



Belastingdienst

Draft AGREEMENT

Public European Tendering Procedure

Tactical Procurement – contract and supplier management facility

Version : 0.9
Reference : IUC22-033
Date : 17.05.2023

The undersigned,

the State of the Netherlands, whose seat is established in The Hague, Ministry of Finance, Directorate General of the Tax and Customs Administration, the Shared Service Organisation Centre for Facility Services (SSO CFD), Tax and Customs Administration Procurement Implementation Centre (IUC), duly represented for the purposes of this document by Ms M.N. van Dooren in her capacity as Director of the SSO Centre for Facility Services,

hereinafter referred to as “the Client”

and

Name of the Contractor, having its registered office and principal place of business at **address and postcode** duly represented for the purposes of this document by name of authorised representative, in **his/her** capacity as **position / capacity**;

hereinafter referred to as “the Contractor”

hereinafter individually or jointly referred to as “the Party” or “the Parties”;

whereas:

- In connection with the objective of the tendering procedure, the Client gives the Contractor the assignment to deliver the Performance, including the realisation and Implementation of a procurement – contract and supplier management facility (which includes making and keeping this facility operational) and all other forms of services or supplies related to the objective of the tendering procedure, namely;
- Furthermore, when delivering the requested Performance, the Contractor will at least ensure that the provisions in Descriptive Document bearing the reference IUC22-033, including the accompanying Appendices and the applicable Contract Specification, as well as the provisions in this Agreement with its Appendices, are performed in a correct and timely manner;
- The Client therefore wishes to contract parts of its duties and the formulated principles within the context of the Performance for a period of 4 years with an optional extension of 6 times 1 year with one Contractor delivering the Performance and actively participating to optimise the deployment, operation and use of the Performance;
- The Client also wishes to purchase Additional Services for the purpose of the Procurement – contract and supplier management facility through the Contractor under the same conditions as laid down in this Agreement;
- The Additional Services will be purchased through a Procurement Order
- The Client has defined the objectives and environment, to which the IT Infrastructure belongs within which the Performance will and must function, in the Descriptive Document and the Contract Specification, reference IUC 22-033. This also applies to any and all Additional Services.
- Information Security (which includes, inter alia, the prevention of a security incident and/or Data Breach) and the processing of personal and other data in delivering the Performance play or will play a significant role. That is why several obligations are detailed in this Agreement to which the Contractor must commit;
- The Client wishes to achieve the Performance by entering into this Agreement and/or Further Agreement(s) preceded by Offer(s) for the Additional Services;
- Following on from this, a European tendering procedure with reference IUC22-033 was held for the acquisition of the Procurement – contract and supplier management facility.
- The Client now wishes to set out the mutual rights and obligations in this Agreement with the Contractor.

have agreed as follows:

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Artikel 1 Terms

- 1.1 In this Agreement, terms are used with an initial capital letter. These terms correspond to a term in the glossary. The glossary has been sent separately with the Tender Documents. It is included as Annex 1 to this Agreement and forms an integral part of it.

Artikel 2 Object of the Agreement

- 2.1 The terms of this Agreement shall apply to the acquisition of the Performance and the Support and Maintenance to be performed by the Contractor in accordance with the Tender Documents.
- 2.2 The terms of this Agreement shall also apply to Procurement Order(s) entered into by the Client on the one hand and the Contractor on the other during the term of this Agreement.
- 2.3 The Client gives the Contractor the assignment to deliver the Performance, including the realisation and Implementation of the procurement – contract and supplier management facility (which includes making and keeping this facility operational) and all other forms of (related) services or supplies of the Performance which are related to the objective of the tendering procedure, namely:
- 2.3.1 Realising, configuring and maintaining the procurement – contract and supplier management facility in order to achieve the following goals:
- the quality and reliability of data capture are improved;
 - the administrative burden on employees is reduced;
 - the BI facility is strengthened and sped up;
 - the workflows are standardised;
 - file creation is in order
- 2.4 In delivering the requested Performance, the Contractor shall at least ensure that:
- 2.4.1 – the provisions of the preamble are met.
- 2.5 The preamble, including any obligations included therein, shall, to the extent not already provided for in the body of the Agreement, form an integral part of this Agreement.
- 2.6 The Descriptive Document accompanying this invitation to tender details the overall functional requirements desired by the Client.
- 2.7 On an ad hoc basis, Additional Services may be purchased from the Contractor during the term of this Agreement in the manner provided for in Artikel 8.
- 2.8 The provisions of this Agreement shall apply unless the Procurement Order expressly deviates from this Agreement in writing.
- 2.9 The following documents form part of this Agreement. In so far as these documents are contradictory, the following order of precedence applies. The higher-ranked document prevails over the lower-ranked document, unless explicitly deviated from by the Parties in the lower-ranked document:
- 1 this Agreement, including Annexes
 - 2 licence terms of the Contractor and/or any third parties as necessary for the provision of the requested services, provided the conditions of Article 6.6 of this Agreement are met
 - 3 Further Agreement(s) including Annexes
 - 4 Summary/Summaries of Additional Information and Changes, with reference xxx of date
 - 5 Tender documents with reference IUC xxx, of date including annexes
 - 6 the Contractor's final tender to the Client with reference xxx of date.
- However, if, on the basis of a lower ranked document, explicitly higher requirements are set on the Performance, then those higher requirements always apply. To the extent that the contents of Annexes letters attached to this Agreement contradict this Agreement, this Agreement shall prevail.

- 2.10 The Contractor has acquainted itself sufficiently with the Client's objectives regarding the present Agreement, the relevant organisation of the Client, the standard processes in which the Performance will be used and the data flows that will be processed with it by the usual management processes in place at the Client.

The Client has provided the Contractor with sufficient and correct information to this end, and will - if required - provide the Contractor with further information, to the extent such information is available from the Client.

- 2.11 In order to guarantee the continuity of the Client's business processes, if necessary, after termination of the Agreement, at the request of the Client, the Maintenance and Support (or part thereof) will be continued under the conditions laid down in this Agreement. The Client and the Contractor will agree on the date of termination of the Maintenance and Support. The Contractor shall, at the request of the Client, cooperate in any Retransition to a successor Contractor in order to make such Retransition as smooth as possible. The provisions laid down in Artikel 32 of this Agreement apply in full here.

Artikel 3 Duration of the Agreement

- 3.1 This Agreement commences on XX-XX-XX and has a term of 4 years, after which it shall terminate by operation of law on date.
- 3.2 The Client is authorised, by mutual consent, to extend this Agreement for a period of up to six (6) years on equal terms. To this end, it shall notify the Contractor in writing of its intention to extend no later than one and a half (1.5) years before the expiry of the relevant (current) contract period and the Contractor, in turn, shall notify the Client in writing no later than 12 months before the expiry of the current contract period whether it agrees to this intention. If the Contractor fails to respond in a timely manner, as described in the previous sentence, the Client is entitled to extend this Agreement for a period of up to six (6) years on equal terms.
- 3.3 The period by which the Agreement is extended will be clearly stated by the Client. The parties will liaise in a timely manner in this regard, but the Client will make the final choice in this respect.

The total term of this Agreement is therefore up to ten (10) years.

Artikel 4 Reserve Contractor Agreement

- 4.1 If the Agreement with the Contractor is terminated, the Client shall be entitled to enter into an agreement on the Performance with the Reserve Contractor within the meaning of section 2.5.5 of the Descriptive Document, without a new tendering procedure. In that case, the suspensive condition of the concluded Reserve Contractor Agreement, Annex x of the Descriptive Document, will lapse.
- 4.2 The Client may exercise the right referred to in this article for 12 months after the date on which the present Agreement was concluded.
- 4.3 In case the Client exercises the right mentioned in this article, the Contractor shall cooperate in an optimal way in a (Re)transition to the Reserve Contractor in order to make the (Re)transition successful. Artikel 32 applies in full.

Artikel 5 Representation and Consultation

- 5.1 With regard to the activities to be performed in respect of the Parties' operational and logistical procedures and the corresponding consultations, reference is made to the contents of the Contract Specification.
- 5.2 The Parties shall each appoint a Contact Person to liaise on the performance of the Agreement. The Parties shall record this in Annex X and/or X and inform each other as to who they have designated as Contact Person.
- 5.3 Without prejudice to the provisions of Artikel 35, the Parties shall have an escalation procedure in place. If the Parties do not have an escalation procedure in place, they will ensure that one is set up.

Artikel 6 Rights of Use

- 6.1 The Contractor grants, and declares that it is authorised to do so, the Client a non-exclusive and non-transferable Right of Use to be able to use the quantity of licences of the Software explicitly stated in the Agreement for the purpose of the Procurement - Contract and Supplier Management Facility.
- 6.2 The expansion in quantity of these licences for the purposes of the Procurement - Contract and Supplier Management Facility may not lead to a change in the Right of Use referred to herein, unless there is a situation as referred to in 6.7.

- 6.3 The Right of Use also includes, free of charge, the right to deploy and use the Software in a manner similar to the Production Environment, insofar as intended for the Acceptance, the Acceptance test and/or making copies for back-up purposes of the software, not being the Client's Production Environment (the OTAP environment).
- 6.4 Third parties engaged by the Client may use the Software in accordance with the provision of this Agreement. The Client shall at all times remain responsible for ensuring that the Software is used by the aforementioned third parties in accordance with the provisions of this Agreement.
- 6.5 In derogation of Article o and without prejudice to the provisions of this article, the licence terms of the Contractor, or of third parties to be engaged by the Contractor when delivering the Performance, will also apply if and insofar as:
- it concerns Standard Software
 - their applicability is not excluded in the Descriptive Document
 - the Contractor (a) has explicitly stipulated the applicability of such terms, (b) a copy of the relevant terms has been attached to the Tender and (c) these terms form an explicit part thereof, and
 - the Agreed use is not excluded or limited as a result, and
 - the Contractor can demonstrate that the Client's rights under the Agreement are not unreasonably reduced or aggravated as a result.
- 6.6 The acceptance of general or special conditions required for the use of the Performance, such as for example in the case of "shrink-wrap", "click-wrap" and "browse-wrap" licences, shall not bind the Client. The Contractor guarantees the Client that such acceptance will not result in any restriction of the Agreed use.
- 6.7 If at any time the Contractor wishes to convert the Right of Use granted to the Client into another right of use in respect of the Software already delivered, as well as the exchange ratio to be applied in that respect, the Contractor will consult with the Client beforehand. Such a conversion will not have any adverse consequences of any kind for the Client. If the Parties fail to reach agreement in the consultation, the Client may continue to apply its Right of Use in full.
- 6.8 The provisions of this Article shall apply mutatis mutandis to Documentation described in this Agreement.

Artikel 7 Rights of Use in respect of the Cloud

- 7.1 The Contractor grants the Client all the Rights of Use that are necessary to use the Service(s) under the Agreement.
- 7.2 The Client grants the Contractor all the Rights of Use that are necessary within the framework of the Agreement for the realisation of Service(s) offered. Trademarks and trade names will only be used with prior written consent.

Artikel 8 Further Supplies and/or Additional and/or Product-Specific Services

- 8.1 The Parties may agree during the term of this Agreement that Further Supplies and/or Additional and/or Product-Specific Services are purchased from the Contractor.
- 8.2 The agreement referred to in the previous paragraph shall be formed through a Procurement Order. It shall be a result obligation unless the nature of the Further Supplies and/or Additional Services and/or Product-Specific Services dictates otherwise.
- 8.3 The Further Supplies and/or Additional and/or Product-Specific Services are related to the subject matter of this Agreement and the underlying tendering procedure.
- 8.4 Moreover, the Additional Services will be performed by the Contractor only on the basis of an Offer accepted by the Client, possibly supplemented by a project plan accepted by a Contractor or the request made by the Client.
- 8.5 In any case, the Offer, and any project plan as referred to in Article 8.4, shall contain information, insofar as relevant, regarding the Additional and/or Product-Specific Services, Documentation (if any), Materials, Rights of Use, risk storage, approval procedure and information about the Client's personnel involved in the Acceptance of the Additional and/or Product-Specific Services and ultimately responsible as implementers.
- 8.6 The provisions laid down in this Agreement also apply to the agreement for Further Supplies and/or Additional and/or Product-Specific Services, unless explicitly stated otherwise.

Artikel 9 Realisation (phase)

- 9.1 After Completion of the Realisation Plan as described in Chapter 3 of the Contract Specification, this Plan will be Accepted by the Client.
- 9.2 Acceptance will be refused if the Realisation Plan is not in accordance with section 3.10 of the Contract Specification
- 9.3 The Contractor shall deliver an updated version of the Realisation Plan incorporating the Client's Findings within 10 Working Days.
- 9.4 If the updated version of the Realisation Plan as referred to in 9.3 is again rejected, the Client is entitled to dissolve the Agreement out of court without any demand or notice of default being required.
- 9.5 Acceptance may not be withheld on grounds not related to the requirements and/or wishes expressly agreed between the Parties and described in the Contract Specification.
- 9.6 The provisions of Artikel 10 of this Agreement shall apply in full to the (final) phase of Realisation as described in Chapter 3 Realisation of the Contract Specification unless the nature and content of the relevant provision dictate otherwise.
- 9.7 The Contractor is obliged to implement the Realisation Plan accepted by the Client. Completion dates as well as the date that the Solution must be live, as stated in the Realisation Plan, are Final Deadlines unless expressly agreed otherwise by the Parties. Artikel 31 applies in full in this regard.
- 9.8 Acceptance of the Realisation Plan by the Client does not in any way affect the Contractor's responsibilities and obligations under the Agreement. The Contractor remains fully responsible for full compliance with the Agreement.

Artikel 10 Completion and Acceptance test(s)

- 10.1 The Client shall not be obliged to make any payment to the Contractor before the Client has accepted the results of the Performance delivered (or parts thereof). Payments nevertheless made before Acceptance are always made under the suspensive condition of Acceptance.
- 10.2 The Parties will make further arrangements in this regard, as regulated in Article 17 of this Agreement.
- 10.3 The Contractor shall notify the Client of an upcoming Completion. Completion and Acceptance shall take place in the manner set by the Parties in advance.
- 10.4 The Client may subject the Performance to an Acceptance Test in accordance with the provisions of the Plan of Action. The Parties will establish procedures within the frameworks set out below with regard to the working method when it comes to performing the Acceptance Test as included in the Plan of Action.
- 10.5 The Acceptance Test shall - unless otherwise agreed - be performed by the Client. The Acceptance Test shall cover all aspects of the Performance agreed in the Realisation Plan, as well as any interfaces and the Documentation.
- 10.6 Immediately after an Acceptance Test has taken place, a signed report shall be drawn up by the Client and sent to the Contractor. This report shall record the Finding(s) exhibited by the Performance and also which parts of the Performance have been approved or disapproved by the Client.
- 10.7 Within a term to be specified, but as soon as possible after the date of the report referred to in Article 10.6, the Contractor shall remedy the Findings recorded in the report at its own expense or offer a replacement Performance. If the results of the Acceptance Test show that any adjustments must be made to the technical interface with the IT Infrastructure, the Contractor, after consultation with the Client, must Implement these adjustments as soon as possible after the Acceptance Test.
- 10.8 If the Client has not approved the Performance during the first performance of the Acceptance Test as referred to in Art. 10.1, the Acceptance Test shall be repeated at the latest within 10 Working Days or as soon as possible after the date of the report as referred to in Art. 10.6 and after rectification of the defects found. A supplementary report will record whether the defects recorded in the first report have been remedied and - in case of a previous rejection - whether the Performance is now approved.
- 10.9 If the Performance is again rejected by the Client after the second Acceptance Test as referred to in article 10.7 because of a defect, the Client shall be entitled to refuse the new or replacement lines of the Performance or the modified Performance

and to demand delivery of a Performance previously approved by the Contractor or to dissolve this Agreement out of court without any demand or notice of default being required.

- 10.10 Acceptance may not be withheld due to the existence of minor faults, being faults that do not reasonably prevent operational or productive commissioning, without prejudice to the Contractor's obligation to rectify these faults under the guarantee scheme.
- 10.11 If all parts of the Performance are approved by the Client, the date on which the relevant report is drawn up and signed shall be the date of Acceptance.
- 10.12 If the Contractor does not comply with its obligation to remedy the Finding(s) in a timely manner, the Client shall be entitled, without prejudice to its further rights and after having given the Contractor proper written notice of default, to remedy these defects itself or have them remedied by third parties. The Contractor shall be obliged to cooperate in this regard. In that case, the Contractor shall be obliged to provide the information required for that purpose at the Client's first request. The Client shall take into account the legitimate interests of the Contractor.
- 10.13 The Client is entitled, after prior written notice, to have the results of the Performance examined by an independent third-party expert before Accepting the Performance. The Contractor is obliged to cooperate in this, but may require the third-party expert to declare beforehand that he will comply with the obligation of confidentiality referred to in Artikel 21 confidentiality. The costs of this examination shall be borne by the Client, unless the results of the examination show that the Client need not proceed to Acceptance on the basis of the provisions laid down in this article.
- 10.14 The Contractor shall provide sufficient support for the proper performance of the Acceptance Test.
- 10.15 If the Client and/or the Parties decide(s) during the performance of this Agreement to carry out an interim (partial) test on the Performance, or part thereof, the provisions of this article shall apply accordingly.

Artikel 11 Maintenance and Support

- 11.1 With regard to the activities to be performed within the scope of Maintenance and Support as well as the related Service Levels, reference is made to the Specifications in paragraph 10.1 as well as to the Service Level Agreement Annex.
- 11.2 The Contractor shall - within the time limit specified in paragraph 10.1.1 of the Contract Specification - submit a Service Level Agreement, which shall be inserted **as Annex X** to this Agreement after Acceptance by the Client.
- 11.3 If the Client rejects all or part of the Service Level Agreement submitted, the Parties shall, in a similar way, follow the procedure described in Articles 10.7, 10.8, 10.9 and 10.10 of this Agreement.
- 11.4 If the Contractor, after this has been pointed out to it once by the Client and after having been given the opportunity to remedy this defect, still fails to comply with one or more Service Levels as included in the Contract Specification and the Service Level Agreement Annex, the Client shall be authorised to terminate the Agreement in accordance with Artikel 31.

Artikel 12 Guarantee of no foreign elements

- 12.1 The Contractor guarantees the Client that, upon Completion, the delivered Performance and/or parts thereof, insofar as this could reasonably have been known to the Contractor - given the current state of the art - does not contain any foreign elements such as viruses, trojan horses, and suchlike.
- 12.2 The Contractor also guarantees the Client that, upon Completion as well as afterwards, the Performance made available (and/or parts thereof) will contain no features, functions or other foreign elements (hidden features such as fraudulent components, backdoors, etc.) which may at any time prevent the use of the Performance.
- 12.3 If the Performance made available (and/or any parts thereof) do contain features, functions or other facilities that the Parties have not explicitly agreed upon in advance, the Contractor will, without prejudice to any of the Client's other claims, make every effort to undo them as soon as possible and will do so free of charge.

Artikel 13 Guarantee

- 13.1 The Contractor guarantees, at least during the term of this Agreement, including any renewals, and the required period of Retransition, that:

- 13.1.1 in case of a (premature) partial termination of the Agreement, for the remaining non-terminated objects of the Agreement, the Performance will be delivered by the Contractor in accordance with the provisions laid down in this Agreement, insofar as this is reasonable.
- 13.1.2 the Performance will be suitable for use in connection with the Client's IT Infrastructure as used by the Client at the time of commencement of the Agreement.
- 13.1.3 standards commonly used in the market are used for the Performance, with a view to ensuring the continuity of the Performance;
- 13.1.4 the Performance is, and will continue to be, suitable in accordance with the required guidelines as detailed in the Tender Documents;
- 13.1.5 if the decision is made not to make use of the added new feature(s), the Performance can be continued undisturbed in accordance with the principles laid down in the Tender Documents and under the provisions laid down in this Agreement;
- 13.1.6 the Performance provides sufficient and adequate protection with regard to the confidentiality of Information Security and, more specifically, with regard to the privacy of data subjects whose personal and other data are processed;
- 13.1.7 the Data, including personal data, may only be processed within the European Economic Area (EEA);
- 13.1.8 that the transport of the Data, including personal data, will at all times be encrypted, whereby the encryption, insofar as not already specifically prescribed by the Client, will at least comply with the state of the art customary in the relevant market and information exchange will only take place with systems authorised for that purpose, the authenticity of which has been established in the context of the relevant transfer;
- 13.1.9 a solution is used that guarantees the backup of all Data and data forming part of the Performance;
- 13.1.10 it acts in accordance with the provisions of Article 22.3 in the event of any Data Breach and that it will take all appropriate technical and organisational measures to prevent (further) Data Breaches;
- 13.1.11 it has implemented such measures to prevent unauthorised access to the (personal) Data or to prevent unauthorised third parties from consulting and/or modifying the (personal) Data and/or affecting the integrity of the (personal) Data, all this in accordance with the GDPR;
- 13.1.12 after termination of the Agreement, he will immediately make the (personal) Data available to the Client or, after the Client's consent, destroy the (personal) Data so that no (personal) Data and/or traces of (personal) Data remain with the Contractor. If returning and/or deleting certain (personal) Data as referred to in the previous sentence is technically impossible according to the Contractor, the Contractor is obliged to prove this by means of a statement issued by an independent competent authority;
- 13.1.13 in the event of partial termination or dissolution of the Agreement as referred to in Artikel 31, the Maintenance and Support will be carried out by the Contractor in accordance with the provisions laid down in this Agreement and Specifications for the remaining objects of the Agreement that have not been dissolved or terminated. The Contractor is also obliged to enter into cooperation with the Client and/or other Contractor in respect of the dissolved or terminated part of the Agreement.
- 13.2 If, at any time during the guarantee period, the Client observes that the **Performance** does not comply with the provisions of Articles 13.1 and 13.2, the Client will notify the Contractor in writing, and in urgent cases by telephone. During the guarantee period, the Client shall be entitled to the rights under the guarantee referred to in this Article, for which purpose the Client need only prove that the **Performance** does not contain the guaranteed feature(s) as stipulated in this article.
- 13.3 If the Contractor is of the opinion that the Client cannot invoke the guarantee provisions, the burden of proof in this respect shall be on the Contractor.
- 13.4 The Contractor shall deliver if the Performance under 13.1 does not function or does not function properly in conjunction with the Infrastructure, in conjunction and in relation to the Procurement contract and supplier management facility.
- 13.5 The guarantee does not apply if a defect is demonstrably the result of incorrect, careless or inexperienced use of the Performance by the Client.

Artikel 14 Liability

- 14.1 If a Party fails to perform an agreed obligation and/or acts unlawfully towards the other Party, the other Party may give it notice of default, granting the defaulting Party a reasonable period in which to perform the obligation. If the defaulting party fails to perform the obligation within this period, it will be in default.
- 14.2 No notice of default will be required if a Final Deadline applies to the performance or if it appears from a notification from or the attitude of the other Party that it will fail to perform its obligation. The Party who is in breach of its obligations will be liable to the other Party for the damage or loss suffered and/or to be suffered by it.
- 14.3 The notice of default shall be in writing, granting the defaulting Party a reasonable period to perform its obligations, unless it is evident from the Contractor's attitude that a demand would be useless. This deadline is to be regarded as a final deadline.
- 14.4 The Client shall be entitled to set off the damage or loss resulting from the Contractor's breach or unlawful act against the Price payable to the Contractor in accordance with the provisions of 15. The Client will notify the Contractor in writing if the Client exercises this power.
- 14.5 The liability referred to in Article 14.1 for personal injury and property damage and resulting damage or loss shall be limited to an amount of € 1,250,000 per event. Here, related events are regarded as a single event.
- 14.6 The liability referred to in 14.1 for all damage or loss other than that referred to in Article 14.5 shall be limited per event to an amount not exceeding four times the fee per claim. Related or a combination of similar and connected occurrences of claims or events are considered one claim.

Damage and loss shall include, but not be limited to:

- damage to the IT Infrastructure including in any case the Performance and data files;
- costs of necessary modifications and/or changes to the Performance, Materials or Documentation made to limit or repair damage or loss;
- all costs including delay costs arising and related to a situation as mentioned in Article 14.1

The Client shall take all reasonable organisational and technical measures (including with respect to recovery software and back-up systems) that it will take as a good Client in order to minimise the damage or loss within the scope of this paragraph.

- 14.7 The liability for consequential damage or loss in Article 14.1 shall be excluded. Consequential damage or loss shall mean:
- loss of profit and turnover
 - costs incurred to prevent, limit or determine consequential damage or loss
 - any damage or loss other than mentioned in Article 14.5.
- 14.8 The limitation or exclusion of liability contained in this article shall lapse:
- 14.8.1 in the event of third-party claims for compensation resulting from death or injury, and/or;
- 14.8.2 in the event of wilful misconduct or gross negligence on the part of the Client and/or its Personnel, and/or;
- 14.8.3 in the event of infringement of intellectual property rights.
- 14.8.4 if an agreement is concluded between the Parties pursuant to Article 19.4 with respect to claims for compensation, which include the fines imposed by the supervisory authority in connection with a failure to perform that agreement.

Artikel 15 Penalty clause(s)

- 15.1 If the Contractor acts in violation of the provisions of Article 21 and/or o of this Agreement, the Contractor shall, without any demand or notice of default being required, forfeit to the Client in each of these cases an immediately payable penalty, not eligible for compensation, of € 50,000 per violation and event.
- 15.2 If non-compliance with any of the provisions of this Agreement would result in multiple agreed penalties becoming due, only one penalty shall be due for the non-compliance. If the relevant penalties differ in amount, the highest penalty will apply. The provisions of this paragraph shall apply if the penalties, or any of them, are in the nature of fixed compensation
- 15.3 The agreed penalties shall, after notice has been given, be immediately due and payable and may be offset against payments made under this Agreement.

- 15.4 Notwithstanding Article 92 of Book 6 of the Dutch Civil Code, the Client is free to claim full compensation in addition to the penalties mentioned in this article and this will not affect the Client's right to performance or full or partial termination.

Artikel 16 Prices

- 16.1 The Prices of the Performance including Maintenance and Support are in accordance with Price Form, Annex **xx** and are fixed for the initial term of this Agreement.
- 16.2 The provisions of Chapter 7 of the Contract Specification on Prices shall apply in full including the manner in which the agreed Prices may be indexed.
- 16.3 Any foreign exchange risks shall be borne entirely by the Contractor and shall be deemed to be reflected in the Prices offered.

Artikel 17 Payment and audit

- 17.1 The Price(s) shall be paid by the Client within 30 days after Acceptance and receipt of the invoice, provided it is duly specified in accordance with the provisions of this article.
- 17.2 Invoices must be drawn up using an overall summary (of what) and a clear specification of the Performance actually delivered, stating a description and code.
- 17.3 Services will be invoiced annually, each time before the services are provided.
- 17.4 Invoicing will take place on the basis of the Contract Specification, Chapter 7, as well as on the basis of what the Parties have agreed in the Pricing Form. Invoices will be sent as stated in the Contract Specification.
- 17.5 The Contractor will send the invoice in electronic form, so that it can be received and processed electronically in accordance with 32.1 with due observance of the specifications provided by the Client.
- 17.6 The additional costs incurred by the Client regarding the delivery by the Contractor of the new and improved version of the invoice shall be borne by the Contractor, unless the sending of the new and improved version of the invoice is due to the Client's business operations.
- 17.7 The Contractor will refrain from sending compound invoices.
- 17.8 The Client shall at all times be entitled to have the contents of the invoices sent by the Contractor checked for correctness by one independent registered accountant to be appointed by the Client.
- The Contractor shall allow this registered accountant to inspect the books and records and provide all data and information as required by the latter and necessary for the audit. The audit will be confidential and will not extend beyond what is required to verify the invoices. The registered accountant will issue his report to both Parties as soon as possible.
- 17.9 The Client is entitled to suspend payment during the period of the audit. The Client will only exercise this power if the Client has reasonable doubt as to the accuracy of the relevant invoices and only for the disputed part of the invoice.
- 17.10 The costs of the audit shall be borne by the Client unless the audit shows that the invoice was incorrect.
- 17.11 If the Client has failed to pay the invoice without a valid reason after the expiry of the term referred to in Article 17.1, it shall by operation of law owe interest as referred to in Article 119a of Book 6 of the Dutch Civil Code on the outstanding amount from the moment of expiry of the term referred to in Article 17.1.
- 17.12 If the payment obligation referred to in Article 17.9 is rightly suspended, the period referred to in Article 17.1 shall be extended by the duration of the rightful suspension.
- 17.13 The Contractor shall not be entitled to statutory interest if the invoice did not contain the said information and/or the Client rightfully exercised its right of suspension.
- 17.14 If one or more payment terms are exceeded by the Client or the Client fails to pay one or more invoices on the grounds of suspected substantive inaccuracy of such invoice(s) or of unsoundness of the Performance delivered and invoiced, this shall not entitle the Contractor to suspend or terminate its performance under this Agreement. The right of suspension shall only accrue to the Contractor if it is firmly established that payment is withheld by the Client on unreasonable grounds.

Artikel 18 Intellectual property rights

- 18.1 All intellectual property rights that can or could be exercised wherever and whenever with respect to the Performance shall be vested:
- a) in the Client, if the Performance, including Documentation, is or has been designed or created specifically for the Client and/or is or has been delivered under the management or supervision of the Client or based on its instructions or designs. By and under this Agreement, the Contractor transfers the aforementioned rights, including rights to works yet to be produced, which will be transferred to the Client should that situation arise, after the Client has paid all invoices to the Contractor in this respect.
- The Contractor hereby acquires a Right of Use for the duration of the Agreement, which includes the use of the Documentation and Materials for the performance of the Agreement. The Contractor is not allowed to use, change and/or further develop the aforesaid Documentation for any work for the benefit of the Contractor and/or for the Client. The Client's permission will be required for any use for the benefit of third parties, to which permission conditions may be attached.
- b) In the Contractor or a third party, if the Performance, which has not been designed or created for the Client, is Standard Software, excluding the Client's data. In that case, the Contractor will grant the Client a Right of Use to the Performance which will, in any case, be sufficient in order to comply with the provisions of the Agreement. If the intellectual property right is vested in a third party, and the Contractor cannot grant the Right of Use itself, the Contractor must ensure that the party in whom the intellectual property right is vested grants the Right of Use to the Client.
- 18.2 Intellectual property rights that arise as a result of work performed by the Contractor for the Client are vested in the Client, unless the Parties have explicitly agreed otherwise.
- 18.3 The Contractor indemnifies the Client against any claims from third parties with respect to any infringements of intellectual and other property rights of third parties, personality rights, including any claims with respect to know-how, unlawful competition and suchlike, insofar as such claims pertain to the Performance delivered by the Contractor.
- 18.4 The Client is and remains the (intellectual) owner of all data and information used or to be used in the performance of the Agreement. This includes the use of, for example, templates, corporate identity, pictorial marks, logos and look-and-feel directly related to or owned by the Client. The provisions of Article 7.2 shall apply in full.
- 18.5 If the Parties have a difference of opinion on intellectual property rights to (parts of) the results of the Performance and/or Documentation, it will be assumed that those rights are vested in the Client, unless the contrary is proven. The Client may continue with the Agreed use irrespective of the outcome of that dispute.

Artikel 19 Processing of personal and other data

- 19.1 In the execution of this Agreement, no personal data will in principle be processed. Should this nevertheless be or become the case (in the future), the Parties will immediately make additional agreements on this and, if necessary, enter into a separate processing agreement. The central government's model agreement will serve as a basis for this where appropriate.
- 19.2 If the Contractor, as a processor within the meaning of the General Data Protection Regulation, processes personal data for the Client within the context of the execution of the Agreement, the Contractor guarantees the application of appropriate technical and organisational measures to ensure that the processing complies with the requirements of the General Data Protection Regulation and protection of data subjects is ensured.
- 19.3 The Contractor shall process personal data only on the instructions and on the basis of written instructions from the Client in the absence of statutory requirements to the contrary.
- 19.4 The Parties shall regulate the processing of personal data by the Contractor for the Client by means of an agreement.
- 19.5 The Parties shall involve each other in the defence of claims by third parties in connection with the processing of personal data under the agreement.
- 19.6 Without prejudice to the provisions of this article, the Contractor shall use the data provided by the Client, and generated on the basis thereof on the instructions of the Client, only for delivering the Performance and to the extent that such use is necessary and proportionate for this Performance, unless there are statutory requirements to the contrary.

Artikel 20 Information disclosure procedure

- 20.1 If the Contractor is asked by one or more foreign government services to transfer (personal) Data in its possession under this Agreement, the Contractor shall follow the procedure set out in this article.
- 20.2 In principle, the Contractor will always inform the Client immediately of the relevant request by means of an immediate written notification. The Contractor agrees to leave the handling of the request to the Client and, if requested, to provide every reasonable assistance necessary to the Client, including the granting of powers of attorney to conduct the defence in the Contractor's name to the extent necessary.
- 20.3 Insofar as the Contractor is not permitted to inform the Client about the request, the Contractor is obliged to:
- legally review the contents of the request from the foreign government service(s) in order to verify that the request has been authorised in accordance with all statutory requirements;
 - examine whether the request concerns the issue of personal data within the meaning of the GDPR or the GDPR (Implementation) Act;
 - identify the data subjects to whom the request relates;
assess whether the country to which the personal data are to be transferred ensures an adequate level of protection within the meaning of the GDPR (Implementation) Act. To the extent this is not the case, the Contractor should check whether a basis exists as mentioned in the GDPR (Implementation) Act which still allows for the transfer;
 - consult with the foreign government service if there appears to be no lawful basis for the transfer of the personal data. Consultations should aim to explore alternative options in order to comply with the GDPR (Implementation) Act at all times and to minimise the scope of data to be provided. Whenever possible, the Contractor shall refer to Data Protection Authorities for advice;
 - object (in court) to the request as well as the prohibition of informing the Client about it.
- 20.4 The provisions of Article 20.3 of this Agreement shall apply mutatis mutandis if, although the Contractor has notified the Client of the request, relevant foreign legislation does not contain any options for the Client, but does contain options for the Contractor, to object to the execution of the request. Where appropriate, the Contractor will first coordinate each step of the procedure with the Client.
- 20.5 Notwithstanding the provisions of article 19 (processing of Personal Data) of the Agreement, the Contractor shall become a controller within the meaning of the GDPR (Implementation) Act when it decides independently - i.e. without prior coordination with the Client - on the request of a foreign government service for access to personal data.
- 20.6 If the Contractor decides to comply with a request to provide personal data, the Contractor shall in any case:
- stripping the data as much as possible of (directly and indirectly) identifying characteristics and offering the data only at an aggregated level;
 - not provide any special personal data within the meaning of the GDPR and the GDPR (Implementation) Act;
 - provide only the most necessary data to satisfy the request;
 - provide for safeguards such that the privacy of data subjects whose data are processed is not disproportionately affected;
 - inform the Client immediately as soon as this is permitted.
- 20.7 In all cases, the Contractor may under no circumstances waive defence or enter into a settlement in respect of the request without the prior written consent of the Client. Data subjects shall be informed exclusively through the Client.

Artikel 21 Confidentiality

- 21.1 Both Parties shall observe strict confidentiality with regard to information about each other's organisation, the operation of Equipment, Documentation, the files, Software, the Results of the Performance, Services, IT Infrastructure and anything that is reasonable to assume disclosure would or could prejudice the interests of the Parties.

Confidential information shall not include;

- information already publicly available;

- information that at the time of disclosure had already been disclosed without restriction to the receiving
 - Party;
 - information lawfully disclosed to the receiving party by a third party;
 - information independently developed by the receiving party without using confidential information of the other party.
- 21.2 Subject to the prior written consent of the other Party, each Party shall make information and data carriers at their disposal available only to its Personnel and the persons it uses in the performance of this Agreement to the extent necessary for delivering the agreed Performance.
- 21.3 The Parties shall keep secret all knowledge of access rules and codes used by the other Party in connection with the execution of the Agreement and take all necessary measures to prevent this knowledge from falling into the hands of unauthorised persons, as well as instruct their Personnel accordingly. Access rules and codes will be changed or blocked by mutual agreement if one of the Parties believes that confidentiality as referred to in this article is no longer guaranteed.
- 21.4 The Parties shall require their Personnel and the persons they use in the performance of this Agreement to comply with these confidentiality provisions. Even after the termination of the contract and/or Agreement, this confidentiality shall remain in force for five years.
- 21.5 The Parties will make every effort to prevent confidential information of the other Party from coming to the knowledge or falling into the hands of third parties. The foregoing does not apply if the disclosure is made pursuant to a Dutch court order or any other Dutch statutory obligation to disclose information or with the prior written consent of the Parties.
- 21.6 The Contractor is also obliged not to make any (news) statements (publications) in the press in any form about the content and scope of this Agreement, unless the Contractor has received prior written permission from an authorised person of the Client. This includes providing references and/or advertising.

Artikel 22 Information security

- 22.1 The Client's modus operandi regarding data confidentiality and safeguarding integrity is laid down in the Government information security baseline (BIO). The Contractor commits to the contents of the document and ensures that the Performance offered does not affect the aforementioned annexes, as described in section 3.3 of the Contract Specification.
- 22.2 Compliance with security requirements is based on international standards whereby:
- a. the Contractor is certified on the basis of ISO/IEC 27001 and 27002 Information Security or equivalent. the Contractor also undertakes to comply with the control measures;
 - b. for all security guidelines qualified as "high", the Performance will meet the criteria used by the National Cyber Security Centre (NCSC) in the NCSC reference ICT security guideline;
 - c. the Performance does not contain any current top 10 risks as further defined in the Open Web Application Security Project (OWASP) top 10 Application Security Risk;
 - d. the Performance does not contain any current SANS top 25 software errors (http://cwe.mitre.org/top25/archive/2011/2011_cwe_sans_top25.pdf)
- 22.3 The provisions of Article 22.1 shall be accepted by the Client and according to a Third-Party Notification, whereby the Client designates a third party. Artikel 23 applies in full here.
- 22.4 The Contractor will immediately inform the Client of any security vulnerabilities discovered or to be expected with respect to Information Security and will inform the Client in writing within a period of two (2) Working Days of the measures and the follow-up actions taken in order to eliminate the risks discovered. Security vulnerability also includes a (suspected) Data Breach. This deadline shall be considered a Final Deadline.
- 22.5 The Contractor's Personnel will only have access to the systems pertaining to the Service(s) if authorisation has been granted by the competent officials of the Parties. The Parties' authorisation procedure should state for all persons involved and authorised under this procedure the nature of their activities, the duration of the authorisation and the systems and data they are granted access to.
- 22.6 The Contractor shall take care of the operational management of the authorisation as regards the access security and tools used by the Contractor.

- 22.7 The Contractor is responsible for detecting unauthorised access or attempts at unauthorised access to the Performance. If the Contractor discovers unauthorised access or attempts at unauthorised access, it will take the necessary measures to limit any damage as much as possible and will try to prevent such from being repeated. Unauthorised access and attempts at unauthorised access, as well as all measures taken, will be reported to the Client immediately.
- 22.8 If the Contractor intends to make any changes to the Performance or to security which have consequences for the security agreements made with the Client, the Contractor will notify the Client thereof in advance and will reach agreement on this with the Client. The Client is required to grant its written approval concerning changes relating to security if these could have adverse consequences for the Client.
- The matters set out above are with the exception of measures that by the nature of the steps to be taken must be implemented immediately in order to handle new and existing security aspects sufficiently.
- 22.9 The Parties are obliged to inform their employees or the third parties hired by them of the applicable security regulations when the Agreement enters into effect. The Parties undertake that they will instruct their employees or the third parties hired by them correctly and fully so that the latter comply with these regulations correctly.
- 22.10 With respect to all data from the Client which - in whatever form or on whatever information carrier - are held by or have been provided to the Contractor, the Contractor undertakes:
- to observe all reasonable measures for safe threat [sic] or storage;
 - not to use the data for any purpose other than the purpose agreed upon;
 - not to retain the data any longer than reasonably necessary for the performance of the agreed obligation by the Contractor and to return these data, including any copies made, to the Client immediately after having fully complied with said obligations or to destroy them after having obtained the Client's permission; if permission has been granted to destroy the data, the Client is entitled to demand proof of destruction.
 - to only have the agreed obligations performed by persons whom the Contractor reasonably believes to be reliable;
 - to cooperate in the supervision carried out by or on behalf of the Client.
- 22.11 The Contractor undertakes to have an Information Security Policy in place. In this policy, the Contractor will at least describe the method and procedures in place within its organisation in order to deal with the obligations on information security as laid down in this Agreement.
- 22.12 In the absence of a policy as referred to in 22.11, the Contractor will have to submit such policy to the Client for approval within 6 months of signing of this Agreement. The Client is authorised to give the Contractor instructions to improve and/or supplement the information security policy submitted for approval. The Client will also set a period within which the Contractor must have followed those instructions.
- 22.13 The Client is also authorised to check the accuracy of the Contractor's Information Security Policy and/or decide to make it part of the (annual) Audit referred to in Artikel 24 of this Agreement.
- 22.14 The information security specified by the Client shall not affect the Contractor's duty to ensure a level of information security that may be expected of a reasonably acting and competent IT supplier.
- 22.15 The Contractor shall terminate a Breach as soon as possible. Without prejudice to the above, the Contractor shall inform the Client as soon as the Contractor becomes aware of a breach.
- 22.16 Even after a notification under the previous paragraph, the Contractor shall inform the Client about developments concerning the Breach, including the measures it is taking to remedy and prevent the Breach in the future.
- 22.17 The Contractor shall leave it to the Client to make notifications to supervisors and competent authorities, unless there are statutory obligations to the contrary. The Contractor shall provide all necessary cooperation for the timely provision of additional information to supervisors, competent authorities and data subjects. The Parties shall each bear the costs they incur in connection with making reports to supervisors, competent authorities and data subjects.

Artikel 23 Third-Party Notification

- 23.1 The Contractor shall submit a current Third-Party Notification (TPN) showing that the design and operation of the Performance meet the specified quality requirements.

- 23.2 The Client shall appoint a third party in charge of the TPN, the TPN party.
- 23.3 The Contractor shall also provide instructions to the designated TPN party.
- 23.4 At the Contractor's first request, the Client will have the TPN party referred to in this article sign a declaration of confidentiality with regard to the information of the Contractor that comes to his attention during his investigation.
- 23.5 The TPN shall be updated annually, unless otherwise agreed in writing and/or if there is a special situation.
- 23.6 In the event of a special situation, the Client shall immediately instruct the Contractor to submit a TPN on a specific subject within a specified time limit.
- 23.7 The Contractor also undertakes to follow and/or implement the recommendations from the TPN immediately, at its own expense.
- 23.8 The provisions of 23.7 shall be accepted by the Client.
- 23.9 The costs of a TPN will be borne by the Client unless the TPN results show that the Performance delivered by the Contractor based on this Agreement can be qualified as not correctly performed by the external and/or internal expert.

Artikel 24 Audit

- 24.1 At the Client's request, the Contractor shall make available all information necessary to demonstrate that the obligations under the Agreement have been and are being fulfilled. This information referred to in the previous sentence shall also include the submission of an officially recognised certificate showing conformity with the requirements and agreements made.
- 24.2 If specific circumstances so warrant, the Client may have an audit carried out. The Contractor shall fully cooperate with any audits, including audits of the Contractor's personnel, unless this cannot reasonably be expected of it.
- 24.3 An Audit is used, among other things, to check whether (personal) data are processed by the Contractor in accordance with laws and regulations, and in accordance with the obligations laid down in this Agreement, and whether the systems used by the Contractor for this purpose meet the requirements set by the Client.
- 24.4 The Client will notify the Contractor in a timely manner in writing of any such intended Audit, the reason for initiating the audit and the audit questions to be addressed by the expert to be engaged.
- 24.5 The Client shall notify the Contractor in writing of any changes in the regulations that form the basis for industry supervisors and/or independent experts to conduct such an audit and, if applicable, shall also notify the Contractor in writing of the consequences of such changes to the Agreement or the method of operation based on it.
- 24.6 The Client shall determine, in consultation with the Contractor, when and by whom an Audit will be carried out, as well as the scope and purpose of this Audit. The Audit referred to in this article is to be regarded as a binding opinion, unless the Client uses an internal audit service.
- 24.7 The results of this Audit shall be respected by the Contractor and the Contractor shall immediately and at its own expense take appropriate measures to minimise the resulting security risks, for example, and shall adopt the recommendations from the Audit. Acceptance takes place by the Client.
- 24.8 The Contractor declares to cooperate in an Audit and to make all facilities and information reasonably required for this purpose, free of charge, available in good time within the scope of the Audit and, if necessary, to provide access to the systems used for the Performance to supervisors or to cooperate in an investigation to be instigated by them in the context of the outsourcing of the Performance by the Client to the Contractor, as provided for in this Agreement.
- 24.9 The aforementioned cooperation also includes, if applicable, cooperation of the Contractor's external auditor. The cooperation referred to herein shall be provided by the Contractor to the extent it can reasonably be required of it.
- 24.10 The costs of an Audit incurred by the Parties in connection with the Audit referred to in this Article shall be borne by the Parties themselves, including the costs of any third parties engaged.

Artikel 25 Personnel

- 25.1 Both Parties undertake to grant Personnel of the other Party access to the place where work is to be performed for the fulfilment of obligations under this Agreement, as well as to enable this Personnel to perform the work under the working conditions customary at that Party.

- 25.2 The Parties also undertake to instruct their Personnel to comply with the house rules applicable at the place of performance as well as to act in accordance with the agreements regarding confidentiality, processing of (personal) Data and security as laid down in, inter alia, the Government information security baseline (BIO).
- 25.3 The Contractor is obliged to ensure that Personnel and/or third parties engaged by the Contractor are aware of the obligations set out in this Agreement. The Contractor shall ensure that Personnel and third parties involved in the work are contractually bound to confidentiality.
- 25.4 The Contractor shall work with its own Personnel, or Personnel of third parties while maintaining the full responsibility of the Contractor. The Contractor warrants that it will not deploy its own Personnel, or Personnel of third parties for the performance of the Agreement, who, at the time of the actual deployment by the Contractor, were in the official service of the Client less than two (2) years ago.

Artikel 26 Training

- 26.1 The Contractor shall provide the training as described in section 8.2 of the Contract Specification.

Artikel 27 Insurance

- 27.1 The Contractor has adequately insured itself and will remain adequately insured during the term of this Agreement for the risks associated with third-party liability, with a minimum policy coverage of € 1,250,000 per claim.
- 27.2 Upon request, the Contractor shall immediately submit proof of premium payment or a valid insurance certificate (or copy thereof) to the Client.
- 27.3 The insurance premiums payable by the Contractor shall be deemed to be included in the agreed Prices.

Artikel 28 Documentation

- 28.1 The Contractor shall provide the Client with the requested Documentation as described in section 8.1 of the Contract Specification.

Artikel 29 Transfer of rights and obligations and subcontracting

- 29.1 The Parties are not entitled to assign the rights and obligations under this Agreement to a third party without the written consent of the other Party. Such consent will not be withheld on unreasonable grounds. However, the consenting Party is entitled to attach conditions to the granting of such consent.
- 29.2 If, in the execution of this Agreement, the Contractor wishes to use the services of third parties, either in subcontracting or by temporary hiring of Personnel, it will only be authorised to do so after obtaining the written consent of the Client, which consent will not be withheld on unreasonable grounds.
- 29.3 When granting approval as referred to in this paragraph, the Client is entitled to attach conditions to the approval as referred to in Article 29.2 or to limit such approval in time. This may also include the submission of a tenderer's statement, certificates or other supporting documents as referred to in Article 2.79(5)(f) of the Dutch Procurement Act.
- 29.4 The Contractor shall immediately (but no later than within 3 Working Days) replace the subcontractor about whom a ground for exclusion as referred to in Article 2.86 and/or 2.87 of the Dutch Procurement Act has become known during the investigation.

Artikel 30 (Non-)performance and force majeure

- 30.1 Any failure to perform the Agreement for which a Party cannot be blamed and which is not for its own account pursuant to the law, a juridical act or generally accepted practice, constitutes force majeure.
- 30.2 Force majeure shall in any case not include: lack of personnel, strikes, illness of personnel (other than due to a pandemic in the Netherlands), power failures, late delivery of Solution(s), non-performance of third parties engaged by the Contractor and/or liquidity or solvency problems on the part of the Contractor.
- 30.3 If, in respect of a failure as referred to in Article 30.1 of this Agreement, the Contractor can claim any advantage it would not have had in case of proper performance, the Contractor will compensate for the loss suffered by the Client as a result

of that failure up to the value of the advantage referred to in the preceding sentence. The provisions of Article 14.8 shall apply.

Artikel 31 Termination of the Agreement

- 31.1 If the Contractor fails to fulfil its obligations under this Agreement, or fails to do so on time or properly, it shall be in default after notice of default, unless a Final Deadline applies, and the Client shall be entitled, without prejudice to any other rights to which it is entitled and without any obligation to pay compensation, to terminate or dissolve the Agreement in whole or in part with immediate effect or to suspend (further) performance of the Agreement.

In such a case, however, the failure must justify the termination.

- 31.2 If the Contractor fails to fulfil its obligations laid down in Articles 22.3, 13.1.7, 34.4, or fails to do so on time or properly, it shall be immediately in default and the Client shall be entitled to take any measure(s) to resolve and/or otherwise remedy the failure on the part of the Contractor at its expense.
- 31.3 The previous paragraph shall not affect the other rights to which the Client is entitled, and without any obligation to pay compensation, the Client shall be authorised to terminate or dissolve the Agreement in full or in part with immediate effect by registered letter, or to suspend (further) performance of the Agreement.
- 31.4 Repeated non-compliance with the conditions set out in this Agreement will also be regarded by the Client as the Contractor's failure to properly fulfil its obligations. This may constitute a ground to exercise the power of dissolution in full in accordance with the provisions of Article 31.1. What is to be understood by repeatedly depends partly on the nature in conjunction with the frequency of the failure, and therefore cannot be defined in advance.
- 31.5 The European Union has imposed sanctions against Russia. Part of these sanctions is that no contracts should be awarded to Russian parties. This also applies to parties subcontracting more than 10% of the contract value to Russian parties or parties using Russian suppliers participating in the Agreement for more than 10%. While the sanctions are in force, the Contractor shall not deploy any party to whom any of the following qualifications apply:
- a. persons of Russian nationality and persons or legal entities (companies, entities or bodies) based in Russia;
 - b. legal entities that are owned more than 50% by a Russian party as mentioned under a; and
 - c. persons or legal entities acting in the interest of or at the direction of a party referred to under a or b.
- The persons and legal entities mentioned under b and c may also be persons and legal entities established in a country other than Russia. If the Contractor violates this provision, the Client is entitled to terminate this Agreement in full or in part without any demand or notice of default, with immediate effect, out of court and in writing, or to dissolve it in full or in part without the Contractor being entitled to damages or other compensation.
- 31.6 The Client is also authorised to terminate or dissolve this Agreement in whole or in part with immediate effect and out of court by means of a registered letter or to suspend the (further) performance of the Agreement with the Contractor, if:
- i. the Contractor is granted a provisional or definitive suspension of payments;
 - ii. a settlement is reached with the Contractor's creditors;
 - iii. a petition for the Contractor's bankruptcy is filed;
 - iv. the Contractor is declared bankrupt;
 - v. a resolution to dissolve the Contractor has been adopted;
 - vi. the Contractor discontinues its business;
 - vii. third parties, not being group or subsidiary companies (as referred to in Article 24b of Book 2 of the Dutch Civil Code and Article 24a of Book 2 of the Dutch Civil Code, respectively), directly or indirectly, acquire control over the activities of the Contractor, whereby for the purposes of this provision, the term "control" shall have the meaning given in the definition of "merger" in the SER Merger Code 2000 [*SER Fusiegedragsregels 2000*], irrespective of whether or not this Code applies to this acquisition (the purchase transactions made shall remain unaffected in this situation as referred to in this paragraph, vii).
 - viii. a significant part of the Contractor's assets is attached;

- ix. any advantage in any form whatsoever has been promised, offered or provided by the Contractor or one or more of its directors, representatives, subordinates and/or non-subordinates to directors, representatives, subordinates and/or non-subordinates of the Client.
 - x. If, during the term of this Agreement, any grounds for exclusion arise in respect of the Contractor as referred to in section 2.86 of the Dutch Procurement Act.
- 31.7 If, at any time [after] the start of the delivery and/or Implementation of the Performance, including the Additional Services, even after Acceptance, facts and circumstances as referred to in Article 31.6 appear to exist with respect to the Contractor, the Client is entitled to immediately dissolve these parts of the Agreement or the entire Agreement. The Contractor shall then be obliged to immediately return to the Client all documents relating to the Client in its possession without retaining a copy, except to the extent that the Client expressly agrees to a different arrangement.
- 31.8 In a situation referred to in article 31.6, the Contractor shall not be entitled to any compensation. Notwithstanding the provisions of Articles 270 to 272 and 278 of Book 6 of the Dutch Civil Code, the Contractor shall not be entitled to any compensation and the Client shall not be bound by any obligation.
- 31.9 If, in the opinion of the Client, there is good reason to fear that the Contractor, directly or indirectly through the agency of subcontractors or suppliers, will fail to fulfil its obligations properly or on time, the Contractor will be obliged, at the Client's first request, to immediately furnish sufficient security, in the form desired by the Client, for the full performance of all its obligations or to take measures to prevent its suppliers or subcontractors from failing to perform properly or on time.
- 31.10 All extrajudicial and judicial costs incurred by the Client as a result of the Contractor's non-performance shall be borne by the Contractor, with the exception of the costs incurred for legal assistance, which shall not be understood to include an order for costs imposed by a court.
- 31.11 Obligations which by their nature are intended to continue even after dissolution and/or termination of this Agreement shall continue after dissolution. These obligations shall include: Liability (Artikel 14), Confidentiality (Artikel 21), Disputes and Applicable Law (Artikel 35), Processing Personal Data (Artikel 19) including the Processors' Agreement (Annex X).

Artikel 32 Retransition

- 32.1 Retransition takes place in accordance with the set requirements as laid down in section 10.4 of the Contract Specification.
- 32.2 If the Agreement is terminated for whatever reason (early or otherwise), the Contractor shall, at the Client's first request, do what is reasonably necessary to ensure that a new Contractor (transition), or the Client itself (re-transition), can take over the performance of the Agreement without any impediments and/or can deliver a similar performance for the Client. If necessary, at the request of the Client, the Contractor shall participate in a consultation with a successor Contractor
- 32.3 Other than in the event of dissolution of the Agreement pursuant to the provisions of the previous article, the Contractor shall perform the services referred to in the previous paragraph at the rates and under the conditions stipulated in the Agreement or, in the absence thereof, at the rates and under the conditions generally applied by the Contractor and to be agreed on. The costs of services referred to in the previous paragraph shall be borne by the contractor in case of an attributable failure by the contractor including the situation where the unlawfulness is partly attributable to the contractor.
- 32.4 Upon completion of the Agreement, the Contractor shall, at the Client's discretion, immediately return or destroy all data provided to it by the Client and generated on the basis thereof on the Client's instructions, including personal data. The Contractor shall ensure that, from the time determined by the Client and, if applicable, not earlier than after return, such data are deleted (including deletion of copies) from its systems and its subcontractors' systems. The Contractor shall inform the Client if, in its opinion, statutory requirements prevent immediate deletion.
- 32.5 During the transition or re-transition, the Contractor guarantees to keep the data referred to in the previous paragraph available for unobstructed inspection by the Client until such time as these data are returned to the Client, or deleted after coordination with the Client.

Artikel 33 Electronic Ordering and Invoicing

- 33.1 The Client shall use the automation system as mentioned in paragraph 10.3 of the Contract Specification. At the request of the Client and within three (3) months, the Contractor shall cooperate with the introduction and application of the then current and successive automation system regarding electronic ordering and invoicing between the Parties. The costs incurred (and to be incurred) by the Client and the Contractor in this connection shall be at their own expense.

Artikel 34 Socially responsible procurement

- 34.1 The Contractor is obliged to deliver the Performance including other accessories in accordance with the requirements, standards and guidelines mentioned in Chapter 5 of the Contract Specification.
- 34.2 In doing so, the Contractor shall send the periodic social return accountability form in accordance with requirement UE36 CSR.
- 34.3 The Client shall be entitled to check the correctness of the certificates submitted and/or Annexes completed.
- 34.4 If the Client concludes from the check referred to in the previous paragraph that the certificates or Annexes submitted are incorrect or outdated, as a result of which they cannot be applied, the Client shall be authorised, without prejudice to the other rights to which it is entitled and without any obligation to pay compensation, to terminate or dissolve this Agreement in full or in part with immediate effect or to suspend the (further) performance of this Agreement.

Artikel 35 Disputes and applicable law

- 35.1 Any dispute between the Parties relating to this Agreement shall be submitted exclusively to the competent court in the district of The Hague, unless the Parties will agree on arbitration or binding-opinion proceedings.
- 35.2 Dutch law applies to this Agreement. The United Nations Convention on Contracts for the International Sale of Goods does not apply.

Artikel 36 General

- 36.1 The general delivery and payment conditions of the Contractor and its subcontractors do not apply , except for licence terms of the Contractor and/or third parties, necessary for the performance of the requested services, provided that the conditions of Art. 6.6 of this Agreement are met
- 36.2 Artikel 35 and Artikel 31 of the Agreement apply in full to the instructions to deliver the Performance. This is in line with the relevant provisions of Article 2.9(1) of the Agreement.
- 36.3 Notices given by either Party to the other pursuant to this Agreement shall be in writing.
- 36.4 At the Client's first request, the Contractor will provide the Client with all information it possesses within the context of the execution of the Agreement, including any copies of such information.
- 36.5 Oral communications, undertakings or agreements shall have no legal effect unless confirmed in writing by the Persons authorised to do so after no later than five (5) Working Days.
- 36.6 With regard to all provisions of the Agreement that are qualified as 'penalties' in the sense of the law, notwithstanding Section 92 of Book 6 of the Dutch Civil Code, the Client is free to claim full compensation in addition to penalties and the Client's right to performance or full or partial dissolution is not affected.
- 36.7 Neither Party shall be authorised to induce Personnel Members of the other Party to perform, undertake and suchlike, against any form of remuneration or gift to that Personnel Member, without which remuneration or gift the performance or undertaking would not have come about, or on different terms.
- 36.8 The Contractor shall refrain from all activities that involve any conflict of interest in the context of the performance of this Agreement. If the Contractor in any way doubts or is aware or may be aware that there is a conflict of interest, it has the obligation to notify the Client thereof immediately.
- 36.9 During the term of this Agreement, the parties shall not, without the prior written consent of the other Party, employ one or more employees involved in the execution of this Agreement from such other Party , or otherwise have them work for it. The Contractor guarantees that the provisions of this paragraph will also be complied with by affiliated third parties such as companies in and/or outside the Netherlands which belong to the Contractor's group company or the group company of which the Contractor forms part. However, consent will not be withheld on unreasonable grounds.

Artikel 37 Annexes

37.1 The following Annexes are attached to this Agreement, which may form an integral part thereof:

1. Glossary
- A. Service Level Agreement
- B. Pricing form

optional:

- C. License Agreement
- D. Support Agreement
- E. DAP
- F. <xxx>

Agreed on <date>, recorded on <number> pages of text (excluding annexes) and signed in duplicate.

On behalf of the Client

On behalf of the Contractor

Procurement Commission Centre of the Tax and Customs Administration <name of entity>

M.N. (Marcia) van Dooren

<name of authorised representative>

director of the Shared Service Organisation Centre for Facility Services of the Tax and Customs Administration <position / capacity>