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Date

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PCM2026-10070

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[www.tue.nl](http://www.tue.nl)

# Agreement

# Enterprise Service Management

between

Eindhoven University of Technology

and

[...]

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**THE UNDERSIGNED:**

- A. The legal entity under public law **Technische Universiteit Eindhoven**, with its registered office at Groene Loper 3, 5612 AE Eindhoven, the Netherlands, registered in the Trade Register of the Chamber of Commerce under number 51278871, legally represented in this matter by <NAME>, Vice president Executive Board,

Eindhoven University of Technology, hereinafter also referred to as: 'TU/e' or 'Client'

and;

- B. [ORGANISATION], with its registered office in [TOWN/CITY], and having its principal place of business at [ADDRESS] in [TOWN/CITY], registered in the Trade Register of the Chamber of Commerce under number [NUMBER], legally represented in this matter by [NAME], [POSITION],

hereinafter referred to as: 'Contractor'

Client and Contractor are hereinafter also referred to as: 'Parties',

**WHEREAS:**

- TU/e requires an IT solution in the field of [subject of the contract];
- TU/e is therefore looking for a party that can contribute the knowledge, experience, and resources to realize this;
- in that context, TU/e has performed a European tender procedure in order to select a Contractor who meets the requirements in the Request for Proposal (invitation to tender) and all accompanying annexes;
- the Contractor has submitted a legally valid Proposal (offer) in respect of the above procedure dated [date] (Annex 2 of this Agreement), which TU/e has deemed the economically most advantageous proposal.
- on the basis of the above, TU/e intends to grant this contract to the Contractor;
- the Contractor has familiarized itself with the requirements, wishes and Objectives set by TU/e in respect of the contract and as a result the Contractor declared itself prepared to perform the contract accordingly;
- the Parties wish to lay down the conditions relating their mutual performance in more detail in this Agreement.

**DECLARE TO HAVE AGREED AS FOLLOWS:**

## Contents

|                    |   |           |
|--------------------|---|-----------|
| <b>Article 1.</b>  | <b>Terms</b> .....  | <b>4</b>  |
| <b>Article 2.</b>  | <b>Objectives and intended result</b> .....                                 | <b>6</b>  |
| <b>Article 3.</b>  | <b>Object of the agreement</b> .....  | <b>6</b>  |
| <b>Article 4.</b>  | <b>Further specification and scoping</b> .....                              | <b>7</b>  |
| <b>Article 5.</b>  | <b>Implementation</b> .....   | <b>7</b>  |
| <b>Article 6.</b>  | <b>Acceptance</b> .....   | <b>8</b>  |
| <b>Article 7.</b>  | <b>Documentation</b> .....  | <b>9</b>  |
| <b>Article 8.</b>  | <b>Obligations of the Client</b> .....                                      | <b>10</b> |
| <b>Article 9.</b>  | <b>Personnel</b> .....  | <b>10</b> |
| <b>Article 10.</b> | <b>Management</b> .....   | <b>11</b> |
| <b>Article 11.</b> | <b>Maintenance and Support</b> .....  | <b>11</b> |
| <b>Article 12.</b> | <b>Service Level</b> .....  | <b>12</b> |
| <b>Article 13.</b> | <b>Version policy</b> .....   | <b>14</b> |
| <b>Article 14.</b> | <b>Prices and rates</b> .....   | <b>14</b> |
| <b>Article 15.</b> | <b>Invoicing and payment</b> .....  | <b>15</b> |
| <b>Article 16.</b> | <b>Guarantee</b> .....  | <b>16</b> |
| <b>Article 17.</b> | <b>Licenses and (intellectual) property rights</b> .....                    | <b>16</b> |
| <b>Article 18.</b> | <b>Term and termination</b> .....   | <b>18</b> |
| <b>Article 19.</b> | <b>Liability</b> .....  | <b>20</b> |
| <b>Article 20.</b> | <b>Force majeure</b> .....  | <b>21</b> |
| <b>Article 21.</b> | <b>Security</b> .....   | <b>22</b> |
| <b>Article 22.</b> | <b>Privacy – Personal Data processing</b> .....                             | <b>23</b> |
| <b>Article 23.</b> | <b>Procedure for request of data</b> .....                                  | <b>23</b> |
| <b>Article 24.</b> | <b>Change of control, transfer of rights and use of third parties</b> ..... | <b>25</b> |
| <b>Article 25.</b> | <b>Secrecy and Confidentiality</b> .....                                    | <b>26</b> |
| <b>Article 26.</b> | <b>AI clause</b> .....  | <b>26</b> |
| <b>Article 27.</b> | <b>Audit and inspection</b> .....   | <b>27</b> |
| <b>Article 28.</b> | <b>Applicable law and disputes</b> .....                                    | <b>27</b> |
| <b>Article 29.</b> | <b>General Provisions</b> .....   | <b>27</b> |
| <b>Annex 1</b>     | <b>Request for Proposal</b> .....   | <b>29</b> |
| <b>Annex 2</b>     | <b>Proposal of Contractor</b> .....   | <b>29</b> |
| <b>Annex 3</b>     | <b>Data Processing Agreement</b> .....                                      | <b>29</b> |

## Article 1. Terms

This article defines a number of terms which are written with a capital letter in this Agreement. The definitions used have the same meaning both in their plural and in their singular form unless the context requires otherwise.

- 1.1. Acceptance: the Client's approval of the object of Acceptance on the basis of the Acceptance Test as described in this Agreement.
- 1.2. Acceptance Test: a test with which the Client assesses on the basis of the agreed acceptance criteria whether the object of Acceptance, as defined in this Agreement, meets the requirements.
- 1.3. Adaptive Maintenance: adjusting the IT solution if this is necessary due to changes in the IT Infrastructure, in the context of the normal version and release policy of the Contractor of the relevant component of the IT Infrastructure, as well as adjusting the IT solution due to changing circumstances and new developments occurring in the field for which the IT solution was designed, such as changing laws and regulations.
- 1.4. Agreement: this Agreement including the accompanying Annexes.
- 1.5. Annexes: the appendices to this Agreement which form an integral part of such.
- 1.6. Availability: the extent to which the IT solution is fully operational and all contracted functionalities are accessible and usable by the Client.
- 1.7. Conversion: the entirety of measures and activities required to transfer the Client's data files to the IT solution without modifying the completeness, integrity and meta data of the data.
- 1.8. Corrective Maintenance: Performance with which the Contractor ensures that Defects in the Software are remedied.
- 1.9. Data: all Data, details, information and any other material or content that Client and/or Users enter, upload, store, share, or otherwise make available through the IT Solution in the context of this Agreement,, including any Personal data.
- 1.10. Delivery: bringing the IT solution and Documentation under the actual control of the Client or the actual granting of access to the Client to the IT solution and Documentation in electronic form.
- 1.11. Defect: a failure or imperfection in the IT solution as a result of which the solution does not comply with the agreed use, or the IT solution is otherwise unsatisfactory.
- 1.12. Development: Performance consisting of the creation of customized links and/or newly to be developed functionality within the framework of the architecture of the IT solution.
- 1.13. Disaster Recovery: the entirety of measures to restore the availability and usability of the IT solution in the event of an emergency, as a result of which the IT solution is no longer available and/or usable. This also includes, but is not limited to failover procedures, backup restoration, and recovery operations using alternative infrastructure within the cloud environment.

- 1.14. Documentation: all descriptions agreed for the management, training and use of the IT solution.
- 1.15. Functional Management: The support of the functional, organization-specific set-up of the IT solution, such as the granting of authorizations and user instructions.
- 1.16. Hosting: Technical and application management, keeping the IT solution running on the IT infrastructure and location of the Contractor under the responsibility of the Contractor, including Interfaces.
- 1.17. Impact: the extent of the disruption of an Incident on the Client.
- 1.18. Implementation: Performance consisting of the process of various activities and measures such as installation, parameterization, setting up, interfacing with existing IT solutions, conversion, migration, and training for the purpose of the functional and technical commissioning of the IT solutions envisaged by the Client.
- 1.19. Incident: a disruption in the Availability and/or usability of the IT solution, whether or not caused by a Defect.
- 1.20. Innovative Maintenance: adapting, improving and/or extending the functionality of the Software other than through Corrective, Adaptive and Preventive maintenance.
- 1.21. Interface: software enabling the mutual data exchange between specific parts of the IT Solution and/or with elements in the IT Infrastructure and/or systems of third parties.
- 1.22. IT Infrastructure: both the physical and logical environment (physical space, equipment, network components etc) in which the IT solution will be operational and with which the IT solution should function in conjunction.
- 1.23. IT Solution: the solution to be delivered by Contractor under the Agreement, such as a system, platform, or software.
- 1.24. Maintenance: Performance consisting of the entirety of Adaptive Maintenance, Corrective Maintenance, Preventive Maintenance, and Innovative Maintenance, as described in the Request for Proposal.
- 1.25. Migration: the entirety of measures and activities aimed at the transition of the existing work processes and Data in the current systems to the work processes and systems that are part of the IT solution to be implemented by the Contractor.
- 1.26. New Version: modified version of the IT solution, extending the functionality through Innovative or Adaptive Maintenance.
- 1.27. Notice of Completion: the written notification by Contractor to Client that an agreed object of Acceptance can be subjected to an Acceptance Test.
- 1.28. Objectives: the Objectives which the Client intends to achieve with the IT solution and has made known to Contractor in the form of the Request for Proposal and this Agreement.
- 1.29. Personal Data: any data concerning an identified or identifiable natural person, which is or will be processed in any way by Contractor and/or otherwise in the IT Solution within the scope of the Agreement.
- 1.30. Performances: the work to be carried out by the Contractor on behalf of the Client and/or its Users on the basis of this Agreement and the services to be provided in the context of such.

- 1.31. Preventative Maintenance: the carrying out of maintenance aimed at ensuring that the IT solution continues to meet the requirements set for it during the term of this Agreement (including but not limited to carrying out releases and patches).
- 1.32. Proposal: The written offer from the Contractor to the Client for the delivery of the Performances (included in **Annex 2**)
- 1.33. Request for Proposal: The Request for Proposal or invitation to tender with reference PCM2026-10070 (included in Annex 1).
- 1.34. Software: the computer software with accompanying Documentation to be supplied by the Contractor as specified in the Request for Proposal, of which the Client acquires a right of use and/or copyright by virtue of this Agreement.
- 1.35. Support: Support is in any case understood to mean accepting and remedying Defects, faults, Incidents, and questions from the Client via a helpdesk.
- 1.36. Technical Management: maintaining the IT solution, as described in the Request for Proposal.
- 1.37. Turnkey Delivery: The delivery of the IT solution, which is ready for use and accepted by the Client in accordance with the Acceptance Article of this Agreement.
- 1.38. User(s): a (natural) person affiliated in any way with TU/e, such as TU/e staff, students, or customers, authorized by the Client to use (a particular part of) the IT solution.
- 1.39. Working days: calendar days excluding Saturdays, Sundays, and official public holidays in the Netherlands, as well as any additional closure days or collective holidays observed by the Client. All references to time are in local Central European Time (CET) or Central European Summer Time (CEST), as applicable..
- 1.40. Workaround: temporary software diversion or problem-avoiding restriction as a result of which the Client is no longer significantly inconvenienced by the Defect.

## Article 2. Objectives and intended result

- 2.1. With this Agreement, the Client aims to achieve at least the Objectives and the result as included in the Request for Proposal.

## Article 3. Object of the agreement

- 3.1. The Client hereby grants the contract to the Contractor, which the Contractor hereby accepts, to carry out the Performances as described in the documents referred to in Article 3.2 which in outline consists of:
  - i) *[outline description of the performances]*;
  - ii) *[...]*;
- 3.2. The following contractual documents, taken together and in mutual coherence, define the rights and obligations of the Parties arising from this Agreement:
  - i) mandatory government rules;
  - ii) The Data Processing Agreement (**Annex 3**) as definitively agreed and signed by the Parties, d.d. *[date]*;

- iii) This agreement;
- iv) Request for Proposal (**Annex 1**), consisting of:
  - a) Any information memoranda dated [date];
  - b) Request for Proposal dated [datum];
  - c) Annexes of the Request for Proposal;
- v) Proposal /offer by Contractor (**Annex 2**)

In the event of contradiction between the documents referred to above, the above-mentioned order will apply, whereby the higher-ranking document always takes precedence over the lower-ranking document unless the nature of the contradiction evidently compels another ranking order and/or a lower-ranking document imposes higher requirements on the performance to be carried out by the Contractor under this Agreement. Commitments made by the Contractor during the tender procedure, including any demonstration, shall be binding on the Contractor insofar as they result in higher requirements for the Performances to be delivered. In the event of any inconsistency between information memoranda, the most recent (latest) information shall prevail

## Article 4. Further specification and scoping

- 4.1. Insofar as the Client and/or Contractor deem necessary, further details of the specification and scope will be included in an implementation plan, within the limits of this Agreement. This further detailing will be based on the information provided in the Request for Proposal (Annex 1).
- 4.2. If, during the term of the Agreement, the Client wishes to have an adjustment of the requirements as included in the Request for Proposal (Annex 1), it will discuss this with the Contractor. The Contractor shall provide a written assessment of the Impact, in the broadest sense of the word, of the desired adjustments on the lead time, budgets and cohesion with other IT systems of the Client of the adjustment and/or development. The requested adjustments will only be made after prior approval in writing by the Client.
- 4.3. The Client is entitled to contract the Contractor for the subjects or modules related to the scope for which a need has arisen during the term of the Agreement as a result of progressive insight. In that event the Parties will come to further agreements in this regard and record them in writing.
- 4.4. Future expansion of the ESM solution to additional business domains is anticipated. The proposed architecture, configuration approach, and implementation methodology should therefore support scalability and phased growth. However, such expansions will be treated as separate business cases and projects. These projects may be initiated after completion and evaluation of the initial implementation phase. The Client is entitled to award any subsequent contracts in this context to the Contractor, but is under no obligation to do so.

## Article 5. Implementation

- 5.1. The Contractor is responsible for the Implementation of the IT solution in the organization of Client, in accordance with the provisions in this respect in the Agreement and the implementation plan that is drawn up by Contractor in mutual consultation with Client and must be explicitly approved in writing by Client. The costs of preparing the implementation plan shall be deemed to be included in the prices and rates included in this Agreement and are not eligible for separate reimbursement.

- 5.2. Implementation takes place in accordance with the time schedule and (predetermined financial and other) conditions and includes the Performances and results of such as included in this Agreement and the Annexes and must take place with optimum deployment of the necessary personnel of the Parties.
- 5.3. The Client requires the Contractor to provide training, instruction and/or education in order to familiarize the Client and its personnel with the use of Contractor's IT solution. The training, instruction and/or education will be given as much as possible by experts involved in the Implementation.
- 5.4. The Parties are entitled to carry out several tests as part of the Implementation, on the basis of which Parties can establish that the IT solution works properly both as regards the individual components and in its entirety and meets the requirements and criteria laid down for this purpose in this Agreement and the Annexes. The exercise of this right is without prejudice to the provisions elsewhere in this Agreement, including the provisions regarding the testing procedures, Acceptance and guarantees.
- 5.5. The Contractor will perform Conversion and/or Migration from the current systems of the Client to the systems of the Contractor in the manner stated in the Request for Proposal. For Conversion and/or Migration, the Client will use the existing formats and tools of the Contractor as far as possible. However, if it turns out that Conversion and/or Migration software needs to be developed, the Contractor shall submit the specifications for such Conversion and/or Migration software to Client for approval.
- 5.6. As soon as the Contractor is of the view that (a part of) the Implementation has been completed, the Contractor shall send the Client a Notice of Completion. The Client shall immediately confirm receipt of this notice to the Contractor in writing. The date of confirmation by the Client shall be deemed to be the date of the Notice of Completion. The Notice of Completion shall be without prejudice to the provisions of this Agreement regarding Acceptance and guarantee.

## **Article 6. Acceptance**

- 6.1. As soon as possible after the Notice of Completion, the Parties will proceed to carry out the Acceptance Test in respect of the (delivered, installed, and implemented) Performances (hereinafter: 'the object of Acceptance'). There may be several (partial) Acceptance Tests.
- 6.2. The Acceptance Test takes place within a test environment (which is made available free of charge) and on the basis of a test plan to be drawn up by the Contractor and approved by the Client. The Client also has the right to have an attack and penetration test performed at its own expense by a company certified for this purpose. The Contractor must provide its full cooperation to this end.
- 6.3. During the Acceptance Test, the Contractor shall assist the Client at its request and provide all necessary qualitative cooperation.
- 6.4. If (parts of) the IT solution is/are rejected for Defects during the (integral) Acceptance Procedure for the second time, Client is entitled to:

- i) terminate the Agreement - wholly or in part - extrajudicially and without further notice of default being required, in which case the Contractor will also be liable within the framework of Article 20 (Liability) for the loss suffered and to be suffered by the Client; or
  - ii) without prejudice to its right to compensation for loss already suffered, allow Contractor to repair the Defects at its own expense; or
  - iii) conditionally accept the IT solution under a condition to be agreed, whereby if Contractor does not meet the conditions set in the conditional acceptance in time, the provisions under i shall apply.
- 6.5. Minor Defects, including Defects which by their nature and/or number do not reasonably prevent putting the IT solution into operation, shall not be a reason for withholding Acceptance, without prejudice to the obligation of Contractor to remedy such Defects free of charge. The Contractor shall remedy the Defects at its own expense within 10 Working Days after the Acceptance Test.
- 6.6. If at the Client's discretion, the choice of which it shall notify the Contractor in writing in good time, no or only a partial Acceptance Test takes place and Client puts the completed product into use in its production environment, the completed product that has been put into use will be deemed to be accepted if it has been put into use for more than twenty (20) Working Days. Putting into use does not affect rights under the guarantee.
- 6.7. Upon Turnkey Delivery, the Contractor shall provide the Client with all data, such as URLs and login data, which are necessary in order to actually use the IT solution.
- 6.8. Periodic costs do not start and may not be charged until after Turnkey Delivery and the taking into use of the IT solution.
- 6.9. If as a result of an attributable failure on the part of the Contractor, the IT solution is not Delivered as a Turnkey Delivery on the agreed date, or is rejected, an amount of € 1.000,00 will be charged for each Working day that the delay in the Turnkey Delivery or Delivery continues, up to a maximum of 20% of the total implementation costs.

## Article 7. Documentation

- 7.1. The Contractor shall will provide the Client with at least one (1) complete set of Documentation. The Documentation must be such that:
- i) it provides a correct and complete description of the IT solution provided by Contractor and its functions;
  - ii) that it contains all relevant and complete information necessary to establish any Interface;
  - iii) Users can easily make use of all features of the IT solution;
  - iv) it is freely deployable by the Client and contains complete information on the basis of which the Client can provide adequate training to its employees/users with regard to use and management;
  - v) that Functional Management by the Client can take place efficiently.
  - vi) it may be reproduced and used by the Client without any restriction for the purpose for which the Documentation was written;

- vii) it is transferable in the widest sense of the word;
  - viii) that it contains all relevant technical and organisational information relating to the storage, processing and access to Data, including the configuration of the infrastructure used, the locations of data processing and the third parties involved;
  - ix) that it contains sufficient information to enable the Client or a third party to continue operating the IT solution, including the processing of Data.
- 7.2. The Contractor shall ensure that the Documentation is ready at the latest on the date of the Notice of Completion. After Acceptance, the Contractor shall make this Documentation available to the Client in the agreed quantities.
- 7.3. During the term of this Agreement the Contractor shall ensure that the Documentation it has supplied will be replaced, amended, or modified as quickly as possible at its own expense, but no later than within two (2) weeks, if at any time it appears that the Documentation contains incorrect information or is otherwise incomplete, insufficient, unclear, or out of date.

## **Article 8. Obligations of the Client**

- 8.1. The Client shall ensure that all Data and documents which are necessary for the correct and timely performance of the Performances are made available to the Contractor in a timely manner and in a form usable by the Contractor.
- 8.2. At the Contractor's request and to the extent that the Contractor is of the opinion that this is necessary for the proper performance of this Agreement, the Client will make the following available to the Contractor free of charge:
- i) safe working space;
  - ii) user facilities on computer systems, and;
  - iii) telecommunication facilities with sufficient capacity.

## **Article 9. Personnel**

- 9.1. Only competent personnel will be deployed by the Contractor for the performance of this Agreement.
- 9.2. If and insofar as personnel of the Contractor will be working on the TU/e campus for the performance of this Agreement, the Contractor undertakes to instruct its personnel to observe the internal rules applicable at the site.
- 9.3. The Contractor will make every effort to have the work carried out by or under the responsibility and supervision of one permanent person, in order to make maximum use of the knowledge of the project and the situation at the Client.
- 9.4. If the Client is of the opinion that the Contractor's personnel are not functioning properly, or are unwilling or unable to carry out the work properly, the Client is entitled to require the Contractor, based on substantiated reasons, to replace such personnel.

- 9.5. In the event personnel are replaced, the Contractor must, after consultation with the Client, make replacement personnel available that are of at least the same level in terms of expertise, training level and experience as the originally deployed personnel. The rates applicable to the original personnel may not be increased in the event of replacement. The costs of training the new personnel shall be borne by the Contractor.
- 9.6. There is a smoking ban in place on the entire TU/e campus. The smoking ban applies to everyone on campus, so including the Contractor. This follows from the new Tobacco and Related Products Act (Article 10, paragraph 1b), in which smoking is no longer permitted on the grounds of educational institutions and sports facilities. The smoking ban applies day and night (24/7). The Contractor can therefore be held liable for any fines incurred by its personnel, auxiliary persons or subcontractors.

## Article 10. Management

- 10.1. The Contractor is fully responsible for the Technical Management of the IT solution , in accordance with the provisions of the Request for Proposal and Annexes.
- 10.2. The Contractor shall not transfer any Personal Data to, or make them accessible from, any country outside the European Economic Area, except with TU/e's express written consent. Where such consent is granted, the Contractor shall ensure that the transfer is subject to appropriate safeguards in accordance with Chapter V of the GDPR, including (but not limited to) the use of Standard Contractual Clauses approved by the European Commission, and shall provide TU/e with evidence thereof upon request.
- 10.3. The Contractor shall not engage sub-processors that will process Personal data without prior written approval of the Client. The Contractor shall notify the Client in writing at least 30 days in advance of any intended change of sub-processors.

## Article 11. Maintenance and Support

- 11.1. Maintenance, to be carried out by the Contractor, shall, unless otherwise agreed, include at least the following services:
- i) Corrective Maintenance;
  - ii) Preventive Maintenance;
  - iii) Adaptive Maintenance;
  - iv) Innovative Maintenance;
- 11.2. Maintenance and Support take place in accordance with a Service Level Agreement agreed between Parties as referred to in Article 12 (Service Level).
- 11.3. The Contractor guarantees that it has sufficient manpower, knowledge and skills at its disposal to be able to properly perform the Maintenance and Support.
- 11.4. All Maintenance shall be carried out without interruption and in the shortest possible time.
- 11.5. Planned Maintenance involving downtime shall always be reported to the Client at least 7 calendar days in advance.
- 11.6. Repair work includes – if this proves necessary – the provision of Workarounds. Workarounds will not be introduced by the Contractor until after written permission has

been obtained from the Client. It is then also determined when the workaround will be replaced with a definitive solution. Workarounds are always temporary in nature.

- 11.7. The Contractor will report to Client in writing why a reported Defect does, or does not, qualify for repair and/or Workaround.
- 11.8. Backup and restore. The Contractor shall make backups of all data in the IT solution at least once a day. This backup process may not affect the performance of the IT solution. The Contractor shall store the backups at a geographically different location than where the data of the IT Solution is stored. In the case of a Disaster recovery, the last backup made is restored by the Contractor. A procedure for this will be agreed and possibly laid down in a Disaster recovery plan. The Disaster Recovery Plan shall in any event ensure that:
- i) the recovery time objective does not exceed four (4) hours, meaning that the IT Solution must be restored to operational status within this period after the occurrence of a disaster; and
  - ii) the recovery point objective does not exceed one (1) hours, meaning that the maximum acceptable data loss measured in time from the last available backup shall not exceed this period

The Client may at all times request the Contractor to make data from the back-up available. Further agreements will then be made on this.

- 11.9. The Contractor will make release notes available for each adjustment of the IT solution.
- 11.10. In emergencies, the Contractor will also carry out Maintenance outside office hours in order to guarantee the continuity of the Client's business operations. The determination of whether and to what extent the work must be carried out outside office hours will take place in joint consultation.

## Article 12. Service Level

- 12.1. The Contractor shall take measures to ensure that the IT solution offered is provided with sufficient redundancy with regard to Availability, performance and Maintenance. This also means that any recovery of Data and cloud services is facilitated by infrastructure and (supporting) IT services that are robust and redundant and that are periodically and demonstrably tested by the Contractor.
- 12.2. Service Desk. The service desk for the reporting of, among other things, Incidents and Defects by the Client to Contractor, whereby the Contractor ensures correct registration and ensures that the report is dealt with, is at least available by telephone on business days between 08:00 am to 06:00 pm, and available via a portal and/or through email 24/7.
- 12.3. Service Window. The window in which the Contractor actively handles, proceeds, executes and/or resolves reports and incidents is 24/7
- 12.4. Availability. The Contractor guarantees that the IT Solution shall be available with an Availability of at least 99.8% per calendar quarter, measured on a 24/7 basis. Availability is calculated as follows:

$$\text{Availability (\%)} = \frac{\text{Actual Operating Time}}{\text{Total Scheduled Operating Time}} \times 100$$

*Actual Operating Time:* is defined as the total time during the Service Window in which the IT Solution is fully operational and available for use, as measured by system monitoring tools or equivalent logging methods agreed with the Client.

*Total Scheduled Operating Time:* is defined as the total number of hours in the Service Window in the relevant calendar quarter, excluding downtime due to:

- Planned/scheduled Maintenance activities approved by the Client in advance;
- Force majeure as defined in Article 21

- 12.5. Maintenance Window. Scheduled maintenance must be carried out on business days between 10:00 pm and 07:00 am, next day or during the weekend between 05:00 pm and 08:00 am, next day.
- 12.6. The maximum downtime for Maintenance shall not exceed 4 hours. The maximum downtime per calendar quarter shall not exceed 12 hours.
- 12.7. Maintenance with a requiring downtime will be announced to Client at least 10 workdays before the Maintenance occurs.
- 12.8. Response and recovery times for Incidents and Defects will be in accordance with the matrix below, with the Client determining the priority assigned to a Defect:

| Incident Category   | Response time<br>(the period between the Client submitting a report and receiving an acknowledgement of receipt from the Contractor) | Recovery time<br>(the period between the Contractor's acknowledgement of receipt of the report and the restoration of the IT Solution to its operational state) |
|---------------------|--|---|
| Priority 1 (High)   | 5 minutes  | 4 hours, 24/7   |
| Priority 2 (Medium) | 5 minutes  | 8 hours, 24/7   |
| Priority 3 (Low)    | 30 minutes   | 24 hours, during 08:00 pm and 06:00 am during business days.  |

- 12.9. The performance of the IT solution must continuously be of such an acceptable level that Client's User can make adequate use of the IT solution.
- 12.10. Monitoring. The IT solution is monitored by the Contractor 24/7. If Incidents or Defects occur, the Contractor will take action and a report is registered. A priority will be assigned to this and the notification will then be dealt with in accordance with paragraph 7 of this article.
- 12.11. The Contractor shall provide the Client with a quarterly Availability report within 10 Working days after the end of each calendar quarter, containing at least:
- the Total Scheduled Operating Time (in hours);
  - the Actual Operating Time (in hours);
  - the total unplanned downtime (in hours) within the Service Window, including date, time, duration, and root cause per Incident/Defect
- 12.12. If the agreed Availability is not achieved during the stipulated period, a penalty of 10% of the recurring quarterly fees will be charged.

If an Incident or Defect with priority 1 has not been resolved within the set recovery times, an amount of € 2.500,00 will be deducted from the next invoice for each calendar day the recovery is not achieved up to a maximum of € 50.000,00. If an Incident or Defect with priority 2 is not resolved within the set recovery times, an amount of € 1000,00 will be deducted from the next invoice for each calendar day the recovery is not achieved up to a maximum of € 10.000,00.

### Article 13. Version policy

- 13.1. Upgrading (New Version) of the Software is always possible. Without prejudice to the foregoing, the Contractor will provide the Client with a New Version if necessary during the term of this Agreement. The Contractor will only be entitled to carry out automatic upgrading of the IT Solution without prior consent of the Client if:
  - a) the Contractor Party provides the Client with an up-to-date and freely accessible release calendar, which forecasts at least 6 months into the future and provides an insight into the changes implemented in each release.
  - b) the Client has the opportunity to test the new releases for a period of 3 weeks.
  - c) the Contractor and the Client agree on a (test) procedure to be followed that will enable the Client to determine whether the upgrade (New Version) and/or Maintenance will have an impact on other systems or Interfaces used within the Client's environment of the IT-Solution . The Contractor will follow the Client's reasonable instructions in this respect.
- 13.2. Without prejudice to the provisions in paragraph 1, the Contractor is obliged to timely adapt the functionality of the IT solution insofar as it concerns legal obligations or guidelines within the sector that are necessary from the point of view of good governance. The Contractor shall notify the Client of this well in advance.
- 13.3. New versions delivered by Contractor are deemed to form part of this Agreement from the day they are added to the IT Solution.
- 13.4. Adjustments and/or additions to the IT Solution provided, including New Versions, shall never result in a limitation of the performance and/or applications or application features of the IT Solution in connection with the IT Infrastructure used by the Client, or in an increase of costs for the Client.

### Article 14. Prices and rates

- 14.1. The prices and rates are stated in **the Proposal (Annex 2)**. All prices and rates are exclusive of VAT, but inclusive of all other costs associated with the performance of the Agreement.
- 14.2. Unless otherwise stipulated, the agreed prices and rates are fixed and unchangeable during the initial term of the Agreement.
- 14.3. After the initial term of the Agreement, an annual indexation may be applied to the agreed rates: Any indexation is based on the annual change of the month January of the Consumer Price Index of the CBS (total expenditures, last determined base year). After Written approval by the Client, the price revision can be implemented. Indexation with retroactive effect over multiple years is excluded.
- 14.4. Additional work

- 14.5. If the Contractor is of the view that there will be additional work, it will inform Client as soon as possible in writing and also state the apparent reason for this. Additional work shall only be eligible for payment if instructions to this end has been issued in writing by the Client.
- 14.6. Additional work does not include unforeseen work required to deliver the agreed IT solution in a working condition. Additional work therefore does not include additional work which the Contractor could or should have foreseen or which is necessary to deliver the IT solution in an operational sense in accordance with the specifications and/or to keep it operational as such.

## Article 15. Invoicing and payment

- 15.1. To the extent that the Contractor can reasonably be required to do so, the Contractor will state on the invoices to the Client the date, specification, the amount owed in euros and other information made known to the Contractor in writing by the Client and which is required by law. The Contractor will invoice the Client for the amounts payable by the Client on the basis of this Agreement, but not until the Contractor has received a specific, relevant purchase order from the Client to this end. This/these purchase order(s) is/are intended for administrative purposes only and can never be construed as an addition/amendment to this Agreement. No rights whatsoever can therefore be derived from this/these purchase order(s) issued by Client. All amounts arise from the performance of the Contractor's obligations under this Agreement; the Contractor shall therefore not charge any prices, costs and/or refunds other than those agreed In Writing and in advance.
- 15.2. Invoicing takes place as follows:
- I. Costs for the Implementation, including the license costs required for the implementation, are invoiced at a rate of 70% pro rata the implementation and progress per month in arrears. 30% of the costs will be invoiced after successful completion of the Turnkey Delivery
  - II. Costs for training and education shall be invoiced in arrears, based on the actual services performed or consumed by the Client .
  - III. Periodic costs for annual services and annual maintenance on Interfaces must be invoiced monthly in arrears in 1/12th part, with annual services starting on [date]/or periodic costs for annual services will be invoiced annually in advance/after the end of the month.
  - IV. [...]

Periodic costs may not be charged until the date after successful completion of the Turnkey Delivery and the actual go-live of the IT Solution.

- 15.3. Invoices must be addressed and sent digitally to:  
Eindhoven University of Technology  
Attn Invoice processing  
Groene Loper 3  
5612 AE Eindhoven, the Netherlands

The Client prefers to receive the invoice in XML format via the Dutch PEPPOL Authority (NPa); see [www.peppolautoriteit.nl](http://www.peppolautoriteit.nl) for more information.

If necessary, receipt of the invoice in PDF format is possible. In that case, the invoice must be sent to [factuuradministratie@tue.nl](mailto:factuuradministratie@tue.nl).

To be able to process the invoice, the invoice must contain the order number (PO number).

- 15.4. Payment of correct invoices takes place within thirty days of the invoice date and after approval by the Client.
- 15.5. The Client may suspend payment of an invoice, or part of such, on which there is no agreement between the Parties, during the period of an investigation to be conducted by the Client. The Client will only use this authority if it has reasonable doubts about the correctness of the invoice concerned.
- 15.6. Exceeding a payment term by the Client or non-payment by the Client of an invoice on the basis of a suspected substantive inaccuracy of that invoice does not entitle the Contractor to suspend or terminate its Performances. The Contractor is also not allowed to charge interest on the amount owed. The Client will inform the Contractor about the suspension of payments.
- 15.7. Additional work will be invoiced by the Contractor in a separate invoice after completion of the additional work. The nature and scope of the additional work performed will be explicitly specified in the invoice with reference to the written approval of the Client.
- 15.8. Settlement of reduced work takes place by deduction from the agreed sum or by credit if advance payment has been made. When paying, the Client will indicate which part will be settled due to reduced work. Settlement will take place after the Client has notified the Contractor of the incurred amount and has received or has prepared an invoice for this.

## Article 16. Guarantee

- 16.1. With regard to the IT solution, the Contractor guarantees during the term of this Agreement that:
- i) it contains the agreed properties, as laid down in this Agreement and complies with the specifications as included in the contractual documents referred to in Article 3.2
  - ii) it is efficiently, soundly and coherently designed and developed;
  - iii) it complies with prevailing technical standards;
  - iv) it does not contain any other security measures or functions or elements foreign to the IT solution than those stated in the Documentation;
  - v) all measures have been taken to prevent it from containing viruses/malware/Trojan horses.

## Article 17. Licenses and (intellectual) property rights

- 17.1. The basic principle is that all licenses required for the correct performance of the Agreement are provided by the Contractor and are included in the prices as stated in this Agreement. So-called shrink wrap licenses (opening a package/seal) or click-through/wrap licenses (clicking an acceptance button or otherwise during the installation of software) or other types of licenses where the Client was not able to take note of the contents prior to the formation of this Agreement are never applicable and may never be added to the IT solution. This also applies if such license conditions are/will be added to the IT solution (or parts thereof) in breach of the foregoing and whether or not they are consciously or unconsciously accepted by the Client and/or Users. If and insofar as declaring the above conditions to be inapplicable proves impossible or partially impossible, and should there

nevertheless be any commitment towards the Client/Users to one or more of those conditions, then the content of those applicable conditions are set at the same level as the Contractor's Proposal (as referred to under article 3.2.v) and will therefore at all times be subordinate to the content of this Agreement and the Client's Request for Proposal.

- 17.2. The basic principle is that all intellectual property rights that can or will be exercised - wherever and whenever - with regard to the IT solution vest in the Contractor or its licensor(s). This also applies insofar as the IT solution includes a TU/e-specific addition to existing software not specifically developed for the TU/e by the Contractor and/or its licensor(s), for which the Contractor and/or its licensor(s) already has/have all property rights. With regard to an IT solution, or parts thereof, specifically developed for the benefit of TU/e, which do not constitute an addition as aforementioned, the intellectual property rights vest in the Client. These rights are transferred by the Contractor to the Client on the basis of this Agreement, or, if necessary, each time by separate deed after Acceptance. The Contractor authorizes the Client in advance to do all that is necessary to make such a transfer possible.

In order to fulfil the Objectives, Development is necessary. The Contractor guarantees that Development takes place specifically for and on the instructions of the Client and that the IT solution, parts thereof and/or elements related thereto are not related and/or for functionality/operation are not dependent on software/products/licenses for which the property rights cannot be transferred to the Client. The starting principle is therefore that all (intellectual) property rights, which can or will be exercised - wherever and whenever - with regard to the IT solution, or a part thereof, and all related elements, including all Documentation, vest in the Client. At the moment of the Development of the IT Solution, the ownership of this Software, both in Source Code and in object code, as well as the accompanying Documentation and data carrier(s), will transfer to the Client. These rights are transferred by the Contractor to the Client on the basis of this Agreement, or, if necessary, each time by separate deed after Acceptance. The Contractor authorizes the Client in advance to do all that is necessary to make such a transfer possible.

Without prejudice to the foregoing, the Contractor furthermore undertakes to confirm this transfer by deed after the completion of (every part of) the IT solution and the accompanying Documentation, or to have this as yet take place by deed (with an offer letter or Notice of Completion). In view of the nature and scope of this Agreement, the Contractor hereby also expressly waives its right to make changes to the IT solution or parts thereof (as stated in the last paragraph of article 25 of the 1912 Copyright Act). The Contractor also waives its rights referred to in the first sentence of article 25 under a., b. and c. of that act. Furthermore, the Contractor guarantees that it has entered into agreements with third parties, which are engaged in the development process, which include the full transfer of the copyright to the Contractor and the waiver by these third parties of the rights referred to in article 25 of the Copyright Act, so that the Contractor is authorized to pass those to Client without restrictions.

Insofar as intellectual property rights are vested in the Contractor and/or its licensor(s) or must be transferred to the Client on the basis of the previous paragraph but this transfer is not possible due to mandatory law or regulations, the Contractor hereby grants the Client for an indefinite period (an) exclusive transferable license(s) on all parts of the IT solution, therefore including the aforementioned additions, and the corresponding Source Code and object code which are not transferable. The license has no geographical restrictions with regard to the use by the Client and/or Users and also gives the right to use, develop, expand and/or exploit the Source Code and object code (or have them used). The license granted

under this Article for parts of the IT Solution specifically developed for the Client shall be perpetual, irrevocable, and shall survive termination or expiry of this Agreement. For all other parts of the IT Solution, the license shall remain in effect for the term of this Agreement and can only be terminated by the Contractor in accordance with and can only be terminated by the Contractor in accordance with Article 19 (Term and Termination) of this Agreement.

- 17.3. If the Contractor wishes to reuse the changes, improvements and/or extensions, the Parties will agree on the (financial) conditions for this in mutual consultation and record them in a separate agreement. Any reuse of changes, improvements, and/or extensions as referred to in this Article shall in no event contain, disclose, or otherwise make recognizable any Data, designs, branding, configurations, or other elements that could identify the Client or its Users
- 17.4. The Contractor indemnifies the Client against all (financial) consequences attributable to the Contractor of claims from third parties (whereby personnel of the Client can be regarded as third parties in that regard) in respect of copyright infringement. The Contractor furthermore guarantees that it has not concluded an agreement with its employees who are involved in the performance of this Agreement which include deviations from article 7 Copyright Act. Only the Contractor shall be entitled to take all actions necessary to end the continuation of such infringement and the Contractor shall assume the defense of such a claim and reimburse all costs and/or damages to the Client that are finally awarded by a court of law. However, the Contractor will not indemnify the Client against such costs and loss if the infringement is the result of:
- i) The use by the Client of the IT solution, or part thereof, in combination with materials, hardware or other items not supplied or to be delivered by the Contractor;
  - ii) Use by the Client of the IT solution other than for which it was created;
  - iii) Changes by Client to the IT solution or part thereof other than for which it was created;
  - iv) Failure by the Client to change the IT solution or part thereof on the instructions of the Contractor, as a result of which the infringement could have been eliminated or prevented.
- 17.5. The Client or the User respectively is and remains the owner of all Data generated and/or stored during the performance of the Agreement, as well as the Data that is involved in the Conversion and/or Migration, as well as the Data that occurs and/or is retrieved from other systems of the Client with whom Interfaces are realized for the benefit of the IT solution. Without prejudice to the above, the Data must at all times be accessible to the Client in a usable machine-readable format without restriction to employees of the Client authorized to do so. The Contractor is only permitted to use this Data to realize the required Performances and to provide the desired reports, as included in this Agreement. The Contractor is not permitted in any way to use this Data for itself other than for the performance of the Agreement and/or to provide it to third parties, whether or not in anonymized form, without the express and prior written consent of the Client.

## Article 18. Term and termination

- 18.1. This Agreement will enter into force upon signature by both Parties.
- 18.2. The Turnkey Delivery of the IT solution must have taken place by [date]

- 18.3. This Agreement has an initial term of 4 (four) years. The initial term starts after the successful completion of the Turnkey Delivery of the IT solution. . After this initial term, the Client has the unilateral option to extend the Agreement 3 (three) times for a period of 2 (two) years. After these extension options have also been purchased by the Client, the Agreement can be extended for a period of twelve months each time by mutual consent of the Parties.
- 18.4. Except as provided elsewhere in this Agreement:
- i) one Party is entitled to terminate this Agreement by means of a registered letter addressed to the other Party, if the other Party fails in the fulfilment of its obligations arising from this Agreement and after notice of default, in which the other Party is given a reasonable period of time to as yet fulfil its obligations, continues to fail, unless a strict deadline has already been exceeded, as a result of which the other Party is in default by operation of law and the other Party can terminate the Agreement immediately after the occurrence of the failure in accordance with this provision.
  - ii) one Party is entitled to terminate this Agreement extrajudicially by means of a registered letter without any reminder or notice of default being required if the other Party applies for a moratorium or is granted a moratorium; the bankruptcy of the other Party is petitioned for or it is declared bankrupt; the company of the other Party is liquidated or terminated other than for the purpose of merging companies; a substantial part of the assets of the other Party or of the IT solution is seized, or the other Party should no longer be deemed able on reasonable grounds to fulfill their obligations under this Agreement; Furthermore, if:
    - a) One or more grounds for exclusion as included in Sections 2.86 and 2.87 of the Public Procurement Act 2012 are applicable to the Contractor at any time during the term of the Agreement, and/or;
    - b) The Contractor (or one of its directors) and/or a subcontractor of the Contractor is suspected, or convicted, of a criminal offense, and/or;
    - c) The Contractor, or its consortium partners and/or any third party/subcontractor engaged by the Contractor for more than 10% of the value of the Agreement, is, at any point during the term of the Agreement, found to be a Russian entity within the meaning of Article 5d of the Regulation (see also Article 11 of Council Regulation (EU) No. 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine).
    - d) other conduct of the Contractor that results in unacceptable damage to the Client's image.

Before the Client proceeds to terminate the Agreement on the basis of the provisions referred to under a) to d), the Client will take the justified interests of the Contractor into account. The Contractor shall notify the Client without delay if and as soon as the Contractor becomes aware that it is subject to criminal investigation and/or that criminal prosecution has been initiated against it and/or that one or more of the exclusion grounds set out in Articles 2.86 and 2.87 of the Dutch Public Procurement Act 2012 apply to it. The Contractor shall also notify the Client without delay if it, or its consortium partners and/or any third party/subcontractor, is found to be a Russian entity within the meaning of Article 5d of the Regulation.

During the term of the Agreement, the Client shall be entitled to (have a third party) screen the Contractor to verify whether one (1) or more of the circumstances referred to in this provision apply. If the Client requires the Contractor's cooperation for this purpose, the

Contractor shall comply upon first request. Should the Contractor refuse to cooperate, the Client shall assume that one (1) or more of the circumstances referred to in this provision have occurred.

- 18.5. In the event of a ground for termination, the Contractor is furthermore obliged, at the Client's first request, to hand over the Source Code and object code belonging to the IT solution, as well as all other Data required for the rights as referred to in paragraph 2 of the previous article with regard to Licenses and intellectual property rights, all this for a reasonable fee, insofar as this has not already been paid by the Client.
- 18.6. Obligations under the Agreement that by their nature are intended to continue to exist after the termination of the Agreement will continue to exist after the termination of the Agreement. The termination of this Agreement expressly does not release the Parties from the provisions with regard to confidentiality, security and data protection, liability, intellectual property, takeover, applicable law and competent court.
- 18.7. In the event that the Agreement ends for any reason whatsoever, the Contractor will, upon the Client's first request, do all that is reasonably necessary to ensure that a successor Contractor or the Client itself can take over the performance of the Agreement without hindrance or can perform a similar service for the Client. The Contractor will also promptly return to the Client all documents, books, records and other goods (including data and information carriers) made available to it by the Client.

In addition, the Contractor will also ensure that (at the Client's discretion):

- i) all or part of the Data made available by the Client will be destroyed at all locations,
- ii) all or part of the Data made available by the Client is made available to a subsequent service provider, or
- iii) the Client and/or Users are given the opportunity to extract their Data, or a part of the Data determined by the Client, from the hosted data.

The Contractor guarantees that, in carrying out the foregoing, no Data will be processed, stored or accessed outside the European Economic Area, unless the Client has specified otherwise in writing in advance.

Where the IT Solution includes third-party software, modules, and/or Interfaces provided or facilitated by the Contractor, the Contractor shall use best efforts to safeguard, continue, and transfer the relevant licenses, subscriptions, Interfaces, or equivalent access rights to a successor Contractor or to the Client, on terms no less favourable than those in effect during the Agreement.

If necessary, the Client may impose further requirements on the method of provision, including requirements for the file format or destruction.

- 18.8. The Contractor will at all times and at no costs guarantee the data portability of the Data described in the previous paragraphs in such a way that there is no loss of functionality or (parts of) the Data. The Contractor further guarantees that the transfer and provision of Data will take place in such a way that the confidentiality, integrity and availability of the Data are maintained and that no unauthorised access by third parties or public authorities can occur.

## Article 19. Liability

- 19.1. If the Contractor imputably fails to fulfill its obligation(s), the Contractor is liable towards the Client for compensation for the loss suffered or to be suffered by the Client. However, the Contractor is not liable (limitedly) for loss suffered by the Client as a result of loss of profits and other loss of revenue.
- 19.2. Liability for an attributable failure to perform any obligation under this Agreement is limited to an amount of implementation costs + 1 times the annual costs per event or series of related events.
- 19.3. The limitations of liability included in the previous paragraph shall not apply in the event of: compensation for death or injury, and /or willful misconduct or gross negligence on the part of the Contractor and/or its personnel, and/or breach of confidentiality and/or infringement of intellectual property rights, and/or claims relating to the processing of personal data.
- 19.4. The Contractor indemnifies the Client, in the event of attributability on the part of the Contractor, against all (financial) consequences of claims from third parties (whereby staff, students and guests of the Client can be regarded as third parties in that regard) that are in any way related to the performance of its obligations under this Agreement.
- 19.5. The liability of the Contractor or the Client on account of failure to perform this Agreement will only arise after the Contractor has been given notice of default by the Client, or vice versa, unless a deadline has been exceeded or the fulfilment of the obligations involved is already permanently impossible, or the liability arises from an indemnity obligation under this Agreement, in which case the Contractor or the Client will be immediately in default by operation of law. The notice of default will be given in writing (including via email), whereby the Contractor or the Client is given a reasonable period of time to as yet fulfil its obligations. This term has the character of a strict deadline.
- 19.6. The Contractor will be and remain adequately insured during the entire term of the Agreement. This insurance includes business liability. At the request of the Client, the Contractor will submit the appropriate documents in proof of this. The insurance premiums owed are included in the agreed prices and rates.

## Article 20. Force majeure

- 20.1. Neither Party is obliged to fulfil any obligation if it is prevented from doing so as a result of force majeure. Force majeure does in any event not include: illness of personnel, lack of personnel, strikes, late delivery or unsuitability of materials, and/or liquidity or solvency problems on the part of the Contractor. Nor does force majeure include the attributable shortcoming in the fulfilment of the obligations of a third party engaged by the Contractor.
- 20.2. The parties can only invoke force majeure towards each other if the relevant Party notifies the other Party in writing of such an invocation of force majeure as soon as possible, subject to submission of the necessary documentary evidence.
- 20.3. If the force majeure on the part of the Contractor lasts longer than fifteen (15) Working Days, or it is foreseeable that it will last longer than fifteen (15) Working Days, the Client has in any event the right to terminate this Agreement extrajudicially and with immediate effect by means of a registered letter, without the Parties being liable to pay any compensation.
- 20.4. Paragraph 3 of this article does not apply if fulfilment of the obligations is already permanently impossible, in which case the Client can terminate this Agreement immediately.

## Article 21. Security

- 21.1. The Contractor is aware and acknowledges that the IT solution will contain confidential Data of the Client and/or the Users. The Contractor must ensure careful, honest and secure management of all data information involved in this Agreement, including all associated management systems that are used to provide the Client with information efficiently and effectively, and organizes its procedures and working methods in such a way that the Client is able to continue to comply with the security level and level of protection of personal data that it has established/prescribed.
- 21.2. The Contractor will take appropriate measures to adequately organize the physical and logical security of the IT solution against loss or damage and against any form of unauthorized access, change and provision or otherwise unlawful processing of Data. Taking into account the state of the art and the costs of its implementation, these measures guarantee an appropriate level of security in view of the risks involved in the processing and the nature of the Data to be protected. The measures are also aimed at preventing unnecessary collection and further processing of the Data referred to. The Contractor will record the measures in writing and ensure that the security as referred to in this article continuously meets the security requirements under, among other things, the General Data Protection Regulation (GDPR) and the accessibility requirements of the central government.
- 21.3. The Contractor warrants that:
- i) Data is stored, processed and managed exclusively within the European Economic Area;
  - ii) this geographical restriction is technically enforced (including in relation to any subcontractors or suppliers) and is not solely guaranteed by contract;
  - iii) Data shall not be transferred outside the European Economic Area without the Client's prior written consent;
  - iv) access to Data, including management, support and administrative access, takes place exclusively from within the European Economic Area, unless the Client has given prior written consent to the contrary;
  - v) remote access from countries outside the European Economic Area is prohibited without the Client's prior written consent;
  - vi) Data shall not be accessible to entities subject to the laws and regulations of third countries that may compel access to such Data, unless the Client has given its prior written consent and the Contractor (and any third parties acting under its responsibility) has implemented appropriate technical and organisational measures to mitigate the risks of such access;
  - vii) access to Data and systems is granted solely on the basis of the principle of least privilege;
  - viii) all access to Data is fully logged and verifiable;
  - ix) access to Data by the Contractor or by third parties engaged by it takes place only to the extent necessary for the performance of the Agreement and in accordance with any procedures prescribed for that purpose by the Client.
- 21.4. The Client requires, in view of the nature of the Data and the risks, that the Contractor takes additional measures regarding encryption and key management.

In that case, the Contractor guarantees that:

- i) Data is encrypted during storage, transmission and, as far as possible, processing;
- ii) Encryption keys are under the exclusive control of the Client and/or a party designated by the Client within the European Economic Area;
- iii) the Contractor has no access to these keys
- iv) Data cannot be made available in a readable form without access to these keys;
- v) the technical configuration is such that the Contractor is unable to provide Data in a readable form without the Client's active cooperation.

21.5. The Contractor shall inform the Client without delay and at the latest within 24 hours, after it has become aware of a suspected or actual security incident, which shall in any event include:

- i) unauthorized access, alteration/modification, or disclosure of Data; or
- ii) loss, destruction or corruption of Data; or
- iii) breach of security measures.

The Contractor shall take all necessary measures at its own expense to secure the Data, to remedy the shortcomings in the security measures in order to prevent further unauthorized access, alteration/modification and disclosure, without prejudice to any right of the Client to claim damages or other remedies. At the request of the Client, the Contractor will cooperate in informing the competent authorities and the affected data subject(s) in accordance with applicable laws and the Data Processing Agreement.

21.6. If so requested, the Contractor will immediately provide the Client with information in writing with regard to the (organization of) the processing and security of Data. The Contractor shall provide all information necessary to demonstrate compliance with the obligations under this Agreement.

## **Article 22. Privacy – Personal Data processing**

- 22.1. This Article applies when personal data is processed by the Parties in the context of the performance of this Agreement.
- 22.2. in the context of the performance of this Agreement, the Contractor shall act as a Processor within the meaning of the General Data Protection Regulation (GDPR) and shall process the personal data in accordance with the Processing Agreement as set out in Annex 3.
- 22.3. If the previous article does not apply: Prior to the processing of data, the Parties shall make additional written agreements in accordance with the applicable laws and regulatory data, which agreements shall form an appendix to this Agreement.

## **Article 23. Procedure for request of data**

- 23.1. If the Contractor is approached by a government body or other third party with a request to provide, inspect or otherwise grant access to Data in its possession, the Contractor shall in each case act in accordance with the procedure set out in the following paragraphs of this Article.
- 23.2. The Contractor shall inform the Client in writing without delay of any such request, unless this is prohibited by legal obligations incumbent upon the Contractor or binding orders from competent authorities. The Contractor shall then give the Client the opportunity to take over

the handling of the request and shall provide all reasonably necessary cooperation for this purpose, including the provision of powers of attorney.

- 23.3. If the Contractor is not entitled to inform the Client due to legal obligations incumbent upon it or binding orders from competent authorities, or if the Client does not take over the handling as referred to in the preceding paragraph, the Contractor is obliged:
- i) to assess the request and the requester from a legal perspective in terms of lawfulness, competence and proportionality;
  - ii) to assess whether the request relates to personal data and whether disclosure is permitted under the GDPR;
  - iii) to assess whether an adequate level of protection (in the case of personal data, a level equivalent to the GDPR) exists in the country of the requesting party;
  - iv) if an adequate level of protection is not guaranteed, to assess whether there is a valid basis for the transfer and, in the absence thereof, not to disclose any Data;
  - v) to consult with the requesting party if there appears to be no lawful basis for disclosure, with the aim of exploring alternative solutions and minimising the scope of the Data to be disclosed;
  - vi) to make every effort to limit, challenge or otherwise prevent the request, including by lodging an objection and/or bringing legal proceedings, as well as to object to any prohibition on informing the Client as referred to in the preceding paragraph;
  - vii) not to waive any legal remedies or enter into any settlement without the Client's prior written consent.

The Contractor shall document all steps taken under this paragraph and, provided this does not conflict with any legal obligations incumbent upon it or binding orders from competent authorities, shall make this documentation available to the Client without delay upon the Client's first request. If disclosure is temporarily prohibited, the Contractor shall provide this information without delay as soon as such restriction ceases to apply.

- 23.4. If the Contractor has notified the Client of a request as referred to in this article, but the applicable legislation does not provide the Client with any legal remedies, whilst such remedies are available to the Contractor, the Contractor is obliged:
- i)* to comply fully with the obligations referred to in article 24.3; and
  - ii)* to consult with the Client in advance on the substance of every step in the handling of the request.

- 23.5. If, despite compliance with the preceding provisions of this Article, the Contractor is required to disclose Data pursuant to legal obligations incumbent upon it or binding orders from competent authorities, shall the Contractor ensure that:

- i) only the Data strictly necessary is disclosed;
- ii) Data shall, as far as possible, be stripped of direct and indirect identifying characteristics and, where possible, shall be provided solely at an aggregated level;
- iii) no special categories of personal data shall be provided, unless this is strictly necessary and legally required;
- iv) appropriate safeguards shall be put in place to protect the privacy of data subjects;
- v) The client and, where permitted, the data subjects are informed without delay.

- 23.6. If, in the context of a request as referred to in this Article, the Contractor discloses Data or otherwise grants access in breach of the obligations set out in this Article, this shall be

deemed a breach of the confidentiality obligations. The Contractor shall be fully liable for all damage arising from such a breach, and any limitations of liability shall not apply.

## Article 24. Change of control, transfer of rights and use of third parties

- 24.1. The Contractor is not permitted to assign any rights or obligations under this Agreement, in whole or in part, to a third party without the Client's prior written consent.
- 24.2. For the purposes of this Article, 'transfer' shall also be understood to mean any change that may affect the performance of the Agreement and/or the digital sovereignty of Data as referred to, inter alia in Article 22 and Article 24, including in any event:
- i) transfer of the contract;
  - ii) transfer of the activities covered by the Agreement;
  - iii) the transfer of the Agreement to another legal entity;
  - iv) a change in the control, ownership structure or group structure of the Contractor;
  - v) replacement or change of a third party engaged by the Contractor, including subcontractors, hosting providers and data centre suppliers;
  - vi) change in the location or jurisdiction under which the Contractor or a relevant third party (including subcontractors, hosting providers and data centre suppliers) operates;
  - vii) the Contractor or a relevant third party (including subcontractors, hosting providers and data centre suppliers) coming under the control of a party subject to the laws and regulations of a third country that may enforce access to Data.
- 24.3. Consent as referred to in article 25.1 may be refused or granted subject to conditions, in which case the Contractor must, in any event, guarantee that the obligations under this Agreement, in particular those relating to the security, access and digital sovereignty of Data, can be fulfilled in full and are not affected by the transfer or modification.
- 24.4. If the Contractor acts in breach of this clause or is unable to guarantee that the requirements are met, the Client is entitled to:
- i) require the Contractor to reverse the change or terminate the engagement of a third party, or;
  - ii) terminate the Agreement in whole or in part.
- Ad i) If the Client exercises the right set out in (i), the Contractor shall be obliged to take, without delay and free of charge, such steps as are reasonably necessary to ensure, without interruption, that the provision of services and the processing of Data continue in accordance with the Agreement. This obligation shall in any event include:
- replacing the third party in question;
  - migrating Data and services to an alternative solution approved by the Client;
  - preventing any interruption or loss of functionality or Data.
- The Contractor undertakes to ensure that these obligations are fulfilled in accordance with the requirements set out in articles 19.7 en 19.8, where applicable.
- Ad ii) If the Client invokes the provisions set out in (ii), the provisions of Article 19 shall apply mutatis mutandis to the termination. In that case, the Contractor shall be deemed to have failed to perform the Agreement through its own fault and shall be liable in accordance with the provisions of Article 20

## Article 25. Secrecy and Confidentiality

- 25.1. The Parties shall keep all Data of which they know or can reasonably suspect its confidential nature and that come to their knowledge or disposal in the context of the implementation of this Agreement, confidential and will not in any way further disclose it internally or externally and/or provide it to third parties, except insofar as:
- a) disclosure and/or provision of such Data is necessary in the context of the performance of the Agreement;
  - b) any mandatory statutory regulation or court order obliges the Parties to disclose and/or provide such Data or information, whereby the Parties first inform the other party thereof;
  - c) publication and/or provision of such Data takes place with the prior Written consent of the other Party; or
  - d) it concerns information that was already lawfully public in a way other than through breach by one of the parties.
- 25.2. The Parties will make all Data that they have in their possession in the context of the Performance of the Agreement, including any copies thereof, available to the other party on first request.
- 25.3. The confidentiality obligations in this Article shall survive termination or expiry of this Agreement for as long as the information remains confidential

## Article 26. AI clause

- 26.1. The Contractor guarantees that Data shall not be used for training, improving, or developing any AI Systems, algorithms, or models, whether for the Contractor's benefit or that of third parties, without prior written consent of the Client. Furthermore, Contractor shall implement and maintain appropriate technical and organizational measures to ensure complete segregation of Data from any AI System development, training, or improvement processes.
- 26.2. Where the IT Solution incorporates an AI System, the Contractor guarantees that: (i) the AI System complies with applicable laws, including Regulation (EU) 2024/1689 (AI Act); (ii) the AI System has been developed to prevent unjust biases and discrimination; (iii) the AI System performs accurately in accordance with the agreed specifications; and (iv) the AI System is suitable for the intended purposes as described in the Agreement.
- 26.3. The Contractor shall disclose in writing whether the IT Solution incorporates any AI System and whether such AI System qualifies as a High-risk AI System. The Contractor shall notify the Client at least sixty (60) calendar days before incorporating any AI System into the IT Solution. A High-risk AI System requires the Client's prior written consent.
- 26.4. Where the IT Solution incorporates an AI System used for screening or assessment purposes, the Contractor shall ensure meaningful human oversight by the Client and provide documentation enabling the Client to understand the AI System's functioning and to intervene in or override automated decisions.
- 26.5. The Contractor shall continuously monitor and test any AI System incorporated in the IT Solution to ensure it remains robust, secure, and reliable. The Contractor shall notify the

Client within twenty-four (24) hours of any security incident, malfunction, bias or other issue affecting the AI System's performance.

- 26.6. The Contractor shall ensure that any AI System incorporated in the IT Solution is sufficiently transparent to enable the Client to understand its functioning. At the Client's request, the Contractor shall provide information about the AI System's functioning, including training data, algorithms, and decision-making logic and explain specific conclusions or recommendations in sufficient detail to enable validation.

## **Article 27. Audit and inspection**

- 27.1. The Client is entitled to verify, or have verified, compliance with the obligations under this Agreement, including in particular those relating to security, data protection, digital sovereignty and AI.
- 27.2. The Contractor shall cooperate fully to this end and shall provide all relevant information and Documentation upon first request, insofar as this does not conflict with any legal obligations incumbent upon it or binding orders from competent authorities.
- 27.3. The audit may be carried out by the Client itself or by an independent third party appointed by the Client, provided that such third party is bound by a duty of confidentiality.
- 27.4. The Contractor shall remedy any identified shortcomings within a reasonable period to be determined by the Client. In the event of an attributable shortcoming on the part of the Contractor, the costs of remedy shall be borne in full by the Contractor.
- 27.5. The costs of the audit shall be borne by the Client, unless there is an attributable shortcoming on the part of the Contractor, in which case the costs shall be borne by the Contractor.

## **Article 28. Applicable law and disputes**

- 28.1. This Agreement and further agreements related to this Agreement are governed by Dutch law.
- 28.2. Any dispute regarding the formation, interpretation or performance of the Agreement as well as any other dispute with regard to, or in connection with, the Agreement, whether legal or factual, without exceptions, will be submitted for settlement to the competent court. However, the Client and the Contractor shall only revert to the Court after they have made every effort to resolve the dispute in mutual consultation. Any dispute between the Parties with regard to this Agreement will be submitted exclusively to the competent court of the District Court in Oost-Brabant.

## **Article 29. General Provisions**

- 29.1. The Contractor's general delivery and payment conditions, or other general or special conditions – with the exception of factory conditions – are expressly not applicable to this Agreement.
- 29.2. Oral statements, undertakings or understandings in connection with the performance of this Agreement shall have no legal force unless confirmed in writing by the relevant Party.

- 29.3. The Client is located in the environmental zone of Eindhoven. The Contractor must comply with the current legal guidelines regarding environmental zoning. Information about the current legislation and regulations can be found on the website of the municipality of Eindhoven.
- 29.4. Amendments or further additions to this Agreement will only be effective if agreed in writing by both Parties, signed for agreement.
- 29.5. Should (European) options arise in the future that offer the Client a better guarantee in terms of data sovereignty, the Contractor shall actively cooperate in implementing these options for the IT solution.
- 29.6. Failure by either Party to require performance of any provision within a period specified in this Agreement shall not affect the right to as yet require performance unless that Party has expressly agreed in writing to the failure.
- 29.7. Application of any penalty provision in accordance with this Agreement does not affect the Client's further rights, such as the right to performance or dissolution and compensation. These fines are expressly intended to encourage the Contractor to perform in accordance with the Agreement. Regardless of the imposition of fines, the Client may therefore also decide to claim damages, and/or to claim compliance and/or dissolution.
- 29.8. If one of the provisions of this Agreement is null and void or is annulled, the other provisions of this Agreement will remain in force and the Parties will consult to agree on a substitute provision in which the content and purport of the annulled or null and void provision will be maintained as far as possible.

Thus recorded and signed,

**On behalf of the Client**

.....(name)

*Vice president Executive Board, TU/e*

.....(date)

.....(town/city)

**On behalf of the Contractor**

.....(name)

.....(position)

.....(date)

.....(town/city)

## **Annex 1 Request for Proposal**

Request for Proposal or invitation to tender, added as a separate file.

## **Annex 2 Proposal of Contractor**

Proposal or offer, added as separate file.

## **Annex 3 Data Processing Agreement**

Added as a separate file.