



GIBIT 2025

Articles

VNG Realisatie

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Inhoud

I General provisions	4
Article 1. Definitions	4
Article 2. Scope of Application	7
Article 3. Conclusion of the Agreement	8
Article 4. Performance of the Agreement	9
Article 5. Transport, Ownership and Risk of Products	9
Article 6. Implementation of ICT Deliverable	9
Article 7. Dependency on and Coordination with Third Parties	11
Article 8. Interoperability Requirements, Norms and Standards	12
Article 9. Acceptance	12
Article 10. Maintenance and Support	14
Article 11. Fees, Invoicing and Payment	16
Article 12. Warranties	17
Article 13. Algorithmic Applications	18
Article 14. AI Systems	19
Article 15. Documentation and Information	20
Article 16. Product Management	20
Article 17. Liability	20
Article 18. Insurance	21
Article 19. Confidentiality	21
Article 20. Force Majeure	22
Article 21. Intellectual Property	22
Article 22. Access to Data and Authorisations	23
Article 23. Third-party software	25
Article 24. Replacement of Personnel	26
Article 25. Software Bill of Materials	26
Article 26. Company Takeover	26
Article 27. Suspension, Termination and Dissolution	27
Article 28. Right of Inspection and Cooperation with Audits at the Client's Premises	29
Article 29. Exit plan, Transition, Limited Continuation, Transfer and Extended Use	29
Article 30. Applicable law and disputes	31
II Privacy, security and archiving	32
Article 31. Data processor relationship	32
Article 32. Information security	32
Article 33. Archiving	32
III Remote Services	34
Article 34. General Provision	34
Article 35. Acceptance Procedure	34
Article 36. Stored Data	34
Article 37. Maintenance and Availability	35
Article 38. Periodic Third-Party Statement	35
Article 39. Continuity Guarantees	35
IV Open Source	37
Article 40. General Provision	37
Article 41. Delivery and Rights	37
Article 42. Repository	37
Article 43. Open Source License	37
Article 44. Management and Maintenance	38
Article 45. Additional Financial Arrangements	38
Article 46. Termination (<i>opzegging, ontbinding, vernietiging of nietigverklaring</i>)	38

I

General provisions

Article 1. Definitions

These Terms and Conditions of Purchase form part of the GIBIT 2025. In these terms and conditions, the following terms are used with an (initial) capital letter (terms may be used in both the singular and plural forms):

- 1.1 Acceptance: the formal approval of (parts of) the ICT Deliverable by or on behalf of the Client, either separately or in conjunction with one another.
- 1.2 Acceptance Procedure: the procedure by which, on the basis of pre-established criteria and testing methods, Acceptance can be achieved by or on behalf of the Client.
- 1.3 Delivery: the delivery by the Supplier of the Products forming part of the ICT Deliverable in the manner specified in the Agreement, as evidenced by a proof of receipt issued by the Client.
- 1.4 AI system: an ICT Deliverable that consists or will consist (in part) of a machine-based system that is designed to operate with varying levels of autonomy and that may exhibit adaptiveness after deployment, and that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments.
- 1.5 Algorithmic Application: an ICT Deliverable that consists or will consist (in part) of – whether or not still to be developed – software with which predictions are made, decisions are taken and/or advice is given in an automated manner by using data analysis, statistics and/or self-learning logic, including AI systems.
- 1.6 Application Landscape: the entirety of internal and external systems, software, databases, interfaces, equipment, ICT infrastructure and tools that constitute the automated information provision for the Client.
- 1.7 Availability: the extent to which the IT Deliverable is actually available to the Client and can be used.
- 1.8 Tender Specifications: the documents made available as such to the Supplier during the tendering procedure (including further explanations and amendments).
- 1.9 Conversion: the transfer of Data from one medium to another, or from one format to another.
- 1.10 Corrective Maintenance: the detection and rectification by the Supplier of Defects which the Client has reported to him or which have otherwise come to the Supplier's attention.
- 1.11 CSIRT: the Computer Security Incident Response Team that has been designated as the Client's point of contact.
- 1.12 Data: any digital representation of acts, facts or information and any compilation of such acts, facts or information, including in the form of sound, visual or audio-visual recording.

- 1.13 Third-party software: Software for which the intellectual property rights do not rest with the Supplier and/or a company affiliated with the Supplier, and where the Supplier is unable to enforce certain developments or changes to that software.
- 1.14 Remote Services: the provision by the Supplier of the ICT Deliverables to the Client by means of remote communication technologies (such as cloud, ASP, SaaS, PaaS).
- 1.15 Documentation: the user, management and/or integration documentation to be supplied and maintained.
- 1.16 Exit plan: the action plan for the exit and migration in the run-up to and/or following the end of the Agreement, which includes a detailed breakdown of the activities to be carried out by the parties involved in this context, the responsibilities of the Supplier, the Client and any third parties involved, and the timetable.
- 1.17 Defect: any failure of the IT Deliverable to comply, or to comply fully, with the Agreed Use.
- 1.18 User Support: the Supplier's provision of answers to the Client's questions, including, in any event, questions relating to the Agreed Use of the ICT Deliverable.
- 1.19 Municipal ICT Quality Standards: (Gemeentelijke ICT-kwaliteitsnormen) the document published by the Association of Netherlands Municipalities (Vereniging Nederlandse Gemeenten: VNG) and VNG Realisatie www.gibit.nl and updated from time to time, containing a compilation of norms and standards for ICT products and services.
- 1.20 GIBIT 2025: the Municipal Procurement at IT Toolbox, consisting of the Terms and Conditions of Purchase, the explanatory notes to those terms and conditions, the Municipal ICT Quality Standards and various tools for local authorities, as published on www.gibit.nl
- 1.21 ICT Deliverable: all goods (tangible and intangible assets) to be delivered by the Supplier pursuant to the Agreement, including Products, Licenses, and services.
- 1.22 Implementation: the entirety of acts and activities necessary to put all components of the ICT Deliverable, separately and in conjunction with one another, into use within the Client's organisation, in such a way that all intended users of the Client can work with them in accordance with the Agreed Use.
- 1.23 Implementation Plan: the action plan for the Implementation, which sets out in detail the activities to be carried out by the parties involved in this context, the ICT Deliverables to be implemented and/or developed, the responsibilities of the Supplier and the Client, and the timetable.
- 1.24 Terms and Conditions of Purchase: these Terms and Conditions of Purchase, as adopted by VNG Realisatie on 12 February 2026.
- 1.25 Innovative Maintenance: the provision by the Supplier to the Client of Upgrades to the ICT Deliverable.
- 1.26 Interoperability requirements: the requirements set out in the Agreement that must be met by the ICT Deliverable in order to exchange Data with or otherwise interoperate with other components of the Application Landscape.
- 1.27 Annual Fee: the average annual fee, calculated by dividing the Fee by the initially intended term of the Agreement in years. For Agreements that have in fact already lasted longer than the initially intended term and for Agreements of indefinite duration, the Annual Fee is calculated by dividing the fee actually paid by the actual term of the Agreement in years. For Agreements with a term of less than 1 year, the Annual Fee is equal to the Fee.

- 1.28 Interface: the system for exchanging Data between, on the one hand, the ICT Deliverable and, on the other hand, (parts of) the Application Landscape or other systems, software, databases, interfaces, equipment, ICT infrastructure and tools that are not part of the Application Landscape.
- 1.29 Supplier: the Party with whom the Client has entered into an Agreement.
- 1.30 Licence: the right of use on the basis of which the Client is authorised to use the ICT Deliverable within the parameters set out in the Agreement.
- 1.31 Customised Software: (i) Software or (ii) modifications to or configurations of Standard Software, where the source code is modified, developed or to be developed specifically for the Client, on the Client's written instructions and at the Client's expense.
- 1.32 Migration: the transfer of Data to the ICT Deliverable.
- 1.33 Maintenance: Corrective Maintenance, Preventive Maintenance, Innovative Maintenance and User Support, all to the extent agreed and as further detailed in the Terms and Conditions of Purchase, the Agreement and the (where applicable) SLA.
- 1.34 Client: the party for whose benefit the ICT Deliverable is provided.
- 1.35 Open Source Software: Software for which the source code is publicly available or is made available, and which is distributed under a licence that grants the user the right to use, study, modify and distribute the Software, whether or not in modified form, without any licence fees being payable.
- 1.36 Agreed Use: the use of the ICT Deliverable intended by the Client as was known to the Supplier at the time of the conclusion of the Agreement (whether or not based on the request for quotation or other documents preceding the Agreement) or as the Supplier ought to have known pursuant to Article 3, insofar as such use is not expressly excluded or restricted in the Agreement.
- 1.37 Agreement: the arrangements between the Client and the Supplier regarding the delivery of the ICT Deliverable, of which these Conditions of Purchase form part.
- 1.38 Party: the Supplier or the Client, collectively also referred to as 'the Parties'.
- 1.39 Personnel: the staff members and/or auxiliary persons to be engaged by the Parties in the performance of the Agreement.
- 1.40 Preventive Maintenance: the taking of measures by the Supplier to prevent Defects and other technical problems, and other related forms of service provision, whether or not by making Updates available.
- 1.41 Product: the tangible object that the Supplier delivers to the Client on the basis of the Agreement.
- 1.42 Software: the entirety of the software to be delivered by the Supplier. Software may be distinguished into Standard, Third-Party, or Customised Software and Interfaces.
- 1.43 Service Levels: the requirements and performance standards included in the Agreement with regard to Maintenance and other agreed forms of service provision.
- 1.44 Service Level Agreement (SLA): the further agreement relating to Maintenance, including the type of Maintenance provided and the applicable Service Levels.

- 1.45 Standard Software: Software developed for general use that is not made available exclusively to the Client.
- 1.46 Update: a subsequent version (regardless of naming or numbering) of the ICT Deliverable in which Defects have been rectified and/or the functioning of the ICT Deliverable has otherwise been improved.
- 1.47 Upgrade: a subsequent version (regardless of naming or numbering) of the ICT Deliverable with predominantly new or modified functionalities, not being Customised Software developed specifically for the Client and following the Client's separate instruction and at the Client's expense.
- 1.48 Fee: the total price agreed for the ICT Deliverable or the price actually paid, including the estimate for the work for which no (fixed) price has been agreed, excluding VAT.
- 1.49 Data Processing Agreement: the data processing agreement attached to the Agreement, or, in the absence thereof, the Standard Data Processing Agreement that was declared standard by the Association of Netherlands Municipalities (VNG) at the time of the conclusion of the Agreement, as administered by the VNG's VWO Management Group.

Article 2. Scope of Application

- 2.1 These Terms and Conditions of Purchase apply to and form part of all requests, quotations, offers, order confirmations, orders, agreements, and any other legal acts between the Client and the Supplier relating to the ICT Deliverable as specified in the Agreement and to any related ICT Deliverable.
- 2.2 The Terms and Conditions of Purchase consist of four chapters:
- i) Chapter I (which always applies); and
 - ii) Chapter II on privacy, security and records management (which applies additionally if the ICT Deliverable involves the processing of Data on behalf of the Client or if the ICT Deliverable involves the processing of records or documents within the meaning of the Records Management Act 20XX belonging to the Client); and
 - iii) Chapter III on Remote Services (which applies additionally when providing Remote Services); and
 - iv) Chapter IV on open source (which applies additionally if (parts of) the ICT Deliverable(s) is/are to be delivered as Open-Source Software).
- 2.3 The applicability of any general or specific terms and conditions or articles of the Supplier, under whatever name, is expressly rejected. This also applies where reference is made to such terms and conditions at a later date.
- 2.4 Should any provision of the Terms and Conditions of Purchase be null and void or be subject to annulment, or should any provision of the Terms and Conditions of Purchase be deemed inapplicable or invalid by a court, only the provision concerned shall be regarded as not having been written, but the Terms and Conditions of Purchase shall otherwise remain in full force and effect. The parties shall then consult with each other in order to replace the relevant inapplicable or invalid provision with a new provision, while observing as much as possible the purpose and intent of the previous provision.
- 2.5 In the event of any conflict between the Terms and Conditions of Purchase and those of the Agreement or any other document, the following order of precedence shall apply (in the event of a conflict, the document of higher rank shall prevail; in the event of a conflict between documents of equal rank, the most recent document shall prevail):
- i) The licence and maintenance terms for Third-Party Software, insofar as they relate to the Third-Party Software, and provided that the information obligations referred to in Article 3.5 have been met;
 - ii) The European Union Public Licence (EUPL), insofar as it relates to the Open Source Software;

- iii) Further agreements and annexes to the Agreement, such as the Implementation Plan, the SLA, the Data Processing Agreement or the Exit Plan;
 - iv) The Agreement;
 - v) The Terms and Conditions of Purchase, whereby Chapters II, III and IV shall, where applicable, take precedence over the provisions of Chapter I.
- 2.6 Unless expressly provided otherwise in the Agreement or the Terms and Conditions of Purchase, the default provisions of non-mandatory law shall apply in full (on a supplementary basis).
- 2.7 Amendments and additions to the Terms and Conditions of Purchase shall only be valid if agreed in writing between the Parties. The amendment and/or addition shall only apply to the Agreement referred to in Article 2.1.

Article 3. Conclusion of the Agreement

- 3.1 A request for a quotation or any other invitation to make an offer does not bind the Client.
- 3.2 Before submitting an offer to the Client, the Supplier shall have sufficiently informed himself of:
- i) the objectives in relation to which the Client intends to conclude the Agreement;
 - ii) the Client's organisation and Application Landscape, insofar as relevant to the request or the offer.
- 3.3 If and insofar as the Supplier lacks sufficient information to fulfil the obligation referred to in the previous paragraph, he must make enquiries in this regard with the Client. The Client shall provide the Supplier with all information reasonably requested (unless such information is of a confidential nature and cannot reasonably be provided under a confidentiality agreement). The Client shall in any event provide a description of the Application Landscape upon request.
- 3.4 When submitting an offer, the Supplier shall:
- i) take into account the information referred to in the two preceding paragraphs; and
 - ii) address the risks arising from that information and the control measures required in that context in the offer ('risk analysis'), subject to the provisions of Article 4.4;
 - iii) identify any other risks he foresees;
 - iv) insofar as the offer relates to Products: specify whether the products are new, refurbished or second-hand.
- 3.5 If the ICT Deliverable consists (wholly or in part) of Third-Party Software, the Supplier shall, when making an offer (whether or not by reference to the Documentation):
- i) specify which part of the ICT Deliverable consists of such software;
 - ii) make any applicable (licence and maintenance) terms and conditions available;
 - iii) if so requested: specify to what extent it is possible to obtain the Third-Party Software in question elsewhere and to what extent the decision to do so would affect the Supplier's offer; and
 - iv) insofar as there is a dependency between the Third-Party Software and the other parts of the ICT Deliverable, clearly indicate the nature of that dependency and the effects that dependency has on (the quality of) the ICT Deliverable.
- 3.6 In the event of a tender within the meaning of the Public Procurement Act 2012, the obligations referred to in paragraphs 2 to 5 shall be limited by the content, nature and scope of the Tender Specifications.
- 3.7 An agreement shall only come into effect once either:
- i) the Client has accepted the Supplier's written offer in writing;
 - ii) the Parties have signed a written agreement;
 - iii) the Supplier carries out a written order from the Client.

Article 4. Performance of the Agreement

- 4.1 Agreed deadlines shall only be considered as a fixed and strict deadlines if expressly stipulated in writing.
- 4.2 Notwithstanding the previous paragraph, any specific completion date for the Implementation set out in the Agreement or the Implementation Plan shall be binding in all cases. Unless expressly agreed in writing, the associated interim delivery dates shall not be fixed and strict deadlines.
- 4.3 If the Agreed Use requires that the Implementation or the delivery of certain Updates and/or Upgrades be completed in good time prior to the entry into force of (an amendment to) legislation and regulations, this shall, by way of derogation from paragraph 1, in all cases, constitute a fixed and strict deadline. This deadline shall expire on the date of entry into force of the (amended) legislation and regulations, unless the Supplier proves that the specific (amendment to) legislation or regulations was not foreseeable for it, or shows that the period before the entry into force of the (amendment to) legislation or regulations, given the nature and extent of the required adjustments, was unreasonably short to implement these in time.
- 4.4 The risk analysis referred to in Article 3.4(ii) may also be carried out after the conclusion of the Agreement, but prior to Implementation. This option does not apply in the case of a tender as referred to in Article 3.6. If the Supplier's proposal regarding how identified risks are to be addressed is not acceptable to the Client, the Client is entitled to dissolve (ontbinden) the Agreement with immediate effect. In this case, the Client shall not be liable for damages to the Supplier, but the Client shall be obliged to reimburse the costs incurred by the Supplier up to that point (including the costs of carrying out the risk analysis). The option to carry out the risk analysis at a later date does not affect the Supplier's obligation to identify general risks that he already foresees when making an offer.
- 4.5 The Client shall fulfil his obligations under the Agreement and the related further agreements (Implementation Plan, SLA, etc.) and shall at all times provide the cooperation reasonably required for this purpose.

Article 5. Transport, Ownership and Risk of Products

- 5.1 Unless otherwise agreed, the Supplier shall make the Delivery in one single delivery.
- 5.2 Upon Delivery, the Parties shall visually inspect the quantity and check for any damage visible on the exterior. If damage is found, the Client is not obliged to accept the Product. This does not affect the Supplier's obligation to deliver on time.
- 5.3 The Client shall provide the Supplier with a proof of receipt for the Products received. Such receipt shall not affect the Client's rights under the Agreement.
- 5.4 The Supplier shall use sustainable packaging materials as far as possible and shall ensure their environmentally friendly disposal.
- 5.5 The risk of loss of or damage to the Products shall pass to the Client upon Delivery.
- 5.6 Insofar as the Agreement provides for a transfer of ownership, this transfer shall take place upon Acceptance by the Client. Supplier represents and warrants that he holds full title to the Product, that the Product is not subject to any retention of title, limited right or attachment by a third party, and that it is free from any other liens or encumbrances.

Article 6. Implementation of ICT Deliverable

- 6.1 Unless otherwise agreed, or where the nature of the ICT Deliverable precludes its implementation, the Supplier shall ensure the implementation of the ICT Deliverable within the Client's organisation, in accordance with the provisions (where applicable) set out in the Agreement and the Implementation Plan.

- 6.2 Unless otherwise agreed, the Implementation shall also include the Conversion, the Migration, the realisation of the Interfaces necessary for the Agreed Use and the performance of the Acceptance Procedure.
- 6.3 The Supplier shall carry out the Conversion and Migration in such a manner that the completeness and integrity of the Data are not affected, and that the metadata are transferred in a functionally equivalent manner and as fully and accurately as possible.
- 6.4 If no Implementation Plan has been drawn up at the time of signing the Agreement, such plan shall be established by mutual agreement between the Parties at the first request of either Party. Unless otherwise agreed, the Implementation Plan shall be delivered within three (3) months of the first request. Supplier shall take the lead in drafting the Implementation Plan. The costs of drawing up the Implementation Plan are included in the Fee.
- 6.5 The Implementation Plan shall specify the following (where applicable):
- i) A detailed description of the project's objectives for the implementation of the ICT Deliverable, as well as the preconditions and the applicable frameworks and standards, taking into account the risk analysis that has been carried out;
 - ii) The project organisation, including the way in which reporting is carried out and the approach to project management;
 - iii) The division of labour and allocation of responsibilities, including the commitment and availability required of the Client;
 - iv) An overview of the necessary Interfaces, their functional specifications and any cooperation from third parties required for their implementation;
 - v) The relationship between the ICT Deliverable and the relevant components of the Application Landscape, and any cooperation from third parties required for the Implementation in view of that relationship;
 - vi) The partial deliveries ('milestones') of the project and the functional specifications that the partial deliveries must meet (in relation to the Agreed Use);
 - vii) An overview of the (categories of) intended users who must be able to work with the IT Deliverable following Implementation;
 - viii) The Implementation schedule (including the partial deliveries), in accordance with the requirements set out in the Agreement regarding the planning;
 - ix) The manner in which each partial delivery will be delivered;
 - x) The manner in which the Acceptance Procedure will be carried out;
 - xi) The manner in which the Conversion will take place;
 - xii) The manner in which the Migration will take place;
 - xiii) The manner in which the Client will be familiarised, through training courses, with the use and (technical and functional) management of the ICT Deliverable, to the extent agreed;
 - xiv) To the extent that a development, test, acceptance and/or production environment is required, the division of responsibilities for the delivery and management thereof.
- 6.6 The provisions of Article 7 shall apply in respect of any cooperation and dependency on third parties that may be required for the Implementation.
- 6.7 The Supplier warrants that, during the Implementation, he shall only deliver to and charge the Client for those parts of the ICT Deliverable that are necessary for the Implementation. If there are parts of the ICT Deliverable that are not necessary but are beneficial to the Implementation, the Parties shall consult on the advisability of procuring that part.
- 6.8 If, during the Implementation, it appears that modifications to the Application Landscape are necessary which the Parties had not foreseen, but which the Supplier ought to have foreseen in the offer and/or the risk analysis referred to in Article 3.4(ii), the costs of such modifications shall be borne by the Supplier.
- 6.9 The Supplier hereby declares himself willing and able, after completion of the (initial)

Implementation, at the Client's request and during the term of the Agreement, to perform additional activities related to the Implementation or otherwise connected with the ICT Deliverable. The provisions of Article 3 shall apply mutatis mutandis to the conclusion of such further agreements. Unless otherwise agreed, the provisions of the existing Agreement shall apply to this work.

Article 7. Dependency on and Coordination with Third Parties

- 7.1 If the cooperation of third parties is required for the performance of work, and such third parties are not auxiliary persons of either Party, the provisions of this article shall apply.
- 7.2 Without prejudice to the Parties' responsibility to warn each other of risks of which they are aware or ought to be aware, the responsibility for determining in good time and notifying the other Party that the cooperation of third parties as referred to in paragraph 1 is necessary rests, unless otherwise agreed, with the following Part:
- i) in the case of Remote Services: the Supplier;
 - ii) in the case of ICT Deliverables other than Remote Services: the Client.
- 7.3 As soon as it is established that the cooperation of third parties is necessary, further arrangements shall be made within a reasonable period of time at the first request of either Party regarding:
- i) the identity of those third parties;
 - ii) the cooperation required from those third parties (taking into account their role in the relevant components of the (intended) Application Landscape or any Interfaces in question);
 - iii) the role of each Party in managing those third parties;
 - iv) responsibility for the coordination of the various third parties involved;
 - v) any (limited or otherwise) powers of attorney to represent the other Party vis-à-vis those third parties;
 - vi) the costs to be incurred by those third parties and their allocation between the Parties;
 - vii) the costs of the work involved in coordinating those third parties and their allocation between the Parties.
- 7.4 The further agreements referred to in paragraph 3 may be set out in (a new version of) an existing document (such as an Implementation Plan or an Exit Plan) or in a separate document.
- 7.5 When drawing up the further agreements referred to in paragraph 3, the Parties shall involve the relevant third parties as much as possible in advance and, where possible, include them as part of the further agreements or have them endorse these further agreements.
- 7.6 If, due to dependency on third parties as referred to in this article, an Acceptance Procedure or end-to-end test fails, and the Supplier demonstrates that this cannot be attributed to him, then:
- i) with regard to the relevant part of the Acceptance Procedure or the end-to-end test, it shall be deemed that no Defect exists; and
 - ii) the end-to-end test or Acceptance Procedure shall otherwise be continued;
 - iii) consultations shall take place with all parties involved in order to make further arrangements to arrive at an appropriate solution. The initiative for these consultations shall be taken by the Party designated in paragraph 2. Once the parties have reached an agreement on the appropriate solution, they shall record this in an (amended or supplementary) Implementation Plan. Article 6 applies mutatis mutandis to the drafting/ amendment of this plan. Insofar as the implementation of this plan results in additional work, this shall not commence until the Client has given his express consent.

Article 8. Interoperability Requirements, Norms and Standards

- 8.1 The Agreed Use includes the requirement that the ICT Deliverable complies with the Interoperability requirements, norms and standards specified (in more detail) in the Agreement, such as the Municipal ICT Quality Standards or internationally recognised standards.
- 8.2 Prior to the Implementation, the Supplier shall perform the preventive tests prescribed in the aforementioned norms, requirements, and standards. Unless agreed otherwise, the Supplier shall, within five (5) working days of completing the aforementioned tests, provide the test report demonstrating that the ICT Deliverable complies with the aforementioned standard(s).
- 8.3 If the Client requires that the preventive tests referred to in the previous paragraph be carried out in an environment not used for the Client's production purposes, the Supplier shall provide such an environment. Supplier shall configure this environment in such a way that the tests can be carried out effectively and realistically. The Client acknowledges the limitations inherently associated with such an environment.
- 8.4 The Supplier is not obliged to carry out the preventive tests referred to in paragraph 2 if he can provide a report or refer to a publicly accessible source for such a publication which demonstrates that the aforementioned tests have already been successfully completed on exactly the same version of the ICT Deliverable and with comparable Agreed Use. If parts of the ICT Deliverable have already been tested with comparable Agreed Use, the Supplier may choose to test only the remaining parts.
- 8.5 In the case of Standard Software for which the Supplier has already had an independent assessment carried out (such as a third-party declaration (TPM) or valid (ISO) certification) and which has thereby demonstrated compliance with the relevant standards, an additional preventive test as referred to in the previous paragraph shall only take place if this is reasonably expected to provide additional assurance, given the context of the Client's Application Landscape. In that case, the Parties shall determine by mutual agreement whether and which preventive tests are to be carried out.
- 8.6 During the Acceptance Procedure, an assessment will be made of the extent to which the ICT Deliverable, after Implementation at the Client's premises, actually complies with the provisions set out in paragraph 1.

Article 9. Acceptance

- 9.1 Acceptance takes place following the successful completion of a (integrated) Acceptance Procedure. The Acceptance Procedure assesses whether the IT Deliverable contains any Defect(s). The Client is not obliged to accept the Deliverable if the Acceptance Procedure reveals any Defect(s).
- 9.2 If no Implementation Plan has been drawn up, or if this plan does not contain a description of how the Acceptance Procedure is to be carried out, a written test protocol shall be drawn up at the Client's first request, setting out how and within what timeframes the Acceptance Procedure is to be carried out. Articles 6.4 and 6.5 apply mutatis mutandis to the drawing up of this test protocol.
- 9.3 Unless otherwise provided for in the Agreement, the Implementation Plan or the test protocol referred to in the previous paragraph, the Acceptance Procedure shall be as follows:
- i) Following each delivery of (parts of) the ICT Deliverable, the Client shall test the relevant delivery for Defects. This test shall be completed within five (5) weeks. The Parties shall draw up and sign a test report in this regard. This test report shall record whether the ICT Deliverable exhibits Defects and, furthermore, whether the ICT Deliverable has been (partially) approved or rejected;
 - ii) Within a reasonable period, but in any event within the agreed period, following the date of signing the test report, the Supplier shall provide a time schedule within which the

- Defects, recorded in the test report, shall be remedied at the Supplier's expense;
- iii) Upon expiry of the period referred to in the previous paragraph, the Supplier shall resubmit (part of) the updated ICT Deliverable for Acceptance by means of the Acceptance Procedure.
- 9.4 The timelines and (revised) schedules applied within the context of the Acceptance Procedure must fit within the overall schedule of the Agreement or the Implementation Plan and may not cause any delays. It is part of the Supplier's duty of care to monitor the deadlines and the (progress of the) Implementation and Acceptance Procedure and, where necessary, to warn or demand that the Client comply with his obligation to cooperate. If the Client's cooperation is essential to remedy the Defects identified in the test report, the Supplier shall demand the Client to do so within five (5) working days of the test report being drawn up.
- 9.5 The Client acknowledges that a lack of cooperation on his part may lead to creditor's default.
- 9.6 If and to the extent that, during the Acceptance Procedure, cooperation and dependency on third parties are involved, the provisions of Article 7 shall apply.
- 9.7 If and to the extent that the ICT Deliverable also consists of Interfaces, an end-to-end test shall be carried out as part of the Acceptance Procedure. This will assess whether the Interfaces comply with the Agreed Use and the Interoperability Requirements, and whether the Application Landscape will continue to function correctly after Implementation.
- 9.8 If (parts of) the ICT Deliverables are rejected on the grounds of Defects when the (integrated) Acceptance Procedure is conducted for the second time, the Client shall be entitled to:
- i) dissolve (ontbinden) the Agreement – in whole or in part – out of court without further notice of default, in which case the Supplier shall also be liable, within the framework of Article 17, for the damage suffered and to be suffered by the Client; or
 - ii) without prejudice to his right to compensation (within the framework of Article 17) for the damage already suffered, allow the Supplier to remedy the Defects at his own expense; or
 - iii) accept the ICT Deliverable conditionally subject to conditions to be agreed upon, in which case, if the Supplier fails to comply in good time with the conditions set out in the conditional acceptance, the provisions under (i) shall apply.
- 9.9 The provisions of the preceding paragraph shall not apply if the Supplier demonstrates that Acceptance is withheld as a result of Defects which the Client should reasonably have identified when the Acceptance procedure was conducted for the first time.
- 9.10 For Defects that cannot be resolved within the agreed schedule, the parties may, by mutual agreement, decide to temporarily implement an acceptable workaround and/or to provide a solution at a later stage.
- 9.11 Defects which (neither individually nor collectively) prevent the use of (the relevant part of) the ICT Deliverable for productive purposes shall not constitute grounds for non-Acceptance, without prejudice to the Supplier's obligation to remedy such Defects at the earliest opportunity.
- 9.12 If the ICT Deliverable is delivered in partial deliveries, an Acceptance Procedure shall take place after each delivery and, following Acceptance of the final part of the ICT Deliverable, an integrated Acceptance Procedure shall then take place, during which the entire ICT Deliverable as well as the coherence of the partial deliveries ('sum of the parts') shall be assessed for Defects. Acceptance shall only be deemed to have taken place after the successful completion of the integrated Acceptance Procedure.

- 9.13 Acceptance shall be deemed to have taken place if the Client has put the ICT Deliverable into use for productive purposes within his organisation, unless the putting into use of the ICT Deliverable for productive purposes is related to delays or failures on the part of the Supplier.

Article 10. Maintenance and Support

General provisions

- 10.1 Unless otherwise agreed, the Supplier shall provide Maintenance for the ICT Deliverable in return for the fee set out in the Agreement. Maintenance shall commence upon Acceptance of (the relevant part of) the ICT Deliverable, subject to article 6.7.
- 10.2 The terms and conditions set out below shall apply as the (minimum) terms and conditions for Maintenance, unless otherwise agreed in the Agreement and/or the SLA.
- 10.3 Unless otherwise agreed, Maintenance shall comprise at least the following services:
- i) Corrective Maintenance;
 - ii) Preventive Maintenance;
 - iii) Innovative Maintenance;
 - iv) User Support.
- 10.4 The basic principle regarding Maintenance is that it shall be carried out in such a way as to cause the least possible disruption to the Client's business processes. If the Supplier can reasonably foresee that the Maintenance will or may disrupt the Client's business processes, the Supplier shall, where possible, give timely advance notice thereof.
- 10.5 When releasing Updates and/or Upgrades, the Supplier warrants that the performance of the IT Deliverable will remain at least the same and that the IT Deliverable shall continue to comply with the Agreed Use.

Availability, reporting of malfunctions and Defects

- 10.6 For the purpose of Maintenance, the Supplier's appropriately qualified Staff shall in any event be reachable on working days between 09:00 and 17:00. The Client shall likewise be reachable during these hours, where possible with appropriately qualified Personnel.
- 10.7 If the Client's reachability is essential whilst the Maintenance is being carried out, the Supplier shall notify the Client of this as soon as possible. If this is notified at least 48 hours prior to the Maintenance in question, the Client shall ensure that appropriately qualified Personnel are available. In other cases, the Client shall make reasonable efforts to ensure that competent Personnel are available.
- 10.8 Both Defects and other malfunctions may be reported to the Supplier.
- 10.9 If and insofar as the Supplier demonstrates that a malfunction or Defect is not attributable to him, he shall not be obliged to repair it. If the Client, nevertheless, instructs the Supplier to attempt the aforementioned repair, the Supplier shall be entitled to charge the costs involved in the repair separately at the Supplier's standard costs and standard rates.

Service Level Agreement

- 10.10 The Supplier declares his willingness to conclude, at the Client's first request – insofar as this is not already regulated in the Agreement – one or more Service Level Agreements (SLAs), in which concrete Service Levels with respect to the Maintenance referred to in paragraph 3 are laid down, and which include measures in relation to whether or not the agreed Service Levels are achieved. In any event, the following matters shall be included as Service Levels, whereby Service Levels, unless otherwise agreed, constitute obligations of result (resultaatsverbintenissen):
- i) the response time, being the time within which the Supplier must respond adequately to a report by the Client of a Defect and other requests from the Client for services;

- ii) the functional recovery time, being the period between the moment a Defect is reported to the Supplier and the moment it is remedied.

10.11 The consequences of failing to meet Service Levels are set out in the Agreement and/or the SLA, on the understanding that in the event of:

- i) failure to meet the same Service Levels during several consecutive measurement periods; or
- ii) failure to meet the same Service Levels on three (3) occasions during a period of six (6) consecutive measurement periods

the Client shall be entitled:

- i) to require the Supplier to provide an improvement plan ensuring that the Supplier will perform in accordance with the agreed Service Levels within a measurement period; or
- ii) to demand a meeting at management level with the Supplier. If the Supplier refuses such consultation, or if the Client considers the outcome of such consultation to be unsatisfactory, the Client is entitled to dissolve (ontbinden) the Agreement and/or the SLA(s) (in whole or in part).

10.12 Within the framework of an improvement plan, the Parties may agree on a temporary penalty scheme, whereby attributable failure to meet the Service Levels results in a proportionate and temporary reduction in the Fee, a penalty, or the accrual of service credits.

10.13 An improvement plan as referred to in paragraph 11, a penalty scheme as referred to in paragraph 12 and/or any measures stipulated in the SLA, shall not affect the Client's other rights, including the right to recover the damage suffered by the Client in addition to the measure. Any penalties paid (as part of the agreed measures) shall be deducted from any compensation payable.

Preventive and Innovative Maintenance

10.14 In the context of Preventive Maintenance, the Supplier guarantees at least:

- i) that the ICT Deliverable shall at all times continue to comply in a timely manner with all laws and regulations relevant to the Agreed Use, unless the Supplier demonstrates that the specific (change in) laws or regulations could not reasonably have been foreseen by the Supplier, or demonstrates that the implementation period for the (change in) laws or regulations was, in light of the nature and scope of the required modifications, reasonably, too short to implement such modifications in time;
- ii) that the ICT Deliverable shall at all times remain suitable for data exchange with the other relevant components of the Application Landscape (to the extent this falls within the Supplier's sphere of influence, such components are or should be known to the Supplier, and the Interfaces form part of the ICT Deliverable) and, in that context, shall continue to comply with the agreed Interoperability Requirements in a timely manner;
- iii) that any security advisories issued by the National Cyber Security Centre (NCSC), its legal successor, or otherwise publicly issued security advisories that relate in whole or in part to the ICT Deliverable shall be followed as soon as possible, and that the risk of misuse shall be mitigated as soon as possible through the timely release of Updates and/or Upgrades or through other means;
- iv) that the ICT Deliverable will continue to comply in a timely manner with subsequent versions of standards specified in the Agreement as required norms, through the timely release of Updates and/or Upgrades, unless the Supplier demonstrates that the specific (implementation of the) norm was unforeseeable for him, or demonstrates that the implementation period for the (implementation of the) norm, given the nature and scope of the required adjustments, was, reasonably, too short to implement it in a timely manner.

10.15 At the Client's request, the Supplier shall carry out the Implementation of Updates and Upgrades. In such cases, the provisions regarding Implementation and Acceptance shall apply mutatis mutandis, on the understanding that, in principle, no Acceptance procedure

shall take place in the event of the Implementation of an Update.

- 10.16 The Client is – except in the situation referred to in Article 37.3 (generic Remote Services) – entitled to refuse the use and/or Implementation of Updates and Upgrades, without this affecting the Maintenance to be provided by the Supplier, on the understanding that:
- i) there is no breach on the part of the Supplier in relation to Maintenance if a specific Defect in an Update and/or Upgrade has been remedied and the Client refuses to put that Update or Upgrade into use;
 - ii) the Client may be at most eighteen (18) months behind in taking the Update and/or Upgrade into use; failing which, upon the expiry of that period, the Supplier shall be entitled to charge the demonstrable additional costs incurred for having to continue to provide Maintenance on (the relevant part of) the ICT Deliverable used by the Client.

Reporting and monitoring

- 10.17 The Supplier shall periodically, but in any event at least once a year, send the Client a report on the extent to which the agreed Service Levels have been met and on the level of the services, including in any event Availability and Maintenance. The content and frequency of this reporting may be further specified in the Agreement or the SLA.
- 10.18 Upon receipt of the report, the Client may determine whether the Supplier has fulfilled his obligations with regard to Maintenance, including the Service Levels guaranteed by the Supplier, whether or not by engaging a third party in accordance with Article 28.

Maintenance of Third-Party Software

- 10.19 Notwithstanding the preceding paragraphs of this article, the maintenance of Third-Party Software shall be subject to the terms and conditions, if any, made known in accordance with Article 23.

Subsequent Maintenance

- 10.20 Supplier hereby declares in advance his willingness, insofar as it was originally agreed that the Supplier would not perform, or would only perform parts of, the Maintenance referred to in paragraph 3, to enter into consultation at the Client's first request in order to reach a further agreement or an addendum, and a corresponding Service Level Agreement (SLA).

Article 11. Fees, Invoicing and Payment

- 11.1 The fees payable by the Client to the Supplier for the IT Deliverable are set out in the Agreement.
- 11.2 Unless otherwise agreed, fees shall be invoiced as follows. In the case of one-off fees, 30% shall only become payable upon integral Acceptance. Recurring fees are payable in advance, but 30% of the fees shall only become payable upon integral Acceptance. For Third-Party Software, 100% is payable on delivery. The provisions regarding deferred payment do not apply if no Acceptance procedure is carried out for the ICT Deliverable. Arrangements regarding the remaining 70% of the one-off and periodic fees are specified in the Agreement.
- 11.3 If the Supplier demonstrates that the work to be carried out pursuant to Article 10.14 could not reasonably have been foreseen or is disproportionate in scope, the Supplier shall be entitled to charge for that unforeseen and/or disproportionate part of the work as additional work, provided that prior consent has been obtained from the Client. Failure to grant such consent shall release the Supplier from the obligation to carry out the additional work.
- 11.4 Additional work shall be notified to the Client in good time, shall only be eligible for payment upon the Client's consent, and shall always be invoiced separately. Additional work shall be carried out at the rates specified for that purpose in the Agreement or, failing that, at the Supplier's standard rates.
- 11.5 An invoice must comply with the statutory requirements as well as the requirements set out in the Agreement. Invoices must be issued no later than three (3) months after the relevant

services have become due and payable. The parties may specify in the Agreement a date by which all work carried out before the end of the calendar year must have been invoiced.

- 11.6 Unless otherwise agreed, the payment term is 30 days from receipt of the invoice.
- 11.7 Unless otherwise agreed, the Supplier shall send the invoice electronically in accordance with the applicable invoicing requirements as set out in the Municipal ICT Quality Standards referred to in Article 8.1 or other standards.
- 11.8 The agreed (annual) rates and ongoing fees may be adjusted by the Supplier on an annual basis as of 1 January, provided that such adjustment and its amount are announced no later than the preceding 30 November. Any increase is limited to a maximum of the (any) increase in the final price index for services prices for commercial services and transport (index 2021=100) for group J6202, as most recently published by Statistics Netherlands (Centraal Bureau voor de Statistiek: CBS) at the time of the announcement, over the whole year compared with the price index for the same index in the previous year. If the index 2021=100 is no longer maintained, the successor to this index shall be used to calculate the maximum indexation. If group J6202 is no longer maintained, group J62 shall be used to calculate the maximum indexation.
- 11.9 Unless otherwise agreed, if the Agreement was concluded on or after 1 September of a given year, the agreed (annual) rates and recurring fees cannot be adjusted by the Supplier on the following 1 January.
- 11.10 The Supplier is entitled to pass on any demonstrable price increase in Third-Party Software, provided that such price increase was not foreseeable at the time the Agreement was concluded.
- 11.11 If the Supplier is otherwise faced with circumstances that are not foreseen, unforeseeable and not attributable to the Supplier, and which result in a significant increase in the costs of the ICT Deliverable, he may notify the Client thereof. Such a significant increase shall be, for Agreements of limited duration, more than 10% of the Fee not yet invoiced during the remaining term of the Agreement, and for Agreements of unlimited duration, more than 10% of the Annual Fee. In that event, the Parties shall consult at short notice on whether the aforementioned situation has indeed arisen and, if so, to what extent the cost increase shall be reimbursed in accordance with the principles of reasonableness and fairness. The Client cannot be obliged to agree to reimburse the cost increase. If the Client does not agree and the Supplier persists with his price increase, the Client is entitled to restrict the ICT Deliverable or to terminate (opzeggen) the Agreement. In the event of termination, the provisions of Article 27.6, opening words and under sub-paragraph (i), shall apply mutatis mutandis.
- 11.12 If and insofar as the fee and/or the number of Licences for the use of the ICT Deliverable is made dependent on a figure relating to the Client that is subject to change (such as population, area of the operating territory, etc.), and the Agreement does not specify a date for determining that figure (and thus the adjustment of the fee), this shall be done once a year, effective 1 January.
- 11.13 The provisions of this article concerning Third-Party Software shall apply only insofar as the Supplier has complied with the provisions of Article 3.5.

Article 12. Warranties

- 12.1 The Supplier warrants that:
- i) it will only deploy Personnel who possess the agreed skills and qualifications required to perform the ICT Deliverable, taking into account the nature of the ICT Deliverable to be provided and the manner in which the Supplier has presented himself as an expert. He

- also warrants that the Personnel deployed by him meets the requirements that may reasonably be expected in this respect from a comparable service provider acting as a reasonably competent and reasonably fellow professional;
 - ii) if the manufacturer of a Product sold to the Client prescribes a modification to that Product for safety reasons, the Supplier shall ensure that such modification is carried out as soon as possible and free of charge, either by the Supplier himself or by the manufacturer of the Product;
 - iii) he will be able to carry out Maintenance on the ICT Deliverable for at least two (2) years after the date of Acceptance;
 - iv) the ICT Deliverable complies, and in the event of Maintenance will continue to comply, with the laws and regulations relevant to the Agreed Use.
- 12.2 If, at any time during the term of the Agreement, the Client finds that the IT Service or parts thereof do not comply with the aforementioned warranties, the Client shall notify the Supplier of this in writing and, in urgent cases, also by telephone. If the Supplier is of the opinion that the Client cannot invoke the warranty provisions because the absence of a Defect does not form part of the guaranteed characteristics, or because the presence of the Defect is attributable to causes that are not attributable to the Supplier or to Software or equipment neither supplied nor recommended by the Supplier, the burden of proof in this respect shall rest with the Supplier.
- 12.3 In these Terms and Conditions of Purchase, 'warranty' or 'warrant' refers to an obligation to achieve a result (resultaatsverbintenis), with the burden of proof distributed as set out in the preceding paragraph.

Article 13. Algorithmic Applications

- 13.1 In addition to the provisions of Article 12, the Supplier warrants, in the case of an Algorithmic Application, that:
- i) the underlying processing of Data (including the conclusions drawn on that basis) is lawful;
 - ii) Data is processed in accordance with a structured approach in order to prevent, as far as reasonably possible, socially constructed bias, inaccuracies, errors, mistakes, and 'bias' (undesirable prejudice) in such Data;
 - iii) the Algorithmic Application is accurate.
- 13.2 The Supplier is entitled to enrich the Algorithmic Application and optimise his processes using the Data originating from the Client, and the information derived from that Data, provided that this enrichment cannot in any way be traced back to the Client and – insofar as the Data concerns personal data – this is done in accordance with the Data Processing Agreement.
- 13.3 Upon the Client's first request and without charging any (additional) costs, the Supplier shall:
- i) provide meaningful quantitative and qualitative information regarding the Data used in the Algorithmic Application, the (statistical) models used, and any visualizations, as well as provide all other information reasonably required to be able to account for the operation of the Algorithmic Application in a general sense;
 - ii) in a specific situation, explain at an individual level why the Algorithmic Application has reached a particular conclusion or decision, in sufficient detail to enable the conclusion/decision to be reviewed in court if necessary.
- 13.4 The Client is entitled to share the information referred to in the previous paragraph with third parties, insofar as this does not concern the Supplier's trade secrets.
- 13.5 The right of inspection under Article 28 also extends to verifying the correct functioning of the aforementioned prediction or decision models/algorithms, as well as the accuracy of the Data on which they are based.

Article 14. AI Systems

- 14.1 In addition to the provisions of Article 12 and Article 13, the Supplier warrants that, in the case of an AI system:
- i) the AI system meets requirements for accuracy, robustness and cybersecurity; and
 - ii) appropriate measures have been incorporated into and implemented within the AI System to enable human oversight, allowing the Client to reasonably understand and interpret the operation and output of the AI system.
- 14.2 Insofar as the Supplier qualifies as a 'provider' within the meaning of Regulation (EU) 2024/1689, the following applies. If the Client requests in writing additional appropriate and targeted risk management measures in the AI system, which were unforeseeable at the time the Supplier made the offer, the Supplier shall, within 20 working days, submit a proposal specifying the scope, duration, impact and costs of these additional risk management measures. Following the Client's written approval, these arrangements shall be set out in a further agreement or an addendum. To the extent that the Supplier is required to carry out tests to determine these risk management measures and their effectiveness in light of the intended purpose and reasonably foreseeable misuse, he shall carry out these tests at the Client's expense in a designated environment of the Client.
- 14.3 Unless otherwise agreed, the Supplier has a duty of care to ensure that the Client is not classified as a 'deployer' but as a 'provider' within the meaning of Regulation (EU) 2024/1689. This duty (of care) may imply that the Supplier prevents certain actions by the Client or issues warnings regarding such actions.
- 14.4 The Supplier shall assist the Client with the risk classification of the AI system. He shall share his own considerations in this regard with the Client. If the Supplier anticipates in advance that the AI system will (very likely) be classified as a high-risk AI system, the Supplier shall state this risk when making an offer within the meaning of Article 3.4.
- 14.5 Insofar as the AI system is classified as a high-risk AI system, the Supplier warrants that:
- i) a conformity assessment has been carried out and that CE marking has been affixed, and that a new conformity assessment will be carried out if the AI system is substantially modified during the term of the Agreement; and
 - ii) a quality management system within the meaning of Article 17 of Regulation (EU) 2024/1689 has been established, implemented and documented prior to the delivery of the AI system, and that he will maintain this system.
- 14.6 The Supplier warrants that the AI system has capabilities that enable the automatic recording of events during the operation of the AI system ('logging').
- 14.7 The purpose of logging is to ensure a degree of traceability of the operation of the AI system throughout its lifecycle that is appropriate to the intended purpose of the AI system and to any reasonably foreseeable misuse.
- 14.8 Upon request, the Supplier shall provide all necessary assistance in connection with any required assessment of the impact on fundamental rights within the meaning of Article 27 of Regulation (EU) 2024/1689.
- 14.9 Unless otherwise agreed, if the ICT Deliverable (also) concerns the Maintenance of an AI system, the Supplier shall, as part of User Support, provide assistance with questions regarding the operation and the (technical interpretation of) the output of the AI system.
- 14.10 Where legally required to do so, the Client shall inform his end users in a transparent manner about the AI system upon its implementation and its use. This includes, where relevant, providing clear disclaimers regarding the limitations and capabilities of the AI system. The Supplier is responsible for providing this information to the Client.

- 14.11 Without prejudice to the Supplier's general obligation to perform Maintenance, the Supplier may offer a structured system through which the Client can report any inaccuracies or deficiencies relating to the AI system to the Supplier. The Supplier may use such reports to implement improvements to the AI system.

Article 15. Documentation and Information

- 15.1 The Supplier shall provide the Client with sufficient and comprehensible Documentation, containing at least a description of the relevant functions, functionalities and instructions for use of the IT Deliverable. The level of detail of the Documentation shall be tailored to the nature and use of the IT Deliverable and determined by mutual agreement.
- 15.2 The Documentation for end-users shall be drawn up in Dutch; other documentation may also be drawn up in English.
- 15.3 The Documentation shall be and remain such that:
- i) it provides an accurate, complete and detailed description of the ICT Deliverable to be supplied by the Supplier, as well as its functions;
 - ii) it provides an accurate and complete description of the settings/parameterisations made by the Supplier in the context of the Implementation or Maintenance;
 - iii) end-users can make use of all the possibilities of the ICT Deliverable and can properly understand its operation;
 - iv) it is suitable to serve as a basis for testing the ICT Deliverable within the framework of an Acceptance Procedure;
 - v) is suitable for enabling adequate management of the ICT Deliverable and for integrating it into the Application Landscape in accordance with the documentation requirements regarding interoperability as set out in the standards referred to in Article 8.1.
- 15.4 As soon as it becomes apparent that the Documentation is not, or is no longer, accurate or complete, the Supplier shall update and provide the Documentation as soon as possible and free of charge.

Article 16. Product Management

- 16.1 Without prejudice to any agreed Maintenance, the Supplier shall inform the Client periodically and in good time of the planning and intended functionalities (sometimes referred to as a 'roadmap').
- 16.2 Insofar as the Supplier facilitates a generic (physical or virtual) body or platform for the benefit of (some of) his customers for the purpose of sharing knowledge and experience regarding the ICT Deliverable and/or discussing the (expected) developments of the ICT Deliverable, the Supplier shall grant the Client access to this free of charge and without restrictions.

Article 17. Liability

- 17.1 The Party that is imputably in breach of its obligations, or that acts unlawfully towards the other Party, shall be liable to the other Party for the damage thus suffered and/or to be suffered by the latter as a result.
- 17.2 Insofar as performance is not already permanently impossible, or the obligation arises from a tort (onrechtmatige daad) or is for the purpose of compensation, paragraph 1 shall only apply with due observance to the provisions of Article 27.9 concerning default.
- 17.3 The liability referred to in paragraph 1 for personal injury and property damage and any resulting damage is limited to an amount of €1,250,000 per incident. However, the total liability per calendar year shall never exceed twice the aforementioned maximum, regardless of the number of events. Related events shall be considered as a single event in this respect.

- 17.4 Liability for other damage is limited to twice the Annual Fee per incident. However, total liability per year shall never exceed four times the Annual Fee (regardless of the number of incidents). Related events shall be considered as a single event in this respect.
- 17.5 The limitations of liability set out in this article do not apply:
- i) in the event of third-party claims for damages arising from death or personal injury and/or;
 - ii) in the event of wilful intent or gross negligence on the part of the other Party or its Personnel; and/or
 - iii) in the event of an infringement of intellectual property rights as referred to in Article 21;
 - iv) with regard to fines imposed by the supervisory authority:
 - 1. insofar as such fines could also have been imposed directly on the Supplier but were not imposed; and
 - 2. provided that the Client:
 - a. informs the Supplier in writing and without delay of any investigation initiated by a supervisory authority that may lead to a fine, as well as of the existence and content of the fine imposed; and
 - b. involves the Supplier in mounting a defence against that fine or, if the Parties so agree, the portion of that fine attributable to the Supplier.
- 17.6 All obligations relating to the Supplier's Personnel under tax, health insurance and social security legislation shall be borne by the Supplier. The Supplier shall indemnify the Client against any liability arising therefrom. The foregoing limitations of liability shall not apply to this indemnity.

Article 18. Insurance

- 18.1 The Supplier has taken out insurance, in a manner that is customary and in accordance with generally accepted standards, against all liability arising from the Agreement and these terms and conditions, and shall maintain such insurance. This means that the Supplier is in any case appropriately insured for professional and business liability, or at least that he demonstrably offers sufficient guarantees by other means to cover any liability.
- 18.2 The insurance/guarantee referred to in the previous paragraph shall provide cover for at least two events as referred to in Articles 17.3 and 17.4 per year, and shall provide cover for at least the amounts referred to in the aforementioned articles per year.

Article 19. Confidentiality

- 19.1 The Parties shall not disclose in any way whatsoever any information that comes to their knowledge in the course of the performance of the Agreement, and which they know or can reasonably suspect to be confidential, except where:
- i) required to do so by law;
 - ii) a competent supervisory authority requires this in the context of an investigation;
 - iii) a court or an adjudicator appointed by the Parties requires them to disclose such information in a ruling;
 - iv) disclosure is necessary for the performance of the Agreement;
 - v) disclosure is necessary for internal deliberations.
- 19.2 The obligation referred to in the preceding paragraph shall continue for two (2) years following the expiry of the Agreement.
- 19.3 The Parties shall require their Personnel to comply with the confidentiality obligation set out in the preceding paragraphs.
- 19.4 The content of the Agreement(s) concluded under the Terms and Conditions of Purchase may, as such, be shared with other municipal authorities, legal entities affiliated with municipal authorities and municipal partnerships.

- 19.5 The Parties shall return all information received from each other that is of a confidential nature upon first written request.
- 19.6 The Party that breaches the confidentiality obligation set out in this article shall owe the other Party an immediately payable penalty of €10,000 per breach. Related breaches shall be regarded as a single breach. The provisions of this article are without prejudice to the right to recover the actual damage suffered (subject to Article 17), whereby any penalties paid shall be deducted from the compensation for damage.

Article 20. Force Majeure

- 20.1 A failure to perform the Agreement that is not attributable to the fault of a Party, nor attributable to that Party pursuant to law, legal act, or generally accepted standards prevailing in society, shall constitute force majeure.
- 20.2 Force majeure on the part of the Supplier shall in any event not be considered to include: a shortage of Staff, strikes, Staff illness (with the exception of a pandemic), delayed delivery or unsuitability of goods required for the performance of the ICT Deliverable, or liquidity or solvency problems. A demonstrable failure of utility or telecommunications services shall, however, be considered force majeure, unless this is caused by the Supplier or the ICT Deliverable specifically concerns ensuring the availability of the aforementioned services.
- 20.3 It may occur that the Supplier, in respect of a failure to perform as referred to in paragraph 1, can claim a benefit that he would not have had in the event of proper performance of the Agreement. In this case, the Supplier shall compensate the Client for the damage suffered as a result of that failure, up to a maximum of the value of that benefit. Such compensation shall not exceed the agreed limitation of liability.

Article 21. Intellectual Property

- 21.1 Unless otherwise agreed, all intellectual property rights in the ICT Deliverable made available by the Supplier under the Agreement shall vest exclusively in the Supplier or his licensor(s).
- 21.2 All rights to Data originating from the Client, collected on behalf of the Client, or collected by the Supplier during the Client's use of the ICT Deliverable, shall (remain) vested in the Client, regardless of where this Data is stored and regardless of whether the Data have been processed after initial receipt or not.
- 21.3 Unless otherwise agreed, the Supplier grants a Licence for the IT Deliverable. If a periodic fee is payable for the Licence and/or if Remote Services are provided, the term of the Licence shall be the same as the term of the Agreement. In all other cases, the Licence shall be perpetual and irrevocable. The Licence shall in any event include the right to use the ICT Deliverable (and all information and knowledge contained therein) for the Agreed Use and for testing purposes, including all (whether temporary or otherwise) reproductions and disclosures reasonably necessary for that purpose. Unless otherwise agreed, the Licence does not include the right to perform acts of exploitation itself (including the granting of sub-licences and the transfer of the Licence).
- 21.4 The intellectual property rights to Customised Software vest in the Client. These rights are hereby transferred by the Supplier to the Client, who hereby accepts this transfer. This transfer relates to all current and future rights in the broadest sense of the term. The Supplier further irrevocably waives – to the extent permitted by law – any moral rights in the Customised Software. The Supplier shall make all source codes of the relevant Customised Software available to the Client. The one-off purchase price for the transfer of the rights is deemed to be included in the Fee. The transfer and delivery of the rights and the aforementioned source code shall take place subject to the condition precedent of payment of the relevant part of the Fee. The Parties acknowledge that modifications or extensions carried out by the Supplier within the framework of Innovative Maintenance do not qualify as Customised Software, unless the Client has explicitly and separately remunerated these as a

development assignment.

- 21.5 Unless otherwise agreed, Customised Software shall be made available as Open-Source software, with the exception of Customised Software that cannot be used separately from the contracted Standard Software.
- 21.6 Unless otherwise agreed, the intellectual property rights to Customised Software developed on behalf of several Clients jointly shall vest in those Clients jointly.
- 21.7 The Supplier warrants that the ICT Deliverable provided by him to the Client does not infringe any intellectual property rights or other rights, including moral rights, of third parties. The Supplier shall indemnify and hold the Client harmless against all claims by third parties based on the allegation that the ICT Deliverable made available by the Supplier to the Client infringes the said rights of such third parties, provided that the Client immediately informs the Supplier in writing of the existence and content of the claim and leaves the handling of the matter, including the conclusion of any settlements, entirely to the Supplier. The Client shall provide the necessary powers of attorney, information and cooperation to this end, so that the Supplier can effectively defend himself against these claims. This indemnity cannot be invoked insofar as the infringing content has been supplied by the Client.
- 21.8 If the Client is denied the right to use the ICT Deliverable or parts thereof by a third party (or such a situation is imminent), the Supplier shall (or can), at his own expense and at his discretion, immediately:
- i) ensure that the Client nevertheless obtains the right to continue use; and/or
 - ii) replace the infringing component with another component that does not infringe such third-party rights; and/or
 - iii) modify the infringing component in such a way that the infringement is removed.
- 21.9 In the event of replacement or modification as referred to in (ii) and (iii), the functionality of the replacement parts shall be at least equivalent to that of the replaced parts, and the warranties provided shall remain fully in force.
- 21.10 It may happen that third parties hold the Client liable, claiming that the Client is infringing their intellectual property rights. In such a case, without prejudice to the foregoing, the Client shall be entitled to dissolve (ontbinden) the Agreement in writing, out of court, in whole or in part. Such dissolution shall not affect the Client's other rights.
- 21.11 The provisions of paragraphs 7 to 10 shall not apply if the alleged infringement relates to Software or other materials made available by the Client to the Supplier for use, modification, processing or maintenance, or to changes made by the Client to the ICT Deliverable without the Supplier's written consent.

Article 22. Access to Data and Authorisations

- 22.1 If the ICT Deliverable to be provided is capable of generating, collecting or otherwise acquiring Data, and/or if Data is generated, collected or otherwise acquired in the course of the services to be performed, the Supplier shall notify the Client thereof.
- 22.2 The Supplier shall, free of charge, provide the Client with the technical means to view the Data and to store it for his own use. The Supplier can fulfil this obligation by, amongst other things:
- i) providing the Data to the Client;
 - ii) enabling the Client to view the Data in real time and to download a copy thereof;
 - iii) retaining the Data in his possession for the duration of the Agreement and providing the Client with a copy of the Data upon first request;
 - iv) providing Documentation to the Client to enable the Client to extract the Data from the IT Deliverable himself; or

- v) making Links available to the Client, in order to enable the Client to retrieve the Data himself via these Links.
- 22.3 The Data provided or made available shall:
- i) be supplied in a generally readable electronic file format;
 - ii) be accompanied by Documentation containing an accurate, complete and detailed description of the data models underlying the Data; and
 - iii) comply with the requirements applicable to Data under the Open Government Act (Wet open overheid), the Re-use of Government Information Act (Wet hergebruik van overheidsinformatie) and other legislation and regulations applicable to the Client, as well as the requirements set out in the Agreement, including the Interoperability Requirements.
- 22.4 If (the description of) the data model referred to in the previous paragraph constitutes a trade secret of the Supplier, the Supplier may require the Client to ensure that anyone granted access to (the description of) the data model signs a confidentiality agreement in advance. This confidentiality agreement must not impede the objectives set out in this article. Upon conclusion of the Agreement, the Supplier shall indicate whether the conclusion of a confidentiality agreement is necessary for his data models.
- 22.5 The Client is entitled to store and make further use of the Data for his own purposes, including the right to make the Data publicly available and to make it available to third parties. To the extent that intellectual property rights (will) vest in Data arising from the Client's use or specifically relating to the Client's use of the ICT Deliverable, however named, the provisions of Article 21 regarding intellectual property rights shall apply mutatis mutandis.
- 22.6 If the Data supplied by the Supplier proves to be incorrect and/or incomplete, the Supplier shall, even up to six (6) months after termination (opzegging, ontbinding, vernietiging of nietigverklaring) of the Agreement, cooperate free of charge to correct such inaccuracy and/or incompleteness, unless the Supplier demonstrates that the inaccuracy and/or incompleteness is not attributable to him.
- 22.7 Without prejudice to the obligation to provide Documentation, the Supplier shall, upon first request, do everything that can reasonably be expected of him to assist the Client in clarifying and interpreting the context of the processing of the Data. The Supplier shall fulfil this obligation free of charge, unless otherwise agreed in writing regarding the remuneration for this.
- 22.8 If the Supplier has (joint) access to the Data, the following provisions shall apply:
- i) The Supplier shall use the Data originating from the Client, collected on behalf of the Client or collected by the Supplier during the Client's use of the ICT Deliverable, exclusively for the performance of the Agreement and the fulfilment of the Supplier's legal obligations;
 - ii) The Supplier shall, upon the Client's first request, proceed to destroy the Data (against issuance of a certificate of destruction);
 - iii) During the term of the Agreement, the Supplier shall not destroy the Data without a request to that effect from the Client; and
 - iv) Upon termination (opzegging, ontbinding, vernietiging of nietigverklaring) of the Agreement, the Supplier shall destroy the Data at the Client's first request. Until such a request is made, the Supplier shall continue to process the Data on behalf of the Client. The Supplier is entitled to destroy the Data after the end of the Agreement, but not before he has twice, at intervals of at least 30 days, explicitly offered the Client a reasonable opportunity in writing to download or otherwise obtain the Data, expressly stating the date on which the Data will be destroyed.
- 22.9 The provisions of paragraphs 2 to 7 shall not apply if and to the extent that:
- i) compliance with the obligations is (has been) technically impossible at all times;

- ii) the fulfilment of the obligations conflicts with other legal obligations, including the duty to respect the intellectual property rights of third parties;;
- iii) the Data concern trade secrets of the Supplier and the interest in keeping them confidential cannot reasonably be served by entering into a non-disclosure agreement;
or
- iv) the Client has explicitly and unambiguously indicated to the Supplier that he does not wish to receive the Data or otherwise view it.

22.10 If, prior to granting access to the stored Data, the Supplier indicates that this would circumvent certain security measures (including authorisations), he shall inform the Client of this in advance and issue an explicit warning.

22.11 The Client shall be solely liable for the use of the Data obtained pursuant to this Article. The Client shall indemnify the Supplier against any claims by third parties arising from such use.

Article 23. Third-party software

Third-party Software

- 23.1 As part of the Maintenance, the Supplier shall release Updates and Upgrades in a timely manner in order to continue to guarantee compatibility with the third-party software on which the ICT Deliverable depends.
- 23.2 It may occur that the Supplier can prove that a Defect in the ICT Deliverable is caused by an error in Third-Party Software. In such case, the relevant Defect shall not be considered a Defect, unless the Supplier ought to have known of the relevant error in the Third-Party Software and the effect of such error in the Supplier's own ICT Deliverable could reasonably have been avoided. This provision applies only if the Supplier has complied with the information obligations referred to in Article 3.5.
- 23.3 The provisions of the preceding paragraph are without prejudice to the fact that, where appropriate, the Supplier shall, within the scope of Maintenance, use all reasonable efforts to remedy the Defect as soon as possible. This may be done, for example, by circumventing the fault in the Third-Party Software within the Supplier's own ICT Deliverable and/or by providing the Client as soon as possible with Updates and/or Upgrades to the ICT Deliverable and/or the Third-Party Software.
- 23.4 Unless otherwise agreed, the provisions of paragraphs 1 to 3 shall apply only to Third-Party Software that is reproduced by the Client within the meaning of the Copyright Act (Auteurswet) or otherwise used by the Client.
- 23.5 If any applicable (licence and maintenance) terms and conditions of the Third-Party Software change during the term of the Agreement, the Supplier shall notify the Client thereof. The Supplier shall then provide the Client with the new version of these terms and conditions and indicate which major changes have been made to the terms and conditions.
- 23.6 If, during the term of the Agreement, the Supplier will offer new or additional Third-Party Software to the Client, he shall comply with the information obligations referred to in Article 3.5.

Brokers

- 23.7 Insofar as the Supplier's role consists solely of providing the Client with (licences for) Third-Party Software, the Supplier, acting as a broker, shall be responsible for ensuring that the Terms and Conditions of Purchase are declared applicable in his relationship with the supplier of that Third-Party Software. The broker is only entitled to agree to terms and conditions deviating from the Terms and Conditions of Purchase after obtaining the Client's written consent. This written consent may also be given by the Client in a general sense, in which case the Supplier may agree to the specific deviating condition with all (future) suppliers of Third-Party Software.

Article 24. Replacement of Personnel

- 24.1 The Client may request the replacement of Personnel if he no longer considers their deployment to be desirable for reasons relating to the individual concerned. The Client shall notify the Supplier in writing, stating the reasons why this person is unsuitable.
- 24.2 In the event of the replacement of Personnel, the Supplier shall not charge the Client any costs associated therewith, unless the Supplier demonstrates that the request for replacement was without reasonable grounds.
- 24.3 In the event of the replacement of Personnel, the Supplier shall make available, at the same rate, Personnel who, in terms of expertise, training and experience, are at least equivalent to the Personnel originally deployed or who meet the requirements agreed upon by the Parties in this regard.

Article 25. Software Bill of Materials

- 25.1 Unless otherwise agreed, the Supplier shall maintain a Software Bill of Materials ('SBOM') and make it available to the Client free of charge. This shall provide a complete and exhaustive description of the components comprising the ICT Deliverable, distinguishing between the Supplier's own Software, Third-Party Software and software supplied to the Supplier. Unless otherwise agreed, and if and to the extent applicable, this SBOM shall enable the Client to gain insight into:
- i) the components comprising the ICT Deliverable, whether these components are offered as proprietary or Open Source software, and under which licence these components are offered. The Supplier shall also provide a correct and complete package URL for the identification of the source and the licence of the component;
 - ii) the Supplier's direct or otherwise material supply chain;
 - iii) the relationships between components, the Supplier and relevant third parties;
 - iv) the source of the Software;
 - v) the recipients of the Data processed using the ICT Deliverable;
 - vi) the (physical) location(s) of the Data processed using the ICT Deliverable;
 - vii) the privacy and security risks associated with the ICT Deliverable.
- 25.2 The Supplier shall in any event be deemed to have fulfilled his obligations under the previous paragraph if he is certified to ISO/IEC Standard 5230:2020 and submits this certificate.
- 25.3 Insofar as the provision of parts of the SBOM would pose a demonstrable risk to the cybersecurity of the ICT Deliverable, for example because the disclosure of this part could lead to the possibility of reverse engineering, the Supplier is not obliged to make these components available to the Client. The Supplier does, however, hereby declare his willingness to make these components available should the component in question be involved in an incident relating to information security, in order to enable the Client to resolve the incident and limit its consequences.
- 25.4 The SBOM is confidential. Contrary to Article 19.2, the duty of confidentiality shall continue to apply for two (2) years after the expiry of the Agreement. Contrary to Article 19.4, the Client is not entitled to share the SBOM with others.
- 25.5 The Client is, however, entitled to share the SBOM with the CSIRT. The Parties may also agree that the Supplier shall send the SBOM not to the Client, but to the CSIRT.

Article 26. Company Takeover

- 26.1 The Supplier undertakes that, if his business is acquired by a third party, he will continue to comply with all contractual requirements, that business continuity will be safeguarded, and that the takeover does not contravene the provisions of Article 2.163f of the Public Procurement Act (Aanbestedingswet).

Article 27. Suspension, Termination and Dissolution

Suspension

- 27.1 The Supplier shall not be entitled to suspend his obligations until after sending a notice of default, in which the Client is granted a reasonable period of at least 30 days to still fulfil the obligations and in which explicit reference is made to the consequences of a possible invocation of suspension.

Termination for convenience (opzegging)

- 27.2 Fixed-term contracts may not be terminated before the end of their term – save for the specific grounds for termination set out in the Terms and Conditions of Purchase or the Contract – (Section 7:408(1) of the Dutch Civil Code (Burgerlijk Wetboek) does not apply). Agreements for an indefinite period may be terminated subject to a notice period of three (3) months for the Client and eighteen (18) months for the Supplier.
- 27.3 Even if several Agreements are interrelated (e.g. a licence and a maintenance agreement), the Client is nevertheless entitled to terminate only part of the Agreements (selectively) at the end of the then current term and subject to a notice period of three (3) months. Such termination shall, however, have no effect on the other related Agreements.
- 27.4 The Client is also entitled to terminate the Agreement and all related agreements, subject to a notice period of twelve (12) months, with effect from the date:
- i) the Client's rights and obligations are transferred in their entirety (onder algemene titel) to another party (e.g. due to a municipal reorganisation); or
 - ii) the Client's relevant activities are outsourced to a joint arrangement or similar entity with a public function.
- 27.5 It could happen that national policy changes in a way that could not have been foreseen at the time the Agreement was concluded, as a result of which the Client is obliged to switch, by a specified date, to a national facility that constitutes a (partial) functional alternative to the Use Agreed in the ICT Deliverable Agreement. In this case, the Client shall be entitled, subject to a notice period of twelve (12) months, to terminate the Agreement and all related agreements (in respect of that part) as of the aforementioned date.
- 27.6 In the event of termination by notice pursuant to paragraph 4 or paragraph 5, a settlement shall take place between the Client and the Supplier based on the following:
- i) work already performed by the Supplier in execution of the Agreement at the time of termination; and
 - ii) costs reasonably incurred; and
 - iii) future obligations already undertaken, insofar as reasonable; and
 - iv) loss of profit.
- 27.7 When calculating the settlement referred to in the previous paragraph, adjustments shall always be made for the foreseeable and/or reasonably expected redeployment of production factors by the Supplier.
- 27.8 In the event that the Parties are unable to reach agreement on the amount referred to in the preceding paragraph, that amount shall be determined in accordance with generally accepted accounting principles by an independent third party with expertise in the matter, to be appointed jointly by both Parties. The costs of this third party's investigation shall be shared equally between the Parties.

Dissolution for cause (ontbinding)

- 27.9 If a Party fails to fulfil an agreed obligation, the other Party may give notice of default, in which case the defaulting Party shall be granted a reasonable period of time to remedy the situation. If the obligation is still not fulfilled within that period, the defaulting Party shall be in default. A notice of default is not required if a strict deadline applies to fulfilment of the obligation, if performance is permanently impossible, or if it must be inferred from a

communication and/or the conduct of the other Party that the latter will fail to fulfil its obligation.

- 27.10 Without prejudice to the other provisions of the Agreement, and without prejudice to the other provisions of the law, either Party may dissolve the Agreement in whole or in part by registered letter without recourse to the courts if the other Party is in default or if any of the other situations referred to in paragraph 11 arises.
- 27.11 Without prejudice to the other provisions of the Agreement, and without prejudice to the other provisions of the law, the Client may dissolve the Agreement and all related agreements by registered letter within twelve (12) months of the Client establishing that:
- i) the Supplier applies for (provisional) suspension of payments; or
 - ii) the Supplier files for bankruptcy or is declared bankrupt; or
 - iii) the Supplier's business is wound up; or
 - iv) the Supplier ceases trading; or
 - v) there is a significant change in the control over the activities of the Supplier's business which means that the Client cannot reasonably be expected to maintain the Agreement; or
 - vi) a significant part of the Supplier's assets is seized (other than by the Client); or
 - vii) the BIBOB Bureau has issued a negative opinion regarding the Supplier's organisation; or
 - viii) insofar as the Agreement was concluded by means of a tendering procedure as referred to in the Public Procurement Act, grounds for exclusion as referred to in Section 2.86 of the Public Procurement Act arise in respect of the Supplier during the term of the Agreement; or
 - ix) insofar as the Agreement was concluded by means of a tendering procedure as referred to in the Public Procurement Act: during the term of the Agreement, an optional ground for exclusion as referred to in Section 2.87 of the Public Procurement Act, declared applicable in the Tender Specifications, arises in respect of the Supplier; or
 - x) the continuation of the Agreement would contravene legislation, such as sanctions legislation; or
 - xi) the continuation of the Agreement, having regard also to the Client's special (public) position and the respect for fundamental rights and the rule of law that may consequently be expected of the Client, would be unacceptable according to standards of reasonableness and fairness.
- 27.12 The Client may also dissolve the Agreement and all related agreements if he has reasonable grounds to believe that the court will set aside the Agreement in response to a claim to that effect under the Public Procurement Act. In that case, paragraphs 6 to 8 shall apply mutatis mutandis, unless the Client demonstrates that the unlawfulness is (partly) attributable to the Supplier.
- 27.13 If the force majeure event has lasted for sixty (60) consecutive days or for a total of more than ninety (90) days within a calendar year, or as soon as it becomes clear that the force majeure situation will last longer than such a period, the other party to the person invoking force majeure, shall be entitled to dissolve this Agreement prematurely with immediate effect (in whole or in part).

Consequences of termination (opzegging, ontbinding, vernietiging en nietigverklaring)

- 27.14 Without prejudice to the provisions of Article 29, upon termination of the Agreement(s) for any reason whatsoever, the Supplier shall, upon first request and free of charge, return or destroy all documents, books, records and other items (including data and information carriers) against the delivery of a statement of destruction. In the event of early termination, the foregoing shall apply reciprocally.

Article 28. Right of Inspection and Cooperation with Audits at the Client's Premises

Right of Inspection

- 28.1 The Client is entitled to have the Supplier's compliance with the material obligations under the Agreement, the Terms and Conditions of Purchase and the related agreements (SLA, Data Processing Agreement, etc.), as well as the accuracy of invoices submitted, within a reasonable period of time by an independent third party with expertise in the field who is bound by a duty of confidentiality. The inspection shall not be carried out by a direct competitor of the Supplier.
- 28.2 Before the Client carries out an inspection (or has one carried out), he shall first inform the Supplier of the reason for the request in question and request the necessary information as referred to in the previous paragraph. In the case of generic Remote Services, the Client shall first request the declaration referred to in Article 38.
- 28.3 The inspection shall only take place if the Client – even after the request for information referred to in the previous paragraph has been answered – has reasonable doubt as to the Supplier's compliance with his obligations, or if the Client otherwise has a legitimate interest in the inspection (inter alia, a legal obligation, instruction from a supervisory authority). The Client shall give prior notice of the reason for the inspection.
- 28.4 The Supplier shall provide all reasonable cooperation with such an inspection. In this context, the Supplier shall, at a minimum, grant access to all relevant data and background information that may be relevant to the aforementioned inspection. The Supplier shall also, as far as reasonably possible, grant access to the premises where the services are provided.
- 28.5 The Client guarantees that the third party referred to in paragraph 1 will comply with any regulations applied by the Supplier. However, if the inspection cannot be carried out (in full) due to the aforementioned regulations, this shall be at the Supplier's risk.
- 28.6 The costs of this inspection shall be borne by the Client (including both his own costs and the Supplier's costs), unless the third party identifies one or more non-minor shortcomings on the part of the Supplier that are detrimental to the Client.

Audit by the CSIRT

- 28.7 The Client is entitled to have the information security measures implemented by the Supplier audited by the CSIRT. Paragraphs 4, 5 and 6 shall apply mutatis mutandis to such an audit. Paragraphs 2 and 3 shall not apply mutatis mutandis.

Cooperation with audits at the Client's premises

- 28.8 Insofar as the Client relies on the Supplier for the conduct of (statutory) audits, the Supplier shall provide all necessary cooperation in the conduct of such audits. The costs of such cooperation shall be borne by the Client.

Article 29. Exit plan, Transition, Limited Continuation, Transfer and Extended Use

Exit-plan (general provisions)

- 29.1 At the first request of either Party, the Parties shall draw up an Exit plan or update an existing Exit plan. Unless otherwise agreed, the Parties assume as a starting point that the existing Exit Plan will be updated once (1) a year. The Exit Plan shall set out what needs to be done to prepare for and carry out the activities described in this article. Articles 6.4 and 6.5 apply mutatis mutandis to the Exit Plan.
- 29.2 The activities referred to in this Article – namely transition (Article 29.5 et seq.), limited continuation (Article 29.8 et seq.), transfer (Article 29.10) and limited extension (Article 29.11) – shall be carried out in accordance with the provisions of the following documents (in the event of any conflict, the document of higher rank shall prevail):
- i) the Exit Plan (if drawn up); and
 - ii) the Agreement (insofar as it provides for the consequences of termination (opzegging,

- ontbinding, vernietiging of nietigverklaring) of the Agreement); and
- iii) the Terms and Conditions of Purchase.

- 29.3 At the Client's first request, the Parties shall carry out an interim review of the Exit Plan. The review may include simulating, in whole or in part, or actually carrying out the work described in the plan.
- 29.4 The activities related to the implementation of the Exit Plan shall be performed against the fee stipulated for that purpose in the Agreement or the Exit Plan, or, in the absence thereof, at the Supplier's then-current standard rates.

Transition to a similar ICT Deliverable

- 29.5 Upon termination (opzegging, ontbinding, vernietiging of nietigverklaring) of the Agreement(s) for any reason whatsoever, the Supplier shall, at the Client's first request, take such steps as are reasonably necessary to ensure that a new supplier or the Client himself can, without hindrance, provide a similar ICT Deliverable for the Client's benefit (with the exception of the disclosure of the source code of the Software).
- 29.6 Within the framework of the reasonable measures referred to in the previous paragraph, the Client may in any event choose from the following (to be further elaborated in the Exit Plan):
- i) the Supplier still fulfilling the obligations under Article 22;
 - ii) the Supplier to destroy the Data for which the Client is responsible (against the provision of a certificate of destruction);
 - iii) the Supplier to technically decouple and dismantle (part of) the ICT Deliverable;
 - iv) the structured and high-quality delivery of the Data processed by the ICT Deliverable.
- 29.7 Contrary to the provisions of paragraph 4, the aforementioned services shall be provided free of charge if the Agreement is terminated (opzegging, ontbinding, vernietiging of nietigverklaring) due to attributable failure on the part of the Supplier. The work referred to in paragraph 6(ii) shall be carried out upon request and, in any event, free of charge.

Limited Continuation of the IT Deliverable

- 29.8 The Supplier hereby undertakes that, upon termination (opzegging, ontbinding, vernietiging of nietigverklaring) of the Agreement(s) – for whatever reason – he shall, at the Client's first request:
- i) provide a new ICT Deliverable or limited continuation of the existing ICT Deliverable, enabling the Client to continue to access the Data stored via the current ICT Deliverable; and;
 - ii) (continue to) provide a limited form of Maintenance for the ICT Deliverable referred to in the previous paragraph (namely within the scope of the limited functionality referred to in the previous paragraph).
- 29.9 The following applies to the duration, costs and conditions of the ICT Deliverable referred to in the previous paragraph:
- i) the duration must be sufficient to enable the Client to comply with statutory record-keeping obligations;
 - ii) the costs shall be reasonably proportionate to the original costs for the entire ICT Deliverable (in proportion to the reduced functionality), on the understanding that necessary renewals of Third-Party Software may be charged in full;
 - iii) subject to the provisions of the previous paragraph, the terms and conditions shall be the same as those of the Agreement.

Transfer of ICT Deliverable

- 29.10 It may occur that the Client outsources part of his activities to a joint arrangement or another entity with a public function. In this case, the Client is entitled to transfer the ICT Deliverable in whole or in part, including all associated Licences and all claims relating to Maintenance, to that entity under the same conditions (including the same scope of Licences). The Client

may only opt for a partial transfer if both the transferred and the remaining parts can (continue to) function independently. The Supplier shall provide all necessary cooperation for the aforementioned transfer. The Supplier is not entitled to charge for the transfer as such, but may charge for any additional work to be carried out. Unless prevented by law or the applicable licence terms, Third-Party Software shall also be transferred.

Extended use

- 29.11 The Supplier further declares himself willing, if so requested by the Client, to allow the Client to extend the use of the ICT Deliverable after the termination date for a reasonable period, if the activities in accordance with the Exit Plan have not been completed in time. A fee will be charged for this in proportion to the most recently applicable usage fees (whereby necessary extensions of Third-Party Software may be charged in full), unless the failure to complete the Exit work on time is attributable to the Supplier (in which case the extension is free of charge).

Article 30. Applicable law and disputes

- 30.1 The Agreement and all related documents shall be governed exclusively by Dutch law.
- 30.2 The Vienna Convention on Contracts for the International Sale of Goods shall not apply.
- 30.3 Any disputes (including disputes which only one of the Parties regards as such) that may arise in connection with the Agreement or any agreements arising therefrom between the Parties shall be brought before the competent court in the Client's district.

II

Privacy, security and archiving

Article 31. Data processor relationship

- 31.1 Insofar as the Supplier processes personal data on behalf of the Client in the capacity of a data processor within the meaning of the General Data Protection Regulation in the context of the performance of the Agreement, the Data Processing Agreement shall apply to such processing.

Article 32. Information security

- 32.1 The Supplier guarantees that the ICT Deliverable enables the Client to comply with the information security standards referred to in Article 8.1 (insofar as relevant to the ICT Deliverable).
- 32.2 Upon the Client's first request, the Supplier shall provide the contact details of his Staff responsible for resolving security incidents with the CSIRT.
- 32.3 If the ICT Deliverable is (partly) managed by the Supplier (for example, in the case of Remote Services), or concerns services provided by the Supplier, the Supplier shall also apply security measures to data other than personal data in accordance with the standard set out in the Data Processing Agreement, or at least the information security standard referred to in paragraph 1, or any other agreed standard.
- 32.4 The Supplier warrants that all Personnel engaged by him will work in accordance with the agreed information security standards, or at least standards of an equivalent or better level.
- 32.5 If the Parties agree that the Supplier shall make periodic backups, he shall make these backups in such a way that, in the event of a disaster, the Data can be restored with minimal data loss. Unless otherwise agreed, the maximum data loss (RPO) shall be 28 hours and the maximum recovery time (RTO) 16 working hours in 85 per cent of cases.
- 32.6 The Supplier shall report on incidents relating to information security. The provisions of Articles 10.17 and 10.18 shall apply mutatis mutandis.
- 32.7 In the event of a significant information security incident within the meaning of the Cybersecurity Act (Cyberbeveiligingswet) the Supplier shall contact the CSIRT on his own initiative or at the Client's first request. In such cases, the Parties shall, together with the CSIRT, share information and allocate responsibilities regarding the resolution, handling and reporting of the incident.
- 32.8 Information regarding the security measures taken shall be regarded as confidential information as referred to in Article 19, notwithstanding the Supplier's right to share information regarding the generic security protocols he has implemented also with his other clients and other third parties involved in the security arrangements.

Article 33. Archiving

- 33.1 Unless otherwise agreed, the Supplier shall ensure the demonstrable management and protection of managed Data through security measures, preservation measures, and controls relating to archiving, in accordance with the requirements set out in the standards referred to in Article 8.1.

- 33.2 The Supplier shall, during the term of the Agreement, retain the Data processed by him on behalf of the Client to which a retention period applies pursuant to the Municipal ICT quality standards or, at least, the Agreement, (i) demonstrably retain such Data for the duration of that retention period and (ii) not delete it without the Client's consent. The Supplier is, however, entitled to destroy the processed data in accordance with Article 22.8 subparagraph (iv).
- 33.3 The Supplier shall be capable of migrating archive records or documents, as defined in the Public Records Act 20XX (Archiefwet 20XX), to the Client's archive systems in accordance with the requirements set out in the Municipal ICT Quality Standards referred to in Article 8.1 or other agreed standards. The Supplier shall carry out the work involved in the actual migration of archive records or documents at the rates and conditions specified in the Agreement, or in the absence thereof, at the Supplier's standard rates and conditions to be agreed upon.
- 33.4 If, at the time of suspension, termination or dissolution (opzegging, ontbinding, vernietiging of nietigverklaring) of the Agreement, the Supplier is in possession of archive records or documents within the meaning of the Public Records Act 20XX belonging to the Client which, due to the location and configuration of the ICT Deliverable, are not also held by the Client as the custodian, the Supplier is obliged to act as if he had received a notification under Article 11(1) of the Public Records Act 1995 (Archiefwet 1995) or Article 4.5(1) of the Public Records Act 20XX (regardless of whether the relevant archive records or documents are included in Third-Party Software).

III

Remote Services

Article 34. General Provision

- 34.1 The Supplier shall provide the Client with all information, such as URLs and login details, necessary to actually use the ICT Deliverable.
- 34.2 If a web browser is required to use the ICT Deliverable, the ICT Deliverable must function correctly in the (i) most recent and (ii) still supported version of all common browsers (such as Chrome, Edge, Firefox and Safari) without requiring any further plug-ins or imposing other requirements on the Application Landscape.
- 34.3 The Supplier shall configure the ICT Deliverable in such a way that incidents affecting other customers of the Supplier do not (and cannot) have an adverse effect on the ICT Deliverable.
- 34.4 The Supplier is not entitled to suspend the Remote Services, except insofar as continuation cannot reasonably be expected. A single non-payment on a one-off basis does not justify this.
- 34.5 The Client shall handle the login details provided to him by the Supplier with due care and keep such details confidential. In the event of loss, theft and/or other forms of unauthorised use, the Client shall notify the Supplier thereof, so that the Parties may take appropriate measures against misuse and unlawful use.

Article 35. Acceptance Procedure

- 35.1 Unless otherwise agreed, the Acceptance Procedure shall take place in a separate environment that is isolated from the environment used for production purposes.
- 35.2 The acceptance environment shall have the same characteristics as the production environment, except insofar as those characteristics are not necessary for the Acceptance Procedure or for other testing purposes.
- 35.3 During the Acceptance Procedure, Corrective Maintenance and Preventive Maintenance shall already be carried out on the acceptance environment, to the extent necessary for the Acceptance Procedure. The costs involved are deemed to be included in the fee for the Implementation.

Article 36. Stored Data

- 36.1 The Client shall at all times bear full responsibility for the use he makes of the Remote Services and for the Data he stores, retrieves, disseminates and otherwise uses via the Remote Services.
- 36.2 If and insofar as there are indications or suspicions that the Data processed by means of the Remote Services are unlawful in relation to third parties, the Supplier shall inform the Client thereof as soon as possible.
- 36.3 The Supplier shall not delete the Data in question without prior consultation with the Client, unless the Data is so manifestly unlawful and the urgency of the matter is such that prior consultation with the Client cannot be awaited.

Article 37. Maintenance and Availability

- 37.1 Unless otherwise agreed, from the moment of Acceptance of the IT Deliverable, the specific arrangements regarding Maintenance shall (also) apply to the Remote Services (such as the guaranteed Service Levels and the agreed Availability).
- 37.2 If and insofar as no Service Levels regarding the Availability of the Remote Services have been agreed in the Agreement, a Service Level of 98% Availability per month on working days between 09:00 and 17:00 shall apply.
- 37.3 Notwithstanding the provisions of Article 10.15, the Supplier shall, in the case of Remote Services, be responsible for the installation of Updates and Upgrades.
- 37.4 Unless otherwise agreed, the provisions of Article 10.16 shall not apply to generic Remote Services offered by the Supplier to multiple customers. The Supplier shall, however, always give explicit advance notice of Updates and Upgrades that cause downtime or affect the use of the ICT Deliverable, unless this is not possible given the urgent nature of the Update. The Supplier shall always communicate the expected downtime and consequences. The Supplier shall also always make up-to-date Documentation available for all Updates and Upgrades (whether via online portals or other customary sources).

Article 38. Periodic Third-Party Statement

- 38.1 In the case of generic Remote Services offered by the Supplier to multiple customers, the Supplier shall hold an annually renewed third-party statement (TPM) or valid (ISO) certification or a description of a comparable quality system from a registered EDP auditor or other relevant independent accredited expert regarding the quality of the information security processes at the Supplier. The TPM must describe whether the measures to secure the processed Data, as well as to guarantee the reliability and continuity of the services to be provided, have been sufficiently implemented, taking into account the norms and standards that the Supplier generally applies for the relevant ICT Deliverable. Upon the Client's first request, the Supplier shall send this to the Client within five (5) working days. In doing so, the Supplier shall also indicate when the next version of the TPM, certification or description will become available.
- 38.2 The third-party declaration referred to in the previous paragraph expressly does not cover any specific agreements that the Client has made with the Supplier in addition to or by way of derogation from the generic norms and standards applied by the Supplier. However, the provisions of Article 28 remain applicable to those specific agreements.
- 38.3 The costs of providing the TPM or certification referred to in paragraph 1 shall be borne by the Supplier.
- 38.4 Should the TPM or certification referred to in paragraph 1 reveal findings that the auditor has classified as critical (high priority), the Supplier shall provide the Client with an improvement plan within three (3) months and shall actually implement this improvement plan. The improvement plan must describe measures that eliminate the concerns identified in the TPM or certification. Unless otherwise agreed, the costs of implementing the improvement plan shall be borne by the Supplier. The provisions of this article shall not affect the Client's other rights.

Article 39. Continuity Guarantees

- 39.1 In view of the high degree of dependency on the Supplier and the risk to continuity in the event of incidents and emergencies (such as bankruptcy) inherent in Remote Services, the Supplier hereby declares his willingness, at the Client's first request, to enter into additional agreements with the Client in order to mitigate the aforementioned risks.
- 39.2 The additional arrangements referred to in the previous paragraph may include, amongst other things (all subject to reasonable remuneration):

- i) making arrangements for the periodic return or delivery to a third party of the Data processed by the Supplier ('data escrow'); and/or
- ii) entering into an agreement with a third party whereby that third party undertakes to be jointly and severally liable for, or guarantees compliance with the Agreement; and/or
- iii) entering into a (tripartite) agreement with a third party that ensures that the relevant third party continuously has access to all necessary data to, if required, perform (part of) the ICT Deliverable under the Agreement – whether or not under a new agreement – in place of the Supplier.

IV

Open Source

Article 40. General Provision

40.1 When developing open-source software, the Supplier shall adhere to the principles of Common Ground and, upon request, shall explain to the Client how he fulfils this obligation.

Article 41. Delivery and Rights

41.1 Subject to the provisions of Article 21.4:

- i) the Supplier shall make the source codes and other relevant components of the Open Source software available to the Client; and
- ii) the intellectual property rights to the Open Source software shall vest in the Client.

41.2 Both the provision of the source code and other relevant components, as well as the transfer of rights, shall take place by means of and at the time of publication of the source code in the repository as referred to in Article 42.

41.3 The Supplier warrants that no third-party software has been used in the development of the open-source software that would prevent the fulfilment of the obligations set out in this chapter.

Article 42. Repository

42.1 The source code and other relevant components of the Open Source software shall be published on a Git-compatible platform, or at least on a publicly accessible repository agreed between the Parties. The Supplier shall inform the Client of the location where the source code is deposited.

42.2 Unless otherwise agreed, publication shall take place in a manner not accessible to the public until the moment of Acceptance. After Acceptance, the repository shall be made publicly accessible.

42.3 The Parties shall mutually agree who is to carry out the publication, and under whose name the account through which the publication is made, is registered. Any login details shared between the Parties shall be regarded as confidential information within the meaning of Article 19.

42.4 The Client may request the Supplier to undertake the publication and further management of the Data in the repository on his behalf for a period of two (2) years, or such other period as may be agreed between the Parties. The Supplier hereby declares his willingness to undertake such work at his usual rates.

42.5 The repository shall serve as the single source of truth for the (current version of) the source code and other relevant components of the Open Source software. Both Parties shall document changes to the source code of the Open Source software exclusively in the repository (or have them documented there).

Article 43. Open Source License

43.1 The Client shall make the (source codes of the) Open Source software available to the general public free of charge under the European Union Public Licence (EUPL), version 1.2 or higher.

- 43.2 If, in the development of the Open Source software, use is made of existing open source software whose licence is incompatible with the EUPL, the Parties shall agree under which licence the (source code of the) Open Source software shall be made available to the general public, in derogation from the previous paragraph. If the Supplier foresees the aforementioned incompatibility in advance, he shall state this risk when making an offer within the meaning of Article 3.4.
- 43.3 Depending on the nature and scope of the assignment, it may be the case that certain parts of the Open Source software can be published under the EUPL, whilst the aforementioned incompatibility arises for other parts. In this case, the Parties shall agree on the division of the Open Source software into parts, and under which licence which part of the Open Source software will be made available to the general public.
- 43.4 The Supplier warrants that nothing stands in the way of the Open Source software being made available under the agreed licence.

Article 44. Management and Maintenance

- 44.1 During the term of the Agreement, the Supplier shall carry out Maintenance in accordance with the provisions of the Agreement, including those relating to the Maintenance of software Integration and interfaces.
- 44.2 The Parties shall determine which Upgrades and Updates are to be released and which Defects therein are to be remedied and/or which new functionalities are to be added. The Parties acknowledge that prioritisation may be necessary in this regard and that not every request can be fulfilled. Where applicable, the Client shall have the casting vote in this regard, unless the Supplier demonstrates that fulfilling the request would result in a functional deterioration of the ICT Deliverable.
- 44.3 The Parties acknowledge that the suggestions put forward by the market, on the one hand, and the available development budget, on the other, may mean that the requirements set out in Article 10.14 regarding Maintenance cannot be met, or can no longer be met. Should such a situation arise or threaten to arise, the Supplier shall expressly warn the Client thereof, in order to enable the Client to take an informed decision in this regard.
- 44.4 The provisions of this chapter shall apply mutatis mutandis to the Upgrades and Updates published in this manner.

Article 45. Additional Financial Arrangements

- 45.1 The fee for making the source code available and publishing it in a repository is deemed to be included in the Fee.
- 45.2 Any other work arising from this chapter shall be regarded as additional work. The Supplier is entitled to charge the Client for this on the basis of a subsequent calculation at the usual rates.

Article 46. Termination (*opzegging, ontbinding, vernietiging of nietigverklaring*)

- 46.1 If, at the time of termination of the Agreement for any reason whatsoever, one or more of the obligations under this chapter have not yet been fulfilled by the Supplier (such as the publication of the source code in the repository), the Supplier shall fulfil said obligation(s) as soon as possible.
- 46.2 The Parties acknowledge that – assuming all obligations have been fulfilled by the Parties – there is otherwise no interest in an exit as referred to in Article 29.



**Vereniging van
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