



GÉANT Terms and Conditions for IT contracts 2022

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GENERAL PROVISIONS

The GÉANT General Terms and Conditions for IT Contracts (GÉANT IT terms) consist of these General Provisions and Special Provisions. These General Provisions relate to all IT Contracts involving GÉANT Vereniging (hereafter referred to as Customer). The Special Provisions relate to specific types of IT Contract involving the Customer.

These GÉANT IT Terms are based on the General Government Terms and Conditions for IT Contracts 2022 (ARBIT 2022) used by Dutch Contracting Authorities. More information on the ARBIT terms can be found here: <https://www.pianoo.nl/nl/regelgeving/voorwaarden/rijksoverheid/algemene-rijksinkoopvoorwaarden-bij-it-overeenkomsten-arbit>

Article 1. Definitions

Where written with initial capitals, the following terms are defined as follows in these general terms and conditions:

- 1.1. Acceptance: the approval by the Customer of the Deliverable or parts thereof.
- 1.2. Acceptance Procedure: the procedure recorded in the Contract for use by the Customer in determining whether or not to proceed with Acceptance of the Deliverable.
- 1.3. Delivery: the supply by the Supplier of Products in the manner specified in the Contract, as evidenced by a confirmation of receipt thereof issued by the Customer.
- 1.4. Specifications: the documents made available to the Counterparty (including explanatory notes and amendments) that describe and explain the organisation of the Customer, the Deliverable and the intended use thereof by the Customer, and the contract award procedure.
- 1.5. Schedule: an annexe to the Contract that forms part of it.
- 1.6. Source Code: the entirety of program instructions in their original programming language, including the accompanying Documentation, intended for execution by a computer and in such a form that it can be used by a programmer who has knowledge and experience of the programming method and technology to modify the software.
- 1.7. Documentation: every description of the Deliverable and its properties, whether or not specifically intended for the installation, Implementation, use, management and/or maintenance thereof.
- 1.8. Vital Deadline: a deadline expressly agreed as such by the parties, where failure by the party concerned to meet the deadline constitutes default without the necessity of notice of default.
- 1.9. Defect: every Fault or other failure as a consequence of which the Deliverable is not suitable for the Agreed Use.

- 1.10. Licence: a right entitling the Customer to (install and) use Standard Software in accordance with the Agreed Use, including all reproductions and disclosures thereof, whether temporary or otherwise, which may reasonably be deemed necessary for this purpose.
- 1.11. Implementation: the entirety of acts and measures needed in order to make the organisation of the Customer suitable for the Agreed Use of the Product and/or Software.
- 1.12. Breach: a breach of (the security of) an IT system leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or unauthorised access to, (personal) data transmitted, stored or otherwise processed or the lack of access to processed (personal) data.
- 1.13. Information Security: the required reliability of information systems in terms of confidentiality, availability and integrity as well as the establishment, maintenance and monitoring of a coherent package of associated measures.
- 1.14. Installation: the placement and connection of the Product and/or the setting up of Software by the Counterparty.
- 1.15. Supplier: the Counterparty to the Contract who has undertaken to deliver a Product or grant a Licence.
- 1.16. Materials: equipment and consumables for the installation, implementation, use or maintenance of the Deliverable, such as cables, smartcards and physical data carriers on which the Software is supplied.
- 1.17. Additional Work: work that is not included in the Public Service Contract and results in costs that exceed the Fee.
- 1.18. New Version: a subsequent version of Standard Software that contains predominantly new or modified functionalities, whether or not issued under a new name.
- 1.19. Object Code: translation of the Source Code into a code that can be directly read and executed by a computer.
- 1.20. Maintenance: work to be performed by the Contractor for the purpose of repairing and/or enhancing the Deliverable.
- 1.21. Public Service Contract: work to be performed by the Contractor for the Customer other than pursuant to an employment contract.
- 1.22. Customer: the party for whose benefit a Contract is concluded.
- 1.23. Contractor: a Counterparty who has undertaken to perform a Public Service Contract.
- 1.24. Completion: the presentation by the Contractor of the Deliverable (or parts of it) for Acceptance.
- 1.25. Agreed Use: the use that the Customer intends to make of the Deliverable as known to the Counterparty – or as the Counterparty may reasonably be expected to know – at the time of the conclusion of the Contract on the basis of the Specifications and/or on the

basis of the information referred to in article 4, in so far as such use is not expressly excluded or limited in the Contract.

- 1.26. Contract: the agreements between the Customer and the Counterparty of which the Terms and Conditions form part.
- 1.27. Patch: a correction to Standard Software that is intended to be temporary.
- 1.28. Staff: the members of staff and/or auxiliary personnel used by parties in performing the Contract.
- 1.29. Deliverable: a Product to be delivered by the Counterparty, a Public Service Contract to be performed by it or a Licence to be granted by it or a combination thereof, including Materials and Documentation.
- 1.30. Product: the thing to be delivered by the Supplier to the Customer on the basis of the Contract.
- 1.31. Software: the set of program rules to be provided by the Counterparty and capable of being used, either directly or indirectly, by a computer to achieve a particular, defined result. Software can be classified as Standard Software or Custom Software.
- 1.32. Standard Software: Software developed for general use that is made available to the Customer on a non-exclusive basis.
- 1.33. Enhanced Version: a subsequent version of the Standard Software in which Defects have been repaired and/or its operation has otherwise been improved.
- 1.34. Fee: the total price agreed for the Deliverable.
- 1.35. Terms and Conditions: these general terms and conditions consisting of these General Provisions and all Special Provisions.
- 1.36. Counterparty: the Contractor or Supplier with whom the Contract is concluded.
- 1.37. Working Days: calendar days, with the exception of weekends and official public holidays within the meaning of section 3 of the General Extension of Time Limits Act.

Article 2. Contacts and escalation

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

Article 3. Status of notifications

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

Article 4. Duty of inquiry and disclosure

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

Article 5. Quality assurance, provision of information and audits

- 5.1 Quality assurance is an aspect of the Counterparty's quality management and is part of the Contract. In the framework of quality assurance the Counterparty will take measures that give the Customer confidence that the Agreed Use can be made of the Deliverable. The Counterparty will take these measures on its own initiative.
- 5.2 At the Customer's request, the Counterparty will make available all the information that is needed to demonstrate that the obligations under the Contract have been and are being fulfilled.
- 5.3 The Customer can perform or arrange for the performance of an audit if concrete circumstances give cause to do so. The Counterparty will cooperate fully with audits, including audits of the Counterparty's staff, unless it cannot reasonably be expected to do so.
- 5.4 The parties will themselves bear the costs they incur in connection with the provision of information and the audits referred to in this article, including the costs of third parties they engage.

- 5.5 The Counterparty is entitled at any time to propose measures in response to information obtained pursuant to this article. The Counterparty must carry out such measures in such a manner as may reasonably be expected of it.

Article 6. Delivery

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

Article 7. Transfer of risk and title

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

Article 8. Intellectual property rights

- 8.1. All intellectual property rights that can be exercised in relation to a Deliverable, no matter where or when, are vested in:
- a) the Customer in so far as the Deliverable concerned has been or is being designed or produced specifically for the Customer and/or has been designed or is being produced under the direction or supervision of the Customer or by reference to its instructions or designs. In so far as necessary, these rights are transferred by the Counterparty to the Customer under the Contract, such transfer being hereby accepted in advance by the Customer;
 - b) the Counterparty or a third party in all other cases; the Counterparty grants the Customer in such cases a non-exclusive right, as determined in the Contract, to use the Deliverable that is in any event sufficient for performance of the provisions of the Contract(s).
- 8.2. The rights referred to in article 8.1 (a) are assigned to the Customer upon signature of the Contract. In so far as a separate instrument needs to be executed at any time for the assignment of these rights, the Counterparty irrevocably authorises the Contracting

Authority to draw up such an instrument and sign it on behalf of the Counterparty, without prejudice to the Counterparty's obligation to cooperate in the assignment of these rights as soon as the Customer requests it to do so, without attaching any conditions to its cooperation. In so far as necessary, the Counterparty hereby also irrevocably authorises the Customer to have the assignment of these intellectual property rights entered in the appropriate registers.

- 8.3. In the event of a disagreement between the parties about intellectual property rights in relation to the Deliverable (or parts of it), it will be assumed, in the absence of proof to the contrary, that the rights are vested in the Customer. Irrespective of the outcome of that dispute, the Customer may continue with the Agreed Use.
- 8.4. The Counterparty hereby renounces, in so far as necessary, both in its own capacity and on behalf of its Staff, all personality rights as referred to in section 25, subsection 1 (a) to (c) of the Copyright Act 1912, in so far as the relevant legislation allows it to do so. The Counterparty guarantees to the Customer that it is competent to renounce these rights, including on behalf of its Staff.
- 8.5. The Counterparty will indemnify the Customer against all claims brought by third parties in respect of any breach of their intellectual property rights, including personality rights as referred to in section 25, subsection 1 of the Copyright Act and equivalent claims relating to knowledge, unlawful competition and so forth. The Counterparty is obliged, as soon as the Customer so requests, to assume responsibility for defending any proceedings brought against the Customer in connection with the Deliverable for breach of the intellectual property rights of a third party. For this purpose the Customer will immediately inform the Counterparty of any such proceedings and provide the Counterparty with the necessary powers of attorney and assistance. The Counterparty will also indemnify the Customer against all damages and costs that it may be ordered to pay in such proceedings and against the costs of the proceedings themselves, including, but not limited to, the costs of obtaining legal advice in this connection.
- 8.6. In the event of an alleged breach of the intellectual property rights of third parties, the Counterparty will, at its expense, take all measures that may help to prevent disruption of the operational activities of the Customer and to mitigate the costs incurred and/or loss or damage suffered as a result of such breach.
- 8.7. Without prejudice to the provisions of articles 8.5 and 8.6, the Customer may, if a third party holds it liable for a breach of its intellectual property rights, cancel all or part of the Contract in writing without recourse to the courts and without prejudice to its other rights against the Counterparty including but not limited to any right to compensation.

Article 9. Documentation

- 9.1. Documentation must be drawn up in such a way as to ensure that the Deliverable can be properly used, managed and maintained by the Customer and third parties.

- 9.2. The Customer may reproduce and amend Documentation and publish it for use within its organisation without owing a further fee, provided that any copyright acknowledgements etc. it contains are left intact.

Article 10. Authorisations

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

Article 11. Acceptance

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

Article 12. Guarantees

- 12.1. The Counterparty guarantees that it will only use Staff who have the skills and qualifications that have been agreed or are necessary for the performance of the Contract, taking account of the nature of the Deliverable and the expertise claimed by the Counterparty. It also guarantees that the Staff used by it will meet the requirements that may be made of an equivalent service provider that is reasonably competent and acts in a reasonable manner.

- 12.2. The Counterparty guarantees that it will not supply Staff to or allow them to work for the Customer if they also work for third parties and could as a result have a conflict of interest.
- 12.3. The Counterparty guarantees that it will repair any Defects at its own expense during a period of 12 months after Acceptance. If the Customer wishes to invoke this guarantee, it will inform the Counterparty of this in writing and, in emergencies, by telephone. The Counterparty will repair the Defects forthwith, taking account of their nature and seriousness. Repair will be carried out, where necessary, in consultation with the Customer. If the Counterparty shows that the Defect is of a kind that the Customer should reasonably have discovered when carrying out the Acceptance Procedure, it may charge the Customer for extra costs incurred as a consequence in repairing the Defect.
- 12.4. If, when performing the guarantee referred to in article 12.3, the Counterparty makes use of a work-around solution, it will reimburse any loss or damage suffered by the Customer as a result. Article 26 applies *mutatis mutandis*.
- 12.5. Further to article 12.3, the Counterparty guarantees that Defects that are discovered by the Customer during the Acceptance Procedure but are not regarded by it as a reason for not proceeding with Acceptance will be repaired with due dispatch at the expense of the Counterparty after Acceptance.
- 12.6. The guarantee referred to in article 12.3 does not apply in so far as the Counterparty shows that a Defect has occurred as a consequence of a change made to the Deliverable without its consent by the Customer or a third party used by it. Nor does the guarantee apply if the Defect is demonstrably due to incorrect, careless or injudicious use of the Deliverable by the Customer.
- 12.7. The Counterparty guarantees that it can maintain the Deliverable for five years after the date of Acceptance, during at least three of which the Maintenance will be carried out in the manner specified in the Special Provisions on Maintenance.

Article 13. Support and Maintenance

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

Article 14. Invoicing, discounts and Additional Work

- 14.1. The Counterparty will invoice for the work in the manner prescribed in the Contract.
- 14.2. The Counterparty will send the invoice electronically so that it can be received and processed electronically, in accordance with the specifications given by the Customer.
- 14.3. The Customer is entitled to an agreed discount on the Fee or penalty, without prejudice to the other rights or claims, including, but not limited to:
 - a) its claim to performance of the agreed obligation to perform the contractual obligations in relation to the Deliverable;
 - b) its right to compensation; and/or
 - c) its right to cancellation.
- 14.4. Additional Work must be notified in good time to the Customer, must always be invoiced separately and does not qualify for reimbursement other than with the prior consent of the Customer.

Article 15. Payment and invoice audits

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

- 15.5. The Counterparty does not have the right to suspend or terminate its work if:
- a. the Customer fails to pay an invoice within the stipulated time limit, or
 - b. the Customer does not pay all or part of an invoice because it suspects that the invoice is inaccurate or because the Deliverable is defective.

Article 16. Advances

- 16.1. If the Customer, in performing the Contract, is to make a payment for a Deliverable that has not yet been accepted, it may require the Counterparty to issue it with an on-demand bank guarantee for the value of the payment in question before it makes the payment. The Customer will not be required to pay any of the cost of the guarantee.
- 16.2. If the Customer does not accept the Deliverable within the stipulated time limit owing to a failure that is attributable to the Counterparty, the Counterparty will be liable to pay statutory interest on the advance for as long as the failure persists.
- 16.3. The on-demand bank guarantee will be issued in accordance with the Central Government Financial Management Order using the model enclosed with the Contract. After final Acceptance, the document recording the guarantee will be returned to the Counterparty.

Article 17. Duty of secrecy

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

Article 18. Processing of data

- 18.1. Without prejudice to the provisions of this article and article 8, the Counterparty will use the data provided by the Customer and the data generated on the basis thereof on the instructions of the Customer exclusively for the performance of the contractual obligations in relation to the Deliverable and in so far as this use is necessary and proportionate in relation to the Deliverable, unless statutory rules provide otherwise.
- 18.2. In so far as the Counterparty processes personal data for the Customer in the framework of the Contract, the Counterparty will comply with the applicable legislation on the protection of personal data. The Counterparty will process personal data in any particular case only for and on the basis of written instructions from the Customer, unless statutory rules provide otherwise.
- 18.3. The parties will regulate the processing of personal data by the Counterparty for the Customer by means of an agreement.
- 18.4. The parties will involve each other in putting forward a defence against claims from third parties in connection with the processing of personal data in the framework of this Contract.

Article 19. Security procedures and Information Security

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

Counterparty for any reason whatever, the Counterparty will immediately report this to the Customer's contact.

- 19.6. The Information Security requirements specified by the Customer do not affect the Counterparty's obligation to ensure a level of Information Security that may be expected of a competent IT supplier acting reasonably.
- 19.7. The Counterparty will end Breaches as quickly as possible. Without prejudice to the foregoing, the Counterparty will notify the Customer as soon as the Counterparty becomes aware of a Breach.
- 19.8. The Counterparty will also inform the Customer after a notification pursuant to the previous paragraph of developments concerning the Breach, including the measures it is taking to end the Breach and to avoid such a Breach in the future.
- 19.9. The Counterparty will leave the task of notifying supervisory authorities and competent authorities to the Customer, unless statutory obligations require otherwise. The Counterparty will provide all the necessary cooperation with the timely provision of additional information to supervisory bodies, competent authorities and the data subjects concerned. The parties will themselves each bear the costs they incur in connection with the notifications to supervisory authorities, competent authorities and the data subjects concerned.

Article 20. Working conditions

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

Article 21. Publicity

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

Article 22. Replacement of Counterparty's Staff

- 22.1. The Counterparty will replace Staff only with the prior consent of the Customer. The Customer may not withhold its consent unreasonably and may attach conditions to its consent.

- 22.2. The Customer may demand the replacement of Staff if it considers that their continued assignment to the work is no longer desirable for reasons connected with the individuals concerned.
- 22.3. Where Staff are replaced, the Counterparty may not charge any costs for this to the Customer unless the Counterparty shows that there was no reasonable basis for the request for replacement.
- 22.4. Where Staff are replaced, the Counterparty will provide replacements at the same rate and ensure that their expertise, qualifications and experience are at least equal to those of the original Staff or satisfy the conditions agreed by the parties.

Article 23. Subcontracting

- 23.1. In performing the Contract the Counterparty may use the services of third parties only with the prior consent of the Customer. This consent, to which the Customer may attach conditions, may not be withheld unreasonably.
- 23.2. The Customer's consent is without prejudice to the Counterparty's own responsibility and liability for discharging the obligations to which it is subject under the Contract and its obligations as an employer under the tax, healthcare insurance and social insurance legislation.

Article 24. Assignment of rights and obligations

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

Article 25. Impending delay

- 25.1. In the event of an impending delay in the performance of the contractual obligations in relation to the Deliverable, the Counterparty will immediately notify the Customer, explaining the reasons for and consequences of any delay. The Counterparty will also propose to the Customer measures to avoid delay or further delay.
- 25.2. As quickly as possible after receiving the notification referred to article 25.1, the Customer will notify the Counterparty whether or not it agrees to the proposed measures. Agreement does not imply any acceptance by the Customer of the cause of the impending delay, and is without prejudice to its rights against the Counterparty.

Article 26. Liability

- 26.1. If either party fails to discharge an agreed obligation, the other party may give it notice of default. In such a case the defaulting party will be given a reasonable period in which to perform the obligation. If the party in breach still fails to perform the obligation within this further period, it will then be deemed to be in default. Notice of default is not necessary where the period for performance constitutes a Vital Deadline or where it must be inferred from a notification from or the conduct of the defaulting party that it will fail to perform its obligation. A party that imputably fails to discharge its obligations is liable to the other party for any loss or damage suffered and/or yet to be suffered by the latter.
- 26.2. The liability referred to in article 26.1 for personal injury and damage to property and consequential loss or damage is limited to an amount of €1,250,000 per event. For this purpose, interrelated events will be treated as a single event.
- 26.3. The liability referred to in article 26.1 for loss or damage other than that referred to in article 26.2 is limited per event to an amount not exceeding four times the Fee. For this purpose, interrelated events will be treated as a single event.
- 26.4. The limitations of liability set out in articles 26.2 and 26.3 do not apply:
- a) to third-party claims for compensation as a result of death or injury, and/or
 - b) if there has been intent or gross negligence on the part of the other party or its Staff, and/or
 - c) to breaches of intellectual property rights as referred to in article 8;
 - d) in the event of claims for compensation due to an infringement of legislation on the protection of personal data or actions contrary to the lawful instructions of the controller. Loss or damage includes fines imposed by the supervisory authority.
- 26.5. The Counterparty is liable for all obligations in respect of its Staff, including those arising under tax, healthcare insurance and social insurance legislation. The Counterparty will indemnify the Customer against any liability in this connection.

Article 27. Force majeure

- 27.1. A failure to perform the Contract that is not attributable to the fault of a party and for which it is also not accountable by law or juristic act or according to generally accepted standards constitutes force majeure.
- 27.2. The term force majeure in relation to the Counterparty is in any event deemed not to include staff shortages, strikes, staff illness, late delivery or unsuitability of items required for the performance of the contractual obligations in relation to the Deliverable and liquidity or solvency problems.
- 27.3. If the Counterparty can claim some benefit in respect of a failure as referred to in article 27.1 that it would not have had in the event of proper performance, it will compensate the

Customer for any loss or damage suffered by the Customer as a consequence of that failure, up to a maximum of the value of the benefit concerned. The provisions of articles 26.2 and 26.3 apply in that regard.

Article 28. Defects involving compatibility with other software or hardware

- 28.1. At the request of the Customer, the Counterparty will engage in consultations with other designated counterparties and/or suppliers of the Customer if it appears at any time that the Deliverable is not working properly with other software and/or products used or to be used by the Customer.
- 28.2. The purpose of the consultations referred to in article 28.1 will be to establish the cause of the incompatibility and, if possible, find a solution. Any reasonable costs incurred in participating in the consultations and finding a solution will be borne by the Customer, unless the incompatibility is imputable to be Counterparty.

Article 29. Insurance

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

Article 30. Cancellation and notice of termination

- 30.1. Without prejudice to the provisions of the Contract, either party may cancel the Contract in full or in part in writing, without recourse to the courts, unless the failure, in view of its special nature or insignificance, does not warrant cancellation and the consequences thereof. In so far as performance is not permanently or temporarily impossible, the power to cancel the Contract only arises once the debtor is in default.
- 30.2. In the event of force majeure, the parties may not cancel the Contract until a period of 15 Working Days has elapsed, beginning on the date on which the circumstance causing the force majeure arose.
- 30.3. The Customer may cancel the Contract in writing with immediate effect, without recourse to the courts and without being required to send any prior demand or notice of default, if the Counterparty applies for a provisional or final suspension of payments or files for bankruptcy or is declared bankrupt, if its business is wound up, if it ceases business activities, if control of its business operations undergoes a major change, if a substantial proportion of its assets are seized, or if it is deemed on any other grounds to be no longer capable of

discharging its obligations under the Contract. This power also applies if, during the term of the Contract, other grounds for exclusion as referred to in section 2.86 of the Public Procurement Act 2012.

- 30.4. The Customer may also cancel the Contract in the manner specified in article 30.3 if it has good grounds for assuming that a court of law would set aside the Contract under part 4.3.1 of the Public Procurement Act 2012 if an application to this effect were made. The Counterparty is entitled to reimbursement of costs reasonably incurred in performing the Contract and the costs of reasonable future obligations already entered into in connection with the Contract. If, however, the Customer shows that the unlawfulness is wholly or partly attributable to the Counterparty, the Counterparty is not entitled to compensation.
- 30.5. If the Customer has concluded two or more interrelated Contracts with the Counterparty, the Customer may cancel in the specified manner the other Contract(s) in the cases referred to in articles 30.1 and 30.3. Evidence of an interrelationship as referred to above must be apparent from the (related) Contracts.
- 30.6. Without prejudice to the provisions laid down in the Contract or in the Terms and Conditions, the Customer may give notice terminating a Contract in writing, where applicable with immediate effect. In such an event, the account between the Customer and the Contractor will be settled on the basis of articles 30.7 to 30.9. This method of settling accounts will never result in the Customer owing the Counterparty more than the Fee or the as yet unpaid part thereof due to its termination of the Contract. The Customer is not obliged to indemnify the Counterparty in any way other than that specified in articles 30.7 to 30.9 for the consequences of terminating the Contract.
- 30.7 In the event of the early termination of one-off or fixed-term Public Service Contracts where the obligation to pay the Fee depends on the performance of the Contract or the expiry of its term, the Counterparty is entitled to a reasonable portion of the Fee if the Contract is terminated by the Customer on the basis of article 30.6. In determining the amount, account will be taken, *inter alia*, of the work already performed by the Counterparty, the benefit derived by the Customer from that work and the grounds on which the Contract was terminated. The Counterparty is entitled to the (full) Fee only if the termination of the Contract is attributable to the Customer and payment of the full Fee is reasonable, having regard to all the circumstances of the case. The savings accruing to the Counterparty from early termination will be deducted from the amount of the Fee.
- 30.8 In the event of early termination of other Contracts on the basis of article 30.6, the account between the Customer and the Counterparty will be settled on the basis of (a) the part of the Fee that relates to the part of the Deliverable that the Counterparty has already delivered in the course of performing the Contract at the time the notice of termination is given, (b) other obligations that the Counterparty has already entered into in performing the Contract in so far as they cannot be limited and (c) loss of profit in so far as that loss is not included in the costs referred in points a and b.
- 30.9 If a Contract consists of both a Public Service Contract and other Deliverables, the provisions of articles 30.7 and 30.8 apply to the relevant parts of the Contract.

Article 31. Retention of right to demand performance

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

Article 32. Exit clause

- 32.1. If the Contract ends early for any reason whatever, the Counterparty will, as soon as the Customer so requests, take whatever action is reasonably necessary to ensure that a new counterparty (transition) or the Customer itself (retransition) can, without impediment, assume responsibility for performing the Contract and/or work on a similar Deliverable for the benefit of the Customer. If necessary the Counterparty will take part in consultations with a succeeding counterparty at the Customer's request.
- 32.2. Other than in a case where the Contract is cancelled pursuant to the provisions of article 30.1 or 30.3, the Counterparty will perform the services referred to in article 32.1 at the rates and on the terms specified in the Contract or, in the absence thereof, at the rates generally applied by the Counterparty and on such terms as may be agreed. The costs of the services referred to in article 32.1 will be borne by the Counterparty if the Counterparty imputably fails to discharge an obligation, such to include the situation referred to in the last sentence of article 30.4.
- 32.3. Once the Contract has ended, the Counterparty will immediately return or destroy, at the Customer's discretion, all documents, books, papers and other items (including information carriers) made available to it by the Customer. The Counterparty will notify the Customer if it believes that immediate destruction is barred by statutory rules.
- 32.4. Once the Contract has ended, the Counterparty will immediately return or erase, at the Customer's discretion, all data provided to it by the Customer and data generated on the basis thereof on the instructions of the Customer including personal data. The Counterparty will ensure that, from the moment stipulated by the Customer and, if applicable, not before the return of the data, this data is erased from its systems and its subcontractors' systems (including the deletion of copies). The Counterparty will notify the Customer if it believes that immediate erasure is barred by statutory rules.
- 32.5. The Counterparty guarantees that it will keep the data referred to in paragraph 4 available for unimpeded access by the Customer during the transition or retransition until this data has been returned to the Customer or erased with the Customer's consent.

Article 33. Bribery and conflicts of interest

- 33.1. The parties may not offer to each other or to third parties – or solicit, accept or obtain from each other or third parties – whether for themselves or for any other party, any gift, reward, compensation or benefit of any form whatsoever if this could be construed as an illicit practice. Such a practice may constitute grounds for cancelling the Contract either in full or in part.
- 33.2. If it is found that a member of the Customer's Staff is also in the Counterparty's employment or was also in the Contractor's employment at the time when negotiations took place on the formation of the Contract, regardless of whether or not this is or was paid employment, and that the Customer was not informed of this prior to the conclusion of the Contract, the Customer may cancel the Contract with immediate effect, without being required to give notice of default or to pay any compensation and without prejudice to any right of the Customer to compensation.

Article 34. Continuing obligations

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

Article 35. Follow-up order

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

Article 36. Void and set-aside provisions

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

Article 37. Disputes and applicable law

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

SPECIAL PROVISIONS ON PURCHASES

These provisions apply, together with the General Provisions, to the purchase of IT Products (referred to below as Products) such as computers, laptops and servers.

Article 38. Installation

- 38.1. If the nature and/or scope of the Deliverable warrants this, the Supplier may inspect the place of Installation of the Product prior to Delivery.
- 38.2. If the Supplier considers the place of Installation to be unsuitable, it will immediately notify the Customer of this. The Customer and the Supplier will then consult together to determine a suitable place of Installation.

Article 39. Guarantees

Further to article 12, the Supplier guarantees that:

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

Article 40. Special duty to provide information

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

Article 41. Product modifications

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

SPECIAL PROVISIONS ON LICENCES

The provisions of this special part apply, together with the General Provisions, to the acquisition of Licences by the Customer.

Article 42. Additional definitions

Further to article 1, the following terms, where written with initial capitals, are defined as follows in this special part:

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

Article 43. Nature and content of the Licence

- 43.1. Subject to the Terms and Conditions, the Supplier grants to the Customer an irrevocable Licence to the Standard Software and to New Versions thereof if the Customer is entitled to receive them. The Licence does not entail any transfer by the Supplier to the Customer of any patent, copyright or trademark in relation to the relevant Standard Software.
- 43.2. The Licence in any event includes the following (for which the Customer does not owe any additional fee):
 - a) the right to use all functionalities of the Standard Software that are accessible to the Customer, even if they are not mentioned in the Documentation;
 - b) the right to make, save and regularly test copies of the Standard Software and keep them on hot standby for the purposes of disaster recovery;
 - c) the right to use the Standard Software for testing and development purposes;
 - d) the right to use the Standard Software without any limitation or restraint in terms of place, hardware, and so forth, including its use by third parties on behalf of the Customer.

- 43.3. The Customer may make and use copies of the Standard Software as often as it considers necessary for the purpose of its operational activities. If it does so and thus owes an additional payment to the Supplier it will notify the Supplier of this with due dispatch. The Customer may not remove any notices of ownership and copyright when reproducing Standard Software.
- 43.4. Until the moment of Acceptance of the Standard Software, the Customer obtains from the Supplier a non-exclusive right to use the Standard Software for installation and testing purposes.
- 43.5. If the Supplier repairs Defects in the Standard Software only by issuing Patches or Enhanced Versions, the Customer is entitled to receive and use them free of charge during the guarantee period referred to in article 12.3, even if it has not agreed any Maintenance with the Supplier.

Article 44. Guarantees

Further to article 12, the Supplier guarantees that:

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

Article 45. Provision of an Installation Copy

- 45.1. The Supplier will, if possible, provide the Customer with an Installation Copy or enable it to make a copy itself. The price of the copy is included in the Fee.
- 45.2. If the Customer is entitled to receive New Versions, the provisions of article 45.1 will also apply to them.
- 45.3. If the Installation Copy has been mislaid or has been damaged in such a way that the Agreed Use is no longer possible, the Supplier will, on request and with due dispatch, provide the Customer with a new Installation Copy of the original version delivered to the Customer and of any Enhanced and New Versions thereof used by the Customer or will enable the Customer itself to make such a copy. In so far as applicable, the Supplier will be entitled only to reimbursement of the cost price of the materials of the Installation Copy.

Article 46. Conversion into other Licences

- 46.1. If the Supplier wishes at any time to convert the Licence granted to the Customer into another licence in respect of the Standard Software, it will consult in advance with the

Customer about this and about the exchange ratio to be applied in this connection. Such a conversion may not have disadvantageous consequences of any kind whatever for the Customer.

- 46.2. If the parties do not reach agreement in the consultations referred to in article 46.1, the Customer may continue to exercise its Licence in full.

Article 47. Escrow

- 47.1. The Customer may at all times require the Supplier to provide for Escrow, even if this has not been initially agreed.
- 47.2. The Escrow must include all information not in the public domain that is reasonably needed by the Customer to resolve faults and maintain and manage the Standard Software in such a way that it can continue to make the Agreed Use thereof. The Escrow must satisfy the conditions normally applicable to escrow in the Dutch market at the time the arrangements are made.
- 47.3. If Escrow forms part of the Contract, the Supplier will furnish the Customer with proof that the Escrow fulfils the relevant provisions of the Contract or make provision for such an arrangement with due dispatch.
- 47.4. Even if Escrow does not form part of the Contract, the Customer is still entitled subsequently to require that such an arrangement be concluded or to accede at any time to an Escrow agreement as referred to in article 47.2. Any reasonable costs incurred in this connection will be borne by the Customer.

SPECIAL PROVISIONS ON SERVICE CONTRACTS

The provisions of this special part apply, together with the General Provisions, where the Contractor performs services for the Customer such as consultancy, development of Custom Software, directing IT projects, managing and operating IT infrastructure, provision of network and workplace services and Secondment.

GENERAL

Article 48. Additional definitions

Further to article 1, the following terms, where written with initial capitals, are defined as follows in this special part:

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

Article 49. Time and place of work

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

Article 50. Assignment of specific Staff

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

Article 51. Progress reporting and work consultations

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

Article 52. Professional indemnity insurance

Without prejudice to the provisions of article 29, the Contractor has taken out and will maintain professional indemnity insurance that is appropriate and, taking account of the nature and scope of the Public Service Contract, customary by prevailing standards.

Article 53. Employment conditions

- 53.1 In performing the Public Service Contract, the Contractor will comply with the applicable legislation on employment conditions and with the collective labour agreement applicable to its Staff.
- 53.2 The Contractor will record all agreements on employment conditions made for the purpose of the performance of the Public Service Contract in a clear and accessible manner.
- 53.3 Upon request, the Contractor will immediately grant competent authorities access to these agreements on employment conditions and cooperate with any inspections, audits or salary validations.
- 53.4 Upon request, the Contractor will immediately grant the Customer access to the agreements on employment conditions referred to in paragraph 2 if the Customer considers this necessary to prevent or deal with a salary claim concerning work carried out for the purpose of the performance of the Public Service Contract.
- 53.5 The Contractor will impose the obligations arising from the previous paragraphs in full on all parties with which it enters into contracts for the purpose of the performance of the Public Service Contract and will also stipulate that these parties impose these obligations in full on all parties with which they, in turn, enter into contracts for the purpose of the performance of the Public Service Contract.

SPECIFIC TYPES OF PUBLIC SERVICE CONTRACT

Consultancy services

Article 54. Day-to-day management and supervision

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

Article 55. Project managers

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

Article 56. Project phasing

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

Development of Custom Software

Article 57. Management and supervision, appointment of project managers and project phasing

Articles 54 to 56 apply *mutatis mutandis* to the development of Custom Software.

Article 58. Completion

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

Article 59. Acceptance procedure

- 59.1. Without prejudice to the provisions of article 11, Acceptance of Custom Software will take place as follows.
- 59.2. The Contractor will give the Customer timely notice of Completion in respect of the Custom Software.
- 59.3. If the Customer carries out or commissions an acceptance test, it will draw up and sign a test report as quickly as possible and send it to the Contractor. The test report will record any Defects that are discovered and whether the Customer approves or rejects the Custom Software.

- 59.4. If the Customer approves the Custom Software, the date of signature of the test report will be deemed to be the date of Acceptance.
- 59.5. If the Customer does not approve the Custom Software when carrying out the acceptance test for the first time, it will repeat the test in full or in part within such reasonable period as it may set. Subsequently, the Customer will record in a supplementary test report whether the Defects discovered in the first test have been repaired and whether it now approves the Custom Software.
- 59.6. If the Customer rejects the Custom Software, the Contractor will repair the Defects at its own expense within a reasonable period set by the Customer and starting on the date of signature of the test report. If the Contractor fails to make the repairs, the Customer may itself repair the Defects, or have them repaired by a third party, at the expense of the Contractor after giving notice to the Contractor. In such cases the Contractor will cooperate fully and free of charge, for example by providing the necessary information to the Contractor as soon as it requests. If the Customer itself repairs a Defect, or has it repaired by a third party, for the reason referred to above, this does not in any way relieve the Contractor of its agreed responsibilities for the Custom Software.
- 59.7. If the Customer once again rejects the Custom Software after the second acceptance test, the Contractor will be deemed to be in default as a result. In that case the Customer may cancel the Contract with immediate effect, without recourse to the courts and without any demand or notice of default being required for this purpose.
- 59.8 The provisions of article 59 do not affect the provisions of article 30; in other words, the Customer is not obliged to follow the procedure set out in article 59 if the Counterparty is in default on other grounds.

Article 60. Maintenance of Custom Software

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

Secondment

Article 61. Applicability

Secondment exists – and hence articles 61 to 67 apply – only if the relevant Contract has been expressly designated by the parties as a Secondment Agreement.

Article 62. Guarantees

Further to the provisions of article 12.1, the Contractor guarantees that it will always have sufficient Staff to perform the Contract properly for the Customer.

Article 63. Working days and working hours

- 63.1. The working days and working hours of Staff made available by the Contractor will be the same as those of the Staff of the Customer at the same location.
- 63.2. Overtime occurs only if work is carried out at the request of the Customer outside the working days and working hours referred to in article 63.1. Work carried out for a maximum of half an hour immediately after the working hours referred to in that article is not deemed to be overtime.

Article 64. Secondments and foreign postings

- 64.1. Staff seconded to the Customer may not be hired out by the Customer to third parties without the Contractor's consent.
- 64.2. Staff seconded to the Customer may not be posted by the Customer to work outside the Netherlands without the Contractor's consent.

Article 65. Leave and courses

- 65.1. Staff of the Contractor will take leave only after consulting with the Customer and allowing for the normal progress of the work.
- 65.2. The costs of leave taken by Staff of the Contractor will be borne by the Contractor.
- 65.3. The costs of courses taken at the request of the Customer and the costs of the consequent time off work will be borne by the Customer.
- 65.4. Each year the Customer may designate a number of days on which its office will be closed for reasons to be specified. On such days no work will be performed by Staff of the Contractor at that location.

Article 66. Indemnity

The Contractor indemnifies the Customer against claims by Staff of the Contractor based on the alleged existence of an employment contract with the Customer.

Article 67. Hirer's liability

- 67.1. The Contractor will indemnify the Customer against the hirer's liability for salaries tax and social insurance contributions and for turnover tax that the Contractor, or third parties used by it, may be or become liable to pay in connection with the performance of the Contract.
- 67.2. The salaries tax, social insurance contributions and VAT that must be remitted by the Contractor in connection with the performance of the Contract may be paid by the Customer to a 'G account' of the Contractor. If the Contractor does not have a G account it will open one, if possible as soon as the Customer so requests, and will do whatever is necessary to maintain such an account.

SPECIAL PROVISIONS ON MAINTENANCE

The provisions of this special part apply, together with the General Provisions, where the Customer agrees with the Contractor for Maintenance to be performed by the Contractor.

GENERAL

Article 68. Additional definitions

Further to article 1, the following terms, where written with initial capitals, are defined as follows in this special part:

- 68.1. Availability: the period during which the Deliverable is free of Defects.
- 68.2. Corrective Maintenance: the tracing and resolution by the Contractor of Faults reported by the Customer or Faults that have otherwise become known to the Contractor.
- 68.3. Repair Time: the periods, expressed in Service Hours, between the moment when a Fault is reported to be Contractor and the moment it is resolved.
- 68.4. Innovative Maintenance: the provision by the Contractor to the Customer of New Versions or newly developed parts of Products and/or new Documentation.
- 68.5. Preventive Maintenance: measures taken by the Contractor to prevent Faults and related forms of service.
- 68.6. Response Time: the time within which the Contractor (or Staff of the Contractor) must adequately respond to a report by the Customer of a Fault and other requests by the Customer for service.
- 68.7. Service Levels: requirements included in the Contract in respect of Maintenance and other agreed forms of service.
- 68.8. Service Hours: hours that fall within the agreed service period.
- 68.9. Fault: a technical problem that occurs when using the Deliverable.

Article 69. Maintenance of Deliverables previously provided

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

Article 70. Maintenance starting date

The Contractor will provide Maintenance from the date specified in the Contract.

Article 71. Time and place of Maintenance

- 71.1. The Contractor will perform the Maintenance at or from its premises. The Contractor will perform Maintenance at the Customer's premises only where reasonably necessary.
- 71.2. Maintenance that may disrupt the business operations of the Customer will, in principle, be performed outside the Customer's normal working hours.
- 71.3. If disruption of the business operations referred to in article 71.2 is inevitable, given the importance of resolving the Fault immediately, the Contractor will give the Customer timely notice of this before starting the Maintenance work.

Article 72. Progress reporting and work consultations

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

Article 73. Corrective Maintenance and work-around solutions

- 73.1. Maintenance consists in any event of Corrective Maintenance.
- 73.2. The guarantee in article 12.7 that the Contractor will maintain the Deliverable for at least three years after Acceptance in accordance with these provisions applies in full to Corrective Maintenance, even if the Customer does not wish to acquire New Versions or the latest models of a Product.
- 73.3. The Contractor will use a work-around solution only with the consent of the Customer. Unless the parties agree differently in a specific case, the Contractor will replace a work-around solution as quickly as possible with a final solution.

Article 74. Preventive Maintenance

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

Article 75. Reporting and prioritising Faults

- 75.1. The Customer will report Faults and their resolution in the manner prescribed in the Contract.
- 75.2. In reporting a Fault the Customer will assign a priority level to it in accordance with the provisions of the Maintenance Contract.
- 75.3. In responding to a report as referred to in article 75.1 the Contractor will always aim to resolve the Fault as quickly as possible, whether or not by means of a work-around solution. The provisions of article 73.3 apply in this connection.

Article 76. Compliance with Service Levels

- 76.1. The Contractor will use its best endeavours to achieve the Service Levels. The consequences of not achieving them are regulated in the Contract. The provisions of article 14.3 apply in this connection. The Contract may in any event be cancelled in the event of repeated failures to achieve the Service Levels.
- 76.2. Notwithstanding the provisions of article 76.1, Repair Times and Response Times are deemed to be Vital Deadlines. In the event of failure to ensure the agreed Availability, the Contractor will immediately be in default without notice of default being required.
- 76.3. Service Levels do not detract from the other provisions of the Contract.

Article 77. Maintenance by third parties

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

Article 78. Maintenance result testing

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

Article 79. Professional indemnity insurance

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

SPECIFIC MAINTENANCE

Products

Article 80. Product modifications

Product modifications that are not prescribed by the manufacturer will be made by the Contractor in consultation with the Customer and only after the Customer has agreed to the price quoted for the work.

Article 81. Replacement of parts

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

Software

Article 82. Scope of Maintenance

Further to the provisions of article 73.1, Software Maintenance consists not only of Corrective Maintenance but also of Preventive Maintenance and support. If the Customer so wishes, Software Maintenance will also include Innovative Maintenance.

Article 83. Support

- 83.1. Further to the provisions of article 13, the Contractor will provide support to the Customer, at its request, in the form of advice on the use and functioning of Software.
- 83.2. The Customer may request the Contractor for support at the times referred to in the Maintenance Contract.
- 83.3. If the Customer requests support as referred to in article 83.2, the Contractor will arrange as quickly as possible and, if applicable, within the Response Time for contact between a program specialist and the Customer.

Article 84. Enhanced and New Versions

- 84.1. The Contractor will ensure a consistent policy on the release of versions. The basic principle is that Enhanced and New Versions should become available in good time. The Contractor will for this purpose regularly study the need to issue such versions and will inform the Customer as quickly as possible about the findings of its study.
- 84.2. Interim changes to Software made as a consequence of Corrective Maintenance will, as far as possible, form part of Enhanced and New Versions.
- 84.3. The Contractor will provide the Customer, on request, with a copy of a New Version for the purposes of testing and evaluation. The Customer is not obliged to upgrade to the New Versions.
- 84.4. If it has been agreed that the Contractor will install the Software, this obligation also applies to New Versions that the Contractor wishes to use.
- 84.5. If the Contractor decides to issue different Software rather than a New Version of the existing Software used by the Customer and to discontinue Innovative Maintenance of the existing Software, the Customer may either demand full performance of the Maintenance Contract or claim a Licence to the new Software under the conditions that apply to a New Version as recorded in the Contract.