

NPO General Terms and Conditions for IT contracts 2016

General Provisions

The NPO General Terms and Conditions for IT Contracts 2016 consist of these General Provisions and Special Provisions. These General Provisions relate to all IT Contracts involving the Contracting Authority. The Special Provisions relate to specific IT Contracts involving the Contracting Authority.

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 Contracting Authority of the Deliverable or parts thereof.
- 1.2. *Acceptance Procedure*: the procedure recorded in the Contract for use by the Contracting Authority in determining whether or not to proceed with Acceptance of the Deliverable.
- 1.3. *Delivery*: the supply by the Counterparty of Products in the manner specified in the Contract, as evidenced by a confirmation of receipt thereof issued by the Contracting Authority.
- 1.4. *Specifications*: the documents made available to the Counterparty (including explanatory notes and amendments) that describe and explain the organisation of the Contracting Authority, the Deliverable and the intended use thereof by the Contracting Authority, and the contract award procedure.
- 1.5. *Schedule*: an annexe to the Contract that forms part of it once it has been initialled by the parties.
- 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. *Strict 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 and/or other failure as a consequence of which the Deliverable is not suitable for the Agreed Use.
- 1.10. *Licence*: a right entitling the Contracting Authority 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 considered necessary for this purpose.

- 1.11. *Implementation*: the entirety of acts and measures needed in order to make the organisation of the Contracting Authority suitable for the Agreed Use of the Product and/or Software.
- 1.12. *Installation*: the placement and connection of the Product and/or the setting up of Software by the Counterparty.
- 1.13. *Supplier*: the Counterparty to the Contract who has undertaken to deliver a Product or grant a Licence.
- 1.14. *Materials*: equipment and consumables for the installation, implementation, use and/or maintenance of the Deliverable, such as cables, smartcards and physical data carriers on which the Software is supplied.
- 1.15. *Additional Work*: work that is not included in the Public Service Contract and results in costs that exceed the Fee.
- 1.16. *New Version*: a subsequent version of Standard Software that contains predominantly new or modified functionalities, whether or not issued under a new name.
- 1.17. *Object Code*: translation of the Source Code into a code that can be directly read and operated by a computer.
- 1.18. *Maintenance*: work to be performed by the Contractor for the purpose of repairing and/or enhancing the Deliverable.
- 1.19. *Public Service Contract*: work to be performed by the Contractor for the Contracting Authority other than pursuant to an employment contract.
- 1.20. *Contracting Authority*: the party for whose benefit a Contract is concluded.
- 1.21. *Contractor*: a Counterparty who has undertaken to perform a Public Service Contract.
- 1.22. *Completion*: the presentation by the Contractor of the Deliverable (or parts of it) for Acceptance.
- 1.23. *Agreed Use*: the use that the Contracting Authority 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.
- 1.24. *Contract*: the agreements between the Contracting Authority and the Counterparty of which the Terms and Conditions form part.
- 1.25. *Patch*: a correction to Standard Software that is intended to be temporary.
- 1.26. *Staff*: the members of staff and/or auxiliary personnel used by parties in performing the Contract.
- 1.27. *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.

- 1.28. *Product*: the item to be delivered by the Supplier to the Contracting Authority on the basis of the Contract.
- 1.29. *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.
- 1.30. *Standard Software*: Software developed for general use that is made available to the Contracting Authority on a non-exclusive basis.
- 1.31. *Enhanced Version*: a subsequent version of the Standard Software in which Defects have been repaired and/or its operation has otherwise been improved.
- 1.32. *Fee*: the total price agreed for the Deliverable.
- 1.33. *Terms and Conditions*: the NPO General Terms and Conditions for IT Contracts 2014 consisting of these General Provisions and all Special Provisions.
- 1.34. *Counterparty*: the Contractor or Supplier with whom the Contract is concluded.
- 1.35. *Working Days*: calendar days, with the exception of weekends and official public holidays within the meaning of Section 3 of the Dutch General Extension of Time Limits Act (*Algemene termijnenwet*).

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 only in so far as the performance of the Contract is concerned. They are not competent to amend the Contract.
- 2.3. Without prejudice to the provisions of Article 39, 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 Contracting Authority intends to make of the Deliverable, the Counterparty must sufficiently acquaint itself with:
- a. the objectives of the Contracting Authority in concluding the Contract;
 - b. the organisation of the Contracting Authority, 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 Contracting Authority for this purpose.

- 4.3. For the purposes of Article 4.1, the Contracting Authority will provide the Counterparty with sufficient information. The Contracting Authority will supply the Counterparty, on request, with additional information in so far as this is not of a confidential nature and can reasonably be considered relevant to the performance of the Contract. If anything is unclear, the Counterparty will make inquiries of the Contracting Authority 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

The Contracting Authority may always take measures to guarantee the quality of the Deliverable. The Counterparty will cooperate with such measures and implement their results in such manner as may reasonably be expected of it.

Article 6. Delivery

- 6.1. The Counterparty will make the Delivery in one go.
- 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 Contracting Authority need not take receipt of the Product. This is without prejudice to the Counterparty's obligation to make timely Delivery.
- 6.4. The Contracting Authority will provide the Counterparty with a receipt for Products it receives. This receipt is without prejudice to the rights of the Contracting Authority 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 Contracting Authority upon Delivery.
- 7.2. Without prejudice to the provisions of Article 8, title to the Deliverable (or parts of it) will pass to the Contracting Authority 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 Contracting Authority in so far as the Deliverable concerned has been or is being designed or produced specifically for the Contracting Authority and/or has been designed or is being produced under the direction or supervision of the Contracting Authority or by reference to its instructions or designs. In so far as necessary, these rights are transferred by the Counterparty to the Contracting Authority under the Contract, such transfer being hereby accepted in advance by the Contracting Authority;
 - b. the Counterparty or a third party in all other cases. The Counterparty grants the Contracting Authority 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 Contracting Authority 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 Contracting Authority requests it to do so, without attaching any conditions to its cooperation. In so far as necessary, the Counterparty hereby also irrevocably authorises the Contracting Authority 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 Contracting Authority. Irrespective of the outcome of that dispute, the Contracting Authority 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 Dutch Copyright Act (*Auteurswet*), in so far as the relevant legislation allows it to do so. The Counterparty guarantees to the Contracting Authority that it is competent to renounce these rights, including on behalf of its Staff.
- 8.5. The Counterparty will indemnify the Contracting Authority 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 Contracting Authority so requests, to assume responsibility for defending any proceedings brought against the Contracting Authority in connection with the Deliverable for breach of the intellectual property rights of a third party. For this purpose, the Contracting Authority 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 Contracting Authority 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 a third party, the Counterparty will, at its expense, take all measures that may help to prevent disruption of the operational activities of the Contracting Authority 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 Contracting Authority may, if a third party holds it liable for a breach of its intellectual property rights, dissolve all or part of the Contract 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 Contracting Authority and third parties.
- 9.2. The Contracting Authority 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 Contracting Authority of everything that, in its view, constitutes or may constitute an infringement of the authorisation.

Article 11. Acceptance

- 11.1. The Contracting Authority 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 Contracting Authority will inform the Counterparty within 30 days of 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 60.3 if the Custom Software is approved in the report.
- 11.3. Acceptance includes approval of the Documentation.
- 11.4. If the Contracting Authority 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 Contracting Authority, the Deliverable will be considered to have been accepted by the Contracting Authority.
- 11.6. If the Contracting Authority 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 operation of the Deliverable, 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 Contracting Authority 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 Contracting Authority wishes to invoke this guarantee, it will inform the Counterparty of this in writing and, in urgent cases, by telephone. The Counterparty will repair the Defects forthwith, taking account of their nature and seriousness. Repairs will be carried out, where necessary, in consultation with the Contracting Authority.

If the Counterparty demonstrates that the Defect is such that the Contracting Authority should reasonably have discovered it when carrying out the Acceptance Procedure, it may charge the Contracting Authority 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 temporary solution, it will reimburse any loss or damage suffered by the Contracting Authority as a result. Article 28 will apply *mutatis mutandis*.
- 12.5. Further to Article 12.3, the Counterparty guarantees that Defects that are discovered by the Contracting Authority during the Acceptance Procedure but are not regarded by it as a reason for not proceeding with Acceptance will be repaired promptly 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 demonstrates that a Defect has occurred as a consequence of a change made to the Deliverable without the Counterparty's consent by the Contracting Authority or a third party engaged by it. Nor does the guarantee apply if the Defect is demonstrably due to incorrect, careless or injudicious use of the Deliverable by the Contracting Authority.
- 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 Maintenance Provisions.

Article 13. Support and Maintenance

- 13.1. The Counterparty will, on request, acquaint the Contracting Authority 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 Contracting Authority 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 Contracting Authority.
- 14.3. The Contracting Authority 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 dissolution.
- 14.4. Additional Work must be notified in good time to the Contracting Authority, must always be invoiced separately and does not qualify for reimbursement other than with the prior consent of the Contracting Authority.

Article 15. Payment and invoice audits

- 15.1. The Contracting Authority 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 Contracting Authority 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 Section 96, subsection 4, Book 6, of the Dutch Civil Code (*Burgerlijk Wetboek*) and statutory interest as referred to in Section 119a, Book 6, of the Dutch Civil Code on the amount outstanding. The compensation and interest will be paid at the Contractor'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 Contracting Authority may instruct an accountant designated by it, as referred to in Section 393, subsection 1, Book 2, of the Dutch 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 or her with any data and information he or she 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 promptly to both parties. The Contracting Authority 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 Contracting Authority 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 Contracting Authority will exercise this right only if it has reasonable doubts about the accuracy of the invoice in question.
- 15.5. The Counterparty waives any right it may have to suspend or terminate its work on account of the Contracting Authority's failure to pay an invoice within the stipulated time limit, or if the Contracting Authority does not pay all or part of an invoice because it believes that the invoice is inaccurate or because the Deliverable is defective.

Article 16. Advances

- 16.1. If the Contracting Authority, 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 Contracting Authority will not be required to pay any of the cost of the guarantee.
- 16.2. If the Contracting Authority 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, based on the model enclosed with the Contract, will be issued by a credit institution generally considered to be of sound repute, as designated in the implementing regulations based on Section 37 of the Dutch Government Accounts Act 2001 (*Comptabiliteitswet 2001*). 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 whatsoever 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 under a statutory regulation or court ruling.
- 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 Contracting Authority, in enabling the Contracting Authority, 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 Contracting Authority, 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 EUR 50,000, due and payable forthwith, for each infringement.

Article 18. Information security

- 18.1. In so far as the Contractor processes personal data and/or company confidential information for the Contracting Authority in the course of performing the Contract, the Contractor will take the appropriate technical and organisational security measures in order to secure the personal data and/or other company confidential information against loss or any other form of unlawful processing. These measures must guarantee a level of security commensurate with the risks posed by the processing and nature of the data to be protected, taking account of the latest technology and the costs of implementation.
- 18.2. The Contractor will have taken in any event the following measures:
 - logical access control using strong passwords;
 - physical measures for access security;

- proper encryption (encoding) of digital files with personal data, based on the nature of the personal data;
- organisational measures for access security;
- network connection security via Secure Socket Layer (SSL) technology;
- a secure internal network;
- guaranteeing the integrity and availability of the personal data;
- guaranteeing the recovery of personal data, so that such data can be recovered in the case of physical or technical security incidents;
- evaluating and testing the security measures on a regular basis;
- automatic logging of access to personal data;
- proper reporting on the control of any authorisations granted and the processing of the personal data in line with the requirements of this provision.

Article 19. Processing of personal data

- 19.1. In so far as the Contractor processes personal data for the Contracting Authority in the course of performing the Contract, the Contractor will be designated a processor within the meaning of the Dutch Personal Data Protection Act (*Wet bescherming persoonsgegevens – Wpb*) and the Contract will also constitute an agreement within the meaning of Section 14, subsection 2, of the Personal Data Protection Act, except if a separate processor agreement has been concluded between the parties. The Contractor will not be entitled at any time to use the personal data it obtains, or have others use it, wholly or partly for a purpose other than the performance of the Contract, subject to any statutory obligations to the contrary. The Contractor has no control over the objective and the means for processing personal data and will follow the instructions of the Contracting Authority.
- 19.2. The Contractor will process personal data, as defined in Section 1 of the Personal Data Protection Act, in a proper and careful manner and in accordance with applicable Dutch and European legislation. If the Contractor is obliged to observe a code of conduct relating to the processing of personal data and this code has been approved by the Dutch Data Protection Authority (*Autoriteit Persoonsgegevens*), this code of conduct will likewise apply.
- 19.3. Contrary to Article 25 relating to the engagement of subcontractors, the Contractor will not engage third parties to perform the processing (“Subprocessor”) without informing the Contracting Authority in writing at least four weeks in advance. If the Contracting Authority has serious objections, it will inform the Contractor of such as soon as possible and the parties will enter into consultations to find an alternative solution. The Contractor will not be permitted, without prior written permission, to engage Subprocessors if this results in personal data being processed outside the European Economic Area. The Contracting Authority may subject the permission to engage third parties to further conditions. Subprocessors will be engaged in writing and the Contractor will remain responsible at all times for the fulfilment of the agreements in this Contract by the Subprocessor.

- 19.4. The Contractor will cooperate in full with the Contracting Authority in order to meet the obligations on the basis of the Personal Data Protection Act within the statutory periods.
- 19.5. After the Contract has ended, all personal data, copies and versions of such, as well as all data carriers on which the personal data, copies or versions of such are or will be stored, must be returned or issued to the Contracting Authority as soon as it requests such or if the Contracting Authority does not expressly make such a request, the Contractor will destroy all personal data, copies and versions of such on its own initiative one year after the end of the Contract, except if the data have to be stored for a longer period on the basis of a statutory retention period. In that case, the Contractor will destroy the data after the end of the statutory retention period. This provision applies with respect to personal data, contrary to the provision relating to the return of information in the context of confidentiality.

Article 20. Duty to report data leaks and compliance

- 20.1. If the Contractor identifies a security breach regarding the personal data it is processing in the context of this Contract, it will inform the Contracting Authority of such immediately – but within 12 hours in any event – and will take all reasonable measures to end, prevent or restrict the security incident and further wrongful processing or breaches, without prejudice to the Contractor's obligation to compensate any resulting damage suffered by the Contracting Authority. The Contractor will inform the Contracting Authority by e-mail via: informatiebeveiliging@npo.nl. The same obligation to inform will also apply to new developments concerning the security incident and to the measures taken by the Contractor to restrict the consequences of the security incident and to prevent a repetition. The Contractor will also lend its full cooperation to the Contracting Authority in complying with the duty to report data leaks as stated in Section 34a of the Personal Data Protection Act to the Dutch Data Protection Authority and the parties involved. This obligation will continue after the end of this Contract.
- 20.2. Once a year, no later than 31 December, the Contractor will supply the Contracting Authority with:
- a statement from its legally authorised representative, in which this party issues an assessment of the compliance with its obligations relating to the processing of personal data on the basis of Articles 18, 19 and 20 of these General Terms and Conditions;
 - an overview of the steps taken by the Contractor relating to the technical and organisational security measures adopted and any related points of attention. If the Contractor intends to change the technical and organisational security measures adopted, the Contractor will report this to the Contracting Authority as soon as a proposal for this decision has been drawn up.
- 20.3. If the Contracting Authority suspects that the Contractor is not complying with its obligations relating to the processing of personal data, it can at any time check or have others check the processing and fulfilment of the agreed technical and organisational security measures of the Contractor or the engaged Subprocessors that are necessary in order to comply with the duty to report data leaks.
- 20.4. The Contractor will lend all reasonably required cooperation regarding the check and will ensure that the Subprocessors it has engaged will also lend the cooperation reasonably required for this purpose. On the basis of the results of such an investigation, the

Contracting Authority may issue recommendations regarding the protection of personal data. The Contractor will implement the recommendations made by the Contracting Authority to improve the protection of person data within the period to be stipulated for this purpose by the Contracting Authority.

Article 21. Security procedures and internal rules

- 21.1. In so far as the contractual obligations for the Deliverable are performed at the Contracting Authority's premises, the Counterparty will instruct its Staff to comply with the Contracting Authority's security procedures and internal rules.
- 21.2. The Contracting Authority may require certificates of good conduct to be produced in respect of the Counterparty's Staff at least three Working Days before they start work at the Contracting Authority's premises.
- 21.3. The Contracting Authority 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 Contracting Authority. The Contractor will cooperate fully with such checks. The Contracting Authority may, on the basis of the results of a security check, refuse to allow the person in question to work on the Contract.
- 21.4. The Counterparty will report the arrival of its Staff at a location of the Contracting Authority in good time to the Contracting Authority's contact. The Counterparty will ensure that its Staff are able, at the request of the Contracting Authority, to produce evidence of their identity and to show that they are working for or on behalf of the Counterparty. The Contracting Authority may refuse any person access to any of its locations.
- 21.5. If a person who belongs or belonged to the Staff of the Counterparty and who visits locations of the Contracting Authority 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 Contracting Authority's contact.

Article 22. Working conditions

- 22.1. In so far as work is performed at the Contracting Authority's premises, the Contracting Authority will ensure a satisfactory and safe workplace.
- 22.2. The Counterparty will ensure that its Staff are aware in good time of the rules on working conditions in force at the Contracting Authority's premises and will notify the Contracting Authority promptly if it becomes aware of circumstances that breach (or may breach) these rules.

Article 23. Publicity

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

Article 24. Replacement of Counterparty's Staff

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

- 24.2. The Contracting Authority 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.
- 24.3. Where Staff are replaced, the Counterparty may not charge any related costs to the Contracting Authority unless the Counterparty demonstrates that there was no reasonable basis for the request for replacement.
- 24.4. 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 25. Subcontracting

- 25.1. In performing the Contract the Counterparty may use the services of third parties only with the prior consent of the Contracting Authority. This consent, to which the Contracting Authority may attach conditions, may not be withheld unreasonably.
- 25.2. The Contracting Authority'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 26. Assignment of rights and obligations

- 26.1. 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.
- 26.2. The first paragraph does not apply to the establishment of limited rights such as a right of pledge.

Article 27. Impending delay

- 27.1. 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 Contracting Authority, explaining the reasons for and consequences of any delay. The Counterparty will also propose to the Contracting Authority measures to avoid delay or further delay.
- 27.2. As quickly as possible after receiving the notification referred to Article 27.1, the Contracting Authority will notify the Counterparty whether or not it agrees to the proposed measures. Agreement does not imply any acceptance by the Contracting Authority of the cause of the impending delay, and is without prejudice to its rights against the Counterparty.

Article 28. Liability

- 28.1. 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 considered to be in default. Notice of default is not necessary where the period for performance constitutes a Strict 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.

- 28.2. The liability referred to in Article 28.1 for personal injury and damage to property and consequential loss or damage is limited to an amount of EUR 1,250,000 per event. For this purpose, interrelated events will be treated as a single event.
- 28.3. The liability referred to in Article 28.1 for loss or damage other than that referred to in Article 28.2 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.
- 28.4. The limitations of liability set out in Articles 28.2 and 28.3 will 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.
- 28.5. 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 Contracting Authority against any liability in this connection.

Article 29. Force Majeure

- 29.1. 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*.
- 29.2. The term *force majeure* in relation to the Counterparty is in any event considered 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.
- 29.3. If the Counterparty can claim some benefit in respect of a failure as referred to in Article 29.1 that it would not have had in the event of proper performance, it will compensate the Contracting Authority for any loss or damage suffered by the Contracting Authority as a consequence of that failure, up to a maximum of the value of the benefit concerned. The provisions of Articles 28.2 and 28.3 apply in that regard.

Article 30. Defects involving compatibility with other software or hardware

- 30.1. At the request of the Contracting Authority, the Counterparty will engage in consultations with other designated counterparties and/or suppliers of the Contracting Authority 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 Contracting Authority.
- 30.2. The purpose of the consultations referred to in Article 30.1 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 Contracting Authority, unless the incompatibility is imputable to be Counterparty.

Article 31. Insurance

- 31.1. The Counterparty has taken out and will maintain liability insurance that is appropriate and customary by prevailing standards.
- 31.2. The liability insurance policy must provide cover for at least EUR 1,250,000 per claim and for a minimum annual payment of 200% of this amount.
- 31.3. On request, the Counterparty will immediately present proof to the Contracting Authority of the payment of premiums and, except where barred by statutory obligations, at the same time report any previous claims under the same policy in the current policy year.
- 31.4. The Counterparty may not cancel an insurance policy as referred to in Article 31.1 for the term of the Contract without the prior consent of the Contracting Authority. Nor will the Counterparty, of its own volition, change the terms on which the insurance policy was taken out to the detriment of the Contracting Authority.

Article 32. Dissolution and notice of termination

- 32.1. Without prejudice to the other provisions of the Contract, either party may dissolve the Contract in full or in part by registered letter, without recourse to the courts, if the other party is in default or performance is permanently or temporarily impossible.
- 32.2. . In the event of *force majeure*, the parties may not dissolve the Contract until a period of 15 Working Days has elapsed since the start of the *force majeure*.
- 32.3. The Contracting Authority may dissolve the Contract forthwith by registered letter, 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, if it undergoes a merger or a division or is dissolved, or if it is considered 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 Dutch Public Procurement Act 2012 (*Aanbestedingswet 2012*).
- 32.4. The Contracting Authority may also dissolve the Contract in the manner specified in Article 32.3 if it has good grounds for assuming that a court of law would set aside the Contract under the sections of Chapter 4.3 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 Contracting Authority demonstrates that the unlawfulness is wholly or partly attributable to the Counterparty, the Counterparty is not entitled to compensation.
- 32.5. If the Contracting Authority has concluded two or more interrelated Contracts with the Counterparty, the Contracting Authority may dissolve in the specified manner the other Contract(s) in the cases referred to in Articles 32.1 and 32.3. Evidence of an interrelationship as referred to above must be apparent from the (related) Contracts.
- 32.6. If there is a Public Service Contract, the Contracting Authority may give notice terminating it by registered letter, where applicable with immediate effect. In such an event, the

account between the Contracting Authority and the Contractor will be settled on the basis of the activities already carried out by the Contractor in performing the Contract at the time of the notice of termination and costs reasonably incurred by the Contractor in carrying out the assignment in question and of any commitments reasonably entered into for the future. The Contracting Authority is not obliged to indemnify the Contractor in any other way for the consequences of terminating the Contract.

Article 33. 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 34. Exit clause

- 34.1. If the Contract ends prematurely for any reason whatever, the Counterparty will, as soon as the Contracting Authority so requests, take whatever action is reasonably necessary to ensure that a new counterparty or contracting authority can, without impediment, assume responsibility for performing the Contract and/or that a new counterparty can work on a similar Deliverable for the benefit of the Contracting Authority. The Counterparty will also immediately return to the Contracting Authority all documents, books, papers and other items, including data and information carriers, made available to it by the Contracting Authority.
- 34.2. Other than in a case where the Contract is dissolved pursuant to the provisions of Articles 32.1 or 32.3, the Counterparty will perform the services referred to in Article 34.1 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 services referred to in Article 34.1 will be provided free of charge if the Counterparty imputably fails to discharge an obligation, such to include the situation referred to in the last sentence of Article 32.4.

Article 35. Employment of other party's staff, bribery and conflicts of interest

- 35.1. Neither party may employ members of the other party's Staff, or negotiate with members of the other party's Staff on the possibility of the latter entering into its employment, without the other party's consent either during the term of the Contract or for a period of one year after its termination. The other party may not withhold its consent without good reason.
- 35.2. 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 nature whatsoever if this could be construed as an unlawful practice. If the Contracting Authority discovers such a practice, it may dissolve the Contract either in full or in part.
- 35.3. If it is found that a member of the Contracting Authority'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 Contracting Authority was not informed of this prior to the conclusion of the Contract, the Contracting Authority may dissolve 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 Contracting Authority to compensation.

- 35.4. Other than with the Contracting Authority's prior consent, the Counterparty may not assign staff to the Contract who were employed by the Contracting Authority within a period of two years before the start of the work.

Article 36. Continuing obligations

Termination of the Contract will not discharge the parties from obligations which, by their nature, are intended to continue in force. 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 37. Follow-up assignment

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

Article 38. 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 39. Disputes and applicable law

- 39.1. Any dispute between the parties in relation to the Contract will be submitted only to the competent court in the Central Netherlands (*Midden-Nederland*) district, unless the parties agree on an alternative means of dispute resolution at that time.
- 39.2. 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).

NPO General Terms and Conditions for IT contracts 2016

Special provisions on purchases

These provisions apply, together with the General Provisions of the NPO General Terms and Conditions for IT contracts 2016, to the purchase of IT Products (referred to below as "Products") such as computers, laptops and servers.

Article 40. Installation

- 40.1. 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.
- 40.2. If the Supplier considers the place of Installation to be unsuitable, it will notify the Contracting Authority of this as soon as possible. The Contracting Authority and the Supplier will then consult to determine a suitable place of Installation.

Article 41. 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 will not be 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 42. 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 Contracting Authority with information about ways of enhancing the operation of the Product.

Article 43. Product modifications

If 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.

NPO General Terms and Conditions for IT contracts 2016

Special Provisions on Licences

The provisions of this special part apply, together with the General Provisions of the NPO General Terms and Conditions for IT contracts 2016, to the acquisition of Licences by the Contracting Authority.

Article 44. Additional definitions

Further to Article 1, the following terms, where written with initial capitals, are defined as follows in this special part of the NPO General Terms and Conditions for IT contracts 2016:

- 44.1. Escrow: the depositing of the Source Code (or a copy thereof) with an independent third party to enable the Contracting Authority, 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.
- 44.2. Installation Copy: a data carrier containing the Standard Software for which the Licence is granted.
- 44.3. Owner: the person in whom the intellectual property right to the Standard Software is vested.

Article 45. Nature and content of the Licence

- 45.1. Subject to the Terms and Conditions, the Supplier grants to the Contracting Authority a perpetual and irrevocable Licence to the Standard Software and to New Versions thereof if the Contracting Authority is entitled to receive them. The Licence does not entail any transfer by the Supplier to the Contracting Authority of any patent, copyright or trademark in relation to the relevant Standard Software.
- 45.2. The Licence in any event includes the following (for which the Contracting Authority does not owe any additional fee):

- a. the right to use all functionalities of the Standard Software that are accessible to the Contracting Authority, 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 recovery in the event of an emergency;
 - 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, duration and so forth, including its use by third parties on behalf of the Contracting Authority.
- 45.3. The Contracting Authority 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 promptly. The Contracting Authority may not remove any notices of ownership and copyright when reproducing Standard Software.
- 45.4. Until the time of Acceptance of the Standard Software, the Contracting Authority will receive from the Supplier a non-exclusive right to use the Standard Software for installation and testing purposes.
- 45.5. If the Supplier repairs Defects in the Standard Software only by issuing Patches or Enhanced Versions, the Contracting Authority 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 46. 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 issue the Contracting Authority, on request, with a copy of the authorisation.

Article 47. Provision of an Installation Copy

- 47.1. The Supplier will, if possible, provide the Contracting Authority with an Installation Copy or enable it to make a copy itself. The price of the copy is included in the Fee.
- 47.2. If the Contracting Authority is entitled to receive New Versions, the provisions of Article 47.1 will also apply to them.
- 47.3. 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, promptly provide the Contracting Authority with a new Installation Copy of the original version delivered to the Contracting Authority and of any Enhanced and New Versions thereof used by the

Contracting Authority or will enable the Contracting Authority 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 48. Conversion into other Licences

- 48.1. If the Supplier wishes at any time to convert the Licence granted to the Contracting Authority into another licence in respect of the Standard Software, it will consult in advance with the Contracting Authority about this and about the conversion ratio to be applied in this connection. Such a conversion may not have unfavourable consequences of any kind for the Contracting Authority.
- 48.2. If the parties do not reach agreement in the consultations referred to in Article 48.1, the Contracting Authority may continue to exercise its Licence in full.

Article 49. Escrow

- 49.1. The Contracting Authority may at all times require the Supplier to provide for Escrow, even if this has not been initially agreed.
- 49.2. The Escrow must include all information not in the public domain that is reasonably needed by the Contracting Authority 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.
- 49.3. If Escrow forms part of the Contract, the Supplier will furnish the Contracting Authority with proof that the Escrow fulfils the relevant provisions of the Contract or make provision for such an arrangement promptly.
- 49.4. Even if Escrow does not form part of the Contract, the Contracting Authority 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 49.2. Any reasonable costs incurred in this connection will be borne by the Contracting Authority.

NPO General Terms and Conditions for IT contracts 2016

Special provisions on service contracts

The provisions of this special part apply, together with the General Provisions of the NPO General Terms and Conditions for IT contracts 2016, if the Supplier performs services for the Contracting Authority such as consultancy, development of Custom Software, directing IT projects, managing and operating IT infrastructure, provision of network and workplace services or Secondment.

General

Article 50. Additional definitions

Further to Article 1, the following terms, where written with initial capitals, are defined as follows in this special part of the NPO General Terms and Conditions for IT contracts 2016:

- 50.1. Secondment: the provision of Staff by the Contractor to the Contracting Authority to carry out work under the direction and supervision of the Contracting Authority.

50.2. Custom Software: Software specifically developed or yet to be developed for the Contracting Authority or modifications to Standard Software specifically made for the Contracting Authority.

Article 51. Time and place of work

The work will be carried out at the time and place specified in the Contract. The Contracting Authority 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 Contracting Authority will reimburse such costs. If the opposite is the case, the Contracting Authority is entitled to a corresponding reduction in the Fee.

Article 52. Assignment of specific Staff

If the Contracting Authority 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 53. Progress reporting and work consultations

53.1. The Contractor will report to the Contracting Authority 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.

53.2. The parties will consult together as often as they consider necessary about the progress of the work.

Article 54. Professional indemnity insurance

Without prejudice to the provisions of Article 31, 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.

Specific types of service contract

Consultancy services

Article 55. 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 56. Project managers

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

Article 57. 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 strict deadlines apply, what the outcome must be and when and how the phases will be concluded.

Development of custom software

Article 58. Management and supervision, appointment of project managers and project phasing

Articles 55 to 57 apply *mutatis mutandis* to the development of Custom Software.

Article 59. 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 60. Acceptance procedure

- 60.1. Without prejudice to the provisions of Article 11, Acceptance of Custom Software will take place as follows.
- 60.2. The Contractor will give the Contracting Authority timely notice of Completion in respect of the Custom Software.
- 60.3. If the Contracting Authority 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 Contracting Authority approves or rejects the Custom Software.
- 60.4. If the Contracting Authority approves the Custom Software, the date of signature of the test report will be deemed to be the date of Acceptance.
- 60.5. If the Contracting Authority 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 Contracting Authority 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.
- 60.6. If the Contracting Authority rejects the Custom Software, the Contractor will repair the Defects at its own expense within a reasonable period set by the Contracting Authority and starting on the date of signature of the test report. If the Contractor fails to make the repairs, the Contracting Authority 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 Contracting Authority 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.
- 60.7. If the Contracting Authority once again rejects the Custom Software after the second acceptance test, the Contractor will be considered to be in default as a result. In that case, the Contracting Authority may dissolve the Contract with immediate effect, without recourse to the courts and without any demand or notice of default being required for this purpose.

Article 61. Maintenance of Custom Software

- 61.1. If the Contracting Authority 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 Contracting Authority 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 Contracting Authority itself or by a third party on its behalf.
- 61.2. If the Contracting Authority has agreed with the Contractor that the latter will also carry out Maintenance, the relevant provisions of that Contract will apply.

Secondment

Article 62. Applicability

Secondment is involved – and hence Articles 63 to 68, inclusive, apply – only if the relevant Contract has been expressly designated by the parties as a Secondment Agreement.

Article 63. 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 Contracting Authority.

Article 64. Working days and working hours

- 64.1. The working days and working hours of Staff made available by the Contractor will be the same as those of the Staff of the Contracting Authority at the same location.
- 64.2. Overtime occurs only if work is carried out at the request of the Contracting Authority outside the working days and working hours referred to in Article 64.1. Work carried out for a maximum of half an hour immediately after the working hours referred to in that article is not considered to be overtime.

Article 65. Secondments and foreign postings

- 65.1. Staff seconded to the Contracting Authority may not be hired out by the Contracting Authority to third parties without the Contractor's consent.
- 65.2. Staff seconded to the Contracting Authority may not be posted by the Contracting Authority to work outside the Netherlands without the Contractor's consent.

Article 66. Leave and courses

- 66.1. Staff of the Contractor will take leave only after consulting with the Contracting Authority and allowing for the normal progress of the work.
- 66.2. The costs of leave taken by Staff of the Contractor will be borne by the Contractor.
- 66.3. The costs of courses taken at the request of the Contracting Authority and the costs of the consequent time off work will be borne by the Contracting Authority.
- 66.4. Each year, the Contracting Authority 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 67. Indemnity

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

Article 68. Hirer's liability

68.1. The Contractor will indemnify the Contracting Authority against the hirer's liability for wage tax, social insurance contributions and 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.

68.2. The wage tax, social insurance contributions and turnover tax that must be remitted by the Contractor in connection with the performance of the Contract may be paid by the Contracting Authority:

- a. directly to the Tax and Customs Administration; or
- b. 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 Contracting Authority so requests, and will do whatever is necessary to maintain such an account.

NPO General Terms and Conditions for IT contracts 2016

Special provisions on maintenance

The provisions of this special part apply, together with the General Provisions of the NPO General Terms and Conditions for IT contracts 2016, if the Contracting Authority agrees Maintenance with the Contractor.

General

Article 69. Additional definitions

Further to Article 1, the following terms, where written with initial capitals, are defined as follows in this special part of the NPO General Terms and Conditions for IT contracts 2016:

69.1. **Corrective Maintenance:** the tracing and correction by the Contractor of Faults reported by the Contracting Authority or Faults that have otherwise become known to the Contractor.

69.2. **Repair Time:** the periods, expressed in Service Hours, between the time when a Fault is reported to be Contractor and the time it is corrected.

69.3. **Innovative Maintenance:** the provision by the Contractor to the Contracting Authority of New Versions or newly developed parts of Products and/or new Documentation.

69.4. **Preventive Maintenance:** measures taken by the Contractor to prevent Faults and related forms of service.

69.5. **Response Time:** the time within which the Contractor (or Staff of the Contractor) must effectively respond to a report by the Contracting Authority of a Fault and other requests by the Contracting Authority for service.

69.6. Service Levels: requirements such as Response Times and Repair Times included in the Contract in respect of Maintenance and other agreed forms of service.

69.7. Service Hours: hours that fall within the agreed service period.

69.8. Fault: a technical problem that occurs when using the Deliverable.

Article 70. Maintenance of Deliverables previously provided

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

Article 71. Maintenance starting date

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

Article 72. Time and place of Maintenance

72.1. The Contractor will perform the Maintenance at or from its premises. The Contractor will perform Maintenance at the Contracting Authority's premises only where reasonably necessary.

72.2. Maintenance that may disrupt the business operations of the Contracting Authority will, in principle, be performed outside the Contracting Authority's normal working hours.

72.3. If disruption of the business operations referred to in Article 72.2 is inevitable, given the importance of correcting the Fault immediately, the Contractor will give the Contracting Authority timely notice before starting the Maintenance work.

Article 73. Progress reporting and work consultations

73.1. The Contractor will report to the Contracting Authority 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.

73.2. The parties will consult together as often as either consider necessary regarding the progress of the work.

73.3. 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 74. Corrective Maintenance and temporary solutions

74.1. Maintenance consists in any event of Corrective Maintenance.

74.2. 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 Contracting Authority does not wish to acquire New Versions or the latest models of a Product.

74.3. The Contractor will use a temporary solution only with the consent of the Contracting Authority. Unless the parties agree differently in a specific case, the Contractor will replace a temporary solution as quickly as possible with a final solution.

Article 75. 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 76. Reporting and prioritising Faults

76.1. The Contracting Authority will report Faults and their correction in the manner prescribed in the Contract.

76.2. In reporting a Fault, the Contracting Authority will assign a priority level to it in accordance with the provisions of the Maintenance Contract.

76.3. In responding to a report as referred to in Article 76.1, the Contractor will always aim to resolve the Fault as quickly as possible, whether or not by means of a temporary solution. The provisions of Article 74.3 will apply in this connection.

Article 77. Compliance with Service Levels

77.1. 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 dissolved if repeated failures to achieve the Service Levels occur.

77.2. Contrary to the provisions of Article 77.1, Repair Times and Response Times are considered to be Strict Deadlines.

77.3. Service Levels do not detract from the other provisions of the Contract.

Article 78. Maintenance by third parties

Where the Contracting Authority 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 Contracting Authority 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 Contracting Authority has obtained the Contractor's consent for this.

Article 79. Maintenance result testing

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

Article 80. Professional indemnity insurance

Without prejudice to the provisions of Article 31, 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 81. Product modifications

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

Article 82. Replacement of parts

82.1. 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 Contracting Authority.

82.2. Parts may be replaced only by new parts that are at least equivalent in functional and technical terms.

Software

Article 83. Scope of Maintenance

Further to the provisions of Article 74.1, Software Maintenance consists not only of Corrective Maintenance but also of Preventive Maintenance and support. If the Contracting Authority so wishes, Software Maintenance will also include Innovative Maintenance.

Article 84. Support

84.1. Further to the provisions of Article 13, the Contractor will provide support to the Contracting Authority, at its request, in the form of advice on the use and functioning of Software.

84.2. The Contracting Authority may request the Contractor for support at the times referred to in the Maintenance Contract.

84.3. If the Contracting Authority requests support as referred to in Article 84.2, the Contractor will arrange as quickly as possible and, if applicable, within the Response Time for contact between a program specialist and the Contracting Authority.

Article 85. Enhanced and New Versions

85.1. 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 Contracting Authority as quickly as possible about the findings of its study.

85.2. Interim changes to Software made as a consequence of Corrective Maintenance will, as far as possible, form part of Enhanced and New Versions.

85.3. The Contractor will provide the Contracting Authority, on request, with a copy of a New Version for the purposes of testing and evaluation. The Contracting Authority is not obliged to upgrade to the New Versions.

85.4. 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.

85.5. If the Contractor decides to issue different Software rather than a New Version of the existing Software used by the Contracting Authority and to discontinue Innovative Maintenance of the existing Software, the Contracting Authority 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.