

## InTraffic B.V.

For the purposes of these General Terms and Conditions Governing Procurement "ICT" is deemed to refer to any subsidiary or any other company constituting part of the ICT Group which, acting on its own behalf, has submitted an order to another party – which party is deemed to act for the purposes of conducting a business, practising a trade or performs a public duty (hereinafter: the "Supplier") – or which has given an undertaking to a Supplier on its own behalf and in respect of which it has declared these General Terms and Conditions Governing Procurement to be applicable.

All of the legal entities and companies which are associated with ICT Group N.V. in accordance with the provisions of Sections 2:24a to 2:24c of the Dutch Civil Code constitute part of the ICT Group as well as those legal entities and companies that ICT otherwise has communicated as being part of the ICT Group. These General Terms and Conditions Governing Procurement were lodged with the Chamber of Commerce in Rotterdam, the Netherlands, under Number 24186237 on 3 July 2017, a Supplier may not amend them and they are also available on the internet: [www.ict.eu](http://www.ict.eu).

### A – GENERAL PROVISIONS

#### 1. SCOPE OF APPLICATION AND DEFINITIONS

- 1.1 These General Terms and Conditions Governing Procurement shall apply in relation to all Negotiations involving any contract entered into by ICT with a Supplier for the purposes of the Supply of Goods, the issue of Licences and/or the provision of Services, as well as any Agreement concluded in this respect. These General Terms and Conditions Governing Procurement consist of general provisions, which shall govern all of the aforementioned work, and special conditions, which shall govern the work described in them in greater detail. In the event that there is a conflict between the general provisions and special conditions, the latter shall prevail. In the case of a mixed Agreement the general provisions and the relevant special conditions shall apply in relation to each type of work stipulated in that Agreement.
- 1.2 The application of any terms and conditions (governing sales, payment or supply) employed by a Supplier are explicitly rejected.
- 1.3 A Supplier may only rely on any terms and conditions which derogate from these General Terms and Conditions Governing Procurement provided that and in so far as ICT has consented to those terms conditions in writing.
- 1.4 A Supplier with whom a contract has been concluded in accordance with these General Terms and Conditions Governing Procurement, shall be deemed to have consented to their application in respect of any subsequent negotiations between that Supplier and ICT.
- 1.5 "General Terms and Conditions Governing Procurement" is deemed to refer to these General Terms and Conditions Governing Procurement to the Companies Constituting Part of the ICT Group.
- 1.6 "Cloud Services" is deemed to refer to any Software and/or Documentation provided remotely (online) by a Supplier to ICT. It also covers the following activities: software as a service (SaaS), those of an application service provider (ASP), platform as a service (PaaS) and hosting services (the provision of a computer server).
- 1.7 "Services" is deemed to refer to activities and/or work, including but not confined to software development, consultancy, installation (technical and otherwise), commissioning, support, Cloud Services, training, secondment and Software and Hardware maintenance work.
- 1.8 "Documentation" is deemed to refer to all documents which a Supplier supplies to ICT together with any Software and/or Hardware, including (where applicable) any third-party documents setting out the technical and/or functional specifications of the relevant Software, Hardware and/or the manuals for the use of such Software and/or Hardware, including AutoCAD and/or e-plan printouts and files.
- 1.9 "Executables" is deemed to refer to computer files which may be executed by a computer but not any source code.
- 1.10 "Hardware" is deemed to refer to computers and related equipment, such as but not confined to PLCs, I/O cards, switch panels, cabinets, instruments, other panels, engines, recorders, cables and related Documentation, accessories, parts and Updates.
- 1.11 "New Version" is deemed to refer to a modified and/or improved version ("upgrade") of the relevant Software and/or Hardware which extends or modifies the functionality or subsequent structure of that Software and/or Hardware. Normally, a New Version may be recognised by the fact that the version number is increased by one (1), for example, from Version 1.4 to Version 2.0.
- 1.12 "Licence" is deemed to refer to ICT's right to use – in the broadest sense of the term – any Software supplied by a Supplier to ICT without any limitation in scope and time.
- 1.13 "Custom Software" is deemed to refer to any Software which a Supplier has developed for ICT.
- 1.14 "Deficiencies" is deemed to refer to any deviation, flaw or deficiency in Software and/or Hardware as a result of which such Software and/or Hardware does not comply (or no longer complies) with the relevant Specifications and whatever else is stipulated in these General Terms and Conditions Governing Procurement (including the warranties stipulated in Articles 20 and 25).

## **General Terms and Conditions Governing Procurement – continued**

- 1.15 "Agreement" is deemed to refer to any agreement governing the supply of Items, the granting of Licences and/or the provision of Services by a Supplier to ICT.
- 1.16 "Software" is deemed to refer to any type of computer program (source or object code, Executables, scripts and so forth, amongst other things), including software which is built into equipment (operating systems, firmware and so forth, amongst other things), all design materials produced by or on behalf of a Supplier, Documentation and all New Versions, Updates, extensions, modifications or improvements thereof respectively.
- 1.17 "Specifications" is deemed to refer to all of the technical and functional properties of the Software and/or Hardware covered in the relevant Documentation and/or mentioned in a document drawn up and consented to by ICT.
- 1.18 "Updates" is deemed to refer to modified versions of Software and/or Hardware by means of which Deficiencies in that Software and/or Hardware are resolved by means of patches, their security is improved or the logical cohesion of that Software and/or Hardware is enhanced. Normally, an Update may be recognised by the fact that the second part of the version number is increased by one (1), for example, from Version 1.2 to 1.3. A "bug fix" may be performed where a problem needs to be resolved quickly and easily. It may normally be recognised by the fact that the third part of the version number is increased by one (1), for example, from Version 1.2.1 to 1.2.2.
- 1.19 "Items" is deemed to refer to goods, which includes Software, Hardware and Documentation.

## **2. NEGOTIATIONS WITH ICT**

- 2.1 These General Terms and Conditions Governing Procurement shall also apply in the case of any negotiations between ICT and a Supplier for the purposes of seeking a potential agreement (hereinafter: the "Negotiations"). ICT shall at all times be entitled to terminate Negotiations without having a duty to provide compensation or to pursue those Negotiations.
- 2.2 In the event that a Supplier already starts to provide Services in response to an explicit written request from ICT before an Agreement is concluded in accordance with Article 3.2, a fee that has already been agreed to in the course of Negotiations shall already be payable to ICT in return for this. In the unlikely event that no Agreement is concluded, ICT shall pay for the relevant Services until such time as the relevant Supplier halts those Services, provided that ICT is of the opinion that the Services concerned have been properly provided and it is able to use the outcomes thereof. In this case the aforementioned Services shall only be provided subject to the application of these General Terms and Conditions Governing Procurement.

## **3. OFFERS, CONTRACTS AND AGREEMENTS**

- 3.1 Unless explicitly agreed otherwise in writing, an offer made by a Supplier shall be irrevocable for a period of sixty (60) days after that offer reaches ICT. An Agreement shall be deemed to come into effect by virtue of ICT accepting a Supplier's offer in writing. In the event that and in so far as ICT's acceptance occurs after the aforementioned deadline, an Agreement shall come into effect, unless the relevant Supplier rejects the contract in writing within seven (7) working days after the date of the notice of acceptance that has been sent. A Supplier shall be liable for all expenses associated with the preparation of a quotation.
- 3.2 ICT shall only be liable when it accepts an offer in writing in the form of an Agreement. No verbal undertaking given by or arrangements made with ICT's staff shall be binding on ICT except if and in so far as the latter has confirmed this in writing.
- 3.3 Unless expressly agreed otherwise, a Supplier shall not be entitled to outsource all or part of its obligations pursuant to an Agreement concluded with ICT.
- 3.4 In the event that a Supplier works as a subcontractor at ICT's behest (or as part of a similar construction), the Supplier shall be bound by legal terms and conditions (which is deemed to include but is not confined to provisions governing delivery times, warranties and liability) that are identical to those applicable between ICT and its client as though the Supplier were also party to them. A Supplier shall consent to the application of this back-to-back construction.

## **4. FEES**

- 4.1 Any fees quoted by a Supplier or agreed to with ICT shall be stated in euros and shall be fixed throughout the term of the relevant Agreement and shall be exclusive of VAT but inclusive of any import or export duties and the cost of packaging, shipping, insurance and installation.
- 4.2 In the event that and in so far as a Supplier lowers its fees for its Items and/or Services in its standard fee lists or catalogues before supplying such Items to ICT or providing the Services, that Supplier shall have a duty to grant ICT a corresponding reduction of price.

## **5. SUPPLY, TERMS OF DELIVERY AND ACCEPTANCE**

- 5.1 Unless explicitly agreed otherwise, delivery times shall be material and a failure to meet a delivery time shall mean that the relevant Supplier is in default in the absence of any notice of default. A delivery shall only be deemed to have been completed after the relevant Items and/or Services have been delivered to the delivery location designated by ICT at the time that the parties have agreed to entirely in accordance with the relevant Agreement.
- 5.2 In the event that any circumstances occur pursuant to which it is expected that the agreed delivery time will not be met, the relevant Supplier shall be required to notify ICT of this in writing immediately. In the event that a Supplier fails to meet an agreed delivery time, that Supplier shall forfeit a penalty, payable with immediate effect and without prior notice

## General Terms and Conditions Governing Procurement – continued

of default, equivalent to 1% (one per cent) of the fee for the relevant consignment for every calendar day subject to a maximum equivalent to 10% (ten per cent) of the aforementioned fee. The collection or setoff of such a penalty shall not affect ICT's right to compliance, full compensation or annulment. Although ICT may consent to a different delivery date, it shall also be entitled to proceed with the cancellation (annulment) of all or part of the relevant Agreement. Under no circumstances shall such cancellation entail that ICT is liable to pay the relevant Supplier any compensation. In all cases a Supplier shall adopt appropriate measures to avoid such a transgression in the future.

- 5.3 Subject to any provisions of an Agreement stipulating otherwise, delivery by a Supplier shall occur in accordance with Incoterm DDP. As such, a Supplier shall effect delivery at a delivery address stipulated by ICT on the agreed delivery date or within an agreed term of delivery. In the event that an explicit term of delivery has not been agreed to, it shall amount to five (5) working days. All of the costs and risks associated with the transport of any Items shall be borne by the relevant Supplier. This also includes the payment of any applicable import duties, as well as responsibility for compliance with any formalities that exist in this respect.
- 5.4 A Supplier shall ensure that there is proper packaging and that the transport is of such a nature that the Items will reach their delivery address in good condition.
- 5.5 A Supplier shall give ICT timely notice of the precise time of delivery. In the event that a Supplier effects delivery earlier or in instalments without ICT's prior written consent, ICT shall be entitled to refuse to accept such delivery or instalment. In this case ICT shall also have the power to return relevant Items to the Supplier concerned at the latter's risk and expense.
- 5.6 ICT shall be entitled to postpone delivery. In this case the relevant Supplier shall have a duty to store the Items concerned until such time as the postponed delivery occurs without charging an additional fee for this. Any goods that are stored in this manner must be secured, preserved, insured and also marked as destined for ICT. ICT shall not invoke the right referred to in Article 5.6 in the event that this would have a disproportionately adverse effect on the Supplier concerned, in which case both parties shall enter into consultations with each other in order to secure a solution that is acceptable to both parties.
- 5.7 Should ICT so require, all Items that a supplier is to deliver to ICT must first be subjected to an inspection and/or an acceptance test. Such inspection and/or acceptance by or on behalf of ICT shall not amount to an acknowledgement that the relevant consignment complies with the warranties mentioned in Article 13. The acceptance of Software is set out in greater detail in Article 18 and of Hardware in Article 23.

## 6. INTELLECTUAL PROPERTY RIGHTS

- 6.1 Unless explicitly agreed otherwise in writing, copyrights and all other intellectual property rights to any Item that a Supplier has developed for ICT (which is explicitly deemed to include the source code for Custom Software, which source code shall be transferred to ICT in all cases) and/or the outcomes from the Services provided by that supplier for ICT (which is explicitly also deemed to include the outcomes of work that has been carried out during casual hire in accordance with Article 29). A Supplier shall be deemed to have already transferred such intellectual property rights to ICT now in lieu of then, which transfer ICT hereby consents to now in lieu of then. For that matter, a Supplier shall also do all that serves to effect the aforementioned transfer, including signing any power of attorney and deed (of transfer or otherwise) or organising same. The aforementioned transfer shall not apply in the case of any existing intellectual property rights that were already held by the relevant Supplier or any of the latter's licensors prior to the conclusion of the Agreement. With regard to such existing intellectual property rights, a Supplier shall grant ICT a non-exclusive, world-wide, unlimited, perpetual Licence free of charge in accordance with Article 21.
- 6.2 Unless otherwise agreed to in writing, a Supplier shall supply ICT with the Executables and the source code of the relevant Software.
- 6.3 A Supplier shall warrant that any Items it supplies, as well as any Services which it provides do not infringe any third-party intellectual property rights.

## 7. PASSING OF OWNERSHIP AND RISKS

- 7.1 ICT shall bear the risks pertaining to those Items to be supplied by a Supplier as of the time of delivery and the written acceptance of the relevant Items by a person with ICT who is competent to do so.
- 7.2 Ownership of any Items that are supplied shall pass to ICT at such time as the Items are delivered.
- 7.3 Where ICT places Items at a Supplier's disposal for the purposes of delivery, they shall remain the property of ICT and the Supplier shall have duty to keep such Items under its control clearly marked as being the property of ICT.

## 8. FORCE MAJEURE

- 8.1 A Supplier shall not default, nor shall it have a duty to pay any compensation or penalty in the event that non-compliance occurs for which a Supplier cannot be held liable, albeit subject to the condition that the Supplier gives written notice of such non-compliance and the reason for it without delay but at any rate by the deadline agreed to for compliance with the relevant obligation. At any rate, the following circumstances shall nevertheless be deemed to be attributable to a Supplier: a shortage of staff or machinery, a business embargo, a strike, sickness of personnel and default of performance on the part of the Supplier's subcontractors (including but not confined to a failure to effect delivery or to do so on time).

## General Terms and Conditions Governing Procurement – continued

- 8.2 In the event that a situation of *force majeure* persists for more than three (3) months, both ICT and the relevant Supplier shall have the power to cancel all or part of the Agreement concerned. In accordance with Section 6:271 of the Dutch Civil Code, the aforementioned cancellation shall entail a restoration of the status ante quo, unless ICT is of the opinion that any performance that has already occurred was actually of any benefit and/or ICT wishes to retain the outcome of any performance that has already been affected, in which case ICT shall merely have a duty to pay the relevant Supplier a proportionate fee for the performance that has already been effected.

## 9. LIABILITY, INDEMNIFICATION AND INSURANCE

- 9.1 A Supplier shall be liable for any loss which ICT suffers as a result of any culpable failure on the part of that Supplier to comply with any Agreement and/or a wrongful act committed by that Supplier against ICT. A Supplier shall indemnify ICT against any claim filed by another party in this respect.
- 9.2 A Supplier shall take out and maintain appropriate, satisfactory insurance against legal liability and liability pursuant to any Agreement (which is deemed to include but is not confined to professional, business or product liability, cyber incidents and also fire and theft) and, when first requested to do so, shall immediately grant ICT full access to the relevant policy (terms and conditions) and shall also present ICT with proof of payment of the relevant premiums. A Supplier shall assign in advance all claims to any payout of insurance monies pursuant to an insurance policy referred to in this clause in respect of any loss suffered by ICT and occasioned by the relevant Supplier. In this case any insurance monies which an insurance company pays directly to ICT shall be deducted from any compensation to be paid by the relevant Supplier to ICT with regard to the insured incident.

## 10. INDEMNIFICATION IN RELATION TO INTELLECTUAL PROPERTY RIGHTS

- 10.1 A Supplier shall indemnify ICT in full and unconditionally against any claim made pursuant to any infringement of another party's intellectual property rights which directly or indirectly pertains to the Items supplied or Services provided by that Supplier and shall compensate ICT for any loss which the latter suffers pursuant to that.
- 10.2 In the event that the use of any Item or part thereof infringes another party's intellectual property rights and ICT may be or is denied the use of that Item or any part of it, acting at its own expense and at ICT's discretion, the relevant Supplier shall:
- acquire the right for ICT to continue to use the relevant Item or the part thereof in question;
  - replace the Item or the relevant part thereof with an Item which does not constitute an infringement as provided for above;
  - modify the Item in such a way that the infringement is terminated;
  - repossess the Item or relevant part thereof in return for compensation for any loss suffered by ICT.
- 10.3 A modification and/or replacement of any Item or part thereof in accordance with Article 10.2 may not limit ICT's potential use of such Item as a result and shall emphatically not affect ICT's other legal rights.

## 11. INVOICING, PAYMENT AND SECURITY

- 11.1 Invoices must be sent as a single copy to the address communicated by ICT to the Supplier concerned stating the relevant order (contract) number and the invoice must clearly specify the Item(s) and/or Service(s) in question. Furthermore, an invoice must satisfy any directions issued by ICT in that respect. For as long as an invoice does not comply with the provisions of this clause, ICT shall be entitled to suspend its duty to effect payment, which shall not amount to default on the part of ICT and hence shall not confer on the relevant Supplier any right to suspend or terminate their supply and/or Services. ICT shall be entitled to set off any payable amount due from a Supplier against any debt payable to that Supplier.
- 11.2 Payment must be effected within sixty (60) days after receiving the relevant ICT. Payment by ICT shall under no circumstances entail the waiver of any right held by ICT.
- 11.3 Where an invoice only pertains to the hours spent by a Supplier's member of staff (as would be the case, for example, where a member of the Supplier's staff is hired in accordance with Article 29), ICT shall pay the invoice in instalments, namely 55% (fifty-five per cent) of the hourly rate for which the Supplier has issued an invoice into the Supplier's guarantee account and the remaining 45% (forty-five per cent) into the account which the Supplier has stipulated on the relevant invoice. A Supplier shall maintain a guarantee account with a reputable bank throughout the term of the relevant Agreement for this purpose. The foregoing shall only be derogated from with ICT's prior written consent.
- 11.4 A Supplier shall waive the right to set off any amounts which the parties owe to each other.
- 11.5 In the event that ICT sees good grounds for doing so, it may arrange for a registered accountant whom it appoints to check the accuracy (substantive and otherwise) of an invoice issued by a Supplier. To this end, a Supplier shall grant the accountant concerned access to the relevant books and records. ICT shall be liable for the costs of such an audit, unless it reveals that the relevant invoice was inaccurate or incomplete, in which case the aforementioned costs shall be borne by the Supplier concerned.
- 11.6 ICT shall be entitled to insist that a Supplier tender security to ensure compliance with its obligations pursuant to any Agreement. A Supplier shall be required to tender the aforementioned security in the form of an unconditional, irrevocable guarantee issued by a financial institution accredited in the Netherlands and approved of by ICT. Such bank guarantee must be drawn up in accordance with a "model bank guarantee" supplied by ICT to the relevant Supplier. That security shall continue to apply until the time when the relevant Supplier fulfils all of its obligations pursuant to the relevant Agreement.

## 12. CONFIDENTIALITY AND PROTECTION OF PERSONAL DATA

- 12.1 The parties shall do all that is reasonably possible to treat any confidential information received from each other in confidence. Without ICT's written consent, a Supplier shall refrain from mentioning any Agreement in a publication or advertisement. Confidential information is deemed to be any information which either party designates as such, as well as information whose the receiving party reasonably ought to know is or could expect to be confidential. At any rate, a Supplier shall treat all business information sourced from ICT as confidential and shall not disclose or replicate any documents, specifications, models, drawings, designs and the like in relation to the relevant Agreement other than as explicitly permitted in accordance with the relevant Agreement.
- 12.2 In the event that a Supplier processes personal data for ICT for the purposes of executing an Agreement, the Supplier shall serve as the "processing agent" within the meaning of the Personal Data Protection Act [*Wet bescherming persoonsgegevens*] (Wbp) and the Agreement shall be deemed to constitute an agreement referred to in Section 14(2) of the Wbp. A Supplier shall at all times be prepared to enter into a separate processing agreement with ICT. A Supplier shall adopt appropriate technical and organisational measures to secure personal data against loss or any form of unlawful processing. Having regard to the state of the art and the implementation costs involved, such measures shall guarantee an appropriate level of security given the risks involved in the processing and nature of the data that is to be secured. A Supplier shall record such measures in writing. A Supplier shall warrant that any personal data will be processed properly, carefully and in accordance with the applicable legislation and regulations, and a code of conduct presented to ICT, if applicable. The foregoing shall apply in the event that there is any question of personal data being sent, distributed and/or supplied across the border to a non-EU country, for which ICT's prior written consent shall nevertheless always be required. A Supplier shall indemnify ICT against any claim which another party may file against ICT on the grounds of a Supplier's failure to comply with the obligations stipulated in this article. A Supplier shall grant ICT every assistance to a data subject within the meaning of Section 1(f) of the Wbp (a) to gain access to their personal data, (b) to arrange for their personal data to be deleted or corrected, and/or (c) to arrange to be shown that their personal data has been deleted, corrected if it is incorrect and, where ICT contests a Supplier's opinion, to record that the relevant data subject considers their personal data to be incorrect. In the event of a data leak referred to in Section 34A of the Wbp the relevant Supplier shall inform ICT of it verbally and in writing immediately but at any rate within twenty-four (24) hours after the detection of that leak. In the event that there is a security incident or a data leak, the relevant Supplier shall take all reasonable action to limit the consequences of the incident and/or to prevent any from occurring. A Supplier shall provide every assistance to ICT to assess a security incident and to be able to comply with any legal duty to report it and to inform the parties concerned. The obligation in relation to confidentiality referred to in Clause (1) shall apply in full with regard to the processing of personal data.

## 13. GENERAL WARRANTIES, QUALITY AND PROPERTIES

- 13.1 A Supplier shall warrant that upon the supply of any Item (a) that Item is of good quality and free of defects, (b) it accords in full and functions in accordance with the specifications listed in the relevant Agreement and ICT's reasonable expectations (in relation to its properties and quality, in particular), (c) it complies entirely with all applicable legal requirements (which is also deemed to include European regulations governing CE marking and the RoHS, amongst other things) and government regulations, as well as all relevant legislation and regulations governing imports and exports of such Items in all applicable jurisdictions, including the US Department of Commerce, and (d) it is suitable for the purpose for which ICT wishes to use it. A Supplier warrants that upon the provision of any Services (a) those Services will be provided by staff who are professional in that respect utilising the most up-to-date materials, expertise and technology, (b) they will be provided entirely in accordance with the relevant Agreement and ICT's reasonable expectations (especially in relation to quality), (c) they will satisfy the norms and standards which are customary in the relevant commercial sector, and (d) they will be provided entirely in accordance with all applicable legal requirements (which is also deemed to include the applicable European legislation) and government regulations. Where Items are supplied and Services are provided, the relevant Supplier shall be responsible for ensuring that all requisite permits, consents and licences in relation to those Items and Services are obtained in good time.
- 13.2 In the event that CE marks are required, they must be obtained and affixed by the relevant Supplier on the Items concerned and those marks shall be included in the agreed fee. Obtaining and affixing CE marks shall not have any implications for agreed delivery dates. In the event that and in so far as CE marking also has implications for other products already held by ICT or to be supplied by the latter to its clients, the relevant Supplier shall give ICT timely notice of this, so as to ensure that ICT is also able to comply with its obligations towards its clients. A Supplier shall indemnify ICT against any loss (direct and/or consequential) which ICT suffers due to a failure on the part of that Supplier to comply with its obligations pursuant to this Article 13.2, which is deemed to include a failure to meet the aforementioned delivery dates.
- 13.3 ICT attaches importance to corporate social responsibility. A Supplier shall warrant that, when conducting its business and executing an Agreement, it will comply with the applicable legislation and regulations governing human rights (as provided for in the Universal Declaration of Human Rights), competition, corruption, the environment, bribery, computer crime and working conditions. Subject to the foregoing, a Supplier shall be prohibited from in any way offering or giving ICT staff money, goods or services. A failure to comply with the provisions of this Article 13.3 (or to do so entirely) shall confer entitlement on ICT to cancel the relevant Agreement with immediate effect (extrajudicially) subject to any other rights that ICT has (which is deemed to include its entitlement to compensation).
- 13.4 In the event that any Item and/or Service does not comply with the provisions of Articles 13.1 to 13.3, the relevant Supplier shall have a duty to replace or repair such Item or to provide the Service again at its own risk and expense (hence free of charge) subject to ICT's approval. The provisions of the first sentence shall not affect ICT's other legal

## General Terms and Conditions Governing Procurement – continued

rights. In the event that and in so far as a Supplier fails to comply with its warranty obligations, acting at the relevant Supplier's expense, ICT shall be entitled to proceed with any repairs or replacement, or to redo everything (or to arrange for this to be done) by engaging other parties or otherwise.

- 13.5 In the event that a different term of warranty is not stipulated in the relevant Agreement, it shall amount to 24 (24) months, commencing at such time as the relevant Items are delivered or the Services are completed. The term of warranty shall be extended by the time during which the relevant Item and/or Service does not comply with the provisions of Article 13.1 and shall also apply again in the case of any part of an Item and/or Service which is replaced, repaired or redone.
- 13.6 The terms of the warranty pertaining to Software are set out in Article 20 and in the case of Hardware in Article 25.

## 14. SUSPENSION AND CANCELLATION [ONTBINDING]

- 14.1 ICT shall be entitled to suspend its financial obligations for as long as a Supplier fails to comply with any of its duties pursuant to any Agreement.
- 14.2 In any of the circumstances described below and in so far as such right is conferred below, either party shall be entitled to cancel all or part of the relevant agreement with immediate effect by registered post or to terminate it by giving notice to this effect, such to be done at the terminating party's discretion:
- in the event that the other party has been granted a provisional or final moratorium on payments or has been declared insolvent;
  - should the other party fail to comply with the provisions of the relevant Agreement and still fails to do so within a reasonable period of time after being given written notice to the effect that it is in default;
  - in the event that the other party contravenes the relevant Agreement and compliance or restitution is not (or no longer) possible, which is also deemed to include a Client's breach of the provisions of Article 4 (Intellectual Property Rights);
  - should the other party be in default of performance repeatedly or to such an extent that the other party cannot reasonably be required to allow the relevant Agreement to remain in effect.
  - in the circumstances referred to in Subclauses (c) and (d) above it shall not be necessary to stipulate a deadline as in Subclause (b).
- 14.3 In the event that ICT has fully or partially cancelled pursuant to the provisions of Article 14.2, any claim that it has against a Supplier shall fall due immediately.
- 14.4 In the event that ICT cancels all or part of an Agreement pursuant to this Article 14, this shall entail a restoration of the status ante quo in accordance with Section 6:271 of the Civil Code subject to ICT's right to compensation. This shall only differ in the event that ICT is of the opinion that any performance by a Supplier that has already occurred was actually of any benefit and/or ICT wishes to retain the outcome of any performance that has already been affected, in which case ICT shall merely have a duty to pay the relevant Supplier a proportionate fee for the performance that has already been effected.
- 14.5 In the event that ICT proceeds with the fall of partial cancellation of an Agreement and irrespective of the reason for this, the relevant Supplier shall not be entitled to compensation for any loss which that Supplier or any other party suffers as a result of that cancellation. A Supplier shall indemnify ICT against any third-party claim in this respect.
- 14.6 The provisions of Article 14.2 shall not affect ICT's other rights to cancellation in accordance with the law and also any other provisions of these General Terms and Conditions Governing Procurement.

## 15. MISCELLANEOUS

- 15.1 Throughout the term of an Agreement and for a period of twelve (12) months thereafter, the parties shall refrain from recruiting (as an employer or through another party in the capacity of a contractor) those of each other's staff who are involved in executing that Agreement.
- 15.2 Where required, a Supplier shall have a duty to appoint one (1) or more members of their staff to serve as a contact person for ICT.
- 15.3 In the event that any provision of these General Terms and Conditions Governing Procurement is null and void or is nullified, their remaining provisions shall continue to apply in full and the parties shall enter into consultation with each other for the purposes of agreeing on new provisions to replace the void or nullified provisions, ensuring that the purpose and purport of the void or nullified provisions are approximated as far as possible.
- 15.4 The provisions of any Agreement, which is deemed to include the relevant provisions of these General Terms and Conditions Governing Procurement and which by their nature are intended to remain in effect following the termination of that Agreement shall also continue to remain in effect following the termination of the agreement. Amongst other things, such provisions are those governing liability, intellectual property rights, insurance and non-disclosure.
- 15.5 Except where specifically stipulated otherwise in these General Terms and Conditions Governing Procurement, written communication between a Client and ICT shall occur by means of the post, fax and/or email, which the parties shall accept as proof.

## 16. DISPUTES AND GOVERNING LAW

- 16.1 Any dispute which may arise between the parties shall only be adjudicated by a competent court of law in Rotterdam or any senior legal tribunal, unless ICT prefers some other competent court of law.

## **General Terms and Conditions Governing Procurement – continued**

- 16.2 Even during Negotiations, the relationship between the parties shall be solely governed by the law of the Netherlands to the exclusion of any regulations pursuant to a choice of governing law in accordance with the rules of international private law. The Vienna Sales Convention (United Nations Convention on Contracts for the International Sale of Goods) shall explicitly not apply.

### **17. CONFLICTS BETWEEN THE DUTCH TEXT AND ANY TRANSLATION**

In the event of a conflict between the Dutch version of these General Terms and Conditions Governing Procurement and any translated version thereof, the Dutch version shall prevail. ICT at all times will be entitled to make (interim) linguistic changes to any translated versions without communicating such (however the most recent version can always be consulted at the website of ICT).

## **B – SPECIAL CONDITIONS**

### **B1 – SOFTWARE**

### **18. DEVELOPMENT, MODIFICATION AND ACCEPTANCE OF SOFTWARE**

- 18.1 In the event that it is agreed that a Supplier will develop or modify Software, it shall develop and/or modify that Software strictly in accordance with the relevant Specifications. A Supplier shall declare that it has acquired sufficient expertise in relation to the environment in which the relevant Software will be running, that it is sufficiently aware of the purpose for which ICT wishes to use the Software, that the software is suitable for the purpose mentioned both on its own and in combination with any infrastructure that is present (at ICT or any of its clients), and also that the Supplier is responsible for the proper performance of the Software in the aforementioned environment or in combination with the aforementioned infrastructure.
- 18.2 After a Supplier has developed Software, it shall first test that Software itself so as to determine whether it complies entirely with the relevant Specifications and does not have any Deficiencies. The Supplier shall then supply the Software to ICT and, if so required, shall install and implement it in accordance with any directions issued by ICT, following which the latter shall itself subject the Software to an acceptance test. In the event that ICT detects any Deficiencies in the Software in the course of an acceptance test, it shall notify the relevant Supplier of this in writing, providing as many details as is reasonably possible. Any Deficiency which, according to ICT's reasonable assessment, does not pose an obstacle to the performance or use of the Software concerned, shall not constitute a reason for ICT to refrain from accepting it subject to the relevant Supplier's duty to remedy such Deficiency as soon as possible but by no later than within fifteen (15) working days. Upon the completion of an acceptance test, ICT shall notify the relevant Supplier in writing as to whether or not acceptance has occurred. In the event that ICT withholds acceptance because of any Deficiency that has been detected and reported, the relevant Supplier shall remedy the aforementioned Deficiency as soon as possible – but by no later than within five (5) working days – and ICT shall conduct another acceptance test at least once. In the event that ICT again detects a Deficiency and reports it to the relevant Supplier, ICT shall be entitled – but shall not have a duty – to cancel the relevant Agreement in so far as it pertains to the aforementioned Software, and ICT shall be entitled to remedy such Deficiency itself at the expense of the Supplier concerned by engaging another party to do so or not. Should ICT not cancel the relevant agreement in that case, the Supplier in question shall remedy any Deficiency and again submit it to ICT for the latter's acceptance as soon as possible but by no later than within five (5) working days.
- 18.3 In the event that staggered acceptance tests are agreed to, the same procedure shall apply in relation to those staggered acceptance test as stipulated in Article 18.2.
- 18.4 Where the period has not been stipulated during which ICT is to conduct an acceptance test (or staggered acceptance tests), the test (or tests) shall be conducted within twenty-one (21) days after the Software is supplied.

### **19. SOFTWARE MODIFICATIONS AND EXCESS WORK**

- 19.1 ICT shall be entitled to require a Supplier to change the nature and scope of the Software that is to be supplied and/or the Services which are to be provided. ICT shall notify the Supplier of such a modification in writing, following which the Supplier shall be required to inform ICT within five (5) working days after receiving notice of the required change as to whether and to what extent it would have an impact on the agreed delivery time and fee. In the event that the Supplier is of the opinion that excess work is involved, it shall present ICT with a written quotation (for excess work) within the aforementioned period of five (5) working days. The relevant excess work may only be carried out after ICT accepts the aforementioned quotation (for excess work) in writing. There shall not at any rate be any question of excess work if the Supplier could have reasonably foreseen the change in the nature or scope of the work when the relevant Agreement was concluded or for which it could reasonably become liable in some other way. In the event that and in so far as ICT does not wish to accept the aforementioned quotation (for excess work), ICT shall be entitled to cancel the relevant Agreement, in respect of which it shall only have a duty to pay any reasonable costs actually incurred by the Supplier in so far as they are directly related to the execution of the Agreement concerned.
- 19.2 As far as possible the settlement of any excess work shall occur simultaneously with the next invoice, unless the parties explicitly agree otherwise in writing.

### **20. WARRANTIES IN THE CASE OF THE SUPPLY OF SOFTWARE**

- 20.1 Subject to the application of the provisions of Article 13, a Supplier shall warrant that (1) the relevant Software functions entirely in accordance with the Specifications, (2) the Software has been written efficiently, properly and cohesively, (3) the Software satisfies the relevant technical standards (international and otherwise), (4) the Software does not contain

any security measures which have not been agreed to and also that the Software does not contain any unusual elements (such as viruses, worms and so forth), (5) any response times mentioned in the relevant Agreement and/or Specifications will be abided by, (6) all of the functionality incorporated into the Hardware is described in the Documentation concerned, (7) complies with the applicable legislation and regulations, including but not confined to the Personal Data Protection Act, (8) satisfies the relevant safety standards, such as ISO 27001 and NEN 7510, 7512 and 7513, as well as the applicable assurance declarations, including ISAE 3402, which the Supplier shall issue in good time if requested to do so, and (9) the Software does not contain any so-called open source software (components), unless ICT has explicitly consented to this beforehand. The aforementioned consent may only be given provided that the relevant Supplier has exhaustively explained in good time which open source software is to be used, the terms and conditions (licensing and otherwise) that are to apply in this respect, the legal implications this will have and, after assessing this information, ICT is of the opinion that open source software may be used. Should ICT give its consent, this shall not affect the Supplier's duty to indemnify ICT against any loss and expenditure in the event that the use of open source software constitutes grounds for third-party claims and will also not adversely affect any licences, warranties and indemnifications issued by the Supplier. A warranty shall take the form of remedying any Deficiencies free of charge in accordance with the provisions of these General Terms and Conditions Governing Procurement.

- 20.2 Unless otherwise agreed to in writing, the term of warranty shall amount to twenty-four (24) months after the supply of the relevant Software or – where an acceptance test has been agreed to – after it has been passed.
- 20.3 In the event that ICT is of the opinion that any Software supplied by a Supplier contains a Deficiency during the term of the relevant warranty, ICT shall notify the Supplier of this within a reasonable period of time. Immediately after receiving the aforementioned notice, the Supplier shall proceed to remedy that Deficiency without interruption. Any Deficiency which (i) renders it impossible to use the relevant Software shall be remedied by the relevant Supplier within four (4) office hours after ICT reports it to that Supplier, where necessary by means of a temporary software workaround subject to the Supplier's duty to remedy the Deficiency as soon as possible, while any which disrupts the operation of the Software shall be remedied by the relevant Supplier within twenty-four (24) office hours after ICT reports it to that Supplier, where necessary by means of a temporary software workaround subject to the Supplier's duty to remedy the Deficiency as soon as possible.
- 20.4 A Supplier shall warrant that it will carry out the work in accordance with the relevant Agreement, as well as perform maintenance in accordance with the norms and standards (technical and otherwise) which apply in the latest, properly operating IT practice.

## 21. SOFTWARE LICENCES

- 21.1 In the event that a Supplier supplies Software to ICT under Licence, the provisions of this article shall apply.
- 21.2 Except where otherwise stipulated in the relevant Agreement, the Licence granted by the Supplier shall be irrevocable, perpetual and apply throughout the world. Furthermore, ICT shall at all times be entitled to make copies of any Software and Documentation, and to use such copies (1) in case of an emergency or if the Software does not function properly, (2) for testing purposes, or (3) for the purpose for which ICT has envisaged using that Software and Documentation.
- 21.3 A Licence to use any Software and Documentation shall also include ICT's right (1) to arrange for any other party to maintain and/or administer them (which is deemed to include outsourcing similar third-party services), and (2) granting licences to other parties (sublicensing).
- 21.4 A Supplier shall pursue a consistent version policy and shall ensure the timely supply of New Versions and Updates of the Software supplied. In this respect a Supplier shall regularly examine the need to issue a New Version or Update and shall notify ICT of the findings of such an examination as soon as possible. Where so requested, a Supplier shall provide ICT with a New Version for testing and evaluation purposes. Nevertheless, under no circumstances shall ICT have a duty to put a New Version into service.
- 21.5 In the event that a Supplier is declared insolvent and the administrator terminates the relevant Agreement between the parties, the parties shall be deemed to have agreed now in lieu of then that in that case ICT shall be entitled to continue to use the Software and Documentation in accordance with Section 45j of the Copyright Act [*Auteurswet*]. The parties shall be deemed to have agreed now in lieu of then that the purpose for which the Software is envisaged will at any rate include:
- the right to install the Software on an unlimited number of computers;
  - the right to use the Software (or to allow it to be used) by an unlimited number of ICT users in an unlimited number of locations for an indefinite period of time;
  - ICT's right to maintain the Software or to arrange for this to be done by another party;
  - the right to continue to perform those actions in relation to the Software which ICT had already performed before the Supplier was declared insolvent. The provisions of this article shall be deemed to constitute a settlement agreement pursuant to Section 7:900 of the Civil Code, which shall remain in effect following the termination of the relevant Agreement by virtue of its nature.
- 21.6 In the event that all or part of ICT's business is transferred to another party, a Supplier shall allow the acquiring party to continue to use any Software and Documentation, provided that, when requested to do so, that party provides the Supplier with confirmation to the effect that it will comply with the relevant licensing terms and conditions.
- 21.7 ICT shall at all times be entitled to assign the use of any Software and Documentation to an associated company.
- 21.8 When first requested to do so by ICT, a Supplier shall lodge a copy of the source code of the Software supplied under Licence along with a copy of the relevant Documentation with an escrow agent approved by ICT and the latter shall be



## General Terms and Conditions Governing Procurement – continued

granted the right to use the source code of that Software without limitation in the event that the Supplier becomes insolvent or fails to comply with its maintenance obligations in some other way.

- 21.9 In the event that there is a conflict between the terms and conditions subject to which a Supplier supplies Software and Documentation under Licence and the provisions of these General Terms and Conditions Governing Procurement – including this Article 21 – the latter shall emphatically prevail.

## 22. CLOUD SERVICES

- 22.1 In the event that Software and/or Documentation is supplied to ICT or given to the latter to use in the form of Cloud Services, the provisions of these general terms and conditions of procurement shall apply in full and, in particular, the provisions of Articles 5, 7, 10 and 13 subject to the proviso that in such a case supply shall be effected by virtue of the relevant Supplier actually allowing ICT to use the Software and/or Documentation on the agreed delivery date.
- 22.2 A Supplier's Cloud Services shall comply with the certification standards (such as, ISO 27001 or NEN 7510, 7512 and 7513) stipulated by ICT when the relevant Agreement is concluded. A Supplier shall present ICT with a copy of any certificate available and shall regularly update it and hand ICT such updated certificate.
- 22.3 ICT shall at all times remain the owner of data which it supplies to the relevant Supplier in the case of Cloud Services. A Supplier shall treat such ICT data as confidential information. ICT shall grant a Supplier a limited licence to use ICT data only in so far as is required to provide Cloud Services throughout the term of the relevant Agreement. Any other use of such data by a Supplier shall be explicitly prohibited and a Supplier shall acknowledge that a failure to comply with this obligation will result in irreparable harm to ICT, for which the Supplier shall be liable. When first requested to do so, a Supplier shall supply the aforementioned data to ICT. On the termination of any Cloud Services, a Supplier shall grant access to all ICT data present on the Supplier's systems or those of any other party engaged by the Supplier in the agreed data format(s). The aforementioned data has been documented in such a way that ICT is able to gain access to it. After all ICT data has been supplied as mentioned upon termination and after ICT confirms receipt of all that data, the relevant Supplier shall delete all such data which it still has in its systems, shall record the actions taken to delete it and shall store that documentation for ICT until five (5) years after the expiry of the relevant Agreement. Subject to the provisions of Article 21.5, a Supplier shall also ensure that, should it become insolvent, the aforementioned data shall not constitute part of its estate. In the event that a Supplier stores ICT data outside the Netherlands, it shall require ICT's written consent for this beforehand and only the Supplier shall be responsible for ensuring compliance with the applicable legislation and regulations governing the processing of personal data, amongst other things, in such other country. A Supplier shall indemnify ICT against any loss suffered and claim filed by another party in this respect.
- 22.4 Unless explicitly agreed otherwise, a Supplier shall ensure that ICT data is backed up periodically as agreed, in the absence of which the Supplier shall make a full backup of ICT data once every day. Before an Agreement is concluded, a Supplier shall inform ICT of the location of the server on which its data will be stored. In the case of a public and/or private cloud server the relevant Supplier shall inform ICT about appropriate security measures (staff and encryption regime) before an Agreement is concluded. A Supplier shall enable ICT to comply with its obligations (custodial or otherwise) pursuant to the applicable legislation and regulations.
- 22.5 A Supplier will provide to the individual users, for in particular authentication purposes, an individual login name and individual password. These login names and passwords need to be stored by a Supplier using at least Advanced Encryption Standard (AES) 256-bit encryption. When submitting the login name and password, a Supplier will ensure that this is done in such a way that theft and/or abuse will be avoided. A Supplier will ensure that the individual users will confirm good receipt of passwords. Passwords will always be submitted using adequately secured connections and will never be submitted to third parties. A Supplier will ensure an adequate administration of the accounts as provided by him to individual users. When confronted with unauthorized use of an account and/or password, a Supplier will inform ICT immediately and will indemnify and hold ICT harmless against any damages and costs that ICT (and/or individual users) suffer(s) as a result of such unauthorized use, without prejudice to the obligation for a Supplier immediately to reinstall the required level of security and to inform ICT in writing of the measures taken. Said indemnification does not apply in case the damages are the direct and sole consequence of wilful intent [opzet] or conscious recklessness [bewuste roekeloosheid] of ICT and/or an individual user.
- 22.6 In the case of Cloud Services a Supplier shall preferably use a so-called two-step verification process in order to secure access to them.
- 22.7 A Supplier shall secure a connection with encryption protocols utilising the most secure possible encryption key.
- 22.8 A Supplier shall arrange for experts to test any Cloud Services regularly (no less than twice a year) in the form of manual attack and PEN tests of "state of the art security", following which the Supplier shall adopt appropriate measures (for security purposes or otherwise where necessary) based on the results.
- 22.9 A Supplier shall also ensure that there is intrusion detection (recognising activities that are typical of hackers).
- 22.10 A Supplier shall pursue a consistent version policy and shall ensure the timely supply of New Versions and Updates of the Software applicable for the purposes of providing Cloud Services. In this respect a Supplier shall regularly examine the need to issue a New Version or Update and shall notify ICT of the findings of such an examination as soon as possible. In the event that a Supplier wishes to use a New Version or Update of the Software applicable for the purposes of providing Cloud Services, the Supplier shall consult ICT beforehand. A Supplier shall always extensively test a New Version or Update in a testing environment and install any improved Software in it before it is used in a production environment in consultation with ICT, and in this respect, the Supplier is hereby deemed to warrant that the Cloud

## General Terms and Conditions Governing Procurement – continued

Services will not be disrupted. A Supplier may temporarily suspend all or part of any Cloud Services for maintenance purposes as the case may be but only where necessary and provided that this has been agreed to beforehand. A Supplier shall not permit any such suspension to last longer than is strictly necessary and it must occur outside the window from 7 am to 10 pm but only subject to ICT being given prior notice of no less than fifteen (15) working days. Unless the parties agree otherwise in writing, the costs involved in the aforementioned maintenance (which is also deemed to include the aforementioned New Versions and Updates) shall be deemed to be included in the fees for the Cloud Services.

### 22.11 Hosting

- a. Where a Supplier provides Services at ICT's behest which involve hosting websites, the provisions of this Article 22.11 shall also apply.
- b. ICT shall receive full access to the relevant servers for the purposes of administering the websites. In this respect, the relevant supplier shall provide ICT with all applicable usernames and passwords.
- c. A Supplier shall provide the relevant Hosting Services in accordance with a service level Agreement which the parties have concluded with each other and the service levels and fees stipulated in it along with any discount in the event that the Supplier fails to achieve the guaranteed uptime rates. In the event that and in so far as the parties have not agreed to any of the aforementioned service levels, the service levels that are customary between professional parties in the relevant sector shall apply and a Supplier shall provide Hosting Services in accordance with the requirements of supreme professionalism, utilising all of the features (technical and otherwise) which ICT may reasonably expect.
- d. A Supplier shall only deploy staff for Hosting Services who are qualified for this purpose.
- e. A Supplier shall undertake to adopt organisational and technical measures for ICT in order to secure ICT data which is stored on websites hosted with the Supplier or which may be viewed through such websites adequately and appropriately.

### 22.12 Personal data

- a. A Supplier shall warrant that it shall at all times comply with all applicable legislation and regulations governing the protection of personal data (including but not confined to the Wbp and the General Data Protection Regulation – Regulation EU 2016/679), in respect of which the provisions of Article 12.2 shall apply in full.
- b. A Supplier shall acknowledge that ICT will at all times be entitled to check whether the Supplier is complying with its obligations pursuant to Article 22.12(a) and the Supplier shall provide every assistance for this purpose.
- c. Subject to the provisions of Article 9, a Supplier shall indemnify ICT against any loss or expenditure (including any reasonable lawyer's fees) which ICT suffers or incurs as a result of the Supplier's contravention of Article 22.12(a), and any claims and penalties or fines filed or imposed by other parties (including the Dutch Data Protection Authority) pursuant to a contravention of the legislation and regulations governing privacy (including the Wbp) in connection with Cloud Services. Furthermore, a Supplier shall be required to ensure that such risks are appropriately insured.

## B2 – HARDWARE

### 23. DEVELOPMENT, SUPPLY AND ACCEPTANCE OF HARDWARE

- 23.1 In the event that agreement is reached with a Supplier to the effect that the latter will develop Hardware, Article 18.1 shall apply *mutatis mutandis* to the development of that Hardware.
- 23.2 Except where agreed to otherwise in writing, any Hardware which a Supplier sells to ICT shall be delivered to the location of ICT's warehouse.
- 23.3 A Supplier shall pack any Hardware in accordance with the applicable standards.
- 23.4 Should ICT so require, any hardware that a Supplier is to deliver to ICT must first be subjected to an inspection and/or an acceptance test, should ICT require this. Such inspection and/or acceptance by or on behalf of ICT shall not amount to an acknowledgement that the relevant consignment complies with the warranties mentioned in Article 13.

### 24. HARDWARE MODIFICATIONS AND EXCESS WORK

- 24.1 In the event that any circumstances occur which result in modifications and excess work in relation to the manufacture of any Hardware, Article 19 shall apply *mutatis mutandis*.

### 25. WARRANTIES IN THE CASE OF THE SUPPLY OF HARDWARE

- 25.1 Subject to the application of the provisions of Article 13, a Supplier shall warrant that (1) any Hardware functions entirely in accordance with the relevant Specifications, (2) the Hardware will satisfy the relevant technical standards (international and otherwise), (3) the hardware will not contain any security devices which have not been agreed to and also that the Hardware shall not include any unusual elements, (4) any response times mentioned in the relevant Agreement and/or Specifications will be achieved, and (5) all functionality built into the Hardware is described in the relevant Documentation. A warranty shall take the form of remedying any Deficiencies free of charge in accordance with the provisions of these General Terms and Conditions Governing Procurement.
- 25.2 Unless otherwise agreed to in writing, the term of a warranty shall amount to twenty-four (24) months after the supply of the relevant Software or – where an acceptance test has been agreed to – after it has been passed.
- 25.3 In the event that ICT is of the opinion that any Hardware supplied by a Supplier contains a Deficiency during the term of the relevant warranty, ICT shall notify the Supplier of this within a reasonable period of time. Immediately after

## General Terms and Conditions Governing Procurement – continued

receiving the aforementioned notice, the Supplier shall proceed to remedy that Deficiency without interruption. Any Deficiency which (i) renders it impossible to use the relevant Hardware shall be remedied by the relevant Supplier within four (4) office hours after ICT reports it to that Supplier, subject to the Supplier's duty to remedy the Deficiency as soon as possible, while any which disrupts the operation of the Hardware shall be remedied by the relevant Supplier within twenty-four (24) office hours after ICT reports it to that Supplier, subject to the Supplier's duty to remedy the Deficiency as soon as possible.

- 25.4 A Supplier shall warrant that it will carry out the work in accordance with the relevant Agreement, as well as perform maintenance in accordance with the norms and standards (technical and otherwise) which apply in properly operating state-of-the-art IT practice.

### B3 – MAINTENANCE

#### 26. MAINTENANCE IN GENERAL

- 26.1 These provisions governing maintenance shall only apply in the event that ICT and a Supplier have agreed in writing that the Supplier will carry out maintenance work.
- 26.2 A Supplier shall perform maintenance and exercise the greatest possible care while doing so. A Supplier shall perform maintenance in accordance with the maintenance agreement concluded with ICT and the methods described in it, in respect of which the Supplier shall pursue a consistent version policy in relation to any Software and Hardware. A Supplier shall have a duty to achieve the service levels stipulated in the relevant maintenance agreement.
- 26.3 In the event that it is agreed that a Supplier will provide maintenance for any Software, Hardware and/or Documentation, such maintenance shall commence by no later than immediately after the end of the term of the relevant warranty. Maintenance shall consist of the repair of any Deficiencies in accordance with the following provisions governing maintenance and whatever the parties may stipulate in particular in a maintenance agreement.
- 26.4 A Supplier shall warrant that all of the relevant provisions of the law governing any Items on which ICT will be carrying out maintenance work have been complied with, which is deemed to include the Personal Data Protection Act, and the Client shall indemnify ICT against all claims in this respect.
- 26.5 A Supplier shall bear any risk of Items being stolen or damaged during the period in which the Supplier has them in its possession for the purposes of carrying out maintenance. It shall be up to the relevant Supplier to take out adequate insurance to cover such risks.
- 26.6 Before carrying out any maintenance on an Item, a Supplier shall make backups as required.
- 26.7 In the event that ICT is of the opinion that any Software and/or Hardware contains a Deficiency, ICT shall be required to notify the Supplier of this within a reasonable period of time after such Deficiency becomes evident.

#### 27. MAINTENANCE OF SOFTWARE

- 27.1 A Supplier shall have a duty to remedy any Deficiency which ICT reports to that Supplier throughout the term of the relevant maintenance agreement. Unless explicitly stipulated otherwise in the relevant maintenance agreement, the provisions of Article 20.3 shall apply.
- 27.2 Unless explicitly agreed otherwise in writing, ICT shall be entitled to the supply of the source code and any other materials which are required for the purposes of carrying out maintenance.
- 27.3 Maintenance shall at any rate extend to Software that is mentioned in a software list in a maintenance agreement, which list the relevant Supplier shall ensure remains accurate in consultation with ICT.
- 27.4 ICT shall ensure that its expertise in relation to Software remains up-to-date. A Supplier shall register and record any data concerning work carried out on Software that is relevant for the maintenance of that data in its administrative records. When first requested to do so, a Supplier shall permit ICT to inspect the data thus recorded.
- 27.5 Acting with ICT's prior consent, a Supplier shall be entitled to install temporary solutions, program patches or work-arounds in any Software. In the absence of any explicit arrangements in this respect, a Supplier shall install, configure, determine the parameters of, and fine-tune any updated Software or any New Version thereof that has been supplied and, where necessary, the Client shall modify the Software in use and the user environment.

#### 28. MAINTENANCE OF HARDWARE

- 28.1 A Supplier shall have a duty to remedy any Deficiency which ICT reports to that Supplier throughout the term of the relevant maintenance agreement. Unless explicitly stipulated otherwise in the relevant maintenance agreement, the provisions of Article 20.3 shall apply.
- 28.2 Maintenance shall at any rate extend to Hardware that is mentioned in a Hardware list in a maintenance agreement, which list the relevant Supplier shall ensure remains accurate in consultation with ICT.
- 28.3 A Supplier shall ensure that its expertise in relation to Hardware remains up-to-date. A Supplier shall register and record any data concerning work carried out on Hardware that is relevant for the maintenance of that data in its administrative records. When first requested to do so, a Supplier shall permit ICT to inspect the data thus recorded.

### B4 – CASUAL HIRE

## 29. CASUAL HIRE

- 29.1 These provisions governing the casual hire of staff shall only apply in the event that ICT and a Supplier have agreed that ICT will hire staff from the Supplier.
- 29.2 For the purposes of these general terms and conditions of procurement “casual hire” refers to a situation which ICT temporarily requires a Supplier’s staff (designated as the “Staff” for the purposes of this Article 29) to help it carry out specific work (designated as the “Work” for the purposes of this Article 29) in the field of information technology for the benefit of ICT itself or the latter’s clients.
- 29.3 In the centre where they perform their Work the Staff shall behave in accordance with the rules applicable there and the relevant Supplier shall have a duty to issue instructions to its Staff in this respect. The Staff shall comply with ICT’s or the relevant client’s applicable guidelines and internal regulations in this respect. ICT or the relevant client shall issue instructions that are as comprehensive and accurate as possible in this respect.
- 29.4 With regard to every member of Staff, a Supplier shall comply with all of its legal obligations in relation to withholding and remitting salary tax, social insurance premiums, employee insurance premiums, value added tax and all other applicable legal obligations (the “Legal Obligations”). A Supplier shall indemnify ICT against any claim pertaining to a failure to comply with such Legal Obligations, including but not confined to any claim to pay costs, penalties or fines (including, amongst other things, the fees payable to accountants, tax consultants, legal advisers and lawyers). Furthermore, a Supplier shall pay ICT any related compensation and costs when first requested by ICT to do so.
- 29.5 A Supplier shall have a duty to present ICT with a declaration issued by a registered accountant or accounting consultant which is satisfactory to ICT to the effect that:
- any Staff supplied by the Supplier pursuant to an Agreement have been employed by the Supplier throughout the period from the time when the Work commenced until and including the most recent quarter;
  - returns have been filed and remittances effected for all of the Supplier’s Legal Obligations pertaining to all of the taxable remuneration of the Staff deployed pursuant to the relevant Agreement as of the time when the Work commenced until and including the most recent quarter.
  - value added tax has been remitted in respect of the amounts which the Supplier has charged ICT for work carried out pursuant to the relevant Agreement.
- 29.6 Without the need for any further request from ICT, the relevant Supplier shall present a declaration referred to in Article 29.5 within two (2) weeks after the following dates based on the situation prevailing then: 31 December, 31 March, 30 June and 30 September of each year.
- 29.7 Until such time as ICT receives a declaration referred to in Article 29.5, it shall withhold a sum equivalent to 30% of the invoiced amount which the relevant supplier has charged ICT exclusive of value added tax to cover its risk of liability for remittances pursuant to its Legal Obligations in relation to the Staff supplied by the Supplier.
- 29.8 A failure to comply with the obligations referred to in the foregoing clauses shall confer entitlement on ICT to cancel the relevant Agreement with immediate effect at any time without being required to pay any compensation.
- 29.9 In the event that ICT pays an invoice for casual hire in accordance with Article 11.3 of these General Terms and Conditions Governing Procurement into the relevant Supplier’s guarantee account, Articles 29.4 to 29.8 above shall not apply.
- 29.10 The Staff shall work for ICT throughout the entire period agreed on, unless they are replaced at ICT’s request. ICT shall at all times be entitled to require the relevant Supplier to replace a member of Staff. A replacement member of Staff shall possess the same qualifications as the original member of Staff who worked for ICT. Should a replacement member of Staff require an induction period based on ICT’s reasonable assessment, such induction period shall last no longer than twenty (20) working days. ICT shall not be charged for any induction period.
- 29.11 Should an Agreement reveal that there is a need to satisfy VCA [Health, Safety and Environmental Checklist for Contractors] requirements, the relevant Supplier shall have to comply with VCU [Health and Safety Checklist for all Employment Businesses] requirements and the relevant member of Staff must hold a basic or full VCA certificate. Where an Agreement is concluded with a self-employed person, the latter must satisfy the VCA\* requirements and therefore hold a full VCA certificate, must have successfully conducted an RIE (risk identification and assessment) and must use the self-employed persons materials which have been approved in accordance with the standards, NEN 3140 and NEN 2384.
- 29.12 In accordance with Article 6.1, all intellectual property rights to any outcomes which are produced during a casual hire period shall be vested in ICT.

### B5 – TRAINING

## 30. EDUCATIONAL PROGRAMMES, COURSES AND TRAINING

- 30.1 These provisions governing training shall only apply in the event that ICT and a Supplier have agreed that ICT will provide training for that Supplier.
- 30.2 An Agreement between ICT and a Supplier shall be deemed to have come into effect by virtue of ICT issuing a written notice of confirmation of the educational programme, course or training requested by that Supplier by means of a registration form signed by the latter. As such, the registration form shall constitute the Agreement.

**General Terms and Conditions Governing Procurement – continued**

- 30.3 A Supplier shall only deploy staff for educational programmes, courses and training who are qualified for this purpose.
- 30.4 In the event that registration numbers constitute reasonable grounds for doing so, the relevant Supplier shall – but only with ICT's prior written consent – be entitled to cancel an educational programme, a course or any training or to combine it with one (1) or more educational programmes or courses, or any other training, or to arrange for it to occur on another date or at another time subject to compensation being paid for any loss suffered by ICT.
- 30.5 ICT may cancel the relevant educational programme, course or training in writing free of charge up to 30 (30) days before it commences.
- 30.6 After receiving notice from a Supplier, ICT shall always be entitled to send a trainee to the relevant educational programme, course or training other than the trainee who was originally registered.
- 30.7 ICT shall be entirely at liberty to use any materials (from an educational programme, course or training), which is also deemed to include Software or any other information within its organisation. This shall not change the fact that all intellectual property rights, including in particular for the purposes of this matter the copyright to any materials (for the relevant educational programme, course or training, which is also deemed to include Software) supplied by the relevant Supplier and any other information for such educational programme, course or training shall be and shall continue to be vested solely in ICT and/or its licensors.

**DC Version:**

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