

GIBIT 2023

Articles



VNG Realisatie

Nassaulaan 12
2514 JS The Hague

www.gibit.nl

[Date]

Contents

I. General section	5
Article 1. Definitions	5
Article 2. Applicability.....	8
Article 3. Conclusion of Agreement	9
Article 4. Performance of Agreement	10
Article 5. Transport, ownership and risk of Products	11
Article 6. Implementation of IT Performance	11
Article 7. Dependence on and coordination with third parties	13
Article 8. Municipal IT quality standards, Interoperability Requirements, norms and standards	14
Article 9. Acceptance.....	15
Article 10. Maintenance and support	16
Article 11. Fees, invoicing and payment	19
Article 12. Guarantees.....	21
Article 13. Algorithmic applications	22
Article 14. Documentation and information	23
Article 15. Product management	23
Article 16. Liability	24
Article 17. Insurance.....	25
Article 18. Confidentiality.....	25
Article 19. Force majeure	25
Article 20. Intellectual property	26
Article 21. Access to data and authorisations.....	28
Article 22. Third-Party software	28
Article 23. Substitute staff.....	29
Article 24. Suspension, termination and dissolution	30
Article 25. Right to audit and cooperation in audits at the Principal.....	33
Article 26. Exit plan, transfer, limited continuation, assignment and extended use	34
Article 27. Applicable law and disputes	36
II. Privacy, security and archiving	37
Article 28. Processor relationship	37
Article 29. Information security	37
Article 30. Archiving	37
III. Remote Services.....	39

Article 31. General.....	39
Article 32. Acceptance procedure	39
Article 33. Stored data.....	39
Article 34. Maintenance and Availability	40
Article 35. Periodic third-party certificate	40
Article 36. Safeguarding continuity	41

These conditions are an English translation of an originally Dutch text. In case of conflict or ambiguity regarding the interpretation of certain provisions, the Dutch text shall prevail.

I. General section

Artikel 1. Definitions

These Procurement Conditions form part of the GIBIT 2023. In these Conditions, the following terms are used with an (initial) capital letter (terms may be used in either singular or plural):

- 1.1 Acceptance: the formal approval of (parts of) the IT Performance, separately and in conjunction with each other, by means of a successfully performed (integral) Acceptance Procedure or pursuant to the provisions of article 9.10.
- 1.2 Acceptance Procedure: the test procedure by which it can be demonstrated that the IT Performance does not contain any Defect(s).
- 1.3 Delivery: the delivery by the Supplier of the Products pertaining to the IT Performance in the manner specified in the Agreement, as evidenced by a proof of receipt thereof issued by the Principal.
- 1.4 Algorithmic Application: an IT Performance that consists or will consist (in part) of software - whether still to be developed or not - that makes predictions, takes decisions and/or provides advice in an automated manner by using data analysis, statistics and/or self-learning logic.
- 1.5 Application Landscape: the set of internal and external systems, software, databases, links, equipment, IT infrastructure and tools that for the Principal constitute the automated information provision within which the IT Performance is embedded.
- 1.6 Availability: the extent to which the IT Performance is actually available to the Principal and can be used.
- 1.7 Specification: the documents provided to the Supplier (including further explanations and amendments) describing and explaining the Principal's organisation, the IT Performance and the use intended by the Principal as well as the tender procedure.
- 1.8 Conversion: the conversion and migration of the Principal's data files from the old system to the new IT Performance, without affecting the completeness, integrity and metadata of the data.
- 1.9 Corrective Maintenance: the detection and rectification by the Supplier of Defects reported to it by the Principal or which have otherwise become known to the Supplier.

- 1.10 Third-Party Software: software for which both (a) the intellectual property rights do not rest wholly with the Supplier and/or a company associated with the Supplier and (b) where the Supplier is unable to force certain developments to / changes in that software.
- 1.11 Remote Services: the provision of the IT Performance (such as cloud, ASP, SaaS, PaaS) by the Supplier to the Principal by means of remote communication techniques.
- 1.12 Documentation: the documentation referred to in artikel 14.
- 1.13 Function Recovery Time: the period between the time when a Defect is reported to the Supplier and the time when it is remedied.
- 1.14 Defect: the failure of the IT Performance to meet the Agreed Use or to do so fully.
- 1.15 Right of Use: the right by virtue of which the Principal is authorised to use the IT Performance within the frameworks set out in the Agreement.
- 1.16 Municipal IT Quality Standards: the document published by the Association of Netherlands Municipalities (VNG) and VNG Realisatie at www.gibit.nl and updated from time to time, containing a compiled collection of norms and standards for IT products and services.
- 1.17 GIBIT 2023: the Municipal Procurement in IT Toolbox, comprising the Procurement Conditions, the explanatory notes to those conditions, the Municipal IT Quality Standards and various tools for municipalities, all as published at www.gibit.nl.
- 1.18 IT Performance: all goods to be delivered by the Supplier under the Agreement, including Products, Rights of Use and services.
- 1.19 Implementation: the set of actions and activities necessary to put all parts of the IT Performance, separately and collectively, into use in the organisation of the Principal, such that all of the Principal's users can work with it in accordance with the Agreed Use. The Implementation also includes the Conversion, the realisation of the Links necessary for the Agreed Use and the performance of the Acceptance Procedure.
- 1.20 Implementation Plan: the plan for the Implementation, containing a concrete elaboration of the activities to be performed by the parties involved in this regard, the IT Performance to be implemented and/or developed, the responsibilities of the Supplier and the Principal and the timing schedule.
- 1.21 Procurement Conditions: these present procurement conditions, as adopted by the VNG
- 1.22 Innovative Maintenance: the provision by the Supplier to the Principal of Upgrades to the IT Performance.

- 1.23 Interoperability Requirements: the requirements set out in the Agreement for the IT Performance to allow the exchange of data with or other cooperation with other parts of the Application Landscape.
- 1.24 Annual Fee: the average annual fee, to be calculated by dividing the Fee by the initial intended term of the Agreement in years. For Agreements without a term, or with a term shorter than 1 year, the Annual Fee is the same as the Fee.
- 1.25 Links: the system for exchanging data between on the one hand the IT Performance and on the other hand (parts of) the Application Landscape.
- 1.26 Supplier: the party with which the Principal has entered into an Agreement.
- 1.27 Custom Software: (i) Software or (ii) modifications in or set-ups of Standard Software specifically developed or to be developed for the Principal.
- 1.28 Maintenance: Corrective Maintenance, Preventive Maintenance, Innovative Maintenance and user support, all to the extent agreed and as further detailed in the Procurement Conditions, the Agreement and the SLA (if any).
- 1.29 Principal: the party for whose benefit the Agreement is concluded.
- 1.30 Agreed Use: the use intended by the Principal of the IT Performance as it was known to the Supplier (whether or not on the basis of the request for quotation or other documents preceding the Agreement) at the time the Agreement was concluded or ought to have been known to the Supplier on the basis of artikel 3, all insofar as that use is not expressly excluded or limited in the Agreement.
- 1.31 Agreement: the agreements between the Principal and the Supplier regarding the delivery of the IT Performance, of which the Procurement Conditions form part.
- 1.32 Staff: the staff and/or support people to be engaged by the parties in the performance of the Agreement.
- 1.33 Preventive Maintenance: measures taken by the Supplier to prevent Defects and other technical problems and other related forms of service, whether or not by making Updates available.
- 1.34 Product: the item that the Supplier delivers to the Principal under the Agreement.
- 1.35 Software: the whole of the software to be provided by the Supplier. Software can be distinguished into Standard, Third-Party or Custom Software and Links.
- 1.36 Response Time: the time within which the Supplier must adequately respond to a notification by the Principal of a Defect and other requests by the Principal for service.

- 1.37 Service Levels: requirements and performance standards included in the Agreement with regard to Maintenance and other agreed forms of service provision, such as standards regarding Availability and Response and Function Recovery Times.
- 1.38 Service Level Agreement (SLA): the further agreement relating to the Maintenance, including the type of Maintenance provided and the Service Levels applicable thereto.
- 1.39 Standard Software: Software developed for general use that is not made available exclusively to the Principal.
- 1.40 Update: a successive version (regardless of naming or numbering) of the IT Performance in which Defects have been remedied and/or the operation of the IT Performance has otherwise been improved.
- 1.41 Upgrade(s): a successive version (regardless of naming or numbering) of the IT Performance with predominantly new or changed functionalities.
- 1.42 Fee: the total price agreed upon or (if higher) actually paid for the IT Performance, including the estimate for the work for which no (fixed) price has been agreed (all exclusive of VAT), for the agreed or (if longer) the actual term.
- 1.43 Processor Agreement: the Processor Agreement attached to the Agreement, or, in the absence thereof, the Standard Processor Agreement declared to be standard by the Association of Netherlands Municipalities (VNG) at the time when the Agreement was concluded, as administered by the VWO Management Group of the VNG.

Artikel 2. Applicability

- 2.1 Unless otherwise agreed, the Procurement Conditions apply to and form part of all requests, quotations, offers, order confirmations, orders, agreements and all other juridical acts between the Principal and the Supplier relating to the IT Performance specified in and related to the Agreement.
- 2.2 The Procurement Conditions consist of three chapters:
- i) Chapter I (which always applies); and
 - ii) Chapter II on privacy, security and archive management (which applies in addition if the IT Performance is used to process the Principal's data); and
 - iii) Chapter III on Remote Services (which applies in addition when Remote Services are provided).
- 2.3 The applicability of any general or specific conditions or stipulations of the Supplier, by whatever name, is expressly rejected. This also applies when such conditions are referred to later.

- 2.4 Should any provision in the Procurement Conditions be void or annulled, or should a court consider that any provision of the Procurement Conditions is inapplicable or invalid, only the relevant provision shall be considered as not written, but the Procurement Conditions shall otherwise remain in full force and effect. The parties will consult to replace the relevant inapplicable or invalid provision with a new provision, which will as far as possible observe the purpose and purport of the earlier provision.
- 2.5 In the event of a conflict between the provisions of the Procurement Conditions and the provisions of the Agreement or another document, the following order of precedence shall apply (in the event of a conflict, the document higher in rank shall prevail; in the event of a conflict between documents of equal rank, the most recent document shall prevail):
- i) Licence and maintenance conditions for Third-Party Software, but only insofar as the Third-Party Software is concerned, and provided that the information obligations referred to in Article 22.1 have been complied with;
 - ii) further agreements and annexes to the Agreement, such as the Implementation Plan, the SLA, the Processor Agreement or the exit plan;
 - iii) the Agreement;
 - iv) the Procurement Conditions, with Chapters II and III prevailing over the provisions of Chapter I where applicable.
- 2.6 Unless expressly provided otherwise in the Agreement or the Procurement Conditions, the governing statutory law shall (additionally) apply in full.
- 2.7 Amendments and supplements to the Procurement Conditions are only valid if agreed in writing between the parties. The amendment and/or supplement only applies to the Agreement referred to in Article 2.1.

Artikel 3. Conclusion of the Agreement

- 3.1 A request for an offer or other invitation to make an offer does not bind the Principal.
- 3.2 Before making an offer to the Principal, the Supplier will have adequately informed itself about:
- i) the objectives in connection with which the Principal wishes to enter into the Agreement; and
 - ii) the Principal's organisation and Application Landscape, as relevant to the request or offer.

- 3.3 If and to the extent that the Supplier does not have sufficient information to fulfil the obligation referred to in the previous paragraph, it shall make enquiries with the Principal in this respect. The Principal shall provide the Supplier with all reasonably requested information (unless it is confidential in nature and cannot reasonably be provided even under a confidentiality agreement).
- 3.4 When making an offer, the Supplier shall:
- i) take account of the information referred to in the previous two paragraphs; and
 - ii) address the risks arising from that information and the management measures required in that context in the offer ("risk analysis"), subject to the provisions of Article 4.3;
 - iii) mention other risks that it foresees;
 - iv) comply with Article 22.1;
 - v) insofar as the offer relates to Products: specify whether the products are new, *refurbished* or second-hand.
- 3.5 In the case of a tendering procedure within the meaning of the Public Procurement Act, the obligations referred to in paragraphs 2 to 4 are limited by the content, nature and scope of the Specification.
- 3.6 An agreement shall only come into effect after either (1) the Principal has accepted a written offer from the Supplier in writing, (2) the parties have signed an agreement drawn up in writing or (3) the Supplier executes a written order from the Principal.

Artikel 4. Implementation of agreement

- 4.1 Agreed deadlines shall only be considered fixed and final if expressly agreed in writing.
- 4.2 The following deadlines - notwithstanding the previous paragraph - are final in all cases:
- i) a specific end date for the Implementation included in the Agreement or the Implementation Plan (whereby related interim delivery dates are not final);
 - ii) if the Agreed Use includes the Implementation or delivery of Updates and/or Upgrades being completed in time before any Laws and Regulations (or any amendments thereto) come into effect: the effective date of such (amended) Laws and Regulations.

- 4.3 The risk analysis referred to in Article 3.4ii) may also only be carried out - except in the case of a tendering procedure as referred to in Article 3.5 - after the conclusion of the Agreement, but prior to the Implementation. If the Supplier's proposal on how to deal with identified risks is not acceptable to the Principal, the Principal shall be entitled to terminate the Agreement with immediate effect, without being liable to pay any compensation, but in return for reimbursement of the costs incurred by the Supplier up to that point (including the costs of performing the risk analysis).
- 4.4 The Principal shall fulfil its obligations under the Agreement and related further agreements (Implementation Plan, SLA, etc.) and always provide the cooperation reasonably required for that purpose.

Artikel 5. Transport, ownership and risk of Products

- 5.1 The Supplier performs the Delivery as a single Delivery, unless otherwise agreed.
- 5.2 Upon Delivery of Products, the parties visually check for quantity and externally visible damage. If any damage is found, the Principal does not have to take delivery of the Product. This does not detract from the Supplier's obligation for timely Delivery.
- 5.3 The Principal provides the Supplier with proof of receipt for the Products received. Such evidence shall not affect the Principal's rights under the Agreement.
- 5.4 The Supplier shall as far as possible use sustainable packaging materials and shall arrange for their environmentally friendly disposal.
- 5.5 The risk of damage or loss of Products shall pass to the Principal upon Delivery.
- 5.6 Insofar as the Agreement provides for transfer of ownership, that transfer takes place upon Acceptance by the Principal. The Supplier then warrants that the Product belongs to it in full ownership, is not subject to any retention of title, limited right or attachment by a third party and is free from other charges and encumbrances.

Artikel 6. Implementation of IT Performance

- 6.1 Unless the Agreement expressly provides otherwise or the IT Performance by its nature cannot be implemented, the Supplier shall arrange for the Implementation of the IT Performance in the Principal's organisation, in accordance with the relevant provisions (if any) of the Agreement and the Implementation Plan.

- 6.2 If an Implementation Plan has not yet been drawn up at the time of signing the Agreement, it will still be drawn up within a reasonable period of time by mutual agreement between the parties when either party so requests. The Supplier acts as the author of the Implementation Plan. The cost of preparing the Implementation Plan is included in the Fee.
- 6.3 If an Implementation Plan is prepared, it will include the following (in each case as applicable):
- i) detailed description of the objectives of the project to achieve the Implementation of IT Performance as well as the preconditions and applicable frameworks and standards, taking account of the risk analysis carried out;
 - ii) the project organisation including the method of reporting and the method of project management;
 - iii) the division of work and division of responsibilities, including the commitment and availability required from the Principal;
 - iv) an overview of the required Links, their functional specifications and any third-party cooperation required for their creation;
 - v) the relationship between the IT Performance and the other components of the Application Landscape and any third-party cooperation required for the Implementation, given that relationship;
 - vi) the partial deliveries (milestones) of the project and the functional specifications for the partial deliveries to be met (in relation to the Agreed Use);
 - vii) the timing schedule of the Implementation (including partial deliveries), in accordance with the timing requirements set out in the Agreement;
 - viii) the manner in which each partial delivery is effected;
 - ix) the manner in which the Acceptance Procedure will be carried out;
 - x) the manner in which the Conversion will take place;
 - xi) the manner in which the Principal will be made familiar with the use and (technical and functional) management of the IT Performance through education/training, insofar as agreed.
- 6.4 As regards any cooperation and dependence on third parties required for Implementation, the provisions of Artikel 7 apply.
- 6.5 If it becomes apparent during Implementation that adjustments to the Application Landscape are necessary which the Supplier has not provided for in the offer and/or the risk analysis referred to in Article 3.4ii), but that should have been foreseen, the costs of the relevant adjustments are borne by the Supplier.

6.6 The Supplier hereby declares itself willing and able, after completion of the (initial) Implementation, to perform additional work related to the Implementation or otherwise related to the IT Performance during the term of the Agreement, at the Principal's request. The provisions of artikel 3 apply mutatis mutandis to the finalisation of any such further agreements. Unless otherwise agreed, the provisions of the pre-existing Agreement shall apply to this work.

Artikel 7. Dependence on and coordination with third parties

7.1 The provisions of this Article shall apply to any necessary cooperation of third parties, other than a Party's support people, for any work.

7.2 Unless otherwise agreed, the responsibility for determining and notifying the other Party in a timely manner of the need for the cooperation of third parties referred to in paragraph 1 rests with the following Party:

- i) in the case of Remote Services, with the Supplier;
- ii) for IT Performance other than Remote Services, with the Principal.

7.3 Once it has been established that the cooperation of third parties is necessary, further arrangements will be made to this end within a reasonable period of time at the first request of either Party concerning:

- i) the identity of those third parties;
- ii) the cooperation required from those third parties (also bearing in mind their role in the parts of the (intended) Application Landscape or any Links in question);
- iii) the role of each Party in directing those third parties;
- iv) the responsibility for coordinating the various third parties involved;
- v) any powers of attorney (limited or otherwise) to represent the other Party vis-à-vis those third parties;
- vi) the costs to be incurred by those third parties and their allocation between the Parties;
- vii) the costs for the work related to the coordination of those third parties and their allocation between the Parties.

7.4 The further agreements referred to in paragraph 3 may be laid down in (a new version of) an existing document (such as an Implementation Plan or an exit plan) or in a separate document.

7.5 The parties will involve the relevant third parties in making the further agreements referred to in paragraph 3 as far as possible in advance and, where possible, will have them form part of the further agreements or will have them endorse these further agreements.

- 7.6 If, when third parties are relied upon as referred to in this Article, an Acceptance Procedure or chain test fails, and the Supplier demonstrates that it is not to blame for this, then:
- i) as far as the relevant part of the Acceptance Procedure or the chain test is concerned, no Defect is deemed to exist; and
 - ii) the chain test or Acceptance Procedure is otherwise continued; and
 - iii) there will be discussions with all parties involved in order to reach further agreements to find an appropriate solution. These discussions will be initiated by the Party designated in paragraph 2. Once the parties have agreed on the appropriate solution, they will record it in an Implementation Plan (amended or supplementary). artikel 6 applies mutatis mutandis to the preparation/amendment of that plan. To the extent that the execution of this plan leads to additional work, this will not commence until it has been explicitly agreed to by Principal.

Artikel 8. Municipal IT quality standards, Interoperability Requirements, norms and standards

- 8.1 The Agreed Use includes that the IT Performance complies with the:
- i) prescribed Interoperability Requirements, norms and standards for the function and scope of operation of the relevant IT Performance in the Municipal IT Quality Standards at the time of concluding the Agreement;
 - ii) other Interoperability Requirements, norms and standards (further) specified in the Agreement.
- 8.2 The Supplier shall conduct the preventive tests prescribed in the said norms, requirements and standards prior to Implementation. These tests will be performed on an environment that is not used for the Principal's productive purposes. The Supplier shall, when first so requested, submit the test report showing that the IT Performance meets the said standard(s).
- 8.3 The Supplier is not obliged to carry out the preventive tests referred to in the previous paragraph if it can submit a report or refer to a public site for such a publication showing that the said tests have already been completed positively on exactly the same version of the IT Performance and with comparable Agreed Use.
- 8.4 During the Acceptance Procedure, the tests will include the extent to which the IT Performance after Implementation with the Principal actually complies with what is stated in paragraph 1.
- 8.5 If and to the extent that the IT Performance also consists of Links, a chain test will be performed as part of the Acceptance Procedure. This involves testing whether the Links meet Interoperability Requirements and whether the Application Landscape will still function correctly after Implementation.

Artikel 9. Acceptance

- 9.1 If no Implementation Plan has been drawn up, or if this plan does not contain a description of how the Acceptance Procedure is to be performed, the way in which the Acceptance Procedure is to be performed will still be recorded in a written test protocol when first so requested by the Principal. Articles 6.2 and 6.3 apply, mutatis mutandis, to the preparation of this test protocol.
- 9.2 Unless otherwise provided for in the Agreement, the Implementation Plan or the test protocol referred to in the previous paragraph, the Acceptance Procedure is as follows:
- i) after each delivery of (parts of) the IT Performance, the Principal will test the relevant delivery for Defects. A test report will be prepared and signed by the parties at that time. This test report will record whether the IT Performance exhibits Defects and also whether the IT Performance is approved, partly approved or rejected;
 - ii) within a reasonable time, or at least the time specified for this purpose in the Agreement, after the date when the test report is signed, the Supplier shall issue a timing schedule within which the Defects set out in the test report will be remedied at the Supplier's expense;
 - iii) the Supplier shall resubmit (the part of) the updated IT Performance for Acceptance by means of the Acceptance Procedure after the expiry of the period referred to in the previous paragraph.
- 9.3 Deadlines and (updated) timing schedules used in the context of the Acceptance Procedure must fit into the overall timing schedule of the Agreement or the Implementation Plan and may not lead to delays. It is part of the Supplier's duty of care to monitor the deadlines and (progress of) the Implementation and Acceptance Procedure and, if necessary, to warn or remind the Principal (because of the obligation to cooperate).
- 9.4 If and insofar as there is cooperation and dependence on third parties during the Acceptance Procedure, the provisions of artikel 7 shall apply.
- 9.5 If the IT Performance (or any part thereof) is rejected because of Defects when going through the (complete) Acceptance Procedure for the second time, the Principal is entitled:
- i) to terminate the Agreement - in whole or in part - without further notice of default out of court, in which case the Supplier shall also, within the context of artikel 16 be liable for the damage or loss suffered and to be suffered by the Principal; or
 - ii) without prejudice to its right to compensation (within the context of artikel 16) for the damage or loss already suffered, to allow the Supplier to repair the Defects at its own expense; or

- iii) to accept the IT Performance conditionally on a condition to be agreed upon; if the Supplier fails to meet the conditions set at the time of conditional acceptance in a timely manner, the provisions under i shall apply.
- 9.6 The provisions of the previous paragraph shall not apply if the Supplier proves that Acceptance is being withheld as a result of Defects that the Principal should reasonably have discovered when going through the Acceptance Procedure for the first time.
- 9.7 For Defects that cannot be solved within the agreed timing schedule, it may be decided by mutual agreement to apply an acceptable temporary workaround and/or to find a solution for this at a later date.
- 9.8 Defects that (individually or collectively) do not prevent the use for productive purposes of (the relevant part of) the IT Performance cannot constitute grounds for non-Acceptance, without prejudice to the Supplier's obligation to remedy them in the short term.
- 9.9 If the IT Performance is delivered in parts, there will be an Acceptance Procedure after each delivery and subsequently an overall Acceptance Procedure after Acceptance of the last part of the IT Performance, the entire IT Performance as well as the cohesion of partial deliveries ('sum of the parts') being tested for Defects. Acceptance only occurs after successful completion of the overall Acceptance Procedure.
- 9.10 Acceptance is deemed to have taken place if the Principal has commissioned the IT Performance for productive purposes within its organisation, unless the commissioning of the IT Performance for productive purposes is related to delays or failures on the part of the Supplier.

Artikel 10. Maintenance and support

General

- 10.1 Unless otherwise agreed, the Supplier shall perform Maintenance on the IT Performance for the Fee described in the Agreement. The Maintenance commences from the Acceptance of (the relevant part of) the IT Performance.
- 10.2 The conditions to be described below apply as (minimum) conditions for Maintenance, unless deviated from in the Agreement/SLA.
- 10.3 The Maintenance includes, unless otherwise agreed, at least the following services:
- i) Corrective Maintenance;
 - ii) Preventive Maintenance;
 - iii) Innovative Maintenance;
 - iv) User support.

- 10.4 The principle for Maintenance is that it takes place in a way that is least disruptive to the Principal's business processes. Maintenance that is or may be disruptive to the Principal's business processes will as far as possible also be notified in advance in a timely manner.

Contact availability, reporting faults and Defects

- 10.5 In the context of Maintenance, the Supplier may in any case be contacted on working days between 09.00-17.00.
- 10.6 Both Defects and other failures may be reported to the Supplier.
- 10.7 User support includes in any case answering questions related to the Agreed Use.
- 10.8 If and insofar as the Supplier proves that it is not to blame for a fault or Defect, it is not obliged to remedy it. If the Principal nonetheless gives instructions to attempt the said repair, the Supplier is entitled to charge for the repair costs separately.

Service Level Agreement

- 10.9 The Supplier declares itself prepared - if and insofar as this is not already provided for in the Agreement - to conclude one or more Service Level Agreements (SLAs) at the Principal's first request, which record detailed Service Levels with regard to the Maintenance referred to in paragraph 3 and which include measures with regard to whether or not the agreed Service Levels are met.
- 10.10 The consequences of failure to meet Service Levels are regulated in the Agreement/ SLA, on the understanding that in the case of:
- i) failure to achieve the same Service Levels for several consecutive measurement periods; or
 - ii) failure to achieve the same Service Levels 3 times during a period of 6 consecutive measurement periods;
- the Principal is entitled:
- i) to require the Supplier to submit an improvement plan by which it will resume performance in accordance with the agreed Service Levels within a measurement period; or
 - ii) to require board-level discussions from the Supplier. If the Supplier refuses such discussions, or if the Principal considers the outcome of such discussions to be unsatisfactory, the Principal is entitled to terminate the Agreement and/or the SLA(s) in full or in part.

10.11 An improvement plan, as referred to in the previous paragraph, and/or any measures stipulated in the SLA shall not detract from the Principal's other rights, including the right in addition to the measure to recover damage or loss suffered by the Principal. Penalties paid (as part of the agreed measures) are deducted from any compensation payable.

Preventive and Innovative Maintenance

10.12 In the context of Preventive and/or Innovative Maintenance, the Supplier guarantees at least:

- i) that the IT Performance will always continue to meet the Laws and Regulations relevant for the Agreed Use in a timely manner;
- ii) that the IT Performance will always remain suitable for data exchange with the other relevant parts of the Application Landscape (insofar as known to the Supplier) and in that context will continue to meet the agreed Interoperability Requirements;
- iii) that any security advisories issued by the NCSC or otherwise issued publicly that relate (in part) to the IT Performance will be followed up as soon as possible and that the risk of misuse will be mitigated as soon as possible by the timely release of Updates and/or Upgrades or otherwise;
- iv) that through the timely release of Updates and/or Upgrades, the IT Performance will always continue to meet new versions of standards specified in the Agreement as being required standards;
- v) that when Updates and/or Upgrades are released, the performance of the IT Performance remains at least the same and that the IT Performance continues to meet the Agreed Use.

10.13 At the Principal's request, the Supplier will arrange for the Implementation of Updates and Upgrades. The provisions on Implementation and Acceptance shall apply, mutatis mutandis, in that case, on the understanding that in principle there will be no Acceptance Procedure for an Update.

10.14 Except in the situation referred to in Article 34.3 (generic Remote Services), the Principal is entitled to refuse the use and/or Implementation of Updates and Upgrades, without prejudice to the Maintenance to be provided by the Supplier, provided that:

- i) there is no failure by the Supplier in the context of Maintenance if a particular Defect has been remedied in an Update and/or Upgrade and the Principal refuses to commission that Update or Upgrade;

- ii) the Principal may fall behind in commissioning an Update and/or Upgrade for a maximum of 18 months, failing which the Supplier shall be entitled to charge the demonstrable additional costs for having to provide Maintenance on a permanent basis for (the relevant part of) the IT Performance used by the Principal after that period has expired.

Reporting and monitoring

- 10.15 The Supplier shall periodically report to the Principal on the extent to which the agreed Service Levels have been met and on the level of services, including in any case Availability and Maintenance. The content and frequency of this reporting may be specified in the Agreement or SLA.
- 10.16 Upon receipt of the report, the Principal may determine whether the Supplier has met its Maintenance obligations, including its guaranteed Service Levels, by engaging a third party in accordance with artikel 25 or otherwise.

Maintenance of Third-Party Software

- 10.17 Maintenance of Third-Party Software shall, notwithstanding the previous paragraphs of this Article, be subject to any terms and conditions made known in accordance with artikel 22.

Subsequent SLA

- 10.18 Insofar as it is originally agreed that the Supplier does not carry out any Maintenance or only parts of the Maintenance referred to in paragraph 3, the Supplier hereby declares itself willing to enter into discussions at the Principal's first request in order to arrive at a Service Level Agreement (SLA).

Artikel 11. Fees, invoicing and payment

- 11.1 The fees to be paid by the Principal to the Supplier for the IT Performance are set out in the Agreement.
- 11.2 Invoicing for the fees, unless otherwise agreed, shall take place as follows. 30% of one-off fees is due only after overall Acceptance. Recurring fees are payable in advance, but 30% of the fees is due only after overall Acceptance. For Third-Party Software, 100% is due on delivery. The provisions regarding deferred payability do not apply if there is no Acceptance Procedure for the IT Performance. Arrangements for the remaining 70% of the one-off and recurring fees are made in the Agreement.

- 11.3 If the Supplier demonstrates that the work to be performed under Article 10.12 was not reasonably foreseeable or is disproportionate in scope, it shall be entitled to charge that unforeseen and/or disproportionate part of the work as additional work, provided that the Principal has given its prior consent. The absence of consent absolves the Supplier from the obligation to perform the additional work.
- 11.4 Additional work shall be reported in good time to the Principal, is always invoiced separately and does not qualify for reimbursement except with the consent of the Principal. Additional work is performed at the rates specified in the Agreement for that purpose or, in the absence thereof, at the Supplier's normal rates.
- 11.5 An invoice must comply with statutory requirements as well as the requirements set out in the Agreement. Invoices should be sent no later than three months after the relevant work has become payable. All work carried out before a new year should be invoiced by 6 January at the latest, unless otherwise agreed.
- 11.6 The payment period is 30 days after receipt of the invoice, unless otherwise agreed.
- 11.7 The Supplier shall send the invoice electronically in accordance with the applicable invoicing requirements set out in the Municipal IT Quality Standards referred to in Article 8.1, unless otherwise agreed.
- 11.8 Annually with effect from 1 January, the agreed (annual) rates and recurring fees may be adjusted by the Supplier, provided that any such adjustment is notified at least one month in advance. An increase is limited to no more than the increase (if any) of the final price index figure of [services prices for commercial services and transport \(index 2015=100\)](#), or its successor, for group J62, or J6202, published by Statistics Netherlands (CBS) at the time of notification, for the whole year compared to the price index figure for the previous year of the same index.
- 11.9 The Supplier is also entitled to pass on the demonstrable price increase in Third-Party Software, provided that this price increase could not yet have been foreseen at the time when the Agreement was concluded. If the prices of Third-Party Software fall during the term of the Agreement, the Supplier shall always charge only the current (lower) price for Third-Party Software.

- 11.10 Furthermore, if the Supplier is faced with circumstances that are neither foreseen, foreseeable nor attributable and that lead to a substantial increase in the costs of the IT Performance ($\geq 10\%$ of the Fee), it shall inform the Principal accordingly. The Parties will then expeditiously enter into discussions as to whether the said situation is indeed occurring and, if so, the extent to which the cost increase will be compensated for on a fair and reasonable basis. Instead of agreeing to compensate for the cost increase, the Principal is entitled to limit the IT Performance or terminate the Agreement. If the Agreement is terminated, the provisions of Article 24.6, introductory paragraph and at (i) shall apply mutatis mutandis.
- 11.11 If and to the extent that the fee and/or the number of Rights of Use for the use of the IT Performance has been made dependent on a number related to the Principal that is subject to change (such as number of inhabitants, extent of working area, etc.), and the Agreement does not specify a time when that number is determined (and thus the change in the fee), then this will be done once a year, with effect from 1 January.
- 11.12 The provisions of this Article regarding Third-Party Software only apply insofar as the Supplier has complied with the provisions of Article 22.1.

Artikel 12. Guarantees

- 12.1 The Supplier guarantees that:
- i) the IT Performance will contain the agreed features and comply with the Agreed Use;
 - ii) it only deploys Staff with the agreed skills and qualifications or skills and qualifications required for implementing the IT Performance, taking into account the nature of the IT Performance to be delivered and the way in which the Supplier has presented itself as an expert. It also guarantees that the Staff it deploys meet the requirements that may be imposed in this respect on a comparable service provider as a reasonably competent and reasonably acting professional;
 - iii) if the manufacturer of a Product sold to the Principal prescribes a modification thereof, for the sake of the Product's safety, the Supplier shall ensure that this modification is carried out as soon as possible, free of charge, either by itself or by the manufacturer of the Product;
 - iv) it can carry out Maintenance on the IT Performance until at least 2 years after the date of Acceptance;
 - v) the IT Performance complies and, in the event of Maintenance, will continue to comply with the Laws and Regulations relevant to the Agreed Use.

- 12.2 If, at any time during the term of the Agreement, the Principal discovers that the IT Performance or parts thereof do not comply with the aforementioned guarantees, the Principal shall inform the Supplier of this in writing or by email and, in urgent cases, also by phone. If the Supplier considers that the Principal cannot rely upon the guarantee provisions because the lack of a Defect is not part of the guaranteed properties or because the presence of the Defect can be traced back to causes for which the Supplier is not to blame or to Software or equipment not supplied or advised by the Supplier, the burden of proof in this respect rests with the Supplier.
- 12.3 A "guarantee" or "to guarantee" in these Procurement Conditions means an obligation to achieve a result, with the burden of proof referred to in the previous paragraph.

Artikel 13. Algorithmic Applications

- 13.1 In addition to the provisions of artikel 12, in the case of an Algorithmic Application, the Supplier guarantees that:
- i) the underlying processing of data (including the conclusions drawn on the basis thereof) is lawful;
 - ii) data is processed according to a structured approach to avoid as far as possible for instance socially construed bias, inaccuracies, errors, mistakes and unwanted bias in the data;
 - iii) the Algorithmic Application is accurate.
- 13.2 The Supplier shall not process data received from the Principal for its own purposes. However, the Supplier is entitled to enrich the Algorithmic Application with data derived from the data in question, provided that this enrichment can in no way be traced back to the Principal and - to the extent that the data is personal data - this is done in accordance with the Processor Agreement. The Supplier is also entitled to optimise its processes with the help of the data derived from the relevant data, provided that these actions can in no way be traced back to the Principal and - to the extent the data is personal data - this is done in accordance with the Processor Agreement.
- 13.3 When the Principal first so requests, the Supplier shall, without charging (additional) costs:
- i) provide meaningful quantitative and qualitative information on the data, (statistical) models and any visualisations used in the Algorithmic Application, as well as any other information reasonably required to justify the operation of the Algorithmic Application in a general sense;
 - ii) explain in a specific situation on an individual level why the Algorithmic Application has reached a particular conclusion or decision, in such detail that the conclusion/decision can be tested in court if necessary.

- 13.4 The Principal is entitled to share the information referred to in the previous paragraph with third parties.
- 13.5 The right to check under artikel 25 also extends to checking the correct functioning of the aforementioned prediction or decision models/algorithms, as well as the accuracy of the data underlying them.

Artikel 14. Documentation and information

- 14.1 The Supplier shall provide the Principal with sufficient and understandable Documentation.
- 14.2 The End User Documentation is in Dutch; other documentation may also be in English (unless otherwise agreed).
- 14.3 The Documentation will be and remain such:
- i) that it provides an accurate, complete and detailed description of the IT Performance to be delivered by the Supplier, as well as its functions;
 - ii) that it provides an accurate and complete description of the settings/parametrisations made by the Supplier as part of the Implementation or Maintenance;
 - iii) that users can use all features of the IT Performance and have a good understanding of its operation;
 - iv) that it can be used to test the IT Performance as part of an Acceptance Procedure;
 - v) that it can be used to manage the IT Performance adequately and embed it in the Application Landscape in accordance with the documentation requirements on embedding in the Municipal IT Quality Standards referred to in Article 8.1.
- 14.4 As soon as it appears that the Documentation is not or no longer correct or complete, the Supplier shall update the Documentation as quickly as possible and at its expense.

Artikel 15. Product Management

- 15.1 Without prejudice to any agreed Maintenance, the Supplier shall inform the Principal periodically and promptly about the timing schedule and intended functionalities for Upgrades (sometimes called 'roadmap').
- 15.2 Insofar as the Supplier facilitates a generic (physical or virtual) body or platform for (some or all of) its customers for sharing knowledge and experience about the IT Performance and/or discussing the (expected) developments of the IT Performance, the Supplier shall grant the Principal access to it free of charge and without restrictions.

Artikel 16. Liability

- 16.1 The party that culpably fails to fulfil its obligations, or acts unlawfully towards the other party, is liable to the other party for the damage or loss thus suffered and/or to be suffered by it.
- 16.2 Insofar as performance is not already permanently impossible, or the obligation results from an unlawful act or extends to compensation, paragraph 1 shall only apply with due observance of the provisions of Article 24.9 regarding default.
- 16.3 The liability referred to in paragraph 1 for personal injury and property damage and any damage or loss arising therefrom is limited to an amount of EUR 1,250,000 per event. For this purpose, related events are deemed to be a single event.
- 16.4 Liability for other damage or loss is limited to two times the Annual Fee for each event. However, the total liability in each year never exceeds four times the Annual Fee (regardless of the number of events). For this purpose, related events are deemed to be considered a single event.
- 16.5 The limitations of liability set out in this Article do not apply:
- i) to third-party claims for compensation resulting from death or injury and/or;
 - ii) in case of wilful misconduct or gross negligence on the part of the other party or its Staff; and/or
 - iii) in case of infringement of intellectual property rights as referred to in artikel 20;
 - iv) in respect of fines imposed by the regulatory authority:
 - (1) to the extent that those fines could also have been imposed directly on the Supplier but were not imposed; and
 - (2) on condition that the Principal:
 - (a) promptly informs the Supplier in writing about an investigation initiated by a regulatory authority that may lead to a fine as well as the existence and content of the fine imposed; and
 - (b) fully involves the Supplier in defending against that fine or at least the part of that fine attributable to the Supplier.
- 16.6 The Supplier is financially responsible for all obligations relating to the Supplier's Staff under tax, health insurance and social insurance legislation. The Supplier indemnifies the Principal in respect of any liability related thereto. This indemnification is not subject to the foregoing limitations of liability.

Artikel 17. Insurance

- 17.1 The Supplier has taken out and is maintaining insurance in a manner appropriate and customary to industry standards against all liability arising from the Agreement and these conditions, including in any event professional and corporate liability, or else demonstrably offers alternate sufficient guarantees to cover any liability.
- 17.2 The insurance/guarantee referred to in the previous paragraph provides cover for at least two events as referred to in Article 16.3 and 16.4 per calendar year.

Artikel 18. Confidentiality

- 18.1 The parties shall not in any way further disclose anything that comes to their knowledge in the execution of the Agreement, the confidential nature of which they know or can reasonably suspect, except to the extent that they are obliged to do so by any statutory regulation, investigation by a competent supervisory authority or ruling by the court or a dispute resolution judge appointed by the parties, or to the extent that disclosure is necessary for the execution of the Agreement or for internal deliberations.
- 18.2 The obligation referred to in the previous paragraph continues for two years after the end of the Agreement.
- 18.3 The parties oblige their Staff to observe the confidentiality obligation included in the previous paragraphs.
- 18.4 The contents of the Agreement(s) concluded under the Procurement Conditions as such may be shared with other municipalities, legal entities affiliated to municipalities and municipal partnerships.
- 18.5 The parties shall return any information received from each other that is confidential in nature when first asked to do so.
- 18.6 The party violating the confidentiality obligation contained in this Article shall forfeit to the other party an immediately payable penalty of EUR 10,000 for each violation. Related violations are deemed to be a single violation for this purpose. The provisions of this Article are without prejudice to the right to recover damage or loss actually suffered (subject to artikel 16), with penalties paid being deducted from the compensation.

Artikel 19. Force majeure

- 19.1 Any failure to perform the Agreement for which a party cannot be blamed and which is not for its own account pursuant to the law, a juridical act or generally accepted practice, constitutes force majeure.

- 19.2 In any case, force majeure on the part of the Supplier does not include: lack of Staff, strikes, illness of Staff (with the exception of pandemics), late delivery or unsuitability of goods required for the provision of the IT Performance or liquidity or solvency problems. A demonstrable failure of utility/telecommunications facilities shall, however, be regarded as force majeure, unless it is caused by Supplier or unless the IT Performance relates precisely to keeping the said facilities available.
- 19.3 If, as a result of a failure referred to in paragraph 1, the Supplier can claim any benefit that it would not have had in the event of proper performance of the Agreement, the Supplier shall compensate the damage or loss suffered by the Principal as a result of that failure up to a maximum of the value of the said benefit, on the understanding that the compensation may not exceed the agreed limitation of liability.

Artikel 20. Intellectual property

- 20.1 Unless otherwise agreed, all intellectual property rights to the IT Performance provided by the Supplier under the Agreement are vested exclusively in the Supplier or its licensor(s).
- 20.2 All rights to the processed data originating from the Principal's IT Performance are and remain vested in the Principal, regardless of where this data is stored and regardless of whether or not the data has been processed after initial receipt.
- 20.3 Unless otherwise agreed in the Agreement, the Supplier grants a right to use the IT Performance. If a fee is payable periodically for the Right of Use, the duration of the Right of Use is equal to the term of the Agreement. In other cases, the Right of Use is perpetual and irrevocable. The Right of Use shall in any case include the right to use the IT Performance (and all information/knowledge it contains) for the Agreed Use, as well as for testing purposes, including all reproductions and disclosures, temporary or otherwise, reasonably necessary for that purpose. The Right of Use does not include the right to perform exploitation acts itself (including the grant of sub-licences and assignments) unless otherwise agreed.

- 20.4 Intellectual property rights to Custom Software are vested in the Principal. Such rights are hereby assigned by the Supplier to the Principal, who hereby accepts that assignment. This assignment encompasses all present and future rights in the broadest sense. As far as permitted by law, the Supplier also irrevocably waives any personality rights to the Custom Software. The Supplier shall provide the Principal with all source codes of the Custom Software in question. The one-off purchase price for this assignment is deemed to be included in the price agreed for it. The assignment and delivery of the rights and the said source code are subject to the condition precedent of payment of the relevant price agreed for that purpose.
- 20.5 The Supplier guarantees that the IT Performance it provides to the Principal does not infringe any intellectual property rights or other rights, including personality rights, of third parties. The Supplier shall indemnify and compensate the Principal in respect of all claims by third parties based on the assertion that IT Performance provided to the Principal by the Supplier infringes the said rights of those third parties, on condition that the Principal informs the Supplier immediately in writing of the existence and substance of the claim and leaves the disposal of the matter, including the making of any settlements, entirely to the Supplier. The Principal shall provide the necessary powers of attorney, information and cooperation to that end, so that the Supplier can effectively defend itself against those claims.
- 20.6 If a third party denies the Principal the right to use the IT Performance or parts thereof (or if such a situation is imminent), the Supplier shall (or may), at its expense and at its discretion, immediately either:
- i) ensure that the Principal still obtains the right to continue the use; or
 - ii) replace the infringing component with another component that does not infringe those third-party rights; or
 - iii) modify the infringing part in such a way as to eliminate the infringement.
- 20.7 In the event of replacement or modification as referred to in (ii) and (iii), the functionality of the substitute parts shall be at least equivalent to that of the replaced parts and the guarantees in artikel 12 and, as far as applicable, artikel 13 remain fully intact.
- 20.8 If third parties hold the Principal liable in respect of an alleged violation of intellectual property rights, the Principal be entitled - without prejudice to the foregoing - to dissolve the Agreement in writing, in whole or in part, out of court. Such dissolution does not detract from the Principal's other rights.

20.9 The provisions of paragraphs 5 to 8 inclusive do not apply if the alleged infringement relates to Software or other materials made available to the Supplier by the Principal for use, adaptation, processing or maintenance, or to changes made by the Principal to the IT Performance without the Supplier's written permission.

Artikel 21. Access to data and authorisations

21.1 Without prejudice to the agreed use of the IT Performance, during the term of the Agreement the Supplier shall enable the Principal to gain access during normal office hours or agreed availability times to the data processed with the IT Performance specifically for the benefit of the Principal, as well as the (settings relating to) authorisations and the settings specifically made for the Principal (business rules, macros, etc.).

21.2 The Supplier may fulfil the obligation described in the previous paragraph by, inter alia:

- i) delivering the data stored in the IT Performance in a durable and original file format (including metadata), at least in accordance with the standard for data portability that forms part of the Municipal IT Quality Standards referred to in Article 8.1 (if applicable);
- ii) provide the Principal with Links and the corresponding Documentation, in order to enable the Principal to retrieve the data/authorisations through the Links;
- iii) provide the Principal with Documentation containing an accurate, complete and detailed description of the data models underlying the IT Performance in order to enable the Principal to access the data itself.

21.3 If and to the extent that a certain security measure (including authorisations) is circumvented by granting access to the stored data, the Supplier shall inform and explicitly warn the Principal about this.

21.4 The Principal is itself responsible for the use of the data obtained under this Article. The Principal indemnifies the Supplier in respect of any third-party claims arising from such use.

Artikel 22. Third-Party Software

22.1 If the IT Performance consists (wholly or partly) of Third-Party Software, the Supplier shall include in or with the offer (whether or not by reference to the Documentation or a location accessible to the Principal):

- i) details as to which part of the IT Performance consists of Third-Party Software;
- ii) provision of any applicable (licence and maintenance) terms and conditions;

- iii) only if requested: specification as to what extent it is possible to procure the relevant Third-Party Software elsewhere and to what extent the choice to do so has consequences for the Supplier's offer;
- iv) insofar as there is any dependence between the Third-Party Software and the other parts of the IT Performance, clarification of such dependence and what effects that dependence has on (the quality of) the IT Performance to be provided by the Supplier.

- 22.2 The Supplier shall release timely Updates and Upgrades as part of Maintenance in order to continue to guarantee compatibility with Third-Party Software on which the IT Performance depends.
- 22.3 If and as far as the Supplier proves that a Defect in the IT Performance is caused by an error in Third-Party Software, the relevant Defect shall not be regarded as a Defect, unless the Supplier should have known of the relevant error in the Third-Party Software and the effect of the relevant error in its own IT Performance could reasonably have been avoided.
- 22.4 The provisions of the previous paragraph shall not detract from the fact that the Supplier shall, where appropriate within the scope of the Maintenance, still make every reasonable effort to resolve the Defect as quickly as possible, for example by bypassing the fault in the Third-Party Software in its own IT Performance and/or by providing the Principal with Updates and/or Upgrades to the IT Performance and/or the Third-Party Software as quickly as possible.
- 22.5 The licence and maintenance conditions supplied pursuant to paragraph 1 shall prevail over the provisions of the Agreement, but only as far relating to Third-Party Software.
- 22.6 The provisions of paragraphs 3 and 5 only apply if the Supplier has complied with the information obligations referred to in paragraph 1.
- 22.7 The provisions of this Article only apply to Third-Party Software which is reproduced by the Principal within the meaning of the Copyright Act or otherwise used by the Principal, unless otherwise agreed.

Artikel 23. Substitution of Staff

- 23.1 The Principal may require the substitution of Staff if it considers their deployment no longer desirable for reasons particular to an individual.
- 23.2 If Staff are substituted, the Supplier shall not charge the Principal any related costs unless the Supplier proves that the request for substitution had no reasonable basis.

- 23.3 When substituting Staff, the Supplier shall, at the same rate, make Staff available that, in terms of expertise, education and experience, are at least equivalent to the Staff originally deployed or else comply with what the parties have agreed in this respect.

Artikel 24. Suspension, termination and dissolution

Suspension

- 24.1 The Supplier shall not be entitled to suspend its obligations except after sending a notice of default, offering the Principal a reasonable period of at least 30 days to resume compliance with the obligations and explicitly pointing out the consequences of a possible reliance upon suspension.

Termination

- 24.2 Fixed-term Agreements may not be terminated early (Article 7:408(1) of the Dutch Civil Code does not apply), subject to the specific grounds for termination in the Procurement Conditions or the Agreement. Open-ended Agreements may be terminated subject to a notice period of three (3) months for the Principal and eighteen (18) months for the Supplier respectively.
- 24.3 Even if several Agreements are interrelated (e.g. a licence agreement and a maintenance agreement), the Principal is nevertheless entitled to (selectively) terminate only part of the Agreements with effect from the end of the then current term and subject to three (3) months' notice. Moreover, such termination will have no effect on the other related Agreements.
- 24.4 The Principal is also authorised to terminate the Agreement and all related agreements, subject to a notice period of twelve (12) months, with effect from the date:
- i) when the Principal's rights and obligations pass to another party by universal title (e.g. because of a municipal redivision); or
 - ii) when the relevant activities of the Principal are outsourced to a joint arrangement or similar other entity with a public function.
- 24.5 If the Principal is required, on the basis of national policy that is altered after the time the Agreement is concluded and could not previously have been foreseen, to switch to a national facility that forms a (partial) functional alternative to the use agreed with the IT Performance by a certain date, the Principal is entitled, with due observance of a notice period of twelve (12) months, to terminate the Agreement and all related agreements (for that part) with effect from the said date.
- 24.6 In the event of termination pursuant to paragraph 4 or paragraph 5, settlement between the Principal and the Supplier shall take place on the basis of:

- i) work already carried out by the Supplier in the performance of the Agreement at the time of termination; and
- ii) costs reasonably incurred; and
- iii) obligations reasonably entered into for the future; and
- iv) loss of profit.

24.7 When calculating the settlement referred to in the previous paragraph, adjustments shall always be made for the foreseeable and/or reasonably foreseeable redeployment of production factors by the Supplier.

24.8 To the extent that the parties are unable to agree on the level of the amount referred to in the previous paragraph, this amount shall be determined by an independent expert third party appointed jointly by both parties on the basis of generally accepted accounting principles.

Dissolution

24.9 If a party fails to comply with an agreed obligation, the other party may issue notice of default to it, whereby the defaulting party is still granted a reasonable period for compliance. If there is still no compliance at that point, the defaulting party is in default. Notice of default is not necessary if the performance is subject to a final deadline, if performance is permanently impossible, or if it must be inferred from a communication or the attitude of the other party that it will fail to perform its obligation.

24.10 Without prejudice to anything else stipulated in the Agreement or arising from the law, each of the parties may dissolve the Agreement in full or in part by registered letter outside court if the other party is in default or one of the other situations referred to in paragraph 9 occurs.

24.11 Without prejudice to the other provisions of the Agreement, and without prejudice to the other provisions of the law, the Principal may dissolve the Agreement and all related agreements by registered letter within twelve (12) months after the Principal discovers that:

- i) the Supplier is applying for (provisional) suspension of payments; or
- ii) the Supplier files for bankruptcy or is declared bankrupt; or
- iii) the Supplier's business is dissolved; or
- iv) the Supplier discontinues its business; or
- v) there is a substantial change in the control of the activities of the Supplier's company, meaning that the Principal cannot reasonably be expected to continue with the Agreement; or
- vi) a substantial part of the Supplier's assets is attached (other than by the Principal); or

- vii) the National Public Administration Probity Screening Agency (Bureau BIBOB) has issued a negative opinion on the Supplier's organisation; or
- viii) insofar as the Agreement is concluded by means of a tendering procedure as referred to in the Public Procurement Act, grounds for exclusion as referred to in Section 2.86 of the Public Procurement Act arise with regard to the Supplier during the term of the Agreement; or
- ix) insofar as the Agreement is finalised through a tendering procedure as referred to in the Public Procurement Act: an optional ground for exclusion as referred to in Section 2.87 of the Public Procurement Act arises during the term of the Agreement with regard to the Supplier; or
- x) continuation of the Agreement would conflict with legislation such as sanctions legislation; or
- xi) continuation of the Agreement would be unacceptable according to standards of reasonableness and fairness, given in part the special (public) position of the Principal and the consequent respect for fundamental rights and the rule of law that may be expected of the Principal.

24.12 The Principal may also dissolve the Agreement and any related agreements if it has good grounds to believe that the court will annul the Agreement on a claim to that effect under the Public Procurement Act. In that case, paragraphs 6 to 8 shall apply, mutatis mutandis, unless the Principal proves that the unlawfulness is (partly) the fault of the Supplier.

24.13 If the force majeure situation has lasted for sixty (60) consecutive days or for a total of more than ninety (90) days within a calendar year, or as soon as it is clear that the force majeure situation will last longer than such period, the counterparty of the party relying upon force majeure shall be entitled to dissolve this Agreement prematurely, in full or in part, with immediate effect.

Consequences of termination

24.14 Without prejudice to the provisions of artikel 26 (exit), upon termination of the Agreement(s) on any grounds whatsoever, the Supplier shall return or delete, at first request and free of charge, all documents, books, records and other items (including data and information carriers) provided to it by the Principal. In the event of early termination, the foregoing applies to both parties.

Artikel 25. Right to audit and cooperation in audits at the Principal

Right to audit

- 25.1 The Principal is entitled to have the Supplier's compliance with the essential obligations under the Agreement, the Procurement Conditions and related agreements (SLA, processor agreement, etc.), as well as the correctness of invoices sent, audited within a reasonable period of time by an independent third party expert on the subject and bound by confidentiality.
- 25.2 Before having an audit carried out, the Principal shall first ask the Supplier for the information necessary on the basis of the preceding paragraph, stating the reason for the request in question, or at least in the case of generic Remote Services, shall first ask the Supplier for the certificate referred to in artikel 35.
- 25.3 The audit will only take place if the Principal - even after the request for information referred to in the previous paragraph has been answered - has a reasonable doubt about the Supplier's compliance with the obligations, or if the Principal otherwise has a justified interest in the audit (including statutory duty, instruction by regulator). The Principal will give prior notice of the reason for the audit.
- 25.4 The Supplier shall provide all reasonable cooperation for any such audit. In that context, the Supplier shall at least grant access to all relevant data and background information that may be relevant in the context of the said audit. The Supplier shall also provide access to the location where the services are provided, as far as reasonably possible.
- 25.5 The Principal warrants that the third party referred to in the first paragraph will comply with any regulations used by the Supplier. However, if the audit cannot be carried out (in full) due to the said conditions, this is at the Supplier's risk.
- 25.6 The costs of this audit are borne by the Principal (both its own costs and the Supplier's costs), unless the third party finds one or more failures of a significant nature on the part of the Supplier that are to the detriment of the Principal.

Cooperation with audits at the Principal

- 25.7 To the extent that the Principal depends on the Supplier for the performance of (legally required) audits, the Supplier shall provide all necessary cooperation for the performance of such audits. The costs of such cooperation are borne by the Principal.

Artikel 26. Exit plan, transfer, limited continuation, assignment and extended use

Exit plan (general)

- 26.1 On the Principal's first request, the Parties will prepare an exit plan or update an existing exit plan. The exit plan sets out what needs to be done to prepare for and carry out the work described in this Article. Articles 6.2 and 6.3 apply, mutatis mutandis, to the exit plan.
- 26.2 The activities referred to in this Article - namely transfer (Articles 26.5 et seq.), limited continuation (Articles 26.8 et seq.), assignment (Article 26.10) and limited extension (Article 26.11) - will be carried out in accordance with the provisions of the following documents (in case of discrepancy, the higher ranked document shall prevail):
- i) the exit plan (if drawn up); and
 - ii) the Agreement (to the extent that it provides for the consequences of termination of the Agreement); and
 - iii) the Procurement Conditions.
- 26.3 On the Principal's first request, the Parties will carry out an interim evaluation of the exit plan. Part of the evaluation may include simulating or actually performing all or part of the work described in the plan.
- 26.4 The work in connection with the exit plan will be performed at the fee stipulated in the Agreement or in the exit plan for that purpose, or, failing that, at the Supplier's then normal rates.

Transition to similar IT Performance

- 26.5 In the event of termination of the Agreement(s), on whatever grounds, the Supplier shall, on the Principal's first request, do what is reasonably necessary to ensure that a new supplier or the Principal itself can provide a similar IT Performance for the Principal without hindrance (with the exception of the release of the source code of the Software).
- 26.6 As part of the reasonable measures referred to in the previous paragraph, the Principal may in any case choose from (to be further elaborated in the exit plan):
- i) continued compliance by the Supplier with its obligations under artikel 21;
 - ii) the destruction by the Supplier of the data for which the Principal is responsible (in exchange for submission of proof of destruction);
 - iii) the Supplier's technical stripping and dismantling of (part of) the IT Performance.

26.7 Notwithstanding the provisions of paragraph 4, the aforementioned services shall be provided free of charge if the Agreement is terminated due to an attributable failure on the part of the Supplier. In any event, the work referred to in paragraph 6(ii) shall be carried out free of charge upon request.

Limited continuation of IT Performance

- 26.8 The Supplier hereby declares its willingness, on termination of the Agreement(s) - on any grounds whatever - on the Principal's first request:
- i) to provide a new IT Performance or limited continuation of the existing IT Performance with which the Principal remains able to access the data stored with the current IT Performance; and
 - ii) to (continue to) provide a limited form of Maintenance on the IT Performance referred to in the previous paragraph (namely within the context of the limited functionality referred to in the previous paragraph).
- 26.9 For the duration, costs and conditions for the IT Performance referred to in the previous paragraph:
- i) the duration is at least such a duration that the Principal can meet its statutory administration obligations;
 - ii) the costs are reasonably proportionate to the original costs for the entire IT Performance (proportionate to the reduced functionality), on the understanding that necessary extensions of Third-Party Software may be charged in full;
 - iii) subject to the provisions of the previous paragraph, the conditions are the same as those of the Agreement.

Assignment of IT Performance

26.10 The Principal is entitled to assign the IT Performance in full or in part, including all associated Rights of Use and all claims in connection with Maintenance, on equal conditions (including equal scope of the Rights of Use) to a joint arrangement or other entity with a public function as part of an outsourcing of part of the activities of the Principal. The Supplier shall provide all necessary cooperation for the aforementioned assignment. The Supplier is not entitled to charge for the assignment as such, but is entitled to charge for any additional work to be performed. Third-Party Software may only be assigned to the extent not precluded by law or the applicable licence terms (cf. Article 22.5).

Extended use

26.11 The Supplier also declares its willingness to allow the Principal, if it so desires, to extend the use of the IT Performance beyond the termination date for a reasonable period of time, if the work in accordance with the Exit Plan has not been completed on time. A fee will be charged for this in proportion to the most recent applicable usage fees (where necessary extensions of Third-Party Software may be charged in full), unless the late completion of the Exit work is attributable to the Supplier (in which case the extension will be free of charge).

Artikel 27. Applicable law and disputes

- 27.1 The Agreement and all related agreements are governed exclusively by Dutch law.
- 27.2 The Uniform Laws prepared by the Diplomatic Conference on the Unification of the International Sales Law ('LUF' and 'LUVI') held at The Hague in 1964 and the United Nations Convention on Contracts for the International Sale of Goods do not apply.
- 27.3 All disputes (including disputes that only one of the parties considers as such) that may arise between the parties as a result of the Agreement or agreements resulting from it will be brought before the competent court in the judicial district of the Principal.

II. Privacy, security and archiving

Artikel 28. Processor relationship

28.1 To the extent that the Supplier, in the context of performing the Agreement, processes personal data for the Principal in the capacity of processor within the meaning of the General Data Protection Regulation, that processing is subject to the Processor Agreement.

Artikel 29. Information security

29.1 The Supplier warrants that the IT Performance can be used by the Principal to meet the information security standards included in the Municipal IT Quality Standards referred to in Article 8.1 (insofar as relevant to the IT Performance), or else another agreed information security standard.

29.2 If the IT Performance is (partly) managed by the Supplier (e.g. in the case of Remote Services), or comprises services provided by the Supplier, the Supplier shall also apply security to data other than personal data in accordance with the standard in the Processor Agreement, or else the information security standard referred to in paragraph 1, or else another agreed standard.

29.3 The Supplier warrants that all Staff it engages will work in accordance with the agreed information security standards, or else standards of an equivalent or better level.

29.4 The Supplier shall periodically make backups of the processed data, such that the data can be restored with minimal data loss in the event of a disaster. Unless otherwise agreed, the maximum data loss rate (RPO) is 24 hours and the maximum recovery time (RTO) is 16 working hours.

29.5 The Supplier will report on information security incidents. The provisions of Articles 10.15 et seq. apply mutatis mutandis.

29.6 Information about the security measures taken is deemed to be confidential information as referred to in artikel 18, notwithstanding the right of the Supplier to share information about the generic security protocols it has taken with its other clients and other third parties involved in security.

Artikel 30. Archiving

30.1 Unless otherwise agreed, the Supplier shall arrange for demonstrable management and protection of managed data by security measures, preservation measures and checks with regard to archiving, in accordance with the requirements of the Municipal IT Quality Standards referred to in Article 8.1.

- 30.2 The Supplier shall, during the term of the Agreement, (i) demonstrably retain the data it processes for the Principal to which a retention period applies pursuant to the Municipal IT Quality Standards, or else the Agreement, for the duration of that retention period and (ii) not delete such data except with the consent of the Principal.
- 30.3 The Supplier is in a position to migrate archived documents to the Principal's archive systems in accordance with the requirements in the Municipal IT Quality Standards. The Supplier shall perform the work for the actual migration of archive documents at the rates and conditions stipulated in the Agreement, or in the absence thereof at the Supplier's normal rates and on conditions to be agreed upon.
- 30.4 If, at the time of suspension, termination or dissolution of the Agreement, the Supplier holds the Principal's archive records which, because of the placement and configuration of the IT Performance, are not also held by the Principal as custodian, the Supplier undertakes to act as if it had received a notification under Section 11.1 of the Public Records Act 1995 (regardless of whether the archive records in question are included in Third-Party Software).

III. Remote Services

Artikel 31. General

- 31.1 The Supplier shall make all data such as URLs and login details available to the Principal that is necessary to make actual use of the IT Performance.
- 31.2 If a web browser is required for use of the IT Performance, the IT Performance must function correctly in the (i) most recent and (ii) still supported version of all common browsers (such as Chrome, Edge, Firefox and Safari) without requiring further plug-ins or imposing other requirements on the Application Landscape.
- 31.3 The Supplier shall configure the IT Performance in such a way that incidents at other customers of the Supplier do not or cannot adversely affect the IT Performance.
- 31.4 The Supplier is not entitled to suspend the Remote Services, except to the extent that continuation cannot reasonably be required. A mere one-off non-payment does not justify this.

Artikel 32. Acceptance Procedure

- 32.1 Unless otherwise agreed, the Acceptance Procedure takes place in a separate environment that is separated from the environment used for productive purposes.
- 32.2 The acceptance environment has the same properties as the production environment, except insofar as those properties are not necessary for the Acceptance Procedure or for other testing purposes.
- 32.3 During the Acceptance Procedure, Corrective Maintenance and Preventive Maintenance is already performed on the acceptance environment as far as necessary for the Acceptance Procedure. The associated costs are deemed to be included in the fee for the Implementation.

Artikel 33. Stored data

- 33.1 The Principal itself is fully responsible at all times for the use it makes of the Remote Services and for the data it stores, retrieves, distributes and otherwise uses with the help of the Remote Services.
- 33.2 If and to the extent that there are indications or suspicions that the data processed by means of the Remote Services is unlawful vis-a-vis third parties, the Supplier shall inform the Principal of this as quickly as possible.
- 33.3 The Supplier shall not delete the data concerned without prior consultation with the Principal, unless the data is so obviously illegal and the urgency of the case means that the Supplier cannot wait for prior consultation with the Principal.

Artikel 34. Maintenance and Availability

- 34.1 Unless otherwise agreed, from the moment of Acceptance of the IT Performance, the specific agreements regarding Maintenance (also) apply to the Remote Services (such as the guaranteed Service Levels and the agreed Availability).
- 34.2 If and insofar as there are no agreed Service Levels regarding the Availability of the Remote Services in the Agreement, a Service Level of 98% Availability per month on working days between 09.00-17.00 applies.
- 34.3 Contrary to the provisions of Article 10.13, in the case of Remote Services, the Supplier arranges for the installation of Updates and Upgrades. The provisions of Article 10.14 do not apply in the case of generic Remote Services offered by the Supplier to multiple customers, unless otherwise agreed. However, the Supplier shall always explicitly announce Updates and Upgrades that cause downtime or affect the use of the IT Performance in advance and in good time. The Supplier shall also always make up-to-date Documentation available about all Updates and Upgrades (whether or not via online portals or on other usual locations).

Artikel 35. Periodic third-party certificate

- 35.1 For generic Remote Services offered by the Supplier to multiple customers, the Supplier shall submit annually, no later than the second quarter of each calendar year, a third-party certificate (TPC) or valid (ISO) certification or description of comparable quality system from a registered EDP auditor or other relevant independent accredited expert regarding the quality of processes at the Supplier. The TPC should describe whether the measures to safeguard the security of the processed data as well as the reliability and continuity of the services to be provided have been sufficiently implemented, taking into account the norms and standards applied generically by the Supplier for the IT Performance in question.
- 35.2 The third-party certificate referred to in the previous paragraph expressly does not cover any specific arrangements made by the Principal with the Supplier in addition to or in deviation from the generic norms and standards used by the Supplier. However, the provisions of artikel 25 continue to apply for those specific arrangements.
- 35.3 The costs of submitting the TPC or certification referred to in paragraph 1 are borne by the Supplier.

35.4 Should the TPC or certification referred to in paragraph 1 show any findings identified by the auditor as critical (high priority), the Supplier shall make an improvement plan available to the Principal within 3 months and will actually implement that improvement plan. The improvement plan should describe measures that address the relevant concerns evidenced by the TPC or certification. The costs of implementing the improvement plan are borne by the Supplier, unless otherwise agreed. The provisions of this Article do not detract from the Principal's other rights.

Artikel 36. Safeguarding continuity

36.1 In view of the high dependence on the Supplier and the continuity risk in the event of incidents and calamities (such as bankruptcy) that exists with Remote Services, the Supplier hereby declares itself willing to make additional arrangements with the Principal in order to reduce the said risks.

36.2 The additional arrangements referred to in the previous paragraph may include (all for a reasonable fee):

- i) making arrangements for the periodical return or delivery to a third party of the data processed by the Supplier (data escrow); and/or
- ii) entering into an agreement with a third party to the effect that the third party in question is jointly and severally liable for or warrants the performance of the Agreement; and/or
- iii) concluding a (tripartite) agreement with a third party to the effect that the third party in question will (permanently) have all the necessary data at its disposal to be able to provide (all or part of) the IT Performance under the Agreement - whether or not on the basis of a new agreement - in place of the Supplier.