



ROC GENERAL IT PURCHASE CONDITIONS 2019 (RAIIV-2019)

(based on ARBIT-2018)

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GENERAL PROVISIONS

The General IT Purchase Conditions (hereinafter to be referred to as RAIIV-2019) consist of General Provisions and Special Provisions. These General Provisions apply to all IT agreements entered into by the Client. The Special Provisions apply to specific IT agreements entered into by the Client.

Article 1. Glossary

Where in these conditions the following terms are capitalised, they are defined as follows:

- 1.1. Acceptance: the Client's approval of the Deliverable (or part(s) thereof).
- 1.2. Acceptance Procedure: procedure set out in the Agreement to assist the Client in evaluating whether or not it will proceed with Acceptance of the Deliverable.
- 1.3. Handover: the delivery by the Co-contracting Party of Products in the manner determined in the Agreement, as evidenced by a receipt issued by the Client in respect thereof.
- 1.4. Specifications: the documents (incl. more detailed information and modifications) put at the Co-contracting Party's disposal, in which the Client's organisation, the Deliverable and the Co-contracting Party's intended use thereof, as well as the tendering procedure, are described and explained.
- 1.5. Appendix: a schedule to the Agreement which constitutes part thereof once initialled by the parties.
- 1.6. Source Code: the totality of program instructions in their original programming language, including Documentation pertaining thereto, intended for the purpose of implementation by a computer, in such form that a programmer possessing knowledge and experience of the programming method and technology used can modify the software using it.
- 1.7. Documentation: each description of the Deliverable and its characteristics, regardless of whether intended specifically for the installation, implementation, use, administration and/or maintenance thereof.
- 1.8. Final Deadline: a deadline expressly agreed by the parties as being such, in respect of which, when exceeded, the party to which the deadline applies will be in default, without any notice of default being required.
- 1.9. Defect: every failure and/or other fault as a consequence of which the Deliverable is not suitable for the Agreed Use.
- 1.10. Usage Right: the right on the basis of which the Client is authorised to install and use the Standard Software in accordance with the Agreed Use, including all reproductions and disclosures deemed reasonably necessary to that end, whether temporary or not.
- 1.11. Implementation: the totality of actions and measures required in order to made the Client's organisation suitable for the Agreed Use of the Product and/or Software.
- 1.12. Installation: the placement and connection of the Product and/or installation of the Software by the Co-contracting Party.
- 1.13. Supplier: the Co-contracting Party to the Agreement which has undertaken to supply a Product or provide a Usage Right.
- 1.14. Materials: items (including auxiliary materials) required for the installation, implementation, use and/or maintenance of the Deliverable, such as cables, smart cards and physical data carriers containing Software.
- 1.15. Additional Work: work not included in the Contract which leads to costs over and above the Fee.
- 1.16. New Version: a subsequent version of the Standard Software with primarily new or modified functionalities, regardless of whether released under a different name.
- 1.17. Object Code: Translation of the Source Code into code which a computer may read and run directly.
- 1.18. Maintenance: work to be carried out by the Contractor with the intention of repairing and/or improving the Deliverable.
- 1.19. Contract: work to be performed by the Contractor on behalf of the Client which is not included under any employment contract.
- 1.20. Client: the party on behalf of which the Agreement is concluded, or ROCvA, ROCvF, VOvA.
- 1.21. Contractor: the Co-contracting Party to the Agreement, which has undertaken to implement the Contract.
- 1.22. Delivery: the offering by the Contractor of the Deliverable (or part(s) thereof) for Acceptance.

- 1.23. Agreed Use: the use of the Deliverable intended by the Client as is, or should reasonably be, apparent to the Co-contracting Party at the time of the Agreement's conclusion on the basis of the Specifications and/or on the basis of the information referred to in Article 4, this insofar as such use is not expressly excluded or limited in the Agreement.
- 1.24. Agreement: that agreed between the Client and the Co-contracting Party, including the Conditions.
- 1.25. Patch: correction to the Standard Software intended to be temporary.
- 1.26. Personnel: the members of staff and/or auxiliary persons to be engaged by the parties in the performance of the Agreement.
- 1.27. Deliverable: the Product to be supplied, Contract to be performed or Usage Right to be provided by the Co-contracting Party, or a combination thereof, including Materials and Documentation.
- 1.28. Product: the item which the Supplier supplies to the Client under the Agreement.
- 1.29. Software: the set of program lines to be delivered by the Co-contracting Party as may be used, either directly or indirectly, by a computer in order to achieve a certain result to be described in detail. A distinction is to be made between Standard and Bespoke Software.
- 1.30. Standard Software: Software designed for general use which is not provided to the Client exclusively.
- 1.31. Improved Version: a subsequent version of the Standard Software in which Defects have been remedied and/or its performance has been otherwise improved.
- 1.32. Fee: the total price agreed for the Deliverable.
- 1.33. Conditions: the ROC General IT Purchase Conditions (RAIIV-2019), consisting of these General Provisions and all Special Provisions.
- 1.34. Co-contracting Party: the Contractor or Supplier with which the Agreement has been concluded.
- 1.35. Working Days: calendar days, except weekends and public holidays within the meaning of Section 3 of the General Extension of Time Limits Act.

Article 2. Contact persons and escalation

- 2.1. The parties will each designate a contact person to maintain contacts in relation to the performance of the Agreement. The parties will inform each other as to who they have designated as their contact person.
- 2.2. Contact persons may only represent and bind the parties in relation to the performance of the Agreement. They are not entitled to amend the Agreement.
- 2.3. Without prejudice to the provisions of Article 37, the Parties have an internal escalation procedure or will ensure that such procedure be drawn up.

Article 3. Status of notifications

Notifications of importance to the performance of the Agreement made by one party to the other, including commitments and any further agreements, will only bind the parties if made or confirmed in writing by a person authorised to do so.

Article 4. Obligation to investigate and provide information

- 4.1. In order to determine the Client's intended use of the Deliverable, the Co-contracting Party will familiarise itself sufficiently regarding:
 - a. the objectives with which the Client is concluding the Agreement;
 - b. the Client's organisation, where relevant to the Agreement.
- 4.2. In the performance of the obligation to investigate and provide information referred to under Article 4.1, the Co-contracting Party will also form an opinion with regard to the feasibility of the Deliverable within the parameters indicated by the Client.
- 4.3. The Client will provide the Co-contracting Party with sufficient information in respect of the provisions of Article 4.1. On request, the Client will provide the Co-contracting Party with additional information insofar as this is not of a confidential nature and is reasonably considered necessary to the Agreement's performance. Where something is not clear, the Co-contracting Party will make enquiries with the Client in a timely manner.
- 4.4. The parties will keep one another informed in respect of developments and changes which are (or may be) of importance to the Agreement's performance.

Article 5. Quality assurance

- 5.1. Quality assurance is part of the Agreement.
- 5.2. Quality assurance entails that, in the performance of the Agreement, measures will be taken which are aimed at the Client's being able to make the Agreed Use of the Deliverable.
- 5.3. The Co-contracting Party will take these measures of its own volition. In addition, the Client remains entitled to propose such measures. The Co-contracting Party is obliged to cooperate within reason to those measures, and to implement the results thereof within reason.

Article 6. Handover

- 6.1. The Co-contracting Party will perform the Handover in a single act.
- 6.2. At Handover, the parties will make a visual check of quantity and as to any damage visible on the exterior.
- 6.3. Where damage is identified, the Client does not have to take possession of the Product. This is without prejudice to the Co-contracting Party's obligation to perform the Handover in a timely manner.
- 6.4. The Client will provide the Co-contracting Party with a receipt for the Products received. This receipt is without prejudice to the Client's rights under the Agreement.
- 6.5. The Co-contracting Party will use sustainable packaging materials wherever possible and will ensure that these materials are disposed of in an environmentally-friendly manner.

Article 7. Transfer of risk and ownership

- 7.1. The risk of damage or loss of Products which are the subject of the Deliverable or part thereof is transferred to the Client on Handover.
- 7.2. Notwithstanding the provisions of Article 8, ownership of the Deliverable (or part(s) thereof) is transferred on Acceptance to the Client.

Article 8. Intellectual property rights

- 8.1. All intellectual property rights which may or will be exercised at any place or time in respect of the Deliverable, are vested in:
 - a. the Client, insofar as these concern a Deliverable which is for the Client specifically, or is developed or manufactured for the Client specifically, and/or is or will be realised under the Client's management or supervision or on the basis of its instructions or designs. Where necessary, these rights will be transferred to the Client by the Co-contracting Party under the Agreement, which transfer will subsequently be accepted by the Client;
 - b. the Co-contracting Party or a third party in all other cases. In such cases, the Co-contracting Party will grant the Client a non-exclusive right, to be determined further in accordance with the Agreement, to use the Deliverable, which will in any case be sufficient for the performance of the provisions of the Agreement(s).
- 8.2. By signing the Agreement, the rights referred to in Article 8.1(a) of the Agreement will be transferred to the Client. To the extent that the transfer of those rights requires a further instrument at any time, the Co-contracting Party hereby irrevocably authorises the Client in such case to draw up such an instrument, and to also sign it on behalf of the Co-contracting Party, notwithstanding the Co-contracting Party's obligation to provide assistance in the transfer of these rights on the Client's request, without being able to set any conditions in relation thereto. To the extent necessary, the Co-contracting Party hereby irrevocably authorises the Client to register or copy the transfer of these intellectual property rights in the relevant registers, or to have a third party do so.
- 8.3. In the event of a difference of opinion between the parties regarding intellectual property rights in respect of any Deliverable (or part(s) thereof), in the absence of evidence to the contrary, it will be assumed that such rights are vested in the Client. The Client may proceed with the Agreed Use regardless of the outcome of that dispute.
- 8.4. On behalf of itself and its Personnel, the Co-contracting Party hereby distances itself from any so-called 'personality rights' which may be vested in it, as referred to in Section 25(1)(a) to (c) of the Copyright Act, to the extent to which that legislation allows for such distancing. The Co-contracting Party warrants the Client that it is also entitled to carry out this distancing on behalf of its Personnel.

- 8.5. The Co-contracting Party indemnifies the Client against third-party claims in respect of any breach of the intellectual property rights (whether alleged or concrete) of those third parties, including personality rights as defined in Section 25(1) of the Copyright Act and comparable claims in respect of knowledge, illegal competition and suchlike. On request of the Client, the Co-contracting Party will take up the defence in any legal proceedings against the Client in relation to the Deliverable which may be initiated due to breach of the intellectual property rights of any third party. In relation thereto, the Client will notify the Co-contracting Party immediately of any such proceedings, and provide the Co-contracting Party with the necessary authorisations and assistance. The Co-contracting Party also indemnifies the Client against all damage and costs which it may be ordered to compensate or pay in such proceedings, as well as against the cost of those proceedings themselves, including, but not limited to, costs in relation to legal advice sought in respect thereof.
- 8.6. In case of any alleged breach of the intellectual property rights of any third party, at its own expense, the Co-contracting Party will take all measures which may contribute to preventing the stagnation of the Client's business operations and to limiting the costs to be incurred and/or damage to be suffered by the Client as a consequence thereof.
- 8.7. Notwithstanding the provisions of Articles 8.5 and 8.6, should proceedings be brought by any third party against the Client due to breach of intellectual property rights, the Client may fully or partially terminate the Agreement extrajudicially, notwithstanding its further rights in respect of the Co-contracting Party, including but not limited to any entitlement to compensation.

Article 9. Documentation

- 9.1. Documentation will be drafted in such a way that, with the assistance thereof, the Deliverable may be used, administered and maintained properly by the Client and third parties.
- 9.2. The Client may reproduce Documentation, and modify and publish it for use within its organisation, without owing any further payment for it, provided any designations and copyrights, etc. appearing thereon are preserved.

Article 10. Licences

- 10.1. To the extent to which a licence is required for the performance of the Agreement pursuant to any domestic or international regulation, the Co-contracting Party is responsible for obtaining and retaining such a licence.
- 10.2. The Co-contracting Party will immediately notify the Client of everything which in its opinion is or may potentially be in contravention of the licence.

Article 11. Acceptance

- 11.1. The Client is not obliged to make any payment to the Co-contracting Party prior to Acceptance having taken place. Payments made prior to Acceptance are always made under the suspensive condition of Acceptance.
- 11.2. The Client will inform the Co-contracting Party within 30 days of Delivery or Handover whether it accepts the Deliverable. It may do so by means of an explicit notification intended for that purpose, or by sending the test report referred to in Article 59.3, should the Bespoke Software be approved therein.
- 11.3. Acceptance includes the Documentation.
- 11.4. Should the Client fail to inform the Co-contracting Party whether it accepts the Deliverable within the deadline specified in Article 11.2, it will notify the Co-contracting Party thereof prior to that deadline's expiry, providing reasons and stating the term in which it will subsequently inform the Co-contracting Party of whether it accepts the Deliverable.
- 11.5. In the absence of such notification as that referred to in Article 11.2 or 11.4, and if the additional term for Acceptance referred to in Article 11.4 expires without further notice from the Client, the Deliverable is considered to have been accepted by the Client.
- 11.6. Should the Client accept the Deliverable despite the observed presence of one or more Defects, it will inform the Co-contracting Party thereof in the notification or in the test report referred to in Article 11.2. The Co-contracting Party will repair those Defects in due observance of the provisions of Article 12.5.

Article 12. Warranties

- 12.1. The Co-contracting Party warrants that it will only deploy Personnel which possess the agreed skills and qualifications, or those required for the performance of the Deliverable, taking into account the character of the Deliverable to be supplied and the manner in which the Co-contracting Party has demonstrated its expertise. It also warrants that the Personnel it deploys meet the requirements that a similar service provider might expect of reasonably competent and reasonably acting colleagues in this respect.
- 12.2. The Co-contracting Party warrants that it will not put or leave Personnel at the Client's disposal that are also employed by third parties if, as a result, such Personnel may find itself subject to a conflict of interests.
- 12.3. The Co-contracting Party warrants that it will remedy Defects at its own expense for a period of twelve months following Acceptance. Should the Client wish to invoke this warranty, it will inform the Co-contracting Party hereof in writing, and in case of emergency, by telephone. The Co-contracting Party will repair Defects immediately, depending on the seriousness and nature of these. Repairs will be carried out in consultation with the Client where necessary.
Should the Co-contracting Party demonstrate that a Defect has occurred which the Client should reasonably have observed during implementation of the Acceptance Procedure, it may charge the Client for any additional costs incurred in the repair of that Defect as a consequence thereof.
- 12.4. Should the Co-contracting Party introduce a temporary solution in implementation of the warranty as referred to in Article 12.3, it will compensate any damage which the Client suffers as a result thereof. Article 26 applies mutatis mutandis.
- 12.5. In addition to Article 12.3, the Co-contracting Party warrants that, following Acceptance and at its own expense, it will promptly repair Defects which the Client has observed during the Acceptance Procedure, but which did not cause it to not proceed to Acceptance.
- 12.6. The warranty referred to in Article 12.3 does not apply if the Co-contracting Party demonstrates that a Defect has arisen as a consequence of a modification to the Deliverable made by the Client or a third party engaged by it without the Co-contracting Party's consent. The warranty also does not apply when a Defect is demonstrably the consequence of incorrect, careless or incompetent use of the Deliverable on the Client's part.
- 12.7. The Co-contracting Party warrants that it can maintain the Deliverable for 5 years from the date of Acceptance, for at least 3 years of which in the manner set out in the Special Maintenance Provisions.

Article 13. Support and Maintenance

- 13.1. The Co-contracting Party will familiarise the Client and its Personnel with the use of the Deliverable on request. Should the Co-contracting Party also have been charged with implementation of the Deliverable, such support will in principle be provided by Personnel which had been involved in that.
- 13.2. The nature, extent, duration and (where applicable) costs of the support are each referred to separately in the Agreement.
- 13.3. Should the Client so desire, the Co-contracting Party will maintain the Deliverable in due observance of the provisions of Article 12.7.

Article 14. Invoicing, discounts and Additional Work

- 14.1. The Co-contracting Party will invoice in the manner prescribed in the Agreement.
- 14.2. The Co-contracting Party will send invoices electronically such that these, in due observance of the specifications provided by the Client, may be received and processed electronically.
- 14.3. Any discount agreed on the Fee or penalty will be due to the Client without prejudice to its other rights or claims, including but not limited to:
 - a. any actions for performance of the agreed obligation to deliver the Deliverable;
 - b. its right to compensation and/or;
 - c. its right to termination.
- 14.4. The Client will be notified of Additional Work in writing and in a timely manner, and this Work is always invoiced separately, and will not be eligible for compensation if the Client has not consented to such.
- 14.5. The Contractor will invoice in the Dutch language within 6 months of the Deliverable's completion, or of the project's conclusion, in the manner prescribed by the Client and stating the order number issued by the Client and an accurate specification of the service provided.
Any invoice sent 6 months after the completion or conclusion does not entitle the Contractor to payment; 6 months after completion or conclusion, the Contractor's right to invoice expires.

Article 15. Payment and auditing

- 15.1. Should the invoice satisfy the provisions of Article 14.1, the Client will pay the amounts it owes the Co-contracting Party under the Agreement within 30 days of the invoice's receipt. The 30 day term begins from the date of receipt of the invoice or, when such occurs at a later time, from the date of Acceptance.
- 15.2. Should the Client fail to pay an invoice within the term referred to in Article 15.1 without having a legally valid reason for doing so, it will owe *ipso jure* reimbursement of costs as referred to in Section 96(4) of Book 6 of the Dutch Civil Code, and the statutory interest referred to in Section 119a of Book 6 of the Dutch Civil Code on the overdue amount. The reimbursement of costs and interest payment will be paid on the Contractor's demand. Should the invoice in question fail to meet the requirements agreed, the Co-contracting Party will not be entitled to interest payment.
- 15.3. The Client may have the content of any invoice sent by the Co-contracting Party audited for correctness by an accountant that it designates to do so, such as referred to in Section 393(1) of Book 2 of the Dutch Civil Code. The Co-contracting Party will grant this accountant leave to inspect books and documents, and will provide it with any details and information it desires in doing so. The audit is confidential and will not extend further than is required in order to verify the invoice. The accountant will present their report to both parties in a timely manner. The costs of the audit will be at the Client's expense, unless it becomes evident from the accountant's investigations that the invoice is incorrect or incomplete, in which case the costs of the audit will be at the Co-contracting Party's expense.
- 15.4. The Client may suspend payment of any invoice or part thereof in respect of which the parties fail to agree for the duration of the audit. The Client will only make use of this entitlement if it has reason to doubt the accuracy of the invoice in question.
- 15.5. If any payment term is exceeded by the Client, or the Client fails to pay an invoice (either in full or in part) because it takes the view that the invoice is incorrect or the Deliverable is defective, the Co-contracting Party will waive any rights to suspend or terminate the work.
- 15.6. Without prejudice to previous or subsequent provisions, in case of attributable failure to perform, the Contractor will owe the Client an immediately payable penalty of 10% of the total value of the contract or, in case of late performance, 0.5% of the total value of the contract per day that the delay continues, notwithstanding the Client's right to compensation of further damage. All costs incurred by the Client both in and out of court in upholding its rights in case of attributable failure to perform on the part of the Contractor and/or third parties engaged by the Contractor, including but not limited to the costs of legal assistance, will be at the Contractor's expense.

Article 16. Advance

- 16.1. Should, in its performance of the Agreement, the Client make any payment for a Deliverable which has not yet been accepted, it may request that the Co-contracting Party issue it with an 'call-off' credit institution guarantee prior to such payment in the value of the amount paid in advance. The Client will not be charged for the credit institution guarantee.
- 16.2. If the Deliverable is not accepted within the agreed term due to an attributable failure on the Co-contracting Party's part, the Co-contracting Party must pay the statutory interest owed on the advance for such time as the failure continues.
- 16.3. The credit institution guarantee 'on a call-off basis' will be issued by an institution widely considered to be reliable, as designated in the context of the implementing regulations under Section 37 of the Government Accounts Act 2001, in accordance with the model appended to the Agreement. Following final Acceptance, the Co-contracting Party will receive back the document in which the guarantee has been laid down.

Article 17. Confidentiality

- 17.1. The parties will not further divulge that with which they have become familiar in the course of the Agreement's implementation, and of which they understand, or might be expected to understand, the confidential nature, except to the extent to which they are obliged to do so due to a statutory provision or legal decision. The decision of an authority authorised pursuant to Article 37.1 to settle disputes if the parties have agreed to another form of dispute resolution is here considered equivalent to a legal decision.

- 17.2. The parties undertake to oblige their Personnel to fulfil the duty of confidentiality referred to in Article 17.1.
- 17.3. On the Client's request, the Co-contracting Party will assist with the supervision by or on behalf of the Client of the safekeeping and use of confidential information by the Co-contracting Party.
- 17.4. The Co-contracting Party will put all information it has in the context of the performance of the Agreement, including any copies made thereof, at the disposal of the Client on the latter's request.
- 17.5. Any party which breaches the duty of confidentiality referred to in Article 17.1 must pay the other party an immediately payable penalty of € 50,000 per breach.

Article 18. Processing of personal data

- 18.1. To the extent to which the Co-contracting Party processes the Client's personal data in the context of the performance of the Agreement as a processor as defined in the General Data Protection Regulation, the Co-contracting Party warrants the application of appropriate technical and organisational measures, such that the processing meets the requirements of the General Data Protection Regulation and the protection of the data subjects is guaranteed. The Co-contracting Party will only process personal data on the orders and based on the written instructions of the Client, subject to statutory provisions to the contrary.
- 18.2. The parties will make provision for the processing of personal data by the Co-contracting Party for the benefit of the Client through the Processing Agreement derived from the version drawn up by the Netherlands Association of Senior Secondary Vocational Schools [*MBO Raad*].

Article 19. Security procedures and house rules

- 19.1. If the Deliverable is to be implemented at the Client's site(s), the Co-contracting Party will oblige its Personnel to observe the security procedures and house rules specified by the Client.
- 19.2. The Client may demand that certificates of good conduct pertaining to the Co-contracting Party's Personnel be submitted to the Client no less than three Working Days prior to commencement of the work.
- 19.3. The Client may subject Personnel of the Co-contracting Party which have been or will be engaged to implement the Agreement to a security screening in accordance with the Client's customary rules. The Co-contracting Party will offer its fullest assistance in any such screening. On the basis of the results thereof, the Client may refuse to accept that any given member of personnel concerned be engaged in the performance of the Agreement.
- 19.4. The Co-contracting Party will notify the Client's Contact Person in a timely manner of the arrival of its Personnel at any Client site. On the Client's request, the Co-contracting Party will ensure that its Personnel are able to provide proof of identity and evidence that they are employed by or on behalf of the Co-contracting Party. The Client may refuse access to any of its sites to anyone.
- 19.5. If a person who was or is a member of the Co-contracting Party's Personnel and who visits the Client's sites in that capacity is for any reason whatsoever no longer employed by the Co-contracting Party or is for any reason whatsoever to have their employment with the Co-contracting Party terminated, the Co-contracting Party will inform the Client's contact person thereof immediately.

Article 20. Working conditions

- 20.1. Insofar as work is carried out at the Client's site(s), the Client will ensure a satisfactory and safe workplace.
- 20.2. The Co-contracting Party will ensure that its Personnel are familiarised in a timely manner with the regulations the Client has in place concerning working conditions, and will notify the Client in a timely manner when it encounters circumstances which appear to the Co-contracting Party to breach those regulations (or have the potential to do so).

Article 21. Reference in publications and/or advertisements

The Co-contracting Party will not make any reference, either explicit or implicit, to the Deliverable in publications (including press releases) or advertisements, and will not use the Client's name as a reference, without the Client's consent.

Article 22. Replacement of Co-contracting Party's Personnel

- 22.1. The Co-contracting Party will only replace Personnel with the Client's prior consent. The Client will not refuse its consent unreasonably, and may attach conditions thereto.
- 22.2. The Client may demand replacement of Personnel if it no longer considers their deployment desirable for personal reasons.
- 22.3. In case of replacement of Personnel, the Co-contracting Party will not charge the Client for any costs incurred in relation thereto, unless the Co-contracting Party demonstrates that the request for replacement had no reasonable grounds.
- 22.4. In case of replacement of Personnel, the Co-contracting Party will provide Personnel at the same rate, which are at least equivalent to the Personnel originally deployed in terms of expertise, training and experience, or which satisfy that agreed in respect thereof.

Article 23. Sub-contracting

- 23.1. When performing the Agreement, the Co-contracting Party may only make use of the services of third parties with the Client's prior written consent. This consent, to which further conditions may be attached by the Client, will not be refused on unreasonable grounds.
- 23.2. The Client's consent is without prejudice to the Co-contracting Party's own responsibility and liability to performance of the obligations which it is under pursuant to the Agreement, and those it is under as an employer, pursuant to tax, health insurance and social insurance legislation.

Article 24. Transfer of rights and obligations

- 24.1. Neither party will transfer rights and obligations arising from the Agreement to any third party without the other party's consent. This consent, to which conditions may be attached, will not be refused on unreasonable grounds.
- 24.2. The first paragraph does not apply in respect of the establishment of limited rights, such as that of pledge.

Article 25. Imminent delay

- 25.1. Should delay in the implementation of the Deliverable be imminent, the Co-contracting Party will inform the Client thereof immediately in writing, stating the cause and consequences thereof. The Co-contracting Party will also propose measures to the Client to prevent any further delays.
- 25.2. The Client will notify the Co-contracting Party as quickly as possible following receipt of the notification referred to in Article 25.1 as to whether or not it agrees to the proposed measures. Such agreement does not mean that the Client acknowledges the cause of the imminent delay and is without prejudice to its rights in respect of the Co-contracting Party.

Article 26. Liability

- 26.1. Should a party fail in the performance of an obligation that has been agreed upon, the other party may give it notice of default, whereby the party in breach will be allowed a further reasonable term in which to perform. Should the breach continue, then the party in breach will be considered to be in default. Notice of default will not be required if a Final Deadline applies to the performance, or where it must be concluded from a notification or the other party's stance that that party will fail to meet its obligation. The party which attributable fails to meet any of its obligations is liable towards the other party for the damage it has suffered and/or has yet to suffer as a consequence.
- 26.2. Unless otherwise agreed, the liability for personal injury and property damage and damage arising therefrom referred to in Article 26.1 is limited to the following:

Total value of the agreement (entire duration)	Liability per event	Maximum liability (per contract year or part of a year that the Agreement is in effect.)
<= € 50,000	€ 150,000	€ 300,000
> € 50,000 but <= € 100,000	€ 300,000	Max. € 500,000
> € 100,000 but <= € 150,000	€ 500,000	€ 1,000,000
> € 150,000 but <= € 500,000	€ 1,500,000	€ 3,000,000
> € 500,000	€ 3,000,000	€ 5,000,000

Connected events are deemed a single event.

- 26.3. The limitations of liability referred to in Articles 26.2 and 26.3 cease to apply:
- in case of third-party claims to compensation as a consequence of death or injury and/or;
 - if wilful misconduct or gross negligence on the part of the other party or its Personnel has occurred and/or;
 - in case of breach of intellectual property rights as referred to in Article 8;
 - in case of an agreement concluded between the Parties on the basis of Article 18(2): in respect of claims to compensation, including but not limited to the fines imposed by the supervisory authority, in connection with failure to perform that agreement.
- 26.4. All obligations, including those pursuant to tax, health insurance and social insurance legislation, concerning the Co-contracting Party's Personnel, are chargeable to the Co-contracting Party. The Co-contracting Party indemnifies the Client against any liability in relation thereto.

Article 27. Force majeure

- 27.1. A failure in the performance of the Agreement which may not be attributed to either party nor is attributable to either of them according to the law, any legal act or generally accepted standards, results in force majeure.
- 27.2. Force majeure on the part of the Co-contracting Party does not include: lack of personnel, strikes, illness of Personnel, late delivery or unsuitability of goods required to implement the Deliverable or liquidity or solvency problems.
- 27.3. Should the Co-contracting Party be able to claim any advantage in respect of a failure such as referred to in Article 27.1 that it would not have enjoyed in case of proper performance, the Co-contracting Party will compensate the damage suffered by the Client as a consequence of the failure up to a maximum of the value of the advantage referred to in the previous sentence. The provisions of Articles 2 and 3 of Article 26 will then apply.

Article 28. Defects in functioning with other software or equipment

- 28.1. On the Client's request, the Co-contracting Party will participate in consultation with other co-contracting parties and/or suppliers to the Client designated by the Client, if at any time it becomes apparent that the Deliverable does not function properly in conjunction with other software and/or products used or as yet to be used by the Client.
- 28.2. The consultation referred to in Article 28.1 is aimed at discovering the cause of the failure to function adequately in conjunction and, if possible, finding a solution for this. Any reasonable costs associated with the consultation and the working out of a solution are at the Client's expense, unless the failure to function adequately transpires to be attributable to the Co-contracting Party.

Article 29. Insurance

- 29.1. The Co-contracting Party has insured itself in accordance with appropriate and generally accepted standards and as such will remain insured against third-party liability.
- 29.2. The third-party liability insurance offers cover for at least the amounts referred to in Article 26.2.
- 29.3. The Co-contracting Party will hand over proof of premium payment to the Client immediately on request, in which the Co-contracting Party, except if a statutory obligation to the contrary exists, provides notice of previous claims under the same policy in the current policy year.
- 29.4. The Co-contracting Party will not cancel any insurance as referred to in Article 29.1 for the duration of the Agreement without the Client's prior consent. Neither will the Co-contracting Party modify of its own accord and to the disadvantage of the Client the conditions under which this insurance was taken out.
- 29.5. The Contractor is permitted to hand over a certified corporate guarantee instead of the policy referred to in Article 29.3.

Article 30. Termination by notice or otherwise

- 30.1. Notwithstanding that laid down elsewhere in the Agreement, each of the parties may terminate the Agreement extrajudicially either fully or partially by means of registered letter, if the other party is in default or performance is permanently or temporarily impossible.
- 30.2. In case of force majeure, the parties will not proceed to termination before a term of 15 Working Days from the commencement of the breach has expired.
- 30.3. Without prior warning or notice of default, the Client may immediately terminate the Agreement extrajudicially by means of registered letter, if the Co-contracting Party applies for a suspension of payment (provisional or otherwise), the Co-contracting Party files a winding-up petition or is declared to be in liquidation, the Co-contracting Party's business is dissolved, the Co-contracting Party discontinues its business, a drastic change in the control over the Co-contracting Party's business activities may be said to have occurred, attachment is levied on a sizeable portion of the Co-contracting Party's assets or the Co-contracting Party may for some other reason no longer be considered capable of meeting its obligations under the Agreement. This entitlement also applies if grounds for exclusion in respect of the Co-contracting Party such as those referred to in Section 2.86 of the Public Procurement Act occur during the term of the Agreement's validity.
- 30.4. The Client may also terminate the Agreement in the manner indicated in Article 30.3 if it has good reason to assume that the courts will set aside the contract in response to an action to that effect on the basis of part 4.3.1. of the Public Procurement Act 2012.
The Co-contracting Party will then still have a claim to compensation for costs reasonably incurred in the performance of the Agreement and obligations already reasonably undertaken for the future in relation thereto. However, should the Client demonstrate that the unlawfulness is attributable (even in part) to the Co-contracting Party, the Co-contracting Party will not receive any compensation.
- 30.5. Should the Client have concluded two or more related Agreements with the Co-contracting Party, the Client may, in the cases referred to in Articles 30.1 and 30.3, also terminate the other Agreement(s) in the manner indicated. The type of relatedness referred to above must be apparent from the corresponding Agreements.
- 30.6. Notwithstanding that stipulated in the Agreement and that elsewhere in the Conditions, the Client may terminate an Agreement by means of registered letter, potentially with immediate effect. In such case, settlement between the Client and the Co-contracting Party will take place on the basis of the provisions of Articles 30.7 to 30.9. This manner of settlement may never result in the Client owing the Co-contracting Party more in relation to this termination than the Fee or the as yet to be paid portion thereof. The Client is not obliged to compensate the Contractor in any other way for the consequences of the termination of the Contract than in the way provided for in paragraphs 7 to 9 of this article.
- 30.7. In case of early termination of Contracts of a one-off character or fixed term of validity in which the liability to pay the Fee is dependent on performance or the expiry of such term, the Contractor is entitled to a reasonably determined portion of the Fee if the Client terminates any Contract under the provisions of Article 30.6. The factors taken into account in the determination hereof include the work already performed by the Contractor, the advantage enjoyed by the Client as a consequence of this, and the grounds on which the Contract has been terminated.

The Contractor is only entitled to the Fee (in its entirety or otherwise) if the Contract's termination is attributable to the Client and the payment of the entire Fee, when all of the circumstances of the case are taken into consideration, is deemed reasonable. The savings for the Contractor arising from the premature termination will be deducted from the Fee amount.

- 30.8. In case of early termination of other Agreements based on the provisions of Article 30.6, settlement between the Client and the Co-contracting Party will take place based on (a) that part of the Fee which concerns the part of the Deliverable which the Co-contracting Party has already implemented in the performance of the Agreement at the time of the termination, (b) other obligations which the Co-contracting Party has already entered into in the performance of the Agreement insofar as these cannot be limited and (c) loss of profits to the extent to which such loss does not comprise part of the costs referred to at (a) and (b).
- 30.9. Should any Agreement consist of both a Contract and other Deliverables, the provisions of Articles 30.7 and 30.8 will apply to the parts of the Agreement in question.

Article 31. Retention of right to demand performance

The failure by one of the parties to demand the performance of any provision of the Agreement within a term referred to in the Agreement will not affect the right to demand such performance thereafter, unless the party in question has agreed to the non-performance expressly in writing.

Article 32. Exit clause

- 32.1. Should the Agreement end (or end early) for any reason whatsoever, immediately on the Client's request, the Co-contracting Party will do whatever is reasonably required to ensure that a new Co-contracting Party or Client may take on the performance of the Agreement itself without hindrances, and/or may implement a similar Deliverable for the Client. The Co-contracting Party will also immediately return to the Client all of the documents, books, records and other property (including data and information carriers) put at its disposal by the Client.
- 32.2. Other than in case of the termination of the Agreement pursuant to the provisions of Articles 30.1 or 30.3, the Co-contracting Party provides the services referred to in Article 32.1 at the rates and under the conditions specified in the Agreement or, in the absence thereof, at the rates generally charged by the Co-contracting Party and conditions to be further agreed. The services referred to in Article 32.1 will be provided free of charge if the Co-contracting Party has failed imputably, including the situation referred to in the last sentence of Article 30.4.

Article 33. Bribery and conflict of interests

- 33.1. The parties will offer neither each other nor third parties - nor ask for, accept or receive from each other or third parties - any gift, reward, compensation or advantage (of any other kind whatsoever), that might be interpreted as being an illegal practice. The Client may terminate the Agreement fully or partially on identifying any such practice.
- 33.2. Should it become evident that any Personnel of the Client occupies an additional position with the Co-contracting Party (whether paid or not), or occupied such a position at the time of the negotiations towards the formation of the Agreement, without the Client having been informed thereof by the Co-contracting Party prior to the conclusion of the Agreement, the Client may terminate the Agreement without notice of default and with immediate effect extrajudicially, without being obliged to payment of any compensation, and without prejudice to any entitlement of the Client to compensation.

Article 34. Continuing obligations

Termination of the Agreement does not release the parties from obligations under it which continue by their nature. These obligations include in any case: indemnification against breach of intellectual property rights, warranties, liability, confidentiality, disputes and applicable law.

Article 35. Subsequent assignment

The Co-contracting Party may not derive any rights from the Agreement to obtain a subsequent assignment.

Article 36. Void and voided provisions

Should one or more provisions of the Agreement prove null and void or be set aside by the courts, the other provisions of the Agreement remain in full force to the greatest possible extent. The parties will consult one another concerning the null and void and voided provisions, with a view to coming to an alternative arrangement if possible. The aim and purpose of the Agreement will not be affected in the process.

Article 37. Disputes and applicable law

- 37.1. Every dispute between the parties in respect of the Agreement will be submitted exclusively to the competent court in the district of Amsterdam, unless the parties agree to another form of dispute resolution instead.
- 37.2. Dutch law will apply to the Agreement, to the express exclusion of the rules of private international law, including the Vienna Convention on Contracts for the International Sale of Goods.

SPECIAL PURCHASING PROVISIONS

These provisions apply to the purchase of IT Products (hereinafter to be referred to as Products) such as computers, laptops and servers, always in conjunction with the General Provisions of the RAIIV-2019.

Article 38. Installation

- 38.1. Should the nature and/or extent of the Deliverable give cause for such, the Supplier may inspect the site of Installation of the Product prior to the Handover.
- 38.2. Should the Supplier find the Installation site unsuitable, it will notify the Client of this as quickly as possible. Subsequently, the Client and the Supplier will determine an appropriate site in joint consultation.

Article 39. Warranties

In addition to Article 12, the Supplier warrants that:

- a. at Handover, the Product will be composed of new parts;
- b. at the time of Handover, the Product will be fully owned by it, no retention of title, limited right or third-party attachment will be vested in it, and it will be free of other charges and encumbrances.

Article 40. Special obligation to provide information

The Supplier will inform the Client of its own accord over a period of at least 3 years following the conclusion of the Agreement of possibilities to improve the Product's functioning.

Article 41. Product Modifications

Should a Product's manufacturer prescribe a modification thereof, the Supplier will ensure that such modification will be carried out as quickly as possible and free of charge by the Supplier itself or by the Product's manufacturer.

SPECIAL PROVISIONS ON USAGE RIGHTS

Should the Client obtain Usage Rights, the provisions of this special part will always apply in conjunction with the General Provisions of the RAIIV-2019.

Article 42. Additional definitions

In this special part of the RAIIV-2019, in addition to Article 1, where the following terms are capitalised, they will be defined as follows:

- 42.1. Escrow: the deposition of the Source Code (or a copy thereof) with an independent third party until the Client can use this on its own (or have a third party use it on the Client's authority), in the fulfilment of one or more provisions of the Escrow Agreement, in order to fix bugs and to otherwise maintain and administer the Standard Software.
- 42.2. Installation Copy: a data carrier containing the Standard Software for which the Usage Right has been granted.
- 42.3. Rightholder: that person in whom the intellectual property right to the Standard Software is vested.

Article 43. Nature and content of the Usage Right

- 43.1. In due observance of the Conditions, the Supplier will grant the Client a perpetual and irrevocable Usage Right to the Standard Software, as well as to New Versions, if the Client is entitled to receive these. The Usage Right does not include transfer by the Supplier to the Client of patent rights, copyrights or trademark rights to the Standard Software in question.
- 43.2. The Usage Right will in any case include, without the Client owing any additional payment for these:
 - a. the right to use all functionalities of the Standard Software to which the Client has access, even if this is not stated in the Documentation;
 - b. the right to produce copies of the Standard Software, and to save and regularly test it, and keep it in 'hot standby' format in case of emergency;
 - c. the right to use the Standard Software for testing and development purposes;
 - d. the right to use the Standard Software without any limitation or restriction in respect of location, equipment, duration or otherwise, including its use by third parties on behalf of the Client.
- 43.3. The Client may produce copies of the Standard Software and use these as often as it deems necessary for its business operations. Should it decide to do so, and subsequently owes the Supplier an additional payment as a result, it will inform the Supplier hereof promptly. The Client will not remove any designations of ownership rights or copyrights when reproducing the Standard Software.
- 43.4. Until the moment of Acceptance of the Standard Software, the Client will obtain from the Supplier a non-exclusive right to the use thereof for installation and testing purposes.
- 43.5. Should the Supplier only repair Defects in the Standard Software by means of releasing Patches or Improved Versions, even if it has not agreed any Maintenance with the Supplier, the Client will be entitled to the receipt and use thereof free of charge for the duration of the warranty period referred to in Article 12.3.

Article 44. Warranties

In addition to Article 12, the Supplier warrants that:

- a. the Standard Software does not contain any technical features, functions or other peculiar elements which may at any time obstruct the Agreed Use, whether temporarily or otherwise;
- b. Should it not be the Rightholder to the Standard Software, it is authorised by the Rightholder to provide these Usage Rights to third parties on its behalf. The Supplier will provide the Client with a copy of this authorisation on request.

Article 45. Provision of a Copy of the Installation

- 45.1. Where possible, the Supplier will provide the Client with an Installation Copy, or enable it to make one itself. The price of this will be included in the Fee.
- 45.2. Should the Client be entitled to receive New Versions, the provisions of Article 45.1 will also apply in respect thereof.
- 45.3. Should the Installation Copy become unusable or be damaged to such an extent that the Agreed Use is no longer possible, the Supplier will immediately provide the Client with a new Installation Copy of the originally delivered version on request, as well as any Improved and New Versions of it the Client is already using, or it will enable the Client to make these itself. In addition, where applicable, the Supplier may claim compensation only for the cost price of the materials and the Installation Copy.

Article 46. Conversion into other Usage Rights

- 46.1. Should at any time the Supplier wish to convert the Usage Right granted to the Client into another usage right in respect of the Standard Software, it will enter into consultation with the Client on this matter in advance, as well as on the matter of the conversion ratio to be applied herein. Such a conversion will not entail any adverse effects on the Client of any kind whatsoever.
- 46.2. Should the parties fail to reach any agreement following the consultation referred to in Article 46.1, the Client may continue to exercise its Usage Right in full.

Article 47. Escrow

- 47.1. The Client may at all times demand that the Supplier provide Escrow, even where this has not initially been agreed.
- 47.2. Escrow includes information not made public which the Client may reasonably require for error recovery, maintenance and administration of the Standard Software, in order that it may continue with the Agreed Use thereof. The Escrow will comply with that which is customary on the Dutch market in respect hereof at the time of its conclusion.
- 47.3. Should Escrow be part of the Agreement, the Supplier will provide the Client with evidence proving that the Escrow satisfies the provisions of the Agreement in respect hereof, or the Supplier will promptly ensure that such measures are taken.
- 47.4. Should Escrow not be part of the Agreement, the Client will remain entitled to demand that such a scheme be implemented thereafter, or it may at any time join an Escrow agreement such as referred to in Article 47.2. Any reasonable costs related to that are at the Client's expense..

SPECIAL CONTRACT PROVISIONS

The provisions of this special part will always apply in conjunction with the General Provisions of the RAIIV-2019 if the Supplier provides services for the benefit of the Client such as advisory services, development of Bespoke Software, management of IT projects, taking responsibility for the administration and operation of an IT infrastructure, network and workplace services, or Secondment.

CONTRACTS IN GENERAL

Article 48. Additional definitions

In this special part of the RAIIV-2019, in addition to Article 1, where the following terms are capitalised, they will be defined as follows:

- 48.1. Secondment: the posting by the Contractor to the Client of Personnel to perform work under the Client's management and supervision.
- 48.2. Bespoke Software: Software which has been developed or is to be developed specifically for the Client, or modifications to Standard Software specifically for the purposes of the Client.

Article 49. Working hours and location

The work will be performed at the time and place stated in the Agreement. The Client may change the location at which the work is to be performed, provided it notifies the Contractor of the change no less than 3 Working Days before its commencement. Should the change demonstrably lead to higher costs for the Contractor, the Client will reimburse those costs. In the opposite case, the Client is entitled to an equivalent reduction in the Fee.

Article 50. Deployment of specific Personnel

Should the Client have concluded the Agreement with a view to its performance by one or more specific persons, the Contractor will ensure that those persons are also in fact charged with such performance, and will remain so.

Article 51. Progress reporting and meetings

- 51.1. The Contractor will report to the Client in the manner stated in the Agreement concerning the course of its work. In doing so, it will provide insight into the course and state of the work, the number of hours spent on the Contract and other aspects of relevance to the Contract's progress.
- 51.2. The parties will consult each other as often as either of them deems necessary with regard to the progress of the work.

Article 52. Professional liability insurance

Without prejudice to the provisions of Article 29, the Contractor has insured itself in a manner considered generally acceptable and, given the nature and extent of the Contract, customary, and will in this way retain professional liability insurance.

Article 53. Terms of employment

- 53.1 In its implementation of the Contract, the Contractor will comply with applicable legislation in the area of terms and conditions of employment and with the collective bargaining agreement applicable to it and its employees.
- 53.2 The Contractor will document all arrangements in relation to the terms and conditions of employment for the purpose of the implementation of the Contract in a clear and accessible manner.
- 53.3 If requested to do so, the Contractor will immediately provide competent authorities with access to these arrangements in relation to the terms and conditions of employment, and will cooperate on any checks, audits or wage validations.

- 53.4 If requested to do so, the Contractor will immediately provide the Client with access to the arrangements in relation to the terms and conditions of employment referred to in paragraph 2 should the Client deem this necessary in connection with the prevention or processing of a claim for wages in respect of work performed in the performance of the Contract.
- 53.5 The Contractor will impose the obligations arising from the foregoing paragraphs in full on all parties with which it concludes contracts for the purpose of performing the Contract, and also stipulates that these parties will subsequently impose such obligations in full on all parties with which they in turn conclude contracts for the purpose of performing the Contract.

SPECIFIC CONTRACTS

ADVISORY SERVICES

Article 54. Day-to-day management and supervision

The day-to-day management and supervision of the implementation of the Contract will rest with the Contractor.

Article 55. Project leaders

Each of the parties may appoint a project leader whose competences, tasks and responsibilities will be set out in the Agreement.

Article 56. Project staging

If the project is to be executed in stages, the various project stages will be specified in the Agreement. In addition, the work involved in the separate stages will be specified, as will the work for which Final Deadlines will apply, which result such work should lead to and how this work is to be concluded.

DEVELOPMENT OF BESPOKE SOFTWARE

Article 57. Management and supervision, appointment of project leaders and project staging

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

Article 58. Delivery of Bespoke Software

The Contract to develop Bespoke Software includes its Delivery. Delivery takes place in Source and Object Code.

Article 59. Acceptance Procedure for Bespoke Software

- 59.1. Notwithstanding the provisions of Article 11, Acceptance of Bespoke Software will take place as follows.
- 59.2. The Contractor will inform the Client of the Delivery of the Bespoke Software in a timely manner.
- 59.3. Should the Client carry out an acceptance test (or have a third party do so on its behalf), it will draw up a test report as quickly as possible and send it signed to the Contractor. Any Defects observed will be set out in the test report, as well as whether the Client approves or rejects the Bespoke Software.
- 59.4. Should the Client approve the Bespoke Software, the date of signature of the test report will be deemed the date of Acceptance.
- 59.5. Should the Client fail to approve the Bespoke Software at the acceptance test's initial implementation, it will repeat this test entirely or partially within a reasonable term to be set by itself. The Client will then set out in a supplementary test report whether the Defects observed during the first test have been repaired and whether it will now approve the Bespoke Software.
- 59.6. Should the Client reject the Bespoke Software, the Contractor will repair the Defects observed at its own expense within a reasonable term to be granted by the Client, which commences on the date of signature of the test report.

Should the Contractor fail to meet the deadline of this term, the Client may repair the Defects at its own expense following prior notification to the Contractor, or have a third party do so. In such case, the Contractor will provide its full assistance in doing so free of charge, by among other things providing any information necessary for that purpose to the Client immediately on the latter's request. Should the Client repair a Defect itself for reasons such as those referred to above, or have a third party do so, this will be without prejudice to the Contractor's responsibilities for the Bespoke Software agreed.

- 59.7. Should the Client reject the Bespoke Software once again following the second acceptance test, the Contractor will as a consequence be in default. In that case, the Client may terminate the Agreement extrajudicially with immediate effect without any warning or notice of default being required to do so.
- 59.8. The provisions of Article 59 are without prejudice to the provisions of Article 30. In other words, the Client is not obliged to continue the procedure in Article 59 if the Co-contracting Party is in default on other grounds.

Article 60. Maintenance of Bespoke Software

- 60.1. Should the Client maintain the Bespoke Software itself, or have a third party do so on its behalf, the Contractor will support it therein on request for a fee in line with market rates. To this end, the Contractor will provide the necessary information (including any additional information) to the Client, or a third party engaged by it for this purpose. The foregoing also applies to management activities in respect of Bespoke Software which the Client itself performs or has a third party perform.
- 60.2. Should the Client also have agreed Maintenance with the Contractor, that which is stated in that Agreement in respect thereof will apply.

SECONDMENT

Article 61. Scope of application

Secondment is only said to exist, and thus Articles 61 to 67 to apply, if the Agreement in question is designated by the parties expressly as being a Secondment Agreement.

Article 62. Warranties

In addition to the provisions of Article 12.1, the Contractor warrants that it can always provide sufficient Personnel to the Client in order for the Agreement to be performed properly.

Article 63. Working Days and Hours

- 63.1. The Working Days and Hours of Personnel provided by the Contractor are equal to those of the Client's Personnel at the site in question.
- 63.2. Overtime is only said to have taken place if work is performed on the Client's request outside of the Working Days and Hours referred to in Article 63.1. Work of at most half an hour which follows on from the working hours referred to in Article 63.1 is not considered overtime.

Article 64. Supply and employment outside of the Netherlands

- 64.1. The Client will not supply Personnel seconded to it to third parties without the Contractor's consent.
- 64.2. The Client will not set Personnel seconded to it to work outside the Netherlands without the Contractor's consent.

Article 65. Days' leave and course days

- 65.1. The Personnel of the Contractor will take leave in consultation with the Client and taking the normal progress of the work into account.
- 65.2. Leave which is taken by Personnel of the Contractor is at the Contractor's expense.
- 65.3. The costs of courses followed at the Client's request as well as the time required in doing so are at the Client's expense.

65.4. The Client may designate a number of days annually on which its office will be closed for reasons to be further specified. In such case, no work will be performed at that site by Personnel of the Contractor either.

Article 66. Indemnity

The Contractor indemnifies the Client against claims from the Contractor's Personnel based on the alleged existence of an employment contract with the Client.

Article 67. Recipients' liability

67.1. The Contractor indemnifies the Client against recipients' liability for the payroll and turnover tax owed, or as yet to be owed, by the Contractor or any third parties engaged by it in connection with the performance of the Agreement.

67.2. The Client may pay the payroll and turnover tax which the Contractor has to pay in connection with the performance of the Agreement into a so-called 'G account' belonging to the Contractor. Should the Contractor not possess a 'G account', it will open a 'G account' immediately on request of the Client where possible, and will do everything necessary in order to make use of it.

SPECIAL MAINTENANCE PROVISIONS

Should the Client agree to Maintenance with the Contractor, the provisions of this special part will always apply in conjunction with the General Provisions of the RAIIV-2019.

GENERAL MAINTENANCE

Article 68. Additional definitions

In this special part of the RAIIV-2019, in addition to Article 1, where the following terms are capitalised, they will be defined as follows:

- 68.1. Remedial Maintenance: the location and repair by the Contractor of Failures which the Client has informed it of, or which the Contractor has otherwise become aware of.
- 68.2. Functionality Restoration Time: the period, expressed in Service Hours, between the moment a Failure is reported to the Contractor and the moment it is remedied.
- 68.3. Innovative Maintenance: the making available to the Client of New Versions and/or newly developed products parts and/or new Documentation by the Contractor.
- 68.4. Preventative Maintenance: the taking of measures by the Contractor in order to prevent Failures, and other forms of service provision related thereto.
- 68.5. Response Time: the time within which the Contractor (or its Personnel) must adequately respond to a notification from the Client of a Failure and other requests from the Client for the provision of services.
- 68.6. Service Levels: requirements included in the Agreement in respect of Maintenance and other agreed forms of service provision, such as Response Time and Functionality Restoration Time.
- 68.7. Service Hours: hours which fall within the agreed service period.
- 68.8. Failure: a technical problem which occurs when the Deliverable is used.

Article 69. Maintenance on previously performed Deliverables

These Special Provisions will also apply to Maintenance agreed to later between the Client and Contractor in respect of any Deliverable implemented earlier by the latter for the former.

Article 70. Time of commencement of Maintenance

The Contractor will provide Maintenance from the moment stated in the Agreement.

Article 71. Time and place Maintenance to be carried out

- 71.1. The Contractor will carry out Maintenance at or from its own site. The Contractor will only carry out Maintenance at the Client's site where such may reasonably be considered necessary.
- 71.2. Maintenance which may lead to disruption of work at the Client's site will in principle be carried out at that site outside customary working hours.
- 71.3. Should disruption of work as referred to in Article 71.2. be unavoidable given the importance of immediate remedy of the Failure, the Contractor will inform the Client thereof in a timely manner before it commences the Maintenance.

Article 72. Progress reporting and meetings

- 72.1. The Contractor will report to the Client in the manner stated in the Agreement concerning the course of its work. In doing so, it will provide insight into the course and state of its work, the number of hours spent and other aspects relevant to the performance thereof.
- 72.2. The parties will consult each other as often as either of them deems necessary with regard to the progress of the work.
- 72.3. The Contractor will take responsibility for the adequate documentation and archiving of the causes of Failures and results of Maintenance, and for modifying Documentation where necessary.

Article 73. Remedial Maintenance and temporary solutions

- 73.1. Maintenance includes Remedial Maintenance at minimum.
- 73.2. The warranty in Article 12.7 that the Contractor can maintain the Deliverable for a period of at least three years from the Acceptance in accordance with these provisions fully applies to Remedial Maintenance, even if the Client does not wish to proceed to the purchase of New Versions or the latest models of any Product.
- 73.3. The Contractor will only present a temporary solution with the Client's consent. Unless the parties agree otherwise in a specific case, the Contractor will replace any temporary solution as quickly as possible with a definitive solution.

Article 74. Preventative Maintenance

As part of Preventative Maintenance, the Contractor will inspect the Deliverable regularly, and in any case at least once per year, to ensure it is functioning properly.

Article 75. Registration, resolution and prioritisation of Failures

- 75.1. The Client will register Failures and their resolution in the manner prescribed in the Agreement.
- 75.2. When reporting a Failure, in accordance with the provisions in the Maintenance Agreement, the Client will determine the level of priority it is to be assigned.
- 75.3. The Contractor's response to a notification such as referred to in Article 75.1 will always be intended at remedying the Failure as quickly as possible, potentially by means of a temporary solution. The provisions of Article 73.3 will then apply.

Article 76. Achievement of Service Levels

- 76.1. The Contractor will do its utmost to realise Service Levels. The consequences of failure to do so are set out in the Agreement. The provisions of Article 14.3 apply here. Termination of the agreement is in any case possible when Service Levels fail repeatedly to be achieved.
- 76.2. In deviation from the provisions of Article 76.1, Functionality Restoration Time and Response Time are deemed Final Deadlines.
- 76.3. Service Levels do not affect that stipulated in the Agreement.

Article 77. Maintenance by parties other than the Contractor

The Client may only have Maintenance that it has agreed with the Contractor during the term of validity of the Agreement in question carried out by a third party with preservation of rights if the Contractor has failed to perform its obligations under the Agreement or if it receives the Contractor's consent to do so.

Article 78. Testing of results of Maintenance

The Client may test whether a Failure has actually been remedied (or have a third party do so). The Contractor is obliged to provide its assistance therein. Should it appear from the test that a Failure has not properly been remedied, the Client may recover the costs of the tests from the Contractor.

Article 79. Professional liability insurance

Without prejudice to the provisions of Article 29, the Contractor has insured itself in a manner considered generally acceptable and, given the nature and extent of the Maintenance, customary, and will in this way retain professional liability insurance.

SPECIFIC MAINTENANCE

PRODUCTS

Article 80. Product Modifications

The Contractor will carry out modifications on Products which have not been prescribed by the manufacturer or Supplier in consultation with the Client and only following the latter's agreement to the quotation pertaining thereto.

Article 81. Replacement of parts

- 81.1. Should the replacement of parts by the Contractor lead to changes in the Product's functioning, or have the potential to do so, such replacement will only take place with the Client's agreement.
- 81.2. Parts will only be replaced by parts which are new, functional and technically equivalent at minimum.

SOFTWARE

Article 82. Scope of Maintenance

In addition to the provisions of Article 73.1, apart from Remedial Maintenance, Software Maintenance also consists of Preventative Maintenance and support. Should the Client so desire, Software Maintenance will also include Innovative Maintenance.

Article 83. Support

- 83.1. In addition to the provisions of Article 13, on the Client's request, the Contractor will provide it with support in the form of advice regarding the use and functioning of Software.
- 83.2. The Client may request support from the Contractor during the time periods stated in the Maintenance Agreement.
- 83.3. Should the Client request support as referred to in Article 83.2, the Contractor will establish contact between a program specialist and the Client as quickly as possible and, where applicable, within the Response Time.

Article 84. Improved and New Versions

- 84.1. The Contractor will ensure a consistent version policy. In addition, the basic principle will be that Improved and New Versions will be made available in a timely manner. With a view to the foregoing, the Contractor will regularly explore the necessity of issuing such versions and will inform the Client as quickly as possible of the results of its investigations.
- 84.2. Interim modifications to Software as a consequence of Remedial Maintenance will be part of Improved and New Versions as much as possible.
- 84.3. The Contractor will provide the Client with a copy of a New Version for testing and evaluation purposes on request, free of charge. The Client is not obliged to put New Versions into operation.
- 84.4. Should it be agreed that the Contractor will install the Software, this obligation will also apply to New Versions which the Client wishes to put into operation.
- 84.5. Should the Contractor decide to issue other Software instead of a New Version, and to stop Innovative Maintenance on the Software the Client has in use, the Client may claim either full performance of the Maintenance Agreement or a Usage Right to the new Software under the conditions for a New Version laid down in the Agreement.