

# IT PURCHASE CONDITIONS

Koninklijke Heijmans N.V. and the companies affiliated with it in a group as referred to in Article 2:24b of the Dutch Civil Code.

Drawn up on 1 January 2025

These IT Purchase Conditions contain the following sections: General Provisions (**Section A**), as well as additional provisions in connection with the delivery of Hardware (**Section B**), Software (**Section C**), Services (**Section D**), Consultancy (**Section E**), Training Courses (**Section F**), Secondment (**Section G**), Remote Services (XaaS) (**Section H**), GDPR and Processing of Personal Data (**Section I**), and Artificial Intelligence (AI) (**Section J**).

The General Provisions (**Section A**) apply to all Agreements. The sections with additional provisions (**Sections B to J inclusive**) apply additionally to the General Provisions if the Agreement relates to one or more subjects as mentioned in the sections with additional provisions.

## A General Provisions

### General

#### Article 1: Definitions

For the purposes of these Terms and Conditions, the following terms, if used with an initial capital letter, have the following meaning:

- **Acceptance:** The Client's approval of the Service (or parts of the Service).
- **Additional Work:** Work not included in the Service that leads to costs exceeding the Fee.
- **Agreed Use:** The Client's intended use of the Service as known or reasonably expected to be known to the Contractor at the time of conclusion of the Agreement, insofar as such use is not expressly excluded or restricted in the Agreement.
- **Agreement:** The agreement between the Client and the Contractor to which the IT Purchase Conditions have been declared applicable.
- **Applicable Privacy Legislation:** All legislation, including the GDPR on the protection of Personal Data, applicable to the Processing of Personal Data in connection with the activities carried out under the Agreement.
- **Availability:** The extent to which the Service is accessible to the user, as specified in the Agreement.
- **Client:** Heijmans N.V. and/or one of its Group Companies and/or a building consortium (or other consortium) specified in the Agreement in which Heijmans N.V. and/or one of its Group Companies participates.
- **Consultancy Services:** The advisory and consultancy services as described in the Agreement.
- **Contractor:** The other party to the Agreement who has undertaken to perform the contract.
- **Custom Software:** Software developed specifically for the Client under the Agreement, including the associated Documentation.
- **Data Breach:** A breach of security that accidentally or unlawfully leads to the destruction, loss, alteration or unauthorised disclosure of or access to Personal Data transmitted, stored or otherwise Processed and as further defined in Article 4(12) GDPR.
- **Data Subject:** The person to whom Personal Data relates.
- **Data:** This means any and all data, instructions, other documentation and information, including Personal Data obtained, developed or produced or processed by the Contractor or its subcontractors and which arise from the Service or are specifically created in the context of the Agreement.
- **Defect(s):** Any malfunction and/or other defect as a result of which the Service is not suitable for the Agreed Use or cannot be used for the Agreed Use.
- **Delivery:** The delivery of Products by the Contractor in the manner specified in the Agreement and/or under the IT Purchase Conditions, as evidenced by a written receipt issued by the Client.
- **Documentation:** Any description of the Service and its characteristics, whether or not specifically intended for its installation, implementation, use, management and/or maintenance.
- **Fee:** The total price agreed for the Service.
- **Final Deadline:** A deadline expressly agreed as such by the Parties which, if exceeded, causes the party in respect of which the deadline has been set to be in default immediately, i.e. without notice of default.
- **GDPR:** Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), including the implementing legislation of the GDPR.
- **General Provisions:** The provisions in Part A of the IT Purchase Conditions.
- **Group Company:** The Client's subsidiary and group company (or companies), as referred to in Articles 2:24a and 2:24b of the Dutch Civil Code.
- **Hardware:** Tangible objects such as equipment purchased by the Client from the Contractor.
- **Improved Version(s):** A successor or new version of the Service in which Defects have been repaired and/or its operation has otherwise been improved.
- **Installation and Implementation Services:** The installation and implementation services performed by the Contractor in relation to the Product.
- **Intellectual Property Rights:** Patents, trademarks, copyrights, typographical rights, database rights (including extraction rights), registered and unregistered drawing or design rights, trade secrets and the right to keep information secret, and all rights and forms of protection of a similar nature or with the same or similar effect on the above rights, anywhere in the world, whether registered or not, including applications for registration thereof.
- **IT Purchase Conditions:** These IT Purchase Conditions.
- **Key Performance Indicator/KPI:** Any key performance standard identified as such, as defined in the Agreement.
- **Key Personnel:** The Contractor's personnel designated by the Parties in the Agreement as key personnel.
- **Location(s):** The place where the Product will be installed.

- **Main Building Contract:** The Agreement between the Client and the Principal.
- **Maintenance and Support:** Preventive maintenance, corrective maintenance, emergency maintenance of, and support in any form, relating to the Product.
- **New Version(s):** A successor version of software that forms part of the Service, including the Software or software in Remote Services, with predominantly new or modified functionalities, whether or not released under a different name.
- **Object Code:** Translation of the Source Code into a code that can be executed directly by a computer.
- **Patch:** A temporary correction of standard software.
- **Personal Data:** Any data relating to an identified or identifiable natural person that the Contractor processes or is required to process under the Agreement.
- **Personnel:** Personnel and/or assistants to be engaged by the Parties in the performance of the Agreement.
- **Principal:** The Client according to the Main Building Contract.
- **Processing:** Any action or operation or set of actions and operations which is performed on Data, Personal Data or on sets of Personal Data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.
- **Processor Agreement:** The processor agreement drawn up between the Client and the Contractor as set out in Section I. (Additional Provisions – GDPR and Processing of Personal Data).
- **Product:** Hardware and/or Software that the Contractor supplies to the Client on the basis of the Agreement.
- **Project:** The contract described in the Main Building Contract.
- **Remote Services:** Remote provision of the Service by the Contractor to the Client (such as cloud, hosting, SaaS, IaaS and PaaS).
- **Response and Resolution Times:** The agreed times within which the Contractor will respond to an issue report from the Client and resolve the Defect.
- **Service Levels:** The minimum performance standards relating to a KPI, such as Availability and Response and Resolution Times, as further set out in the Agreement.
- **Service:** The Product to be delivered by the Contractor and/or the Service(s) to be performed by it, as well as the results of Services.
- **Services:** Installation and Implementation Services, Transition Services, Maintenance and Support, Remote Services, Consultancy Services and other services provided by the Contractor.
- **Software:** The set of program rules to be delivered by the Contractor, such as those that can be used, directly or indirectly, by a computer to produce a specific, more precisely defined result. Software can be distinguished as Standard Software or Custom Software.
- **Source Code:** The set of program instructions in their original programming language, including associated Documentation, intended for execution by a computer, in such a form that an average programmer or IT service provider with knowledge and experience of the programming method and technique used can read this programming language and thus modify and maintain the software.
- **Standard Software:** Software developed for general use that is not made available exclusively to the Client, including the associated Documentation.
- **Test Plan:** The written document in which the Parties have defined the nature, method of testing and test criteria for Acceptance of the Transition and Transformation and/or the Installation and Implementation Services.
- **Transition and Transformation:** The transfer and transformation ("as is" or "transformational") of the way in which the Service is provided, in the period from the date of signature of the Agreement to Acceptance of the Service.
- **Transition Plan:** The agreed plan in which the outcome of the Transition and Transformation, milestones at which a phase of the Transition must be started or completed, tasks of the Parties and Test Plan are defined.
- **Transition Services:** All Services performed by the Contractor in the context of the Transition and Transformation.
- **Use:** With regard to the Software and/or Remote Services, the use includes the Client's right (i) to use all available features of the Software and/or Remote Services without limitation in place and time; (ii) to the use of the Software and/or Remote Services for testing purposes; (iii) to make and store (as back-up) copies of the Software and/or Remote Services; (iv) to rectify (or have rectified) errors in the Software and/or Remote Services; (v) to maintain the Software and/or Remote Services; (vi) to use the Software and/or Remote Services for all of the Client's activities; (vii) to use and store data and to retrieve and reuse the data and to modify or merge the data in the database; and (viii) to their use in connection with any associated or connected networks, including and without limitation the Internet or Intranet. The aforementioned right to the use of the Software and/or Remote Services by the Client also includes the use by and for a building consortium (or other consortium) in which the Client participates.
- **Work:** All work to be carried out by the Contractor in the context of the Service and the Agreement.
- **Working Days:** (Optional) calendar days, except weekends and generally recognised public holidays within the meaning of Section 3 of the General Extension of Time Limits Act.

## Heijmans core values

#### Article 2: Integrity and sustainability

- 2.1 The Contractor, as well as the companies affiliated with the Contractor in a group as referred to in Article 2:24b of the Dutch Civil Code, its employees, as well as subcontractors, employees and suppliers engaged by it, shall observe the standards specified in the current Heijmans code of conduct ("Code of Conduct") and act in accordance with the principles and requirements set out in the "Sustainability Statement", both of which can be found on the website [www.heijmans.nl](http://www.heijmans.nl) and which will be sent on request.
- 2.2 Without prejudice to the right to an audit, as specified in Article 12, if there is a serious suspicion that there is conduct in violation of the Code of Conduct and/or the Sustainability Statement, the Client shall be entitled to have an audit carried out by an independent party. The Contractor shall cooperate in this and shall ensure that the parties and persons mentioned in Article 2.1 also cooperate.

If the audit findings indicate that said conduct is in conflict with the Code of Conduct and/or the Sustainability Statement, the Contractor shall immediately ensure that the Contractor and/or the parties and persons mentioned in Article 2.1 act in accordance with the Code of Conduct and/or the Sustainability Statement; the Contractor shall bear any related damages, including the costs of the aforementioned audit. Acting in violation of the Code of Conduct and/or the Sustainability Statement shall be considered a material breach justifying termination of the Agreement.

## Safety

### Article 3: Safety

- 3.1 The Contractor shall make every effort and comply with all legal requirements to ensure the safety of employees, chain partners and third parties and to increase safety awareness. The Contractor shall encourage all parties involved to act proactively with regard to safety.

## Agreement

### Article 4: Conclusion of the Agreement

- 4.1 The Contractor shall maintain its offer for a period of six (6) weeks. In the event the Contractor submits its tender in the context of participation in a tender procedure by the Client, the Contractor shall maintain its tender to the Client up to six (6) months after the Principal has awarded the Project to the Client.
- 4.2 The Contractor must return the Agreement sent to it and concluded by mutual agreement, unchanged and signed, to the Client within fourteen (14) days of the date of dispatch of the Agreement. If the Contractor fails to return the Agreement within the period set out above and does not object to its contents within that period, or if the performance of the Agreement has begun, the Agreement shall be deemed to have been accepted under the conditions set out in the Agreement and subject to the IT Purchase Conditions.

## Rights and obligations of the Contractor

### Article 5: General requirements for the Service

- 5.1 The Contractor shall perform the Service in such a way that:
- the Contractor complies with all applicable legislation;
  - the Service or its performance does not cause the Client to act in violation of the applicable legislation;
  - the Service meets the highest generally accepted standards in the industry.
- 5.2 As part of the Service, the Contractor shall carry out the activities that (i) are described in the Agreement and that (ii) result from or are necessary to perform the Service in accordance with the Agreement, even if these activities are not explicitly described. The Contractor shall provide the Service as a performance obligation.
- 5.3 The Contractor undertakes to organise and carry out its business operations in such a way and to take all necessary measures to this end that it is guaranteed at all times that the Contractor can and will meet its obligations under this Agreement in a careful manner.
- 5.4 If the performance of the Service threatens to be delayed, the Contractor shall immediately inform the Client of this, stating the cause and consequences of said delay. The Contractor shall also propose measures to the Client to prevent delays (or further delays).
- 5.5 As soon as possible after receipt of the notification referred to in Article 5.4, the Client shall inform the Contractor whether or not it approves the proposed measures. Approval does not mean that the Client acknowledges the cause of the impending delay and does not affect its rights against the Contractor in relation to the cause and consequences of this delay.

### Article 6: Investigation and information obligation

- 6.1 In order to determine the Client's intended use of the Service, the Contractor has made itself sufficiently aware of:
- the objectives in relation to which the Client enters into the Agreement;
  - the Client's organisation, insofar as it is of importance for the Agreement.
- 6.2 The Contractor is obliged to notify the Client in writing if information, data, planning, procedures, instructions, etc., provided by or on behalf of the Client or decisions taken by or on behalf of the Client, contain errors or deficiencies or if the Contractor suspects such errors or deficiencies. The Contractor shall be liable for damage caused by its omissions if it fails to provide the written notice referred to in the previous sentence.

### Article 7: Personnel, expertise and experience

- 7.1 The Contractor guarantees that it will only use personnel who have the agreed skills and qualifications or those necessary for the performance of the relevant Service, taking into account the nature of the Service to be performed and the manner in which the Contractor has presented itself as an expert. The Contractor also guarantees that the personnel deployed by it meets the requirements that may be imposed in this respect on a comparable service provider as a reasonably competent and reasonably acting professional.
- 7.2 The Parties may appoint Key Personnel in the roles as agreed in the relevant Agreement. The Contractor shall only be entitled to replace Key Personnel with the Client's prior written approval; said approval shall not be withheld unreasonably.
- 7.3 The Contractor shall replace a member of the Key Personnel at the Client's request if, in the Client's reasonable opinion, the performance of said member of the Key Personnel is significantly behind what can reasonably be expected of such a member.

### Article 8: Cybersecurity

- 8.1 Without prejudice to the provisions of Section I (GDPR and Processing of Personal Data), the Contractor shall always guarantee a high level of security of the Service and Data. The Contractor shall take appropriate technical, operational and organisational measures to protect and secure the Service, Data and the network and information systems of the Contractor and the Client. The Contractor shall ensure a high level of security commensurate with what can be expected of a competent, expert and professional Contractor. The Contractor undertakes to cooperate at least once per calendar year (or more often if required by legislation and regulations or at the request of a regulator) at its own expense if the Client wishes to carry out a supplier investigation and/or an audit regarding information security.
- 8.2 If the Contractor's delivery of items and/or services also includes the delivery or provision of Software, the Contractor shall at least meet the following requirements:
- the Contractor shall have and continue to have ISO 27001 certification;
  - the Contractor shall use adequate anti-virus software and SOC/SIEM services to prevent malware, DDOS and/or other cyberattacks;
  - the Contractor shall carry out regular updates and upgrades to the software to improve security;
  - the Contractor shall make periodic back-ups of the Data so that no Data is lost in the event of disasters.
- 8.3 The Contractor shall comply with all applicable legislation and regulations in connection with the delivery of the items and/or services, including but not limited to legislation and regulations in the field of cybersecurity such as the NIS2 Directive and the resulting implementing act known as the Cybersecurity Act (hereinafter jointly referred to as "**Cybersecurity Legislation**"). The Contractor shall ensure that the items and/or services to be delivered to the Client (including software) also comply with the Cybersecurity Legislation applicable to the Client and/or its Principal, by taking the following measures, among others:
- apply policies and procedures in relation to: (i) risk analysis and security of information systems; (ii) handling of incidents; (iii) assessment of the effectiveness of security measures; (iv) the use of cryptography; (v) access to the Contractor's company/companies;
  - measures relating to business continuity (such as the use of a business continuity plan or a disaster recovery plan);
  - impose the obligations under this Article on its subcontractors, auxiliary personnel and/or suppliers involved in the provision of the Service in order to ensure appropriate security measures throughout the supply chain;
  - provide training and information to its directors and employees in the field of cybersecurity;
  - relating to the security of personnel and the management of assets;
  - where appropriate, with regard to the use of multi-factor or continuous authentication solutions, secure voice, video and text communications and secure emergency communication systems within the Contractor's company.
- 8.4 The Contractor shall immediately report to the Client any security (or other) incident that affects the delivery of items and/or services to the Client, as well as the availability of the Data for the Client, and provide information about: (i) the description of the incident, including its severity and consequences; (ii) the type of incident and its cause; (iii) the mitigating measures taken and still to be taken; and (iv) where applicable, the cross-border consequences of the incident.
- 8.5 If the Contractor engages a subcontractor or auxiliary person in connection with the provision of the Service, the Contractor shall impose the obligations under the Cybersecurity Legislation as mentioned in Articles 8.3 and 8.4 in full on such subcontractor or auxiliary person by way of a perpetual clause, with a third-party clause for the benefit of the Client. The Contractor and its subcontractors and/or auxiliary persons shall be liable for non-compliance with the obligation stated in this Article 8.5.

### Article 9: Invoicing

- 9.1 The invoices to be sent by the Contractor to the Client must comply with the requirements laid down in or pursuant to the Value Added Tax Act 1968.
- 9.2 If Section(s) 34 and/or 35 of the Debt Collection Act 1990 is/are applicable, the Contractor must also clearly and legibly state the following information on the dated and numbered invoice:
- the contract number/SAP number;
  - the Project and the project number;
  - the period and the service provided to which the invoice relates;
  - the amount of the wage bill included in the invoiced amount;
  - the Contractor's name, address and town/city;
  - the Contractor's VAT number;
  - a statement as to whether or not the reverse charge mechanism (as referred to in Section 24b of the VAT Implementation Decree 1968) is applicable. If applicable, with the indication "VAT reverse-charged". If not applicable, stating the amount of the VAT;
  - the number of the Contractor's G account as referred to in Article 18.4 (Sequential liability/Recipients' liability).
- 9.3 The Contractor's invoices must be submitted with the Project, project/order or contract number specified by the Client as well as the date of the contract. The invoice must be submitted to the branch/regional office of the relevant subsidiary acting as the Client, unless another method of invoicing has been agreed in writing.
- 9.4 The invoices must be accompanied by receipts signed for agreement by the Client's authorised representative, or man-day statements, or an entry from the Client's time registration system.
- 9.5 The Contractor is not entitled to increase the invoice with a so-called late payment surcharge.
- 9.6 The Contractor is obliged, upon request, to provide the Client with all information needed for its records or those of the Principal free of charge.
- 9.7 The Contractor shall provide the security required by the Client at the Client's first request.
- 9.8 Invoices that do not meet the requirements set out in the preceding paragraphs of this Article shall be returned without being processed and shall not be paid.

## Article 10: Confidentiality

- 10.1 The Contractor undertakes to maintain confidentiality vis-à-vis third parties regarding the content of the Agreement and all information and items developed in this context, constructions, diagrams and other business information and know-how in the broadest sense of the word.
- 10.2 The Contractor shall impose in writing the same duty of confidentiality on the personnel involved by it and/or third parties engaged by it in the performance of the Agreement.
- 10.3 The obligations arising from this Article shall continue to apply even after termination of the Agreement.

## Article 11: Insurance

- 11.1 The Contractor must have taken out appropriate and customary insurance in accordance with standard practice and therefore be insured against liability.
- 11.2 The statutory liability insurance must provide cover for at least EUR\*2,500,000 per claim.
- 11.3 Upon request, the Contractor shall provide the Client with proof of premium payments without delay, whereby the Contractor – except in the event of legal obligations preventing this – shall report previous claims under the same policy in the current insurance year.
- 11.4 If the Client has held the Contractor liable under the Agreement, the Contractor must, at the Client's request, immediately assign to the Client any related claims relating to the payment of insurance premiums under an insurance policy. By entering into the Agreement, the Contractor irrevocably authorises the Client to sign the deed of assignment in its name and tell the insurer. In this case, the Contractor shall also inform the insurer of this assignment without delay.

## Miscellaneous

### Article 12: Audit

- 12.1 The Client and its accountants, auditors and/or regulators are entitled, but not obliged, to carry out (or have carried out) an audit to inspect and check compliance with the Agreement at any time.
- 12.2. When carrying out an audit, the Contractor shall grant the Client – as well as its accountants, auditors and/or regulators – access to, among other things:
  - a. data, records, invoices, reports and other documents, including the underlying data;
  - b. the Contractor's locations, sites and/or systems, its affiliated companies and/or subcontractors engaged by the Contractor; such to enable the Client to carry out (or have carried out) the aforementioned audit and, to the extent necessary, to inspect and check the Contractor's compliance with the Agreement.
- 12.3 The Contractor shall cooperate fully with any audit by the Client, as well as its accountants, auditors and/or regulators, and shall provide all relevant access, assistance and information in a timely manner and without reservation.
- 12.4 The costs of the audit incurred by the Client and the Contractor shall be borne by the Contractor if and insofar as it appears that the Contractor is acting in violation of any provision of the Agreement, without prejudice to the Client's other rights to compensation, performance and/or termination. If the audit does not reveal that the Contractor is acting in violation of the provisions of the Agreement, each Party shall bear its own costs in connection with the audit.

### Article 13: Changes

- 13.1 Either Party may request a change. The Change Request shall be recorded in writing on a change form specifying the following: (i) Change initiated by; (ii) Description of the Change; (iii) Impact analysis; (iv) Deliverables/Results; (v) Planning and milestones; (vi) Costs/Fee; (vii) Effective Date of the Change; (viii).
- 13.2 A change may concern:
  - a. a change that adapts, extends or reduces the scope of the Service, including the addition of new services;
  - b. a change in the terms of the Agreement or of Service Levels, Fee or Appendices;
  - c. an operational change in the way the Service is performed but which does not constitute a change as described above under (a) or (b);hereinafter jointly referred to as a “**Change**”.
- 13.3 Each change form must be signed by an authorised representative of the Party requesting the Change. The Contractor may not refuse a Change Request made by the Client. The Client is not obliged to agree to a Change Request from the Contractor.
- 13.4 Each Party shall bear its own costs relating to the preparation and assessment of a Change Request, unless otherwise agreed in writing.
- 13.5 Except with the Client's express written consent, the Contractor is not permitted to implement a Change that has not been approved by the Client in accordance with the change procedure.
- 13.6 The provisions of Article 13.5 do not apply in emergencies where there is an immediate risk of loss and damage to either Party. Where there is such a risk and the Contractor therefore proceeds with a Change, it shall notify the Client as soon as possible after implementing the Change in order to subsequently follow the change procedure.

### Article 14: Indemnification against infringement of Intellectual Property Rights

- 14.1 The Contractor guarantees that performance of the Agreement and delivery of the Service will not infringe any Intellectual Property Rights of the Client and third parties. The Contractor shall indemnify and hold harmless the Client without any limitation from and against third-party claims due to infringement (or alleged infringement) of these Intellectual Property Rights. The Contractor's obligations arising from this Article shall continue to apply even after termination of the Agreement.
- 14.2 The Contractor shall immediately inform the Client in writing as soon as the Contractor becomes aware of a claim (or pending claim) by a third party regarding an alleged infringement of Intellectual Property Rights in connection with the Service provided by the Contractor. The Contractor is obliged to fully cooperate with the Client in such

disputes. Such cooperation includes, but is not limited to, providing all necessary information and documentation, granting access to relevant materials, and, if necessary, adapting or replacing the infringing elements at no cost to the Client.

### Article 15: Settlement

- 15.1 The Client is entitled to offset the amounts owed to the Contractor in connection with the Agreement against the amounts that it or one of the other subsidiaries of the Heijmans Group, or a minority interest in which a subsidiary of the Heijmans Group participates, is entitled to claim from the Contractor, including under any other Agreement and also if there is no reciprocity. The Client is not bound by the ratio arising from the Agreement between what is to be paid into the G account and what is to be paid into the Contractor's ordinary account and is therefore entitled to offset the receivable to be settled in full, or for the amount it requires, against amounts it owes that are to be credited to the Contractor's ordinary account.
- 15.2 The Client stipulates, by way of an irrevocable third-party clause for no consideration for the benefit of the Group companies, that these companies may offset claims of the Contractor against them with claims that the Client has against the Contractor.

### Article 16: Suspension rights

- 16.1 The Contractor declares that it waives its right to suspend its obligations under the Agreement.
- 16.2 Without prejudice to the suspension (and other) rights to which the Client is entitled by law, the Client shall be entitled to suspend its payment obligations if the Contractor fails or threatens to fail to fulfil its obligations, regardless of whether this failure is attributable.
- 16.3 The Contractor expressly waives its right of retention.

### Article 17: Liability

- 17.1 The Contractor shall be liable for any and all damage suffered by the Client or third parties in connection with the performance of the Agreement.
- 17.2 The Contractor shall be liable for administrative fines and/or other penalties imposed on the Client, the Principal and/or third parties as a result of an act and/or omission by the Contractor.
- 17.3 The Contractor shall indemnify and hold harmless the Client against third-party claims.

### Article 18: Dissolution/Termination

- 18.1 Any deadline agreed between the Client and the Contractor for fulfilment by the Contractor of its obligations will be a final deadline, unless otherwise agreed in writing. The Contractor will be in default by the mere expiry of a deadline specified in the Agreement. Reminders sent by the Client to the Contractor do not detract from this.
- 18.2 In the following cases, the Contractor will be in default by operation of law and the Client shall be entitled, without any notice of default or judicial intervention being required, to declare the Agreement dissolved or terminate it in whole or in part, without prejudice to its right to compensation and without prejudice to the Client's rights under the law:
  - a. if the Contractor fails to fulfil one or more of its contractual obligations, or fails to do so on time or in full, or if the Client deduces from a notification from the Contractor that it will fail to fulfil its obligations;
  - b. in case of termination (including termination or dissolution) of the Main Building Contract;
  - c. in case of the following (or an application for the following):
    - (i) bankruptcy;
    - (ii) suspension of payment (provisional or otherwise);
    - (iii) liquidation (partial or otherwise);
    - (iv) guardianship order;
    - (v) a scheme based on the Act on Court Confirmation of Extrajudicial Restructuring Plans (*Wet homologatie onderhands akkoord*, Whoa);on the part of the Contractor or of the (legal) person who has guaranteed or provided security for the Contractor's obligations;
  - d. if the Contractor's assets are placed under administration;
  - e. if the Contractor transfers or changes all or part of its business or control over it, suspends all or part of its business or otherwise ceases to operate;
  - f. if the Contractor's assets or part of them are subject to a prejudgment or executory attachment;
  - g. if the Contractor is unable to fulfil its obligations under the Agreement due to force majeure;
  - h. if the Contractor dies;
  - i. if the Contractor violates any legal provision or is subject to a fine or other measure;
  - j. if the Principal determines that the Contractor does not meet (or no longer meets) the suitability requirements set out in the tender procedure of the Main Building Contract, or if there is a reason for exclusion.In the aforementioned cases, the Client shall also be entitled to entrust the performance of the Agreement in whole or in part to one or more third parties at the Contractor's expense and risk.
- 18.3 If a party exercises the right referred to in the preceding paragraphs, the other party will be notified in writing of the full or partial dissolution or termination of the Agreement.
- 18.4 In the event of (full or partial) dissolution or termination, the Client has the right, without prejudice to its right to compensation for damages and costs, at its discretion:
  - a. to return to the Contractor, at its expense, the items that have already been delivered but are no longer to be used and/or to discontinue the work already carried out and to recover the payments already made for this Work;
  - b. to complete the Work itself or have it completed by third parties, possibly after written notice, using the items already delivered by the Contractor and the materials, equipment, etc. used by the Contractor, whether or not for a reasonable fee to be agreed subsequently.
- 18.5 The claims that the Client may have or obtain against the Contractor as a result of the dissolution or termination of the Agreement, including any claim for compensation for damages and costs, shall be payable immediately and in full.

- 18.6 If the Agreement ends (including in the interim) for any reason whatsoever, the Contractor shall, at the Client's first request, do whatever is reasonably necessary to ensure that a new counterparty or Client can take over the performance of the Agreement and/or perform a similar Service for the Client without obstacles. The Contractor shall also return to the Client without delay all documents, books, records and other goods (including data and information carriers) provided by the Client. Documents drawn up by the Contractor for the purpose of providing services to the Client also belong to the documents provided.
- 18.7 The possibility of full or partial dissolution for the Contractor is excluded.

## Article 19: Payment and final settlement

- 19.1 If the Contractor has fulfilled all its obligations under the Agreement, the Contractor may invoice the Client for the agreed price, after which payment will be made by the Client within sixty (60) days, unless Article 6:119a(6) of the Dutch Civil Code applies (to be specified in the Agreement), in which case a period of thirty (30) days applies.
- 19.2 If the Client fails to pay the invoice mentioned in the previous paragraph within sixty (60) days, the Contractor shall be entitled to a maximum of the statutory interest pursuant to Article 6:119 of the Dutch Civil Code as well as EUR 40.00 in extrajudicial collection costs.
- 19.3 Payments will be made on the basis of a schedule to be agreed, and in the absence of such a schedule, after the last delivery (in the case of Delivery of items) or after delivery of its Works (in the case of Performance of works). The Client shall only pay:
- as soon as the Works or the part to which a payment (or instalment) relates have been performed satisfactorily by the Contractor;
  - upon receipt by the Client of an invoice in accordance with the provisions of Article 6 (Invoicing); and
  - once the Contractor has demonstrated to the Client, upon request, that it has paid the amounts due to the employees involved in the Project and that it has paid the social security contributions and payroll taxes due for these employees.
- 19.4 The Contractor is obliged to submit its final settlement to the Client within four (4) weeks of completion of its Works. If the Principal and the Client have agreed on a maintenance period, the final settlement must be submitted within four (4) weeks of the expiry of this maintenance period.
- 19.5 Without prejudice to the above, payments or invoicing may only take place after the Client has received the unchanged copy of the Agreement signed by the Contractor.
- 19.6 Payment by the Client for the Work (or parts of the Work) does not relieve the Contractor of any guarantee and/or liability arising from the Agreement or the law.
- 19.7 If, due to default or incapacity of the Contractor, the Client performs all or part of its Work or has it performed by others, the Client shall be entitled to pay fair compensation directly to the Contractor's subcontractors and suppliers, at the Contractor's expense, for Work performed but for which they have not yet received payment. The Client shall not proceed with this until after having heard the Contractor in this regard. The Client's payment in this regard shall be deducted from the total sum.

## Article 20: Continuity guarantee

- 20.1 The Contractor is aware that the continuity of the Service must remain guaranteed. For this reason, the Contractor shall – at the Client's request – conclude all agreements and provide all reasonable cooperation to ensure that the continuity of the Service is guaranteed, even in the event that the Contractor applies for suspension of payment or its bankruptcy or the Contractor is declared bankrupt.

## Article 21: Exit

- 21.1 If the Agreement ends (including in the interim) in whole or in part for any reason whatsoever, the Contractor shall, at the Client's first request:
- cooperate in the transfer of the Service to the Client or a third party designated by the Client;
  - transfer files, including the Data, relating to the delivery of the Service to the Client or another supplier designated by the Client;
  - transfer all information about the Products (including their structure) to the Client;
  - transfer all files, data and other information in an accessible manner and in a manner generally accepted in the IT sector;
  - provide the Client with all other necessary information; and
  - transfer know-how to the Client and provide exit assistance;
- all as reasonably necessary to ensure a simple and smooth transfer of the Service, without avoidable inconvenience and/or interruptions of the Client's activities, to the Client itself or a third party designated by the Client.

## Article 22: Outsourcing

- 22.1 The use of third-party services by the Contractor in the performance of its obligations under the Agreement is only permitted with the prior written consent of the Client. The Client shall not withhold its consent on unreasonable grounds.
- 22.2 Notwithstanding the right to engage subcontractors under this Article, the Contractor shall remain liable for all acts and omissions of its subcontractors and of those hired or engaged by the subcontractors, as if they were its own acts and omissions.

## Article 23: Transfer

- 23.1 The Contractor may not assign, pledge or transfer ownership of the Agreement, any part thereof or any rights or claims under the Agreement to third parties. This provision has property law effect, as referred to in Article 3:83(2) of the Dutch Civil Code. The Client is entitled to transfer the Agreement to a third party by way of contract takeover. The Contractor hereby agrees to and shall provide reasonable cooperation to the Client in connection with the aforementioned contract takeover.

## Article 24: Back-to-back obligations

- 24.1 The provisions of this Article 24 apply if there is a Main Building Contract. The Contractor declares that it has taken note of the contents of the Main Building Contract between the Client and the Principal, including all documents, appendices and/or conditions forming part thereof. Insofar as this Agreement is not expressly deviated

- from in the Agreement and insofar as it relates to the Contractor's own obligation to perform, the conditions, rights and obligations as they apply or will apply between the Client and the Principal apply back-to-back to the relationship between the Client and the Contractor. The Contractor shall perform the Service in such a way that the Client meets its corresponding obligations to the Principal in good time and in full with regard to these activities. The Main Building Contract will be inapplicable only if and to the extent it is deviated from in this Agreement, in which case this Agreement shall prevail.
- 24.2 The Contractor is obliged to provide the Client with sufficient input in good time with regard to any claims for reimbursement of costs and/or extension of deadlines and/or changes, as well as with regard to any claims of the Principal, so that the Client can substantiate its claims to the Principal and defend itself against any claims of the Principal. The Contractor shall not be able to assert any more rights against the Client than the Client against the Principal.
- 24.3 Performance of the Service must take place within the periods prescribed in the Main Building Contract and the Agreement (including any performance (or other) planning). These periods are deemed final deadlines.
- 24.4 Notwithstanding the provisions of Article 14, the following will apply to payment of the Contractor's invoices. If and insofar as the Principal has proceeded to pay the Client's invoices under the Main Building Contract relating to the Service, the Client shall only then proceed with payment to the Contractor, within a reasonable period of time, of the amount representing the relevant accepted part, according to the pay-if-paid principle. Acceptance by the Principal of the part of the Service performed by the Contractor, as well as the corresponding payment by the Principal to the Client, are also conditions for payment by the Client to the Contractor.
- 24.5 If the Principal instructs the Client to implement a change, the Client is entitled to instruct the Contractor to implement this change, in whole or in part, in which case the Contractor must implement this change. Payment of changes to the Contractor shall also be made in accordance with the pay-if-paid principle described in Article 15.4.

## Article 25: Transfer of Company

- 25.1 The Contractor shall be liable for and shall indemnify and hold harmless the Client from the obligations arising from Directive 2001/23/EC and its implementing legislation in Article 7:662 et seq. of the Dutch Civil Code as a result of, or arising from, any termination (regardless of (i) the grounds for termination, and/or (ii) whether such termination is in whole or in part) of the Agreement in respect of any person currently or previously employed or engaged by the Contractor, any of its affiliates or subcontractors or any of their affiliates.

## Article 26: Dispute resolution and applicable law

- 26.1 Any and all disputes between the Client and the Contractor – including those that are only considered as such by one of the Parties – that may arise as a result of the Agreement or of agreements resulting therefrom shall be settled in accordance with the provisions of the Agreement. If the Agreement does not determine a forum, the aforementioned disputes shall be settled by the District Court of Oost-Brabant, 's-Hertogenbosch location.
- 26.2 The Agreement shall be governed exclusively by Dutch law. Application of the Vienna Sales Convention (CISG: Convention on the International Sales of Goods) is excluded.

# B Additional Provisions – Hardware

## Article 27: Applicability

- 27.1 The provisions of this Section B apply additionally to the purchase of Hardware by the Client.

## Article 28: Delivery of Hardware

- 28.1 The Contractor shall deliver the Hardware:
- on the date and to the location specified in the Agreement;
  - on working days during the Client's opening hours, unless the Client has indicated another time or place prior to the Delivery.
- 28.2 The Contractor shall deliver the Hardware in accordance with Delivered Duty Paid (DDP), pursuant to the Incoterms 2020.
- 28.3 The Contractor may not deliver the Hardware in parts without the Client's prior written consent. If it has been agreed that the Contractor will deliver the Hardware in instalments, each Delivery may be invoiced and paid separately.
- 28.4 The Hardware should be packed and secured in such a way that it reaches its destination in good condition. Unless otherwise specified in the Agreement, no costs will be charged for packing, wrapping and packaging of the Hardware. The Client shall not be responsible for returning such material.
- 28.5 The Hardware, or part thereof, which the Client rejects because it does not comply with the Agreement, shall be returned at the Contractor's expense and risk.

## Article 29: Installation of Hardware

- 29.1 The Contractor acknowledges and agrees that the location where the Client intends to use the Hardware is suitable for the installation and use of the Hardware and that no additional conditions, such as environmental requirements and other preparatory actions, are necessary and/or applicable.

## Article 30: Guarantees on the Hardware

- 30.1 The Contractor guarantees, for a period of twelve (12) months after Delivery or, if an acceptance procedure has been agreed between the Parties, after Acceptance, that:
- the Hardware meets the quality, description, specifications and other details of the Hardware as set out in the Agreement;
  - the Hardware meets all descriptions and specifications made known to the Client by the Contractor;
  - the Hardware complies with the law and all standards referred to on each part of the Hardware and on the product packaging and/or in the documentation;
  - the Hardware is suitable and of a quality that is appropriate for any intended use expressly or implicitly made known by the Client, and will be free of Defects in material, workmanship and installation;



- e. the Contractor shall, without charging any further costs, provide the Client with high-quality user manuals and other documentation for the Hardware in such a manner and quantity as the Client may reasonably request.
- 30.2 The Contractor acknowledges and accepts that if the Client does not conclude a maintenance agreement, the Client is entitled to maintain the Hardware itself or have it maintained by a third party.
- 30.3 If the Client notifies the Contractor of Defects in the Hardware as a result of which the Contractor is not in compliance with one of the warranties under Article\*19.1, the Contractor shall, at the Contractor's expense and risk, repair or replace the Hardware immediately.
- 30.4 The provisions of this Article shall continue to apply after any Delivery, inspection, Acceptance, payment or Performance under the Agreement and shall apply to any replacement, repair and/or corrective Hardware provided by the Contractor.
- 30.5 In the event of repair or replacement during the warranty period, the warranty period for the repaired or replaced items or parts thereof shall start again from the time of repair or replacement.
- 30.6 If the Contractor fails to fulfil its obligations properly or on time during the warranty period, the Client shall be entitled to repair the related defects at the Contractor's risk and expense or to have them repaired by one or more third parties, without prejudice to the Contractor's other rights and liability.

## C Additional Provisions – Software

### Article 31: Applicability

- 31.1 These provisions will also apply if the Contractor sells Software, makes it available for Use or otherwise makes it available to the Client, whether or not as part of or together with Hardware.
- 31.2 Articles 41 (Maintenance and Support) and 42 (Improved and New Version(s)) apply without prejudice to the sale or purchase of Software and the Use made available or otherwise provided by the Contractor to the Client, whether or not as part of or together with Hardware.

### Article 32: Standard Software

- 32.1 The Contractor shall provide the Standard Software as specified in the Agreement.
- 32.2 All Intellectual Property Rights to the Standard Software and Documentation rest with the Contractor or its licensors.
- 32.3 Unless expressly agreed otherwise in the Agreement, the Contractor hereby grants the Client a worldwide, non-exclusive, perpetual and irrevocable right to Use the Standard Software and the Documentation, including the Client's right to grant sublicences to persons working at its Group Companies.
- 32.4 The Parties acknowledge and accept that Use of the Standard Software is limited to use of the Standard Software in object code form.

### Article 33: Custom Software

- 33.1 The Contractor shall develop the Custom Software agreed in the Agreement. All Intellectual Property Rights to Custom Software and the associated Documentation rest with the Client, unless the Parties have agreed otherwise in writing.
- 33.2 By signing the Agreement, the Contractor unconditionally and irrevocably transfers and delivers to the Client, to the extent necessary in advance, all Intellectual Property Rights as referred to in Article 22.1, the transfer and delivery of which the Client accepts now for then. Insofar as a further deed or action is required for the performance of this transfer and delivery at any time, the Contractor hereby irrevocably authorises the Client to draw up such a written deed (or any other document for the transfer and delivery of the Intellectual Property Rights to the Client) and to co-sign it on behalf of the Contractor, without prejudice to the Contractor's obligation to cooperate in the transfer of the Intellectual Property Rights without being able to impose any conditions.
- 33.3 The Contractor hereby irrevocably waives, on behalf of its personnel and/or personnel of third parties engaged by the Contractor (to the extent permitted by law), all personality rights referred to in Section 25(1) subparagraphs a to c of the Copyright Act that rest on the Contract. The Contractor guarantees that it is authorised to waive the personality rights referred to in this Article.
- 33.4 In the event that no transfer of Intellectual Property Rights to the Custom Software and its Documentation has been expressly agreed by the Parties, the Client shall acquire a right of use that includes all the rights that the copyright holder may exercise with regard to the Custom Software and the Documentation thereof, including the right to reproduce, publish and modify the Custom Software and to have a third party do so, to the extent necessary for the Client's use of the Custom Software.
- 33.5 Unless the Parties agree otherwise in writing in the Agreement, the right referred to in the previous paragraph applies mutatis mutandis to the Source Code of the Custom Software.
- 33.6 The Contractor shall, immediately after Acceptance, deliver the Source Code of the Custom Software and associated Documentation to the Client.

### Article 34: Delivery of the Software

- 34.1 Unless otherwise agreed in the Agreement, the Contractor shall:
  - a. deliver the Software to the Location(s) and on the delivery date specified in the Agreement;
  - b. within a reasonable period of time before the applicable delivery date, provide information and assistance to the Client that will enable the Client to prepare the Location(s) for installation of the Software; and
  - c. at the Client's request, provide reasonable assistance in order to be able to carry out such preparation.
- 34.2 The Contractor shall perform Installation and Implementation Services relating to the Standard Software if this has been agreed in the Agreement.
- 34.3 Unless expressly stipulated otherwise in the Agreement, the Contractor shall perform the Installation and Implementation Services relating to the Custom Software.

### Article 35: Guarantees on the Software

- 35.1 The Contractor guarantees, for a period of twelve (12) months after Delivery or, if Installation and Implementation have been agreed between the Parties, after Acceptance, that:
  - a. the Software meets the quality, description, specifications and other details of the Software as stipulated in the Agreement;
  - b. the Software meets all descriptions and specifications submitted by the Contractor to the Client and stipulated in the Agreement;
  - c. the Software and (if applicable) the media on which the Contractor delivers the Software are free of viruses and other harmful code;
  - d. the Software is suitable and of a quality that is appropriate for any intended use expressly or implicitly made known by the Client, and will be free from deficiencies in material, workmanship and installation;
  - e. no use has been made (in the development of the Software) of any open-source software or libraries or codes licensed for a fixed period and/or under, or similar to, a General Public Licence (as defined by the Open Source Initiative or the Free Software Foundation), nor will the Software operate in such a way that it is compiled with or linked to such a licence, unless otherwise agreed in an agreement;
  - f. the Software does not infringe any Intellectual Property Rights of a third party;
  - g. the Contractor is entitled to enter into an Agreement with the Client and to grant the Client a licence for the Use of Standard Software for the purposes agreed under the Agreement;
  - h. the Software is compatible with other software as described in "Objectives" or "Interoperability";
  - i. the Contractor shall, at the Client's first request, (i) enter into an escrow agreement (including an SaaS escrow) with the Client and an escrow agent; and shall (ii) ensure that the third party who owns the Standard Software enters into an escrow agreement with the Client and an escrow agent with respect to the deposit and retention of the Source Code Materials by the escrow agent;
  - j. the Contractor shall, without incurring any further costs, provide the Client with high-quality user manuals and other documentation for the Software in a way and in the quantities that can reasonably be requested by the Client.
- 35.2 The Contractor acknowledges and accepts that if the Client does not conclude a maintenance agreement, the Client shall be entitled to maintain the Software itself or have it maintained by a third party.
- 35.3 If the Client notifies the Contractor of a deficiency in the Software, the Contractor shall immediately repair or replace the Software upon first notice and at its own risk and expense.
- 35.4 The provisions of this Article shall continue to apply after any Delivery, inspection, Acceptance, payment or Performance under the Agreement and shall apply to any replacement, repair and/or corrective Software provided by the Contractor.
- 35.5 In the event of repair during the warranty period, the warranty period for the repaired Software or parts thereof shall start again from the time of repair or replacement.
- 35.6 If the Contractor fails to fulfil its obligations properly or on time during the warranty period, the Client shall be entitled to repair the related defects at the expense and risk of the Contractor or to have them repaired by one or more third parties, without prejudice to other rights and liability of the Contractor accruing to the Client.

## D Additional Provisions – Services

### Article 36: Applicability

- 36.1 These provisions apply additionally to the provision of Services by the Contractor.

### Article 37: General provisions for Services

- 37.1 The Contractor shall perform the Services in accordance with the service description. The Services include:
  - a. all activities and services required to fulfil the obligations under the Agreement; and
  - b. all activities and services that would be performed by a competent professional, even if such activities and services are not specified in the agreed service description.
- 37.2 The Contractor shall perform the services from:
  - a. the effective date specified in the Agreement; or
  - b. any other date agreed in writing between the Parties.
- 37.3 The Contractor shall comply with the dates specified in the Agreement, or communicated to the Contractor by the Client in writing, when performing the Services.
- 37.4 During the term of the Agreement, the Contractor shall:
  - a. cooperate with the Client in all matters relating to the Services and comply with all instructions of the Client;
  - b. perform the Services with the utmost care, skill and dedication;
  - c. obtain and maintain all necessary permits and permissions to comply with applicable legislation and regulations;
  - d. comply with all health and safety rules and other reasonable security regulations applicable to the Client's premises; and
  - e. not do anything or refrain from doing something as a result of which the Client may lose a licence, influence or permission that the Client relies on in connection with performing its business, and the Contractor acknowledges that the Client can rely on the Services.

### Article: 38 Transition and Transformation

- 38.1 In the event that a Transition and Transformation is part of the Service, the Contractor shall perform Transition Services from the date specified by the Parties in the Agreement, in such a way that:
  - a. after the Transition and Transformation, the services that are replaced by the Service are provided in at least the same way as the Client enjoyed immediately before conclusion of the Agreement;
  - b. the Client's business operations are not disrupted; and

- c. the Client delivers the Performance from the scheduled effective date agreed by the Parties in accordance with the provisions of Article 40.
- 38.2 Acceptance of the Transition will be determined on the basis of the tests as described in the agreed Test Plan. If the test results show that the Service meets the criteria for passing the relevant test, as set out in the Test Plan, the relevant test shall be passed. If the test results show that the test criteria have not been met, the Contractor shall, within ten (10) working days, which is a final deadline, have taken such measures that the Service still meets the test criteria and will demonstrate this within this deadline by repeating the relevant Test.
- 38.3 If all tests have been carried out in accordance with the provisions of the Test Plan, Acceptance will be deemed to have occurred. The Client has no obligation to pay for the Transition if it has not been established that there is Acceptance in accordance with the provisions of this Article. Minor imperfections which, taken together, do not prevent the operational commissioning of the Service shall not render the Transition between the Parties as not accepted, without prejudice to the Contractor's obligation to remedy the imperfections within the shortest possible period but no later than four (4) calendar weeks.

## Article 39: Implementation

- 39.1 In the event that an Implementation is part of the Service, the Contractor shall:
- perform the Installation and Implementation Services as set out in the Agreement; and
  - complete the installation and/or performance of each Product at the Location(s) on the installation and/or implementation date set out in the Agreement.
- 39.2 The Contractor shall carry out the agreed acceptance tests for each Product in accordance with the Test Plan and within the deadline specified in the Agreement. Acceptance tests shall commence as soon as is reasonably practicable after installation and/or implementation and shall run continuously on normal working days during normal business hours. Custom Software shall not be delivered before the acceptance tests have been carried out and the resulting errors have been rectified.
- 39.3 If a Product fails the acceptance tests, the Client shall send a written notice, detailing the Defect or Defects, to the Contractor within a reasonable period of time after completion of the acceptance tests or part of these tests. The Contractor shall remedy the Defects and deficiencies and repeat the relevant test(s) within a reasonable period of time after receipt of the written notice.
- 39.4 If a Product fails to pass a repeated acceptance test within a reasonable period of time, the Client may, by means of a written notice, at its own discretion:
- determine a new date for carrying out further tests on the Product under the same conditions. If the Product fails these tests, the Client may demand that the tests be repeated;
  - reject the Product, in which case the Contractor may immediately terminate the Agreement in whole or in part and claim damages.
- 39.5 Acceptance of the Product will be deemed to have taken place by:
- the signing by the Client of a certificate of acceptance of the Product after successful completion of the acceptance tests; or if earlier
  - the expiry of fourteen (14) working days after completion of all acceptance tests, unless the Client has given written notice pursuant to Article 3.

## Article 40: Availability

- 40.1 After Acceptance of the Service, the Contractor shall perform the Service in accordance with the Service Levels. If no further Service Levels have been agreed between the Parties, standard Service Levels of 99.9% Availability per full calendar month and Response and Resolution Times of two (2) and four (4) hours respectively shall apply.
- 40.2 If the agreed Service Levels are not attained, the Contractor shall – without prejudice to the Client's other rights, such as compensation – furthermore:
- promptly conduct a root cause analysis to determine the cause of such deficiency;
  - promptly correct such deficiency;
  - issue a report to the Client with the cause of and the procedure to rectify such deficiency; and
  - issue a report to the Client with the preventive measures taken to prevent such deficiency from recurring, if within the framework of the Service.
- 40.3 The Contractor shall implement the agreed tools and procedures to measure and monitor the achieved Service in accordance with the Agreement. At the Client's request, the Contractor shall provide the Client with information about and access to such tools and procedures for verification from time to time.
- 40.4 At the end of each month in which the Service has been delivered, the Contractor shall provide the Client with a report to inform the Client of performance by and compliance with the Service Levels by the Contractor.

## Article 41: Maintenance and Support

- 41.1 Unless otherwise provided for in the Agreement, in the case of Services in respect of Maintenance and Support, the Contractor shall:
- perform Maintenance in accordance with the schedule set out in the Agreement;
  - if requested by the Client or deemed necessary by the Contractor, carry out Maintenance during a maintenance weekend (from Friday 6 p.m. CET to Monday 6 a.m. CET with a maximum of four (4) hours);
  - test the functionality of the Hardware and/or Software and make any adjustments, repairs or replacements necessary to ensure the proper functioning of the Hardware and/or Software;
  - ensure that support by telephone, e-mail or remotely is available during normal working days and hours to provide assistance to the Client with regard to remedying Defects in the Software and providing advice on the use of the Software; and
  - remedy Defects of which the Client notifies the Contractor within a timeframe appropriate to the severity of the circumstances, in accordance with the procedures set out in the Agreement;
  - if the performance of Maintenance leads to a change in the functionality of components in the Service, consult with the Client in this regard;

- g. inform the Client at least thirty (30) days in advance of the performance of Maintenance, insofar as this is not included in the schedule set out in the Agreement.

## Article 42: Improved and New Version(s)

- 42.1 The Contractor undertakes to improve the quality of the Service to a sufficient extent and to make an Improved or New Version of the Service available to the Client as soon as this is necessary. The Contractor shall inform the Client as soon as possible about the Improved Version and its content and consequences with regard to the Service. The Client is not obliged to accept an Improved Version. An Improved or New Version must not result in a reduction in the agreed functionality, ease of use, stability and security of the Service.
- 42.2 The Client shall provide the Improved and New Versions in a machine-readable form, together with the relevant changes to the Documentation, without incurring any additional costs. The Contractor may make such Improved and New Versions available by means of the possibility to download the Improved and New Versions via the Internet and shall inform the Client immediately when such a download is available.

# E Additional Provisions – Consultancy

## Article 43: Applicability

- 43.1 The provisions of this Section E apply additionally to the provision of Consultancy Services by the Contractor.

## Article 44: Performance of Consultancy Services

- 44.1 The Contractor shall perform the Consultancy Services entirely independently, at its own discretion and not under the Client's direction and supervision.
- 44.2 The Contractor is bound by a lead time for Consultancy Services that has been agreed with the Client in advance. An extension of the lead time for Consultancy Services shall be at the Contractor's risk and expense, without prejudice to the reason for the extension.
- 44.3 If required to achieve the desired result, as agreed in writing, the Consultancy Services will – where necessary – also be performed outside the Contractor's usual working days and hours.
- 44.4 The Contractor shall be liable for the Client's use of any advisory and/or consultancy report issued by the Contractor. The burden of proof that advisory and consultancy services (or how they are performed) comply with what has been agreed in writing or with what may be expected of a reasonably acting and competent contractor lies entirely with the Contractor, without prejudice to the Client's right to provide proof to the contrary by all means available.
- 44.5 The Contractor is not entitled to make any communication to a third party about the Client's methods, processes and techniques and/or the content of the advice or reports without the Client's prior written consent. The Client is free to provide the Contractor's advice or reports to a third party or otherwise make them public.

## Article 45: Reporting

- 45.1 The Contractor shall periodically inform the Client of the performance of the work in the manner agreed in writing. The Contractor shall notify the Client in writing in advance of circumstances that are or may be of importance, such as the manner of reporting, the issues which the Client wishes attention to be paid to, the Client's priorities, the availability of the Client's resources and personnel and special facts or circumstances that may not be known to the Client. The Contractor shall proactively ensure further dissemination and perusal of the information provided by the Contractor in the Client's organisation and shall evaluate this information on that basis and inform the Client thereof.

## Article 46: Fees

- 46.1 In the absence of an expressly agreed payment schedule, all fees relating to Consultancy Services provided by the Contractor shall be payable in arrears each calendar month.

# F Additional Provisions – Training Courses

## Article 47: Applicability

- 47.1 The provisions of this Section F apply additionally to the training to be organised by the Contractor (which also includes courses).

## Article 48 Training

- 48.1 The Contractor shall – if agreed – organise courses for the Client's personnel to ensure that the Services can be used or the results interpreted correctly in accordance with the arrangements and procedures laid down in the Agreement.
- 48.2 Registrations for participation by the Client's personnel in training or courses offered by the Contractor on the subject of the Service to be performed must be confirmed in writing by the Client's Contractor.
- 48.3 The Client has the right to cancel registration(s) for the training free of charge up to at least ten (10) working days before the date on which the training is due to start. In the event of timely cancellation, the Contractor shall refund any amounts paid in advance to the Client within fourteen (14) days.
- 48.4 If an employee of the Client is prevented from attending the training, the Client is entitled to have another person take the training in their place.

## G Additional Provisions – Secondment

### Article 49: Applicability

- 49.1 The provisions in this Section G apply additionally to the provision of personnel by the Contractor to the Client.

### Article 50: Secondment

- 50.1 The Contractor and the Client may agree in writing that the Contractor shall make personnel available to the Client (“**Secondment**”). In the event of Secondment, the Contractor and the Client shall specify in further detail: (i) which employee will be made available (“**Employee**”); (ii) the effective date and duration of the Secondment; (iii) the work that the Employee will perform for the Client (“**Work**”); and (iv) the extent of the Employee’s availability per week.
- 50.2 Secondment does not result in any changes to the Employee’s legal position with the Contractor. After the end of the secondment, the Employee may not derive any rights from this Secondment Agreement with respect to the Client other than the rights expressly stated in the Agreement.

### Article 51: End of Secondment

- 51.1 The Employee’s secondment to the Client ends after expiry of the period as agreed in the Agreement or otherwise by the Parties in writing, unless the Parties agree in writing that the Secondment will continue after that date for a period to be determined.
- 51.2 If the Client wishes to continue the Employee’s secondment after the date referred to in Article 51.1, the Client shall notify the Contractor of this one (1) month before the date referred to in Article 51.1.
- 51.3 The Client may terminate the Assignment in the interim subject to a notice period of one (1) calendar month, unless another period is set out in the Agreement.
- 51.4 The Contractor and the Client are entitled to terminate the Assignment immediately if:
- the employment contract between the Contractor and the Employee is terminated for whatever reason;
  - the Employee dies;
  - the Employee is no longer able to perform Work due to illness or incapacity for work lasting at least one (1) month;
  - there is such a serious or urgent reason that the Contractor can no longer be reasonably required to continue these obligations;
  - the Agreement is terminated for any reason whatsoever.

### Article 52: Employee’s wages

- 52.1 The Contractor shall continue to pay the Employee’s wages pursuant to the employment contract between the Contractor and the Employee in the usual manner during the period of secondment to the Client.
- 52.2 The Employee shall have no claim against the Client with regard to the payment of wages.

### Article 53: Invoicing

- 53.1 As compensation for the provision of the Employee, the Contractor will receive compensation from the Client, as stipulated in the Agreement or as further agreed in writing by the Parties.
- 53.2 The Contractor shall invoice the Client on a weekly basis.

### Article 54: Absence due to illness or leave

- 54.1 If the Employee is prevented from carrying out the Work due to illness or incapacity for work, they shall endeavour to report their illness to the Client as soon as possible, but no later than 9 a.m. on the first day of illness. The Client shall pass the notification of illness onto the Contractor.
- 54.2 If the Employee is on holiday and therefore unavailable during the period of secondment from the Contractor, the Contractor shall provide a replacement employee.

## H Additional Provisions – Remote Services (Xaas)

### Article 55: Applicability

- 55.1 The provisions in this Section H apply additionally to Section A (General Provisions) and Section D (Services) with regard to Remote Services provided by the Contractor to the Client.

### Article 56: General

- 56.1 The Contractor shall provide the Client with all necessary data, such as URLs and login details, so that the Client can make full use of the Service.
- 56.2 If a web browser is required to use the Service, the Contractor shall ensure that the Service functions correctly in both the (i) most recent and the (ii) still supported versions of all common web browsers (such as Chrome, Edge, Firefox and Safari), without the need for additional plug-ins or additional requirements for the Client’s system landscape.
- 56.3 The Contractor shall ensure that incidents with other customers do not have a negative impact on the Service provided to the Client.
- 56.4 The Contractor may not suspend the Service, unless continuation cannot reasonably be expected. The mere fact of a one-off non-payment does not justify suspension of the Service.

### Article 57: Access to Data

- 57.1 The Client is and remains the owner of all Data. All Intellectual Property Rights relating to the Data, as well as results of the Service(s) (including data), wherever and whenever created, can or will be exercised by the Client. To the extent necessary and in advance, the Contractor hereby unconditionally transfers and delivers these

- Intellectual Property Rights to the Client, which transfer and delivery the Client accepts now for then.
- 57.2 The Contractor shall ensure that the Data is accessible, available and can be consulted by the Client at all times. More specifically, the Contractor shall, free of charge and at the Client’s first request:
- provide the Data to the Client in a structured and legible form in a manner to be specified by the Client;
  - provide an API, link or interface – including related documentation and manuals – to the Client, as well as the necessary cooperation required to link the Client’s systems to the Contractor’s systems for the purpose of automated exchange of Data between the Contractor and the Client.

### Article 58: Back-up

- 58.1 The Contractor shall make a full back-up of the Client’s Data at least once a week, for which purpose the Client’s Data shall be logically separated from other back-ups and for which purpose the Contractor shall have at least a disaster recovery centre or other disaster recovery facility. The Contractor shall keep the back-up for a period to be agreed between the Parties and, in the absence of any arrangements, for the period to be specified by the Client. The Contractor shall handle the back-up with due care and keep it encrypted. A back-up will be provided to the Client upon first request, within two (2) Working Days at the latest.

## I Additional Provisions – GDPR and Processing of Personal Data

### Article 59: General

- 59.1 In cases where the Contractor Processes Personal Data under the Agreement on behalf of the Client, the Contractor qualifies as a “processor” and the Client as a “controller” within the meaning of the GDPR.
- 59.2 The Contractor shall comply with the requirements under the Applicable Privacy Legislation, including – but not limited to – the provisions of this Article.
- 59.3 This Section I is also a Processor Agreement as referred to in the Applicable Privacy Legislation.

### Article 60: Subject of the Processing

- 60.1 The Client is the data controller for the Processing of Personal Data arising from the Agreement and the Contractor will act as a processor, as stipulated in the GDPR.
- 60.2 The type of Personal Data to be Processed, the categories of Data Subjects, the nature and other specifications of the Processing are specified in the Agreement.

### Article 61: Obligations of the Contractor and the Client

- 61.1 The Contractor is not permitted to Process or use the Personal Data for its own purposes. The Contractor shall only Process the Personal Data on behalf of and for the benefit of the Client, unless otherwise required by law. The foregoing does not preclude that the Personal Data to be Processed originates or may originate from IT systems managed on behalf of the Client or by a third party.
- 61.2 The Contractor shall Process Personal Data in accordance with the Client’s written instructions and under its responsibility as set out in the Agreement. If the Contractor acts in violation of this Processor Agreement, the applicable law or the Client’s written instructions, the Contractor shall be considered the Controller for such processing within the meaning of the GDPR.
- 61.3 The Contractor is responsible for full compliance with all obligations that apply under the GDPR and related legislation and regulations, which the Contractor shall promptly demonstrate at the request of the Client or a supervisory authority (“Accountability”).
- 61.4 If the Contractor receives an order from a judicial or administrative authority, it shall notify the Client in writing within twenty-four (24) hours of receipt of such an order so that the Client has the opportunity to appeal against it. Furthermore, the Contractor shall provide to the Client as soon as possible any information the Client deems necessary in order to seek a remedy and to determine whether the Client grants the consent referred to in Article 62 below.
- 61.5 At the Client’s request, the Contractor shall – at its own expense – carry out and cooperate with a Data Protection Impact Assessment (DPIA) required and/or carried out by the Client relating to the Processing of Personal Data.
- 61.6 The Contractor shall handle all requests for information from the Client relating to the Processing of Personal Data promptly and properly.

### Article 62: Engagement of a subprocessor

- 62.1 The Contractor will not engage a subprocessor for Processing under the Agreement without the Client’s prior express written consent. The Client is entitled at any time to withhold or impose conditions on its consent, and the Contractor shall provide the Client with all information that the Client needs to take such a decision.
- 62.2 The Contractor is obliged to provide the Client with a copy of all arrangements and contracts with a subprocessor without delay at the Client’s first request.
- 62.3 The Contractor shall, by written agreement, impose on the subprocessor engaged the same obligations that apply to the Contractor under the GDPR, this Processor Agreement and the Agreement, in particular the obligation to provide adequate guarantees regarding the application of appropriate technical and organisational measures. The Contractor shall remain fully liable to the Client for fulfilment of the obligations of this subprocessor.

### Article 63: Security measures and inspection

- 63.1 The Contractor shall comply with all instructions relating to the security of Personal Data and take all appropriate technical and organisational measures to protect Personal Data against loss and unauthorised processing. Given the sensitive or special nature of the Personal Data, the Contractor guarantees an appropriate level of security. The Contractor shall inform the Client in writing of any changes to the security measures.

- 63.2 The Contractor shall take at least the security measures specified in the Agreement and shall implement and maintain the aforementioned security norms and standards fully and properly.
- 63.3 The Contractor shall only give its employees access to the Personal Data insofar as this is necessary for the performance of the Services under the Agreement. If other employees of the Contractor and/or third parties have gained access and/or have obtained access to the Personal Data, this shall always be deemed a Data Breach, which the Contractor must report to the Client in writing without delay.
- 63.4 The Contractor shall diligently create and maintain a log file regarding access to Personal Data. The log file must show, at all times, which employee of the Contractor and/or a third party has been granted access to which Personal Data at which time and which employee of the Contractor and/or a third party has changed Personal Data. The Contractor shall provide the Client with information from the relevant log file on request.
- 63.5 The Contractor shall, at its own expense, regularly evaluate the security measures referred to in this Article and, where necessary, amend or supplement them in order to continue to comply with the GDPR.
- 63.6 If, at the request or instruction of the Client, the Contractor is required to take further security measures specific to the Client during the term of the Agreement, the Parties shall duly consult on the costs and manner of implementing such measures.
- 63.7 The Contractor shall allow the Client or a third party designated by the Client to inspect the Contractor's compliance with such security measures. Upon request, the Client shall provide the Contractor with a copy of the report of this inspection.

#### Article 64: Data Breaches

- 64.1 The Contractor shall inform the Client in writing of any suspected Data Breach as soon as possible, but in any case within eight (8) hours of its discovery. Issue reports can be submitted by e-mail or telephone to servicedesk@heijmans.nl and the Heijmans Service Desk on telephone number +31 (0)88 433 5066. In the event of an issue report, at least the following information must be provided to the Client in detail:
- contact person;
  - contact details;
  - date/time of the Data Breach;
  - a description of the nature of the Data Breach;
  - the categories of Personal Data involved in the Data Breach;
  - the amount of Personal Data involved;
  - the likely consequences of the Data Breach;
  - the measures taken.
- 64.2 The Contractor shall ensure an adequate and effective internal procedure for detecting and reporting Data Breaches.
- 64.3 The Contractor shall document all Data Breaches and suspected Data Breaches, including the facts relating to the Data Breaches, their consequences and the corrective measures taken. This documentation must be made available to the Client free of charge at the Client's first request. The Client is entitled to provide this documentation to the supervisory authorities.

#### Article 65: Rights of Data Subjects

- 65.1 The Contractor shall promptly inform the Privacy Officer of Heijmans Nederland B.V. in writing of all requests received from Data Subjects to exercise their rights as referred to in Section III of the GDPR.
- 65.2 The Contractor shall, immediately following a request to this effect by the Client, provide – at its own expense – all information and full cooperation that the Client may require to exercise the rights of the Data Subjects set out in Section III of the GDPR, within the applicable statutory periods.
- 65.3 The Contractor shall only comply with a request from a Data Subject if the Client has instructed the Contractor to do so in writing. In this case, the Contractor shall provide proof to the Client of fulfilment of the Data Subject's request.

#### Article 66: Transfer of Personal Data

- 66.1 Without the Client's prior explicit written consent, the Contractor is not entitled to transfer Personal Data outside the European Economic Area (EEA), to transfer it to subprocessors outside the EEA or to otherwise Process (or have processed) Personal Data outside the EEA. For the purposes of this Article, "Processing" also expressly refers to the storage of and access to Personal Data.

#### Article 67: Confidentiality

- 67.1 The Contractor hereby guarantees that it will treat the Personal Data of the Client that it holds and Processes on behalf of the Client as confidential.
- 67.2 The Contractor guarantees that the persons authorised to Process the Personal Data are bound to observe confidentiality by entering into written non-disclosure agreements. The Contractor hereby assures that the provisions of these non-disclosure agreements that ensure the confidentiality of Personal Data shall continue to exist after any termination of the employment (or other) contracts with these persons. The Client may check the duration, content and validity of these agreements at any time.
- 67.3 If and insofar as the Client expressly requests this in writing, the Contractor shall take special measures with regard to the Personal Data or information specified in such request with a view to ensuring their confidentiality, which measures may include the destruction of the Personal Data or information in question as soon as there is no longer any need for the Contractor to take cognisance thereof.
- 67.4 The Contractor shall not disclose, make available or open for inspection any Personal Data to third parties except pursuant to an express written order of the Client or pursuant to an order of a judicial or administrative authority, provided that the Contractor has notified the Client within twenty-four (24) hours of receipt of such order and the Client has given its written consent to such disclosure. The Contractor shall not provide more Personal Data than is strictly necessary to comply with the order.

#### Article 68: Liability and indemnification

- 68.1 The Contractor shall be liable for any and all damage suffered by the Client and shall indemnify the Client against any and all third-party claims in connection with non-

- compliance or partial compliance with this Processor Agreement, acting in violation of the Client's instructions or acting in violation of the GDPR and related legislation and regulations. Damage also refers to any and all related and resulting costs (including legal assistance costs) and damage incurred by the Client.
- 68.2 If the Client is obliged to compensate one or more Data Subjects under Section 82(4) of the GDPR for the damage that the Data Subjects in question have suffered or will suffer due to a breach of the GDPR in which the Contractor was wholly or partially involved, the Client shall have a right of recourse against the Contractor to the extent that the Contractor has contributed to the occurrence and/or extent of this damage.
- 68.3 Without prejudice to any and all other claims the Client has against the Contractor in this regard, the Contractor shall indemnify the Client against administrative fines imposed on the Client by a supervisory authority (such as the Personal Data Authority) in connection with the Contractor's failure to comply with the Agreement in whole or in part or the Contractor's violation of the GDPR and related legislation and regulations.

#### Article 69: Termination

- 69.1 The Processor Agreement is entered into for an indefinite period and ends at the time the Service is performed, or at least the Agreement is terminated. If the Contractor still processes personal data of the client after the agreement, this Processing Agreement will remain applicable as long as the processing takes place.
- 69.2 Without prejudice to the Client's written instruction to the contrary, the Contractor shall immediately return to the Client all Personal Data made available in the event of termination of the Agreement. The Contractor shall irreparably destroy all digital (or other) copies of Personal Data, unless there is an obligation on the Contractor under the GDPR and related legislation and regulations to store the Personal Data for a longer period. In this case, the Contractor shall promptly notify the Client in writing and inform the Client of the reason why the Personal Data will be stored for a longer period of time, of the period of storage and of the intended date of deletion. After destruction of the Personal Data, the Contractor shall provide the Client with written proof that it has done so.
- 69.3 If, in the Client's reasonable opinion, the legal obligation referred to in Article 69.2 permits full (or partial) destruction of the Personal Data by the Contractor, the Contractor shall proceed to do so without delay at the Client's request.
- 69.4 The Contractor is obliged to inform the subprocessors or recipients of Personal Data it engages of the end of the Agreement and of the obligations incumbent on the Contractor under this Article. The Contractor guarantees that these parties will permanently destroy, delete or return the Personal Data to the Contractor in the same way as the Contractor itself is obliged to do. Within one (1) month of the end of the Agreement, the Contractor shall send the Client confirmation that the subprocessors and/or third parties engaged by it have fulfilled their obligations.

#### Article 70: Other provisions

- 70.1 Article 61 (Obligations of the Contractor and Client) and Article 67 (Confidentiality) shall continue for an indefinite period between the Parties after termination or dissolution of this Processor Agreement, for whatever reason.

## J Additional Provisions – Artificial Intelligence (AI)

#### Article 71: Applicability

- 71.1 The provisions of this Section J apply additionally to the provision of the Service by the Contractor, which consists or will consist (in whole or in part) of the use of artificial intelligence (AI) systems.

#### Article 72: Transparency and Accountability

- 72.1 The Contractor must provide clear information on the functioning of the AI system, the algorithms used and the origin of the data used for training and operating the system at the Client's first request. The operation and logic of the system must be understandable and explainable to the Client, taking into account the complexity of AI technology.
- 72.2 The AI system must be accessible and understandable to the Client (and the users of the AI system). The Contractor shall provide clear documentation on how the AI system makes decisions and which factors influence these decisions.
- 72.3 The Contractor is responsible for the performance and reliability of the AI system. Any errors, deficiencies or undesirable effects arising from the use of the system must be reported to the Client immediately.

#### Article 73: Ethical use of AI

- 73.1 The Contractor warrants that the AI system will not make decisions that lead to discrimination based on race, ethnicity, gender, religion, nationality, age or other protected characteristics. The Contractor guarantees that the AI system has been designed in compliance with anti-discrimination rules and that measures have been taken to avoid bias.
- 73.2 The AI system must comply with the Applicable Privacy Legislation. The processing of Personal Data by the AI system must be limited to what is strictly necessary, and the Contractor must implement adequate security measures to ensure the integrity and confidentiality of the data.
- 73.3 The AI system must be designed to support decisions, not replace them. The ultimate responsibility for decisions always lies with people. There must be a mechanism in place that allows users to check, assess and correct the decisions of the AI system if necessary.

#### Article 74: Quality and Performance

- 74.1 The Contractor guarantees that the AI system meets the agreed performance and quality requirements, including accuracy, speed and reliability. The Contractor shall regularly test and verify the AI system to ensure that it continues to meet the contractual requirements and does not cause any unexpected or harmful effects.
- 74.2 The Contractor is obliged to perform Maintenance and updates to ensure the performance and security of the AI system.



#### **Article 75: Security and Risk Management**

- 75.1 The Contractor shall take appropriate technical and organisational measures to ensure the security of the AI system. This includes protecting the system against cyberattacks, unauthorised access and other threats that may compromise the integrity of the system.
- 75.2 A comprehensive risk analysis must be carried out before implementing the AI system. This should include an assessment of possible consequences of the use of the system, with particular attention paid to the risks to the rights and freedoms of individuals.

#### **Article 76: Compliance with Legislation and Regulations**

- 76.1 The Contractor warrants that the AI system meets all applicable legislation, including the AI Act, and that the AI system does not cause the Client to act in violation of the applicable legislation.