

# **ICT Purchase Terms & Conditions PON IT BV**



## ICT Purchase Terms & Conditions PON IT BV

These ICT Purchase Terms & Conditions by PON IT BV (hereinafter called ICT T&C), apply to any ICT related orders and Requests for Proposals or Requests for Quotations made by PON IT BV or any company that is controlled by PON IT BV.

### Definitions

In these ICT Purchase Terms & Conditions the following definitions (capital letter) are used.

Acceptance statement / certificate: written statement or certificate by PON IT BV to accept delivered Products.

Acceptance test: test (procedure) as meant in this ICT Purchase Terms & Conditions the test procedure that checks whether delivered Products are in accordance with the agreed specifications.

Active Infrastructure Components: components in a Network infrastructure, including routers, switches and hubs, particularly those that provide the transport of data.

Adaptive Maintenance: the customization of Software and/or systems as a result of external developments.

Additive Maintenance: the customization of Software and/or systems as a result of new functional demands.

Application Management: activities aimed at the preservation of the Application Software and data files.

Agreement: any agreement(s), master agreement(s) as well as other agreement(s) including the appendices, between PON IT BV and Supplier for the delivery of Products, the provision of Services as well as any other assignment commissioned by PON IT BV to Supplier as well as all other (legal) acts regarding these ICT T&C.

Cloud: a type of internet-based computing where different services such as servers, storage and applications, are delivered to PON IT BV computers and devices through the internet.

Connection: a facility, suitable for transport of voice and/or data, with Connections to the ICT-infrastructure.

Corrective Maintenance: trace and repair errors in Software, systems, equipment and Documentation.

Data: all information, data and files, in digital and in written form, related to the business processes of PON IT BV at Supplier's disposal or under Supplier's Management.

Documentation: system manuals, user manuals and all other written and electronic information on, or belonging to Products furnished by the Supplier.

Exploitation: the execution of data processing, data storage, data transport and the data provided by the PON IT BV ICT-infrastructure, including print & CD-ROM Services and additional Services, as defined in these ICT Purchase Terms & Conditions and the Agreement.

Failure: Software, a system and / or equipment not meeting the requirements or not complying with agreed specifications, or the missing of evident and knowable properties that PON IT BV reasonably might expect.

Functional Management: activities towards the organisation and maintenance of (a part of) the functionality of the ICT-infrastructure.

ICT-infrastructure: the infrastructure that exists of all shared Technical resources (equipment, supporting (system) Software and computer Networks) in their mutual relationship, as defined in the Agreement(s).

Implementation: the input of Software and/or a System in the equipment on which or in Connection with the Software has to operate. Also, where needed, the adaptation of the Software in such a way that the Software will be compliant.

Installation: the installing and Connection of Software and/or a System, or the Equipment.

Maintenance: the preventing and repairing of Failures and errors in the Software and/or Equipment and/or the realisation of modifications in the Software and/or the Equipment, as defined in these ICT Purchase Terms & Conditions and the Agreement.

Management: activities agreed by parties aimed at the preservation and the use of (a part of) the ICT-infrastructure and/or Suppliers support to PON IT BV, as defined in the Agreement.

Materials: all data, such as analysis, drafts, Documentation, reports, offers, tools, sub Software, as well as preparatory material with regard thereof, that the Supplier furnishes to PON IT BV within the scope of the shipment of Products by the Supplier.

Network: a communication Network consisting of one or more Connections.

Operational Management: the activities for the conservation of all business critical ICT-infrastructure components.

Preventive Maintenance: the operation of Software, a system or equipment, by taking sufficient actions, to guarantee the performance of that Software, system or equipment during the term of the Agreement.

Product(s): a movable property or ICT-Product, including Software, and customized Software, Data and/or Services as set out in the Agreement.

SaaS: a software delivery method that provides PON IT BV access to Software and its functions remotely, as a web-based service by the Supplier (provider). The Software is stored on the hardware of Supplier or stored in the Cloud.

Software: computer programs together with input and output formats, program listings, narrative descriptions, operating instructions, (other) preparatory Materials and supporting Documentation, including the tangible media upon which such programs and Documentation are recorded as well as any enhancements, translations, modifications, updates, new releases, and other changes.

Staff (of PON IT BV): Staff or engaged Staff working under PON IT BV's responsibility to fulfil the obligations as set out in the Agreement and these ICT-Purchase Terms & Conditions.

Staff (of Supplier): Staff or engaged Staff working under Supplier's responsibility to fulfil the obligations as set out in the Agreement and these ICT-Purchase Terms & Conditions.

System Software: system independent operating Software, with necessary Documentation.

Technical Management / Administration: the activities towards the Technical preservation of all components of the ICT-infrastructure that have to be available constantly under normal use.

Version: a numbered (status) description of Equipment, Software and/or Documentation intended to gain insight in the available functionality and implemented changes.

WAN (Wide Area Network): electronic highway of PON IT BV, as set out in the Agreement(s)

Working day: a calendar day, except weekends and general Dutch public holidays.

Workplace or Site Services: Products to provide, maintain and/or manage by Supplier, intended to use at PON IT BV personnel's Workplace, as set out in these ICT Purchase Terms & Conditions.

## GENERAL ICT PURCHASE TERMS & CONDITIONS

### 1 General

- 1.1 These ICT Purchase Terms & Conditions are applicable exclusively on all agreements with and quotations of PON IT BV by Supplier, regardless of previous reference to Supplier's or other general Terms & Conditions of purchase. PON IT BV expressly rejects general Terms & Conditions applied by Supplier.
- 1.2 In case one of the conditions of this ICT Purchase Terms & Conditions is quashed by any competent judge, the other conditions of this ICT Purchase Terms & Conditions will stay fully applicable.
- 1.3 Deviations and/or changes in the established agreement and these ICT Purchase Terms & Conditions can only be agreed upon in writing.
- 1.4 The agreement of Products delivery (hereafter: the "Agreement") can only be established by written confirmation of PON IT BV and /or a written purchase order.
- 1.5 Supplier is not authorized to transfer his duties and obligations as set out in the Agreement to a third party without prior written permission by PON IT BV.
- 1.6 In case the Agreement contains substantial deviation(s) from these ICT Purchase Terms & Conditions, the conditions of the Agreement prevail.
- 1.7 In case PON IT BV and Supplier have entered into a Master agreement the following order of precedence shall apply in case of conflict between provisions of the Master agreement and these ICT Purchase Terms & Conditions: (1) the provisions of the Master agreement, (2) the provisions of the relevant appendix of the Master Agreement, (3) the provisions of these ICT Purchase Terms & Conditions.
- 1.8 The tenders/ offers of Supplier are final and irrevocable and will have a validity of at least ninety (90) days.
- 1.9 Supplier will verify at least the following information of the tender/ offer: name and address of Supplier, name and address of PON IT BV, the rule number (if applicable), a clear description of the Product(s) and/or Services to deliver, the volume, the pricing excluding VAT, the VAT in Euro's, name, address and VAT- identification number of the fiscal representative, the VAT-identification and bank account number of Supplier, the delivery date and (if applicable) the number of the packing note.
- 1.10 An Agreement between PON IT BV and Supplier will come into effect only when (i) PON IT BV has accepted the tender/offer explicitly in writing and (ii) Supplier has accepted the purchase order of PON IT BV in writing. If Supplier has not accepted the assignment of PONIT BV in writing within five (5) days after PON IT BV's written notice, the Agreement will not come into effect. A master Agreement shall come into effect by accepting in writing by PON IT BV as well as by Supplier.
- 1.11 Verbal agreements on orders/ assignments are not binding to PON IT BV, unless the verbal order is endorsed by PON IT BV.
- 1.12 Supplier shall bear its own costs for drafting the tender(s)/offer(s) in order to submit a tender/offer.
- 1.13 In case PON IT BV has authorized certain (liaison) officers for the execution of the Agreement, this liaison officer is the only authorized person to purchase the Products and/or the Services. In case another person than the liaison officer makes a purchase order, PON IT BV is authorized to withdraw the purchase order.
- 1.14 The relationship between PON IT BV and Supplier is a non-exclusive relationship. PON IT BV. Supplier cannot therefore claim any right whatsoever to be awarded agreements.

### 2 Prices

- 2.1 All prices are excluding VAT. Prices are including all PON IT BV's expenses, including but not limited to packaging, assembly, service, transport, and delivery at a location pointed out by PON IT BV. Prices include obligatory withholdings, (customs) taxes, social insurances and other governmental charges. Travel and accommodation expenses are included, unless otherwise agreed upon in the Agreement.
- 2.2 If a fixed price is agreed, this price shall concern all Suppliers' performances regarding the Agreement. Included are, in addition to the agreed Products, among others the providing of Materials within the agreed period and the insurance costs. The agreed Price cannot be increased unilaterally by Supplier.
- 2.3 If parties agree that Supplier will deliver Products on the basis of post-calculation, only the agreed rates can be charged, regarding subsection 4 of this section 2.
- 2.4 Increase of prices as a result of extra work can only be charged to PON IT BV after written approval.
- 2.5 PON IT BV may execute a benchmark every year, concerning the delivered Products. Purpose of this benchmark is to determine market conformity of the delivered Products and prices. Prior to the benchmark the parties will determine the applicable conditions for the execution and the implementation of the results of the benchmark.
- 2.6 A qualified and independent third party, the bench marker, who will be selected by both parties, will execute the benchmark. The benchmark will cover up to a six (6) months period. Parties will provide the relevant information to bench marker and identify the data (the key performance indicators) the benchmark will address. Parties will give full assistance to bench marker and provide all relevant information necessary for the execution of the benchmark. Parties will enforce secrecy to bench marker as set out in section 14 of these ICT Purchase Terms & Conditions. Parties will share the benchmark expenses, each party for 50% unless explicitly agreed otherwise.

### 3 Social liability, social insurances and tax paying regulations

- 3.1 Supplier has to be able to submit a licence to establish a business if legally required. Suppliers shall submit a recent copy of the licence at first request of PON IT BV.
- 3.2 At the first request of PON IT BV, Supplier will hand over (i) a list with the name(s), first name(s), address(es), (ii) the terms of employment, as well as (iii) the payroll and timesheets of all employees of Supplier.
- 3.3 Supplier will pay and assumes responsibility for paying VAT and all charges and taxes for unemployment insurances and pension contributions, retirements, and charges for other social insurances, annuities and income taxes (relating to salary, any other charges, the number of people that receive charges or otherwise) directly relating to the availability of Products, that will be imposed by any public authority, or due by Supplier or a third party engaged by or affiliated to Supplier.
- 3.4 Supplier indemnifies PON IT BV against claims by public authorities relating to the non-payment of VAT, charges and taxes as specified in the previous section.
- 3.5 Supplier or Supplier's engaged or affiliated third party have no rights to recover taxes, charges and contributions, as determined in this section, from PON IT BV.
- 3.6 In case of changes to the social liability regulations, Supplier and PON IT BV commit themselves to review or change this section to meet the new legal regulations.
- 3.7 PON IT BV is obliged to pay the fees for social security premiums, taxes, duties, levies and other fiscal charges in accordance

with the Invorderingswet 1990 and other regulations regarding the Sequential Liability Act (Wet Ketenaansprakelijkheid 2004) in connection with the execution of the Agreement on an escrow account. Supplier shall open and preserve an escrow account at first request of PON IT BV.

3.8 Notwithstanding the provisions of article 3.7 PON IT BV will be authorized at all times to count down the so called fees for social security premiums, taxes, duties, levies and other fiscal charges to pay the tax department these fees directly.

3.9 The payments as mentioned in the articles 3.7 and 3.8 will be regarded as payments of PON IT BV with reference to its obligations towards Supplier.

#### **4 Delivery and delivery time**

4.1 Supplier delivers the Products in accordance with the agreed Delivery time and destination and in accordance with the stipulations in the next subsection of this section.

4.2 As soon as Supplier expects or is informed about Product Delivery after the agreed term, he will notify PON IT BV immediately in writing.

4.3 Delivery terms and delivery data will in principle be regarded as final terms or final data, meaning that Supplier will be in default by right, without requiring a written default notice by PON IT BV. In that case PON IT BV will grant Supplier a reasonable term of maximum ten (10) Working days to comply with the agreed delivery date(s).

4.4 In case the Supplier is exceeding Product delivery term(s), which default shall not be solved within a reasonable term after written notice of PON IT BV as mentioned in article 4.3, and which default is not caused by force majeure (none accountable failing), PON IT BV is authorized to full or partial dissolution of the agreement, undiminished PON IT BV's right to be compensated by Supplier for the actual suffered damage.

4.5 In case the delivery is not according the specifications of the Agreement, all PON IT BV's extra expenses will be charged to Supplier.

4.6 Supplier will provide a delivery certificate as evidence of delivery, in a format as set out in the Agreement. This statement will be signed by PON IT BV directly after delivery. Such a certificate will not affect PON IT BV's rights regarding the Agreement or these ICT Purchase Terms & Conditions.

4.7 For the purpose of Product parties can agree an Acceptance test, as set out in these ICT Purchase Terms & Conditions or the Agreement. Delivery of Products without an agreed Acceptance test can happen by signing the delivery certificate as set out in subsection 6 of this section. Delivery of Products without an Acceptance test can take place by signing the Acceptance certificate.

4.8 Unless agreed otherwise, Supplier's representative is responsible for the delivery of the agreed Products.

4.9 Supplier provides all available information, necessary for PON IT BV to fulfil its obligations as set out in the Agreement.

#### **5 Transfer of ownership and risk**

5.1 Assuming that parties have agreed so, Products transferred as a result of this Agreement will remain property of Supplier until PON IT BV's Acceptance according to the Acceptance procedure in these ICT Purchase Terms & Conditions.

5.2 Until PON IT BV's Acceptance by signing of the Acceptance certificate, Products will be at Supplier's risk.

#### **6 Staff**

6.1 Supplier only changes Staff after PON IT BV's permission in writing. Replacing Staff will have the same expertise and experience as the replaced Staff. Increasing expenses as a result of Staff changes on Supplier's initiative will be at Supplier's expense. Supplier will procure PON IT BV a copy of the identification document for the employed personnel. Supplier guarantees that its Staff has signed a vow of secrecy according the stipulations of article 14 of these ICT T&C.

6.2 Supplier shall not substitute its Staff or employee(s) without the prior written approval of PON IT BV. Supplier shall substitute its Staff by Staff of at least the same level of competence, knowledge and experience as the original Staff. Supplier will be accountable for all costs regarding the replacement of the Staff initiated by the Supplier.

6.3 On PON IT BV's written and motivated request Supplier will change Staff that does not have required skills and experience. Increasing expenditures due to insufficient quality of Staff will be at Supplier's expense.

6.4 Supplier shall dedicate sufficient personnel with all skills and experience, necessary for the performance of the agreement, in accordance with the agreement.

6.5 PON IT BV will provide sufficient facilities and the required access to these facilities at places necessary for the activities as set out in the Agreement.

6.6 During the Agreement term as well as one year after the expiration of the Agreement Supplier will not take over PON IT BV Staff without PON IT BV's permission in writing.

#### **7 Intellectual Property Rights**

7.1 All intellectual property rights, regarding to Products delivered by Supplier rest with:

a. PON IT BV, with regard to Products, included but not limited to (parts of) Software, developed explicitly for PON IT BV or on the basis of PON IT BV's instructions. Software is understood to be specific Software, source code included when applicable, in object code including all accompanying sub Software and Documentation, including functional and Technical developments.

b. Supplier, with regard to generic Software that is not developed or made explicitly for PON IT BV. In such cases Supplier will grant PON IT BV a non exclusive, irrevocable licence for an indefinite period.

7.2 In case of Product change or improvement the intellectual property rights regarding to the changed or improved Products will belong to the party who owned the intellectual property rights of the original Product.

7.3 Supplier will indemnify PON IT BV in case of claims by third parties regarding (possible) infringement of intellectual property rights of those third parties and comparable claims relating to know how and improper competition. Supplier shall, on its expense, take all measures necessary to avoid additional expenses and stagnation at PON IT BV.

7.4 From the starting date of the Agreement between PON IT BV and Supplier, PON IT BV shall retain the intellectual property rights regarding materials, methods, data, drawings, information, reports, know-how, inventions, trade secrets, as well as any improvement or other modification thereof, techniques, and other results as well as the relevant documents which have been edited in relation to or as a result of any connection with the Agreement. In the event a specific transfer or notification is required Supplier hereby irrevocably and unconditionally agrees to cooperate and shall assign and transfer any and all intellectual property rights to Pon IT BV, which transfer PON IT BV accepts.

7.5 All information and Data of Pon gathered by Supplier as part of the delivery of services or products are confidential as described in article 14.1. Supplier acknowledges this confidentiality. These Data will not be revealed to others than Pon unless Pon has given its approval upfront. Supplier is not authorised to amend, delete or distribute the Data without the approval of Pon IT B.V. In the event that the Data or the information are subject to intellectual property rights, and/or amongst others database rights, supplier will transfer these rights at the first request of Pon IT B.V.

#### **8 Software Licenses**

8.1 A user license for Software authorizes PON IT BV to use the Software in question. The user license is described in the

Agreement.

- 8.2 In the case the Supplier delivers Software as a Service (SaaS), Supplier shall provide PON IT BV a concurrent user license for all PON IT BV users or a flexible user license model which includes the extension or reduction of the number of PON IT BV users, which is calculated on a monthly base and which PON IT BV can change at the request of PON IT BV. Supplier guarantees that the authorized availability of the Software will be realized in an efficient manner with a processing time of maximum two (2) days after the first request of PON IT BV.
- 8.3 Unless agreed otherwise the authorization as set out in subsection 9.1 is non-exclusive, non-transferable, and not limited to specific equipment or a specific location.
- 8.4 PON IT BV is authorized to provide sublicenses to companies that belong to her group.
- 8.5 PON IT BV is authorized to make backup copies of the Software. If making copies is not possible because of protections measures, Supplier will provide copies of the Software to PON IT BV at the first request.
- 8.6 If parties agreed that PON IT BV also receives the source code of the Software, PON IT BV is authorized to make or let make changes in the Software.
- 8.7 Unless differently agreed upon in the Agreement, any license will be given for an indefinite period and can only be terminated by PON IT BV in case of accountable non performance or by PON IT BV's notice.

## **9 Charging and Payment**

- 9.1 Supplier will invoice PON IT BV within thirty (30) days after Product delivery in accordance with the Agreement and the provisions in this section.
- 9.2 Supplier shall send its invoices to PON IT BV, giving date, title and number of the Agreement, customer's number, the period the invoice refers to and other information or documents necessary to confirm invoice's effect, provided by PON IT BV in writing. Supplier will send the invoice to the address mentioned in the Agreement.
- 9.3 In case of post-calculation based invoicing Supplier will charge PON IT BV complete with valid specifications. Declared working hours, used Materials and/or other relevant aspects of delivered Products will be detailed in a survey.
- 9.4 Supplier will charge PON IT BV the assigned extra work separately. Type and amount of the accomplished extra work will explicitly be given and specified in the invoices.
- 9.5 Insufficiently specified invoices will be returned to Supplier for completion.
- 9.6 Subject to the conditions as set out in subsections 9.2, 9.3 and 9.4 payment will take place within sixty (60) days after PON IT BV's Product and/or service acceptance or, when later, within forty five (45) days end of month after the invoice date.
- 9.7 PON IT BV has the right to request a bank warranty when prepayments are required within the scope of the Agreement.
- 9.8 In case of prepayment for the manufacturing of a Product or a work, the transition of ownership of the Product or work will take place at the moment that the prepayment has been effected.
- 9.9 PON IT BV is authorized to deduct Supplier's claims with claims against Supplier. In case of Supplier's non performance of the Agreement PON IT BV is authorized to suspend its (payment) obligations by the Agreement.
- 9.10 PON IT BV is authorized to audit once a year the invoices by a chartered accountant designated by PON IT BV. Supplier will provide access to relevant documents and provide all information requested by the accountant. The audit will be confidential and will not go beyond the reasons of the examination. PON IT BV will cover the costs of the audit, unless the audit demonstrates the improperness of the invoice for more than five (5)%, in which case Supplier will cover the costs.
- 9.11 Payment or (interim) audit by PON IT BV implies relinquishment of any and all rights.

## **10 Guarantees and Quality**

- 10.1 Supplier guarantees that
  - a. Products provided by or on behalf of Supplier and the results of those Products will meet the specifications as set out in this Agreement;
  - b. It shall perform the Services in a professional and workmanlike manner, consistent with good practices and standards;
  - c. During the term of the Agreement Supplier's Staff will meet the requirements as set out in the Agreement, with regard to education, professionalism, experience and security.
- 10.2 Supplier also guarantees that: (i) Supplier shall not act contrary to the applicable laws and regulations especially regarding the current legal acts on child labour, (ii) Supplier shall not discriminate on the grounds of race, sex, religion etc., and any form of discrimination will be forbidden, (iii) there will be no enforced, hidden, dangerous labour or community service, except the work of prisoners who might voluntarily work in a competitive company in order to receive a competitive salary, (iv) the employees have been offered serious and honest terms of employment and good living conditions and (v) the right of freedom of assembly will be respected.
- 10.3 Supplier acknowledges and guarantees that:
  - a. By preparing or executing the Agreement with Pon he will refrain from accepting or giving gifts, hospitality or entertainment which might affect, or which is intended to affect, business judgement. This prohibition applies equally to cash gratuities, goods and services, in kind or at preferential rates.
  - b. He shall procure that his employees or employees of Pon IT B.V. do not accept gifts, hospitality or entertainment outside the scope of their employment which might affect, or which is intended to affect, their judgement matters that are within the scope of their employment. This prohibition applies to cash gratuities, personal discounts, gift vouchers, loans and favourable terms on any product or service intended for personal use.
  - c. He shall not provide gifts payments or promises in order to obtain a contract with Pon IT B.V.
- 10.4 Supplier warrants that all obligations mentioned in article 11.3 are imposed on all its employees and sub contractors. Supplier warrants that its employees and sub-contractors comply with these regulations.
- 10.5 In case Supplier, even after written notice by PON IT BV giving a reasonable time frame, will not or no longer perform its guarantee obligations as set out in subsection 1 of this section, PON IT BV will be authorized to (let) rectify the omission after prior notice, at Supplier's costs, preserving PON IT BV's rights.
- 10.6 PON IT BV is authorized to execute on its expense a interim quality audit by an independent expert, regarding Supplier's organisation, in order to determine whether Supplier complies with these ICT Purchase Terms & Conditions and the Agreement, as well as regarding confidentiality, continuity and efficiency of (parts of) Products provided by Supplier. Supplier is willing to assist in such a review and will follow up the recommendations for improvement given by the expert as far as reasonably possible.
- 10.7 PON IT BV is authorized to carry out regular audits on the Products and their realization by Supplier. Supplier expresses its willingness to assist with these audits. PON IT BV will refund the expenses made by the Supplier in providing its assistance, insofar as these expenses are reasonable and acceptable.
- 10.8 If cooperation with third parties, involved by PON IT BV, is necessary for the realization of Products, Supplier will make all efforts

to let the cooperation be successful.

10.9 Notwithstanding the statements in this section PON IT BV preserves all rights in case of Supplier's non-performance.

## 11 Migration

- 11.1 Supplier will, at PON IT BV's request, cooperate to the realization of documents for ICT Services that will be tendered by PON IT BV and provide, within a reasonable time frame, the available information PON IT BV considers necessary for drafting a Request for Information and/or a Request for Proposal. This information will not be refused unreasonably. .
- 11.2 In case of termination of the Agreement Supplier will:
- a. Transfer all Equipment, Materials, Software, source codes, object codes, available Documentation and PON IT BV-data (digital or in agreed other form) that are PON IT BV 's property, to PON IT BV or a third party pointed out by PON IT BV.;
  - b. Transfer Software licenses and tools subject to intellectual property rights of third parties, as far as concerning third parties will cooperate;
  - c. If necessary and at PON IT BV 's first request fully cooperate to transfer PON IT BV's properties and data and take all actions that can reasonably be expected from Supplier to safeguard the aforementioned properties and data;
  - d. Transfer its specific knowledge relating to the managed or operated systems and rendered Services for PON IT BV at PON IT BV's request to PON IT BV or a third party pointed out by PON IT BV.
- 11.3 In case of termination of the Agreement, Supplier will, at PON IT BV's first request:
- Provide a license to Software and tools subject to Supplier's intellectual property rights. Parties therefore will determine the conditions of such a license;
  - Transfer all Equipment, Materials, Software, source codes and available Documentation and PON IT BV-data that are Supplier's property and considered to be used exclusively or mainly to render Services to PON IT BV or which are of major importance for the continuity of the Production processes of PON IT BV.
- 11.4 Compensation for the expenses of Equipment, Materials, Software and available Documentation as mentioned in the preceding sections will be at book value at the moment of termination of the Agreement. The book value will be determined by Supplier's lowest of two investments minus charges paid by PON IT BV, either by Supplier's investments minus the total amount of depreciations.
- 11.5 In case of different opinions about property of Equipment, Materials, Software and available Documentation or its intellectual (property) rights, these (property) rights are assumed to rest with PON IT BV until Supplier evidence to the contrary.
- 11.6 In case of termination of the Agreement Supplier will, at PON IT BV's first request, provide the complete parameterisation of Systems, fully documented in an electronic or another form to be agreed upon, to PON IT BV and / or a third party pointed out by PON IT BV.
- 11.7 In addition to the obligations as set out in the previous subsections of this section, Supplier commits itself to provide all assistance to achieve a smooth transfer of Services, based on Supplier's rate lists valid at the moment of termination the Agreement, for a period of five (5) months.

## 12 Liability

- 12.1 Supplier shall be liable for any default with regard to the fulfilment of its obligations under the Agreement Supplier takes responsibility for all damages to or by delivered Products arising from defects or deficiencies of the delivered Products.
- 12.2 Supplier's liability extends to damages being the result of exceeding the agreed delivery term, damages to Products of third parties and business loss at PON IT BV or third parties as a result of defects or deficiencies of delivered Products.
- 12.3 Liability does not include consequential damages including financial losses of revenues and profits.
- 12.4 PON IT BV will not be liable for any damage suffered by Supplier, except as result of deliberate or glaring fault unless Parties explicitly have agreed differently in writing.
- 12.5 Supplier has taken out and will retain adequate insurance cover in respect to the Agreement and with reference to article 12. At the request of PON IT BV the Supplier will immediately present either the original or certified copies of the policies and proof of payment of premium for the insurances. This obligation for an adequate insurance cover also refers to the insurance of the resources that are involved with the execution of the Agreement.
- 12.6 Supplier will indemnify PON IT BV against all third party claims, being the result of or in connection with the delivery of Products or the rendering of Services by Supplier.
- 12.7 Pon is not liable to Supplier for any damages unless the damages are caused by Pon IT B.V or its employees on purpose or as a result of negligence or wilful misconduct
- 12.8 The so-called "klachtplicht" (complaint duty) as mentioned in article 6:89 and article 7:23 BW (the Dutch Civil Code) is not applicable.

## 13 Confidentiality

- 13.1 Supplier shall keep strictly confidential all information related to the execution of the Agreement (such as ideas, knowledge, business confidential information, data, procedures, goods, monsters and such) coming from PON IT BV and which PON IT BV has classified as confidential and /or information Supplier should have classified as confidential ("Confidential Information"). Supplier restricts the availability of the Confidential Information to the people/employees who need this information for the execution of the Agreement. Unless subject to a prior written authorization of PON IT BV, Supplier shall not disclose any (part of) Confidential Information to a person, firm, (trading) company or any other entity. Supplier shall not use, without the written prior authorization of PON IT BV the Confidential Information except for the purpose of performing the Agreement.
- 13.2 The obligation of confidentiality and non-use as set out in article 13.1 shall not apply to the information of which Supplier with written evidence is able to prove that:
- a. the information was in the possession of the Supplier prior to the date of receipt of the information from PON IT BV as evidenced by written and dated or datable material; or
  - b. the information was, evidenced by written and dated or datable material, at the date of disclosure public knowledge other than by the default of the Supplier; or
  - c. the information is obtained by the Supplier from a Third Party having no obligations to PON IT BV in respect thereof; or
  - d. the information is developed or designed by the Supplier, independent from any published information of PON IT BV; or
  - e. in case Confidential Information is required to be disclosed by the Supplier by virtue of a court order or statutory obligation. In that case the Supplier shall be allowed to do so, provided that it shall inform PON IT BV in order to allow PON IT BV to seek protective remedies against such disclosure.



- 13.3 Supplier is obliged to constrain its Staff or contracted Third Parties with the same obligation of confidentiality and non-use as set out in article 13.1. Supplier guarantees that its Staff and/ or contracted Third Parties act in accordance with these non-disclosing provisions of Confidential Information.
- 13.4 Confidential information, drawings and other documents received from other parties will be treated as confidential. Parties are not allowed to hand out this information, drawings and documents to other parties without prior permission of counterparty. Parties will enforce these obligations to its Staff.
- 13.5 Parties will be act in accordance to applicable laws and regulations especially regarding the mandatory regulations of the Dutch Data Protection Act.
- 13.6 Supplier will not mention the Agreement in publications or by advertising, without prior permission of PON IT BV.
- 14 Force majeure (non accountable Failure)**
- 14.1 Force majeure refers to the description of force majeure in article 6:75 BW (the Dutch Civil Code). In a situation of force majeure of a party the execution of the Agreement will be fully or partially postponed during the period of the force majeure without the obligation for any Party without enforcement to pay any compensation to the other Party. If a situation of force majeure has lasted for more than thirty (30) days, the party not claiming force majeure shall have the right to terminate in writing the Agreement immediately and without any court action or any compensation for the other Party.
- 14.2 Force majeure of the Supplier does not include, without limitation: lack of Staff, strikes, default(s) of the Third Parties contracted by Supplier, failure of resources, liquidity and/ or solvency problems of the Supplier and government measures at the expense of the Supplier.
- 15 Cancellation**
- 15.1 In the event Supplier fails or partially fails to perform his obligations deriving from the Agreement PON IT BV is authorized either to suspend its obligations set out in the Agreement or to (partially) cancel the Agreement, to take effect immediately and without a judicial sentence, if PON IT BV so desires.
- 15.2 PON IT BV is authorized to (partially) cancel the Agreement immediately, without a judicial sentence and without any payment of damages to Supplier, when Supplier is unable to pay his debts, has applied for suspension of payments or is offering his creditors an arrangement, is declared bankrupt, is ceasing or suspending its commercial activities or substantial part thereof or when substantial debts are attached, and such an attachment will be maintained for at least one month.
- 15.3 In the event internal strategic considerations require the termination of the Agreement PON IT BV is authorized to cancel the Agreement immediately and without a judicial sentence. In such case PON IT BV will compensate Supplier for all activities performed as a result of the Agreement, expenses for equipment, Materials and Services ordered or obtained for the performance of the Agreement until the point of actual termination.
- 15.4 Obligations that are, due to their nature, intended to continue after cancellation of the Agreement will stay effective after cancellation of the Agreement. Parts of these obligations are among other things: protection against infringement of intellectual (property) rights, settlement of disputes, applicable law and choice of residence.
- 16 Applicable law and settlement of disputes**
- 16.1 Agreements for Product delivery and / or the rendering of Services, including Requests for Proposals and Requests for Quotations shall be interpreted and construed in accordance with the laws of the Netherlands.
- 16.2 Disputes between PON IT BV and Supplier will be settled to the exclusive jurisdiction of the competent Court of the municipality of Utrecht in the Netherlands, unless parties agree an arbitration according to the procedure of the NAI (Nederland's Arbitrage Institute / Dutch Arbitration Institute).
- 16.3 A dispute exists if one of the parties states so, supported with a written description of the matters in dispute and the reasons underlying the dispute.
- 16.4 Regarding the disputes mentioned in this section each party shall bear its own expenses.
- 16.5 The Dutch text of these IT Terms & Conditions constitute the only authentic text. Any deviation between the Dutch text and a translation in a foreign language the Dutch text shall prevail.

**DEVELOPMENT AND IMPLEMENTATION OF SYSTEMS AND SOFTWARE**

The conditions in this chapter are applicable when Supplier and PON IT BV enter into an Agreement concerning the development and Implementation of systems and Software.

**17 Software Development**

- 17.1 Parties will determine what Software will be developed as well as the standards the Software has to comply with. Development will be Supplier's constant concern, based on information provided by PON IT BV.
- 17.2 Unless set out differently in the Agreement, Software will be developed on the basis of standards accepted by PON IT BV. Basic assumption to the development of Software is the interoperability with PON IT BV's Systems, clear Administration and cost reduction.
- 17.3 Supplier is authorized, but not obliged, to verify the correctness, the completeness or consistency of the furnished information and specifications regarding to the development of Software. In case of such imperfections Supplier has to suspend its activities until PON IT BV has solved them.
- 17.4 When accountable for the organization of a test environment, Supplier will organize an environment for testing and development that will be separated from the Production environment.
- 17.5 Unless otherwise agreed, the source code of Software developed specially for PON IT BV including the additional Technical Documentation will be delivered to PON IT BV, according to terms and conditions as set out in the Agreement.

**18 Installation of Software**

- 18.1 Supplier will install Software only when set out in the Agreement.
- 18.2 As soon as the Installation is completed, parties will draw up and sign a certificate of Installation. This certificate will not impede the provisions of section 21 of this ICT Purchase Terms & Conditions.

**19 Implementation and security**

- 19.1 Implementation of Software in the appointed environment and/ or equipment by Supplier will only take place when set out in the Agreement.
- 19.2 Implementation will take place as set out in the Agreement. Implementation will be uninterrupted with optimal efforts of Supplier's and PON IT BV's Staff, within an agreed term after Software delivery.
- 19.3 PON IT BV will give assistance to the Implementation, providing material and personnel capacity as set out in the Agreement.
- 19.4 Supplier will procure and warrants that during the execution of the Agreement all obligations with respect to security, privacy and

regulations of Pon IT B.V. regarding security and privacy are taken into account.

- 1a. In the event of provision of software or in the event of delivery of services based on cloud computing Supplier shall always keep Pon IT B.V. appraised on the actual location where the data are stored. Furthermore Supplier warrants that the Data cannot be accessed by a third party without authorization. Supplier warrants that the integrity of the Data is safeguarded. Supplier complies with the guidelines of the CBP "Richtnoeren Beveiliging Persoonsgegevens" published on 1 March 2013
- 1b. As soon as, agreed by parties, the Implementation is finished, parties will draw up and sign a certificate of Implementation. This certificate will not impede the provisions of section 20 and – when applicable – section 21 of this ICT Purchase Terms & Conditions.

## **20 Acceptance**

- 20.1 When an Acceptance test is agreed in writing, parties will execute such a test after completion of Supplier's delivery, Installation or Implementation. The duration of the testing period will be set out in the Agreement.
- 20.2 By mutual agreement parties will set out procedures in the Agreement regarding the execution the Acceptance test of the Software.
- 20.3 Should obstructive Failures prove to exist during the agreed Acceptance test, the test will be interrupted until the Software is adapted so that the obstructions are removed.
- 20.4 Immediately after the Acceptance test has finished, parties will make and sign a record. This record will include Failures in the Software as well as the approval or disapproval of the Software.
- 20.5 Acceptance of Software cannot be withheld for other reasons than those concerning the explicitly agreed specifications.
- 20.6 Should Software Failures appear during the agreed Acceptance test, Supplier will repair these Failures within a reasonable time frame. Supplier is allowed to use temporary solutions, which will be removed after repairing. Whenever Supplier does not fulfil its obligations to repair the Software Failures, PON IT BV will be entitled to repair the Failures itself or have it repaired by other parties, after prior notice and at Supplier's expense.
- 20.7 When Software is approved by PON IT BV, the Acceptance date will be the date of signing the Acceptance certificate. When Software is developed in multiple steps, prior to the Acceptance of the last step a full Software test will be executed, as set out in subsections 2 till 6 of this section.
- 20.8 Software will be deemed to be accepted by parties:
  - a. In case of an Acceptance test agreed in writing: the date of signing the Acceptance certificate;
  - b. In case an Acceptance test is not agreed: by signing the delivery certificate or, when an Installation or Implementation by Supplier is agreed, after completion of the Installation as set out in subsection 18.2, respectively the Implementation as set out in subsection 19.4.
  - c. In case the Software has been taken in operations by PON IT BV without a signed Acceptance certificate.
- 20.9 After Acceptance of the Software Supplier is only obliged to repair Failures in the Software when:
  - a. PON IT BV has guarantee claims as set out in section 21;
  - b. Failures would not appear when Supplier had performed its maintenance obligations in a correct manner;
  - c. Failures, appeared and were reported to Supplier within twelve (12) months after Acceptation of the Software that were hidden during the Acceptance test and could not reasonably be discovered by PON IT BV.

## **21 Guarantee on Equipment**

- 21.1 During a period of three (3) months after delivery, or, when agreed between parties, three (3) months after Acceptance, Supplier will repair any Failure in the Software if these Failures are reported by PON IT BV to Supplier within mentioned time frame. Supplier shall within reasonable time after receiving a notification of a Failure of the Software take all necessary actions to repair the Software. In the event Supplier is reluctant to repair the Software in time Pon IT B.V. is authorised to use its step in rights and request a third party to repair the software on the account of supplier.
- 21.2 For the period of the guarantee, the repair will be free of charge. In case of incorrect use by PON IT BV or other causes that were Supplier's fault, Supplier shall charge PON IT BV the usual rates and expenses. The right of repair will expire after changes in the Equipment made by or through PON IT BV without prior written permission.
- 21.3 Supplier guarantees that Software:
  - a. Meets the agreed specifications regarding functionality, system requirements and performance as set out in the Agreement.;
  - b. Also meets this specifications at peak load.;
  - c. is developed efficiently, reliable and with mutual coherency;
  - d. Is fit for use together with the Equipment and Software as described in the Agreement;
  - e. Can be managed and maintained by Supplier for a period of at least five (5) years.
- 21.4 Supplier commits to enter into a Maintenance agreement with PON IT BV, with a duration of three (3) years, running from the date of Acceptance, which sets out the conditions of "Maintenance and Management of Software".
- 21.5 If parties do not enter into a Maintenance agreement and Supplier makes changes to the Software during the guarantee period, Supplier is, at PON IT BV's first request, obliged to provide a certificate of Maintenance, describing the Maintenance activities during the Maintenance period and their moment of realization.

## **22 Documentation**

- 22.1 Supplier will provide PON IT BV with sufficient Documentation concerning the properties and Application possibilities of the Software. Volume and type of the Documentation will be set out in the Agreement. This Documentation will:
  - 1a. Give a correct, complete and detailed description of the Software and its functionality to be delivered by Supplier.;
  - 1b. Enable users to use all possibilities of the Software in an easy way.;
  - 1c. Enable third parties to administer the Software.
- 22.2 Supplier shall replace Documentation as soon as possible at his expense; if at any moment during the use of the Documentation, it appears that the Documentation is incorrect, incomplete, unsatisfactory, unclear or dated. After expiration of the guarantee period as set out in section 21 these changes and adaptations will be performed by Supplier at compensation of expenses, unless parties have entered into a Maintenance agreement including such repairs.
- 22.3 Supplier will make the Documentation available in hard copy and in digital copy.

## **23 Tariffs and payments**

- 23.1 Unless agreed differently in the Agreement, the total amount for the Software will be invoiced to PON IT BV in accordance with

the next terms of payment:

- 10% at the start of the Software development;
- 40% distributed over the various milestones during the Software development;
- 50% at Acceptance of the Software.

23.2 All prices are fixed prices, unless agreed differently.

## **MAINTENANCE AND MANAGEMENT OF SOFTWARE**

Provisions in this Chapter are applicable if Supplier and PON IT BV entered into an agreement concerning Maintenance and Management of Software.

### **24 Supplier's Duties and Rights**

- 24.1 During the term of the Agreement Supplier is committed to repair Failures in the Software, if reported in accordance with section 28 by PON IT BV to Supplier, and to perform the remaining Maintenance as set out in the Agreement.
- 24.2 During the term of the Agreement Supplier is committed to perform the Management relating to the Software.
- 24.3 During the term of the Agreement Supplier maintains sufficient knowledge and experience to guarantee the performance of the Software.
- 24.4 Regarding to the Maintenance and Management of Software Supplier will establish an environment for testing and development that is separated from the Production environment.
- 24.5 Supplier is committed to respect intellectual property rights of Software and Documentation made directly or indirectly available by PON IT BV and shall do all the reasonable to avoid infringement of intellectual property rights.

### **25 Customers Duties and Rights**

- 25.1 At Supplier's request knowledgeable Staff of PON IT BV will be available for consultation during the performance of the agreed activities.

### **26 Maintenance**

26.1 The Maintenance of Software can include:

- 1a. Preventive Maintenance;
- 1b. Corrective Maintenance;
- 1c. Adaptive Maintenance;
- 1d. Additive Maintenance.

Types of Maintenance agreed for specific situations will be set out in the Agreement, including their specific conditions.

26.2 Regarding Preventive Maintenance the following conditions are applicable:

- 1a. Preventive Maintenance will be performed according to the planning as described in the Agreement. At PON IT BV's request or when Supplier considers this necessary, Preventive Maintenance can be performed during a Maintenance Weekend;
- 1b. Supplier will inform PON IT BV about Preventive Maintenance at least thirty (30) days prior to the performance, as far as this is not already included in the planning mentioned in subsection a. of this section;
- 1c. If the performance of Preventive Maintenance will cause changes in functionality of components of PON IT BV's ICT-infrastructure, Supplier will consult PON IT BV;
- 1d. If desired PON IT BV can have an Acceptance test performed, to determine the proper working of the Software after Preventive Maintenance;
- 1e. In principle Supplier will only perform Preventive Maintenance to the latest Version of Software. In some cases the running Version of Software, or the entire Software, can be frozen, accepting that further extension of functionality will be impossible. In that case Supplier will keep performing Preventive Maintenance to the frozen Version of the Software;
- 1f. Supplier is committed to examine the possibilities to improve the Software and make new Software Versions available to PON IT BV if necessary. Supplier will inform PON IT BV as soon as possible about new Versions, about their content and their consequences for the Software. PON IT BV is not obliged to accept new Software Versions.

26.3 With regard to the performance of Corrective Maintenance, Failures will be divided into categories, as set out in the Agreement.

26.4 If Failures occur, Supplier will start the Corrective Maintenance within the response time frame for the Failure category as set out in the Agreement. Supplier will repair the Failure within the agreed time frame.

26.5 Supplier is authorized to repair Failures in the Software by providing a temporary solution, creating a detour to circumvent the Failure. If parties agree that a Failure cannot be solved in any other way, Supplier has the right to install a Failure avoiding restriction in the Software. This restriction will affect the Software's functionality as little as possible. If PON IT BV deems the reduced functionality unacceptable, PON IT BV is authorized to start an independent investigation. Supplier will give full cooperation to this investigation. Expenses of this independent investigation will be charged to PON IT BV, however when the results justify this, they will be charged to Supplier.

26.6 When Equipment, System Software or ICT-infrastructure related to the performance of the Software is changed, Supplier is, regarding Adaptive Maintenance, committed to adapting the Software as soon as possible for use at the changed Equipment, System Software or ICT-infrastructure, at PON IT BV's expense.

26.7 Regarding the Additive Maintenance, Supplier is committed to adjust the Software to new functional demands, as specified in the Agreement, at PON IT BV's expense.

26.8 Recovery of crippled or lost data will not be considered as Maintenance, unless directly caused by gross omission or caused on purpose by Supplier's Staff.

26.9 The Maintenance obligation expires if and insofar Supplier demonstrates that a Failure is caused by:

- 1a. Indiscriminate use of the Software by PON IT BV;
- 1b. Changing the Software by PON IT BV by without permission of Supplier, unless PON IT BV demonstrates that the Failure is not caused by the changes and also would have occurred without the changes;
- 1c. Failures due to PON IT BV or a Connection with and/or usage of Software, Equipment or Materials that is not delivered or recommended by Supplier;
- 1d. Changes made as a result of the investigation or repair of Failures that resulted from above mentioned exclusions, do not belong to Supplier's duties and will be charged separately at rates of the valid rate list.

### **27 Failure Reporting**

- 27.1 Immediately after the occurrence of a Failure in the Software PON IT BV will give notice to Supplier, as set out in the Agreement, including notification by facsimile, e-mail, telephone, to numbers and/or addresses as specified in the Agreement.

## **28 Maintenance Location**

- 28.1 Software Maintenance will be performed at Supplier's site, unless set out differently in the Agreement. Activities that can not be performed at Supplier's site will be performed at PON IT BV.
- 28.2 Maintenance may be performed by remote diagnosis, except in case of limitations because of security issues. Supplier will determine the options per individual case and can provide the required equipment and communication facilities, if desired. Supplier will take all security measures to avoid virus infection of PON IT BV's Equipment and/or Software, illegal use of the Connection, and to satisfy the other conditions concerning remote diagnose in the Agreement.

## **29 Moments of Maintenance performance**

- 29.1 Periods for the performance of Maintenance will be set out in the agreement.

## **30 Delivery and Implementation**

- 30.1 At PON IT BV's request Supplier will implement the Software as delivered under the Maintenance agreement.
- 30.2 Sections 19 and 20 are applicable.

## **31 Acceptance by Supplier**

- 31.1 Supplier is authorized to submit the Equipment, System Software, Network and Documentation, that was made available by PON IT BV or any third party regarding the Agreement, to an Acceptance Test. The Acceptance Test, the matching schedule and the Acceptance criteria will be provided by Supplier and included in the Agreement.
- 31.2 On the basis of the Acceptance test PON IT BV will take away any obstacles for Acceptation, with due consideration of the Agreement.

## **32 Acceptance by PON IT BV**

- 32.1 PON IT BV has the right to submit the results of Supplier's activities to an Acceptance test. Failures determined by PON IT BV on the basis of such a test will be corrected by Supplier whether within the agreed time frame or within the shortest possible time.

## **33 Guarantee**

- 33.1 PON IT BV can invoke the guarantee rights as set out in section 21 for a period of six (6) months.

## **34 Supplier's Software**

- 34.1 If and insofar Supplier furnishes third party Software to PON IT BV's, parties are obliged to follow the release policy of that third party.
- 34.2 In case of doubt about the Implementation suitability of a new release of third party Software, Implementation will only be done after mutual consultation between parties. In some cases the release or the entire Software can be frozen, accepting that further extension of functionality is impossible.

## **35 Change of Documentation**

- 35.1 If at any moment during usage within the Software's Maintenance period Supplier's Documentation proves to contain incorrect information or to be incomplete, insufficient, unclear or outdated, Supplier will provide replacement, changes or adaptation of the Documentation as soon as possible at Suppliers expense.

## **36 Maintenance**

- 36.1 Maintenance of Software can include:
- 1a. Application Maintenance;
  - 1b. Functional Maintenance;
  - 1c. Technical Maintenance.

The type of Management and the applicable conditions to specific cases will be set out in the Agreement.

## **37 Tariffs and payment**

- 37.1 The conditions of section 2 and section 9 are applicable, as far as this section does not deviate.
- 37.2 The remuneration for Maintenance will be made quarterly.

## **SECONDMENT**

The conditions in this chapter are applicable to temporary secondment of Supplier's Staff at any PON IT BV site, the activities being performed under PON IT BV's Management and supervision.

## **38 Performance**

- 38.1 The Agreement will include the subsequent specifications regarding a secondment order
- a. The period that Supplier's Staff will be seconded at PON IT BV during Working days;
  - b. If relevant, the days that Supplier's Staff will not be active with PON IT BV;
  - c. The activities to perform by Supplier's Staff;  
The site where the activities will be performed;
  - d. The skills that Supplier's Staff have to possess.
- 38.2 Supplier's Staff's leave will be filled out in consultation with PON IT BV, just like the shifts that seconded Staff will participate in activities that are essential to Supplier, including progress meetings and training.
- 38.3 During the period that Supplier's Staff is incapable of performing the agreed activities on behalf of PON IT BV, for example in case of disability, disease or termination of the employment relation with Supplier, Supplier is committed to replace the employee with another employee with a comparable level of education, skills and experience.

## **39 Rates and payment**

- 39.1 The conditions of section 2 and section 9 are applicable.
- 39.2 Supplier will be liable for the payment of taxes and (social) insurance contributions of workers seconded with PON IT BV. Supplier will indemnify PON IT BV for the liability for the contribution of taxes and (social) contributions.
- 39.3 At PON IT BV's request Supplier is committed to provide an auditors certificate, proving that Supplier and third parties engaged by Supplier for the performance of the Agreement have fulfilled their legal commitments of the past year, concerning the obligatory (social) insurance contributions, income tax and/or sales tax to the tax department and the national institute for employee benefit schemes.

#### **40 Intellectual property rights**

- 40.1 All intellectual property rights that arise as a result of the performance of a secondment order by engaged workers will rest with PON IT BV. As far as any (intellectual) property rights concerning developed Software within the scope of the Agreement might rest or will rest with Supplier or its engaged employee, these rights will be transferred to PON IT BV in advance.
- 40.2 Rights not transferable in advance will still be transferred at first request.
- 40.3 Insofar these rights are not transferable, parties agree that Supplier and its engaged third parties give PON IT BV an irrevocable, unlimited and transferable license.

#### **DELIVERY OF MOVABLE PRODUCTS**

The conditions in this chapter are applicable when Supplier sells and delivers ICT Products and components (Equipment and Software) to PON IT BV.

#### **41 Movable products**

- 41.1 Movable products to deliver by Supplier will be specified and detailed in the Agreement.
- 41.2 By exceeding the agreed delivery date(s) of the (part(s) of the) movable Products Supplier will be in default. In case of a potential exceeding of the agreed delivery date(s) Supplier shall report PON IT BV in writing promptly without the prejudice the consequences and Suppliers liability for the exceeding. If the delivery date has been exceeded for ten (10) or more calendar days Supplier shall forfeit a penalty of five percent (5%) of the agreed price(s) for the movable Products, accumulating with one percent (1%) for each day of extra delay, beyond its liability for indemnification. Supplier will be due to pay automatically also the legal interest on the basis of article 6:119a BW (the Dutch Civil Code) for the indebted penalty amount from the day Supplier is indebted to pay the penalty without the obligation of PON IT BV to report that the Supplier is in default.
- 41.3 Supplier is not allowed to postpone its obligations to deliver in case PON IT BV is in default.
- 41.4 The moment of Delivery will be the moment of the transition of ownership and the risks for the Products, unless (i) Parties have agreed otherwise or (ii) PON IT BV has refused and/ or rejected the delivery of the Products according to the stipulation in section 6 of these ICT T&C.
- 41.5 Supplier warrants that the transfer of property rights to PON IT B.V. will be the transfer of unencumbered property.
- 41.6 Supplier resigns all rights for retention and / or complaints for which Supplier as a supplier can rely on the base of the right of retention and complaints.

#### **42 Transport and Packaging**

- 42.1 Transport and packaging is at Supplier's risk, unless otherwise agreed.
- 42.2 All movable Products must be packed and protected adequately so that they reach their destination in good condition under standard transportation circumstances. Supplier is committed to comply with national and international regulations regarding transport and packaging. Damage of movable products as a result of inferior packaging will be at Supplier's risk and expense.

#### **43 Delivery**

- 43.1 Movables to sell, lease, or lend by Supplier to PON IT BV will be delivered to PON IT BV including Documentation, at a location in the Netherlands to be pointed out by PON IT BV, at charges as set out in the Agreement.
- 43.2 Only when agreed in writing Supplier will take care of the collection and handling of released, replaced and/or outdated movables.

#### **44 Acceptance**

- 44.1 Supplier will furnish movables to PON IT BV by delivery as set out in section 45, by Supplier's Installation or Implementation with PON IT BV if agreed so in writing. Moment of Acceptance of movables will be the delivery date, or if an Installation or Implementation is agreed in writing, the date of Acceptance.

#### **45 Guarantee**

- 45.1 During a period of twelve (12) months after delivery, or, when parties have agreed an Acceptance test, twelve (12) months after Acceptance, Supplier will repair Failures in movables and in components delivered by Supplier within the scope of Guarantee or Maintenance, if these Failures will be reported in detail to Supplier within the agreed period.
- 45.2 All replaced components will be property of the owner of the movables. The guarantee obligation expires if Failures are (partly) due to incorrect, careless or incompetent use, external calamities such as suffered fire- and water damage, or when PON IT BV makes or let make changes in movables or components delivered by Supplier within the scope of Guarantee or Maintenance.

Activities and expenses of repairing outside the scope of this Guarantee will be charged on basis of post-calculation in accordance with Supplier's usual rates.

#### **WORKPLACE SERVICES**

The conditions in this chapter apply when Supplier delivers Workplace Services to PON IT BV. In that case Supplier will take care of the delivery of uniform ICT-Products and Services for use at working places. This concerns the availability of Software and Equipment, additional components to be added, as well as development, Maintenance and Management thereof.

#### **46 Workplace Services**

- 46.1 Workplace Services rendered by Supplier will be detailed in the Agreement.
- 46.2 In combination with Workplace Services Supplier will support users concerning troubles with using Workplace Services, as detailed in the Agreement.
- 46.3 Workplace Services by Supplier are not related to any property of Network, Equipment or Software.

#### **47 Security**

- 47.1 Regarding to Workplace Services Supplier shall guarantee an adequate security level.

#### **48 Acceptance**

- 48.1 PON IT BV is authorized to submit the results of Supplier's Workplace Services to an Acceptance test. Failures determined by PON IT BV on the basis of such a test will be corrected by Supplier whether within the agreed time frame or within the shortest possible time. Section 21 is applicable.

#### **ADMINISTRATION AND EXPLOITATION OF ICT-INFRASTRUCTURE**

The conditions in this chapter apply when Supplier delivers ICT infrastructure Administration and Exploitation Services to PON IT BV, data processing with Supplier managed Systems included.

#### **49 Management**

- 49.1 During the term of the Agreement Supplier will Manage the ICT infrastructure as set out in the Agreement, with due consideration of the conditions in these ICT Purchase Terms & Conditions and the Agreement. Supplier will manage the ICT infrastructure with dedication, according to the processes of and the Agreement with PON IT BV.
- 49.2 The Management of the ICT infrastructure can include:
  - a. Application Management;
  - b. Functional Management;
  - c. Technical Management.

Types of Management agreed for specific situations will be set out in the Agreement, including specific conditions.

#### **50 Management Location**

- 50.1 The Management will be performed at Supplier's site, unless Management at a PON IT BV site will be agreed upon.
- 50.2 Management may be performed by remote diagnosis, except in case of limitations because of security issues. Supplier will determine options per individual case and can provide the required equipment and communication facilities, if desired. Supplier will take all security measures to avoid virus infection of PON IT BV's Equipment and/or Software, illegal use of the Connection, and to satisfy the other conditions concerning remote diagnosis as set out in the Agreement.
- 50.3 If set out in the Agreement, in case of limited usefulness of ICT-infrastructure for a continuous period of time, and after parties have agreed so in writing, Supplier will offer adequate alternative facilities.
- 50.4 The decision to switch to alternative facilities will be made after mutual deliberation, unless it is impossible to make that decision within 24 hours after one party's request. In that case Supplier will decide independently to switch to alternative facilities.
- 50.5 The alternative facilities will be equivalent to the original, at hours and places acceptable for PON IT BV. Supplier will only make alternative facilities available to divisions of PON IT BV when agreed in writing.
- 50.6 Supplier will make sure that the conditions in the Agreement concerning ICT Management will also be met after a switch to alternative facilities. Parties will make supplementary agreements regarding to switching, such as concerning data loss and drawback in topicality.

#### **51 Management periods**

- 51.1 Periods that the System will be available for Management will be set out in the Agreement.
- 51.2 At PON IT BV's requests or when the Supplier considers this necessary, Management can be performed during a Maintenance weekend.

#### **52 License Management**

- 52.1 Supplier provides the required licenses for the Systems they made available to PON IT BV to perform the Management and to make possible for PON IT BV to use these Systems. PON IT BV provides licenses for the Systems that will be managed by Supplier, so that Supplier is authorized to perform the Management.
- 52.2 Supplier shall register the licences as set out in the Agreement and in subsection 1 of this section.

#### **53 Exploitation**

- 53.1 All data to be processed by Supplier will be prepared and delivered by PON IT BV, according to the conditions of the Agreement.
- 53.2 PON IT BV constantly guarantees the correctness and completeness of Materials, data, Software, procedures and instructions made available to Supplier for Data processing. Data carriers will meet the requirements of Supplier.
- 53.3 Supplier is committed to keep the Software he uses for data processing up to date with regard to the relevant regulations of governmental and other authorities. Upon request Supplier will advise PON IT BV concerning the implications for PON IT BV against usual rates.
- 53.4 Supplier will deposit a copy of the data to process, in a way to be specifically agreed upon, and for a period of time specifically agreed upon, and will destroy the data after this period.
- 53.5 The description of supplementary Services regarding the Exploitation and the applicable conditions, like the processing of incidental Production orders, disk storage, print and reproduction work, CD-ROM production, authorizations, Directory Services, web hosting and DIS Services will be set out in the Agreement.

#### **54 Telecommunication**

- 54.1 Regarding the data processing with use of telecommunication facilities, Supplier will assign access and identification codes. PON IT BV will treat these codes as confidential and will only make them known to authorized Staff.

#### **55 Security**

- 55.1 Whenever Supplier delivers Exploitation and Management Services to third parties, Supplier is committed to create an environment that will be logically separated from the environment managed by or for PON IT BV.

#### **56 Helpdesk**

- 56.1 During periods as set out in the Agreement Supplier will provide helpdesk Services for telephone support to PON IT BV regarding irregularities in the Management. After a request for support, Supplier will set up contact between PON IT BV representative and a specialist as soon as possible. Response time and the amount of support hours will be set out in the Agreement.

#### **57 Equipment Maintenance**

- 57.1 Within the scope of Management and Exploitation Supplier will perform the Maintenance as set out in the Agreement.
- 57.2 The Equipment Maintenance may include:
  - a. Preventive Maintenance;
  - b. Corrective Maintenance.

Maintenance types agreed for specific situations will be set out in the Agreement, including specific conditions.

- 57.3 Immediately after the occurrence of an Equipment Failure PON IT BV will give notice to Supplier as set out in section 58, by a qualified PON IT BV Staff member giving a detailed Failure description. PON IT BV is committed to cooperate and give access to

the Equipment site. Supplier is committed to observe the access conditions.

57.4 Supplier is authorized to repair Equipment Failures by providing a temporary solution, creating a detour to circumvent the Failure. If parties agree that a Failure cannot be solved in any other way, Supplier has the right to install an avoiding restriction in the Equipment. This restriction will affect the Equipment functionality as little as possible. If PON IT BV deems the reduced functionality unacceptable, PON IT BV has the right to start an independent investigation. Supplier will give full cooperation to this investigation. Expenses of this independent investigation will be charged to PON IT BV, however when the results justify this, they will be charged to Supplier.

57.5 In case it is necessary in order to detect Failures or monitor the Equipment performance, PON IT BV will tolerate Supplier to connect his equipment to PON IT BV's or to install his Software at PON IT BV's Systems. Supplier will inform PON IT BV about the implications. If possible Supplier will give PON IT BV the opportunity to remove or protect data in the Equipment or the System.

57.6 PON IT BV is authorized to connect Equipment not delivered by Supplier.

57.7 If in Supplier's opinion this is necessary, replacement of System components will take place to repair or avoid Failures.

57.8 The price of Maintenance does not include:

- a. Replacement of supplies, like magnetic storage media and ink ribbons.
- b. Failures as a result of the replacement of Equipment without prior written permission of Supplier;
- c. Component replacement costs, as well as repair Services by Supplier, regarding to Failures being a result of third party repair attempts;
- d. Equipment modifications.

57.9 Activities with regard to examination or repair of Failures caused by above-mentioned exclusions do not belong to Suppliers obligations and will be charged by Supplier at Supplier's current rates.

## **58 Reporting Failures**

58.1 Immediately after the occurrence of an Equipment Failure PON IT BV will give notice to Supplier as set out in the Agreement, included notification by facsimile, e-mail, telephone, to numbers and/or addresses as specified in the Agreement.

## **59 Maintenance Location**

59.1 Equipment Maintenance will be performed at Supplier's site, unless set out differently in the Agreement. Activities that can not be performed at Supplier's site will be performed at PON IT BV.

59.2 Maintenance may be performed by remote diagnosis, except in case of limitations because of security issues. Supplier will determine the options per individual case and can provide the required equipment and communication facilities, if desired.. Supplier will take all security measures to avoid virus infection of PON IT BV's Equipment and/or Software, illegal use of the Connection, and to satisfy the other conditions concerning remote diagnose in the Agreement.

## **60 Delivery and Installation**

60.1 Supplier will, at PON IT BV's request, install Equipment provided under the Maintenance duties.

60.2 Installation costs will be charged to PON IT BV.

60.3 Once the Installation is finished in the opinion of both parties, parties will draw up an Installation certificate.

## **61 Acceptance**

61.1 Supplier is authorized to submit the results of Supplier's activities concerning the Management and Exploitation of ICT-infrastructure to an Acceptance Test. Supplier will correct the determined Failures within agreed time frame or within the shortest possible time. Section 20 is applicable.

## **62 Property of components**

62.1 Replaced broken Equipment components, as meant in section 57.7 will be or remain property of Supplier. Replaced Equipment components will be PON IT BV's property as far as PON IT BV will be charged for them. If and insofar the expenses for the replacing components are included in the Maintenance price, the replacing components will be PON IT BV's property.

## **63 Guarantees**

63.1 If imperfections in the results of data processing are due to Products, Software, Data carriers, procedures or control actions, for which the the Supplier is liable explicitly according to the Agreement, Supplier will process the data all over again, in order to repair the imperfections, provided that the data necessary are still available and that PON IT BV reports the imperfections as soon as possible yet not later then one month after receiving the results from Supplier. The redoing of the data processing will be free of charge.

63.2 For the term of the Agreement Supplier guarantees that:

- a. He is authorized and will be able to furnish Systems.;
- b. The available systems will also at Spear load be able to process the data in the agreed way.;
- c. The different steps of the data processing will be reproducible as set out in the Agreement.

## **64 Rates and payment**

64.1 The remuneration for the Management and Exploitation of the ICT-infrastructure will be set out in the Agreement.

64.2 Sections 2 and 9 are applicable.

### **NETWORK SERVICES**

The conditions in this chapter are applicable when Supplier delivers Network Services to PON IT BV, including the Installation, Management and Exploitation of Networks and related Services.

## **65 Network Services**

65.1 Supplier will deliver Network Services as set out in the Agreement, in accordance with the conditions in this chapter, the procedures and the Agreement. Network Services will include the following Services as detailed in the Agreement:

a. Lease lines: the Installation, disposal and, at PON IT BV's request, the moving of Connections;

At the endpoints of a Connection Supplier provides the possibility to connect equipment, based on the agreed standards or, lacking these standards, the most common open interfaces.

b. Telecommunication Services: The Implementation of local telephone switchboards, as well as the Management and extension thereof at PON IT BV's request, and the realization of Connections with switchboards to local and public Networks. Provided telephone switchboards will remain Supplier's property. Supplier will equip the switchboards with analogue or digital extensions, as desired by PON IT BV. Temporary switchboards will be available for a minimum of two weeks for a number of extensions as set out in the

Agreement.

c. Data communication Services: the LAN Connection to the WAN as set out in the Agreement (LAN-Connection), as well as the Management of active infrastructure components.

1a. Internet Services: access to internet and intranet, remote access, e-mail, DNS-server, Directory Services

65.2 In compliance with the security regulations, Supplier will allow a Connection of his Network to PON IT BV's Network. Changes to one of mentioned Networks will only be carried out after parties determined that it would not cause Failures to any Network.

#### **66 Security**

66.1 Regarding Network Services as well as the Management and Exploitation thereof, Supplier will guarantee an adequate security level.

66.2 All Network Services that might harm PON IT BV's security may not be offered to PON IT BV without PON IT BV's written accreditation of the security level.

#### **67 Acceptance**

67.1 PON IT BV is authorized to submit Supplier's Network Services to an Acceptance test. Supplier will fix Failures determined during the Acceptance test within the agreed time frame or within the shortest possible time. Section 20 is applicable.

#### **CONSULTANCY, TRAINING AND OTHER INDIVIDUAL SERVICES**

The conditions in this Chapter will be applicable when Supplier delivers to PON IT BV Services like organisation and computerization advices, Application possibilities, consultancy, education, support and other individual Services, like Installation or Implementation of movables. Education includes education advice, education projects and plans, education development, courses and training as well as training on the job.

#### **68 Consultancy**

68.1 Parties will set out in the Agreement what consultancy Services Supplier will deliver to PON IT BV, including their way of performance. Supplier can deliver his recommendations either by report, or by secondment of experts or project managers, according to the Agreement.

68.2 The Acceptance of the concerning recommendations will be set out in the Agreement.

#### **69 Education**

69.1 Parties will set out in the Agreement what training Supplier will deliver to PON IT BV

69.2 Supplier will, after receipt in writing of registrations for courses, confirm the registrations to PON IT BV in writing.

69.3 Should a training be cancelled according to section 71, PON IT BV is not obliged to pay. If PON IT BV already paid for the training, the amount will be refunded.

69.4 PON IT BV will also pay when (a Staff member of) PON IT BV does not attend the course, unless the participation was cancelled early, according to section 71.

#### **70 Cancellation**

70.1 Unless agreed otherwise in writing, PON IT BV is authorized to cancel a course registration free of charge. Cancellation will be in writing at least ten (10) days before starting date, mentioning name of course, name of student and starting date.

70.2 In case a Staff member of PON IT BV will be unable to attend the course, PON IT BV has the right to have another person attend the course.

#### **71 Remaining individual service**

71.1 Other individual Services Supplier will deliver to PON IT BV, as well as the way these Services will be executed, will be set out in the Agreement.

71.2 The way of Acceptance of the concerning individual Services will be set out in the Agreement.

71.3 PON IT BV is authorized to submit Supplier's activities regarding individual Services to an Acceptance test. Supplier will fix Failures determined during the Acceptance test within the agreed time frame or within the shortest possible time. Section 20 is applicable.