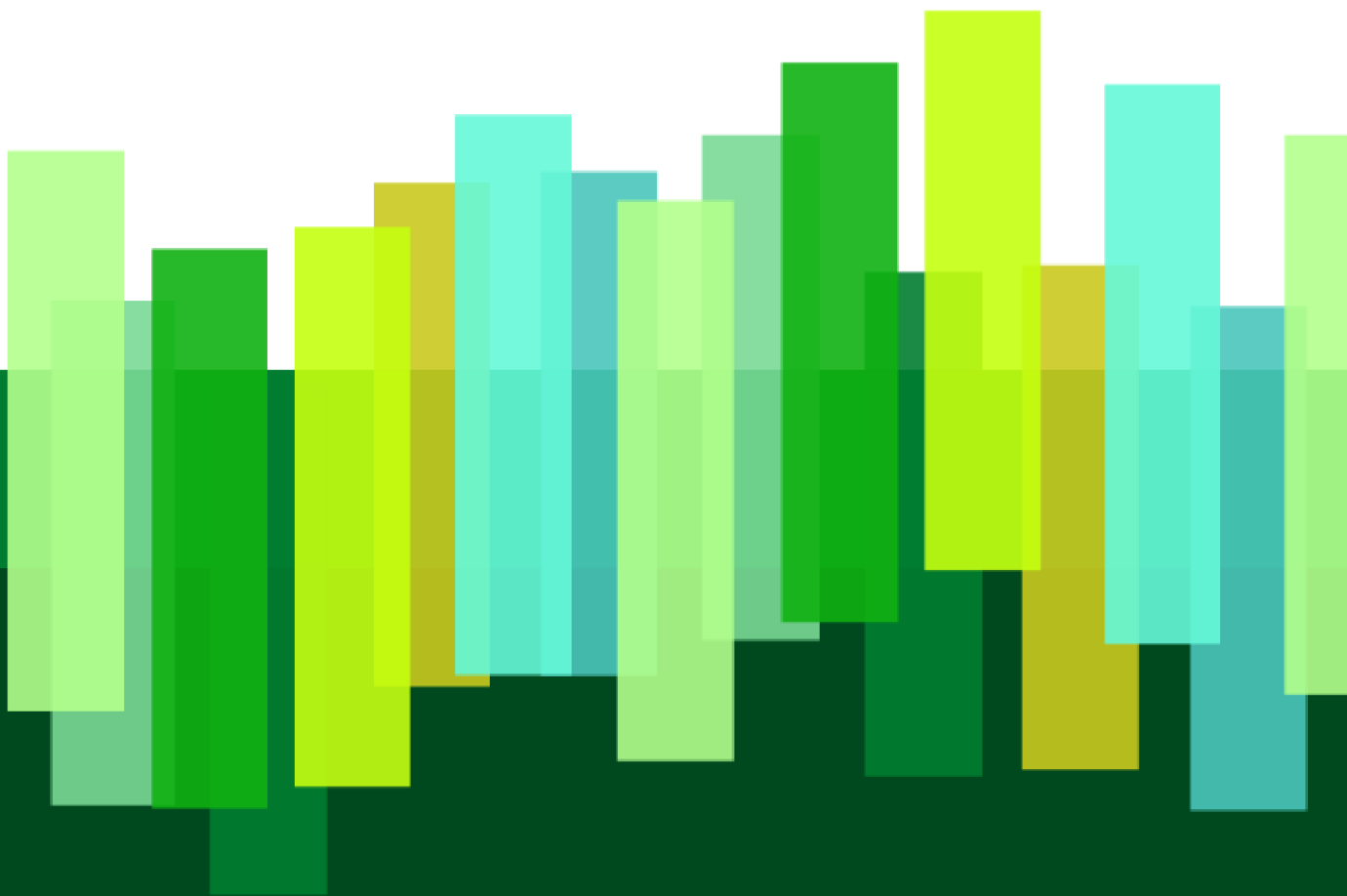




General procurement terms and conditions Kenter B.V.



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1. Scope of application and definitions

1.1. The following terms bear the meaning assigned to them for the purposes of these general procurement terms and conditions ('Conditions'):

Article: an article in these Conditions;

Civil Code: the Dutch Civil Code;

Corrective Maintenance: the detection and repair by a Contractor of Defects which Kenter has reported to them or which have otherwise become known to them;

Day(s): calendar day(s);

Third-party Software: software of which both (a) the intellectual property rights are not wholly vested in a Contractor and/or an associated company of the latter, and (b) in respect of which a Contractor is unable to secure certain developments or modifications of that software.

Documentation: any description of the relevant Product and/or Service and its or their features in Dutch and/or English, whether or not specifically intended for its installation, implementation, use, management or maintenance;

Services: all work, services and/or Remote Services (specified in the relevant Agreement) carried out for or provided to Kenter in the broadest sense of the term;

Remote Services: the provision by a Contractor of Software or Services (such as cloud services, ASP, SaaS, IaaS and PaaS) by means of remote communication techniques (such as the internet);

ICT Performance: any performance to be effected by a Contractor pursuant to an Agreement in the field of ICT, such as the delivery of Products, Standard Software and Third-Party Software, Remote Services, Maintenance and/or the development of Custom Software;

Purchase Order: a Written Order for the Supply of Products and/or Services, and/or Kenter's acceptance of a Contractor's Quotation;

Innovative Maintenance: the Contractor's further development of any

ICT Performance through the supply of Upgrades or otherwise;

Kenter: the private company with limited liability, Kenter B.V., having its registered office in Arnhem and place of business at Dijkgraaf 4 in (6921 RL) Duiven, the Netherlands, and registered in the Commercial Register of the Chamber of Commerce under number 58246312;

Delivery: the placement of one or more Products in the possession or under the control of Kenter by a Contractor and/or the provision of Services in accordance with Article 8 of these Conditions;

Custom Software: software developed or to be developed specifically for the benefit of Kenter or Standard or Third-party Software specifically modified for Kenter's benefit;

Quotation: a Written offer from a Contractor to supply a certain quantity of Products and/or Services in accordance with specific conditions;

Maintenance: the entirety of Corrective, Preventive and Innovative Maintenance and user support, stipulated in greater detail in an Agreement and, where applicable, a Service Level Agreement;

Contractor: any natural person and/or legal entity that conducts negotiations with Kenter concerning the conclusion of an Agreement and/or enters into an Agreement with Kenter;

Agreement: an agreement between Kenter and a Contractor pursuant to which Kenter receives Products and/or Services under any title whatsoever;

Party or Parties: Kenter and/or a Contractor;

Preventive Maintenance: the adoption of measures by a Contractor to prevent Defects and other technical problems from occurring, whether or not by issuing Updates;

Product: any item, product and/or Software (specified in an Agreement) which is delivered to Kenter in the broadest sense of the term;

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In Writing/Written: by letter, email or other electronic means of communication (such as through a web portal);

Service Level Agreement (SLA): a separate agreement describing the quality of Services, such as those in relation to Maintenance, and the applicable service levels;

Software: all Standard and/or Third-party Software to be supplied by a Contractor, as well as any Custom Software to be developed by a Contractor by order of Kenter;

Update: a subsequent version (regardless of naming or numbering) of Software in which Defects have been fixed and/or the operation of the Software has otherwise been improved;

Upgrade: a subsequent version (regardless of naming or numbering) of the Software with predominantly new or modified functionality.

- 1.2. Where words in the plural form are assigned a defined meaning above, they shall be deemed to include the singular form and vice versa.
- 1.3. These Conditions shall govern all offers and Quotations presented to, Purchase Orders from and (negotiations concerning) Agreements with Kenter. In the event that there is any conflict between these Terms and Conditions, and an Agreement, the latter shall prevail.
- 1.4. Any agreements, arrangements and/or conditions which derogate from these Conditions shall only apply provided that they have been explicitly agreed to with Kenter In Writing or the latter has confirmed them In Writing and shall otherwise not in any way affect these Conditions.
- 1.5. The nullity or inapplicability of one (1) or more of the provisions – or part thereof – of these Terms and Conditions shall not affect the validity and operation of their remaining provisions.
- 1.6. Kenter explicitly rejects the applicability of any general (sales and delivery) or other

terms and conditions employed by a Contractor howsoever called.

- 1.7. In the event of a conflict between the Dutch text of these Conditions and any translation thereof, the Dutch text shall prevail.
- 1.8. Kenter shall be entitled to amend these Conditions unilaterally. Should Kenter exercise this power to amend them, the amended Conditions shall apply as soon as Kenter sends them to the relevant Contractor.

2. Conclusion of an Agreement

- 2.1. A request for a Quotation on the part of Kenter shall be:
 - free of obligation;
 - addressed exclusively to the relevant Contractor;
 - may not be disseminated;
 - shall count as a single entity; and
 - may be revoked at any time.

Furthermore, any forecast provided by Kenter to a Contractor for the purposes of a Quotation shall not be binding under any circumstances.
- 2.2. A Quotation, offer, quote or other declaration made by a Contractor to Kenter shall be deemed to be binding, irrevocable and issued free of charge for a period of no less than thirty (30) Days. The Contractor warrants the accuracy and completeness of such Quotations, offers, quotes and other declarations.
- 2.3. An Agreement shall be concluded:
 - where a Contractor accepts a Purchase Order placed by Kenter within five (5) Days of the dispatch of the relevant Purchase Order, in respect of which the time of dispatch of the Purchase Order shall be decisive; or
 - where Kenter accepts a Contractor's Quotation In Writing; or
 - The parties sign a Written Agreement; or

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- the relevant Contractor executes an uncanceled Purchase Order from Kenter.
- 2.4. Where the Parties have not signed a Written Agreement, the content and text of Kenter's Purchase Order shall always be decisive and shall be deemed to constitute the content of the Agreement. In the event that a Contractor in any way modifies – in any form whatsoever – the relevant Purchase Order or order confirmation and/or makes notes and/or comments on it, they shall be deemed not to constitute part of the Agreement. Having regard to the foregoing, where a Purchase Order differs from the relevant Quotation, an Agreement shall be concluded in accordance with the Purchase Order. In the event that part of a Quotation is accepted, an Agreement shall come into effect to the extent of that part of the Quotation which is accepted in return for a corresponding proportion of the stipulated price.
- 2.5. Should no Agreement be concluded, Kenter shall not have a duty to compensate the relevant Contractor for costs of any nature whatsoever. Any preparatory action, acquisition work or performance effected by a Contractor without a Contract having been validly concluded in accordance with these Conditions shall occur at the Contractor's risk and expense and shall not require Kenter to make any payment.
- 2.6. Fees for Products and/or Services not mentioned or included in an Agreement may only be charged to Kenter provided that the latter has entered into a supplementary Written Agreement with the relevant Contractor in this respect.
- 2.7. Any amendment of an Agreement (including any work excess or shortfall) shall only be binding on Kenter provided that the latter has confirmed same In Writing.
- 2.8. A Contractor shall warrant the accuracy and completeness of any data, drawings, specifications, samples, Documentation and other information supplied by it.
- 2.9. Kenter may at any time revoke a Purchase Order without being liable for any compensation provided that it has not received a signed notice confirming the order from the relevant Contractor.
- 3. Fees**
- 3.1. Any fee and/or price structure stipulated in an Agreement shall be fixed for the term of the Agreement and the relevant Contractor shall not alter it to Kenter's disadvantage, even where cost price determining factors, such as the price of raw materials, wages, currency exchange rates and the like have changed since the Agreement was concluded.
- 3.2. A fee shall be based on DDP (*Delivered Duty Paid*) as stipulated in Article 8.1 and shall include administration costs and charges for shipping, importation, the inspection of the relevant Products and/or Services, packaging, transport, loading and unloading, insurance policies, duties, other levies and all other inflationary expenses. Should Kenter nevertheless pay the aforementioned costs, it shall be entitled to charge them separately to the relevant Contractor.
- 3.3. Any fee agreed to shall be stated in euros and shall not include value added tax.
- 4. Payment**
- 4.1. Payment shall occur at Kenter's discretion within thirty (30) days after:
- it receives an invoice from the relevant Contractor for the Products and/or Services which complies with the provisions of Article 4.4; or
 - the relevant Products have been delivered by the Contractor concerned, the Services have been completely readied and approved by Kenter and/or the Contractor has otherwise fully complied with their obligations pursuant to the relevant Agreement.
- 4.2. In derogation from Article 6:119a of the Dutch Civil Code, any compensation due

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- on account of a delay in the payment of a sum of money shall consist of the legally stipulated interest on that sum, as provided for in Article 6:119 of the Civil Code, covering the time during which Kenter was in default of payment.
- 4.3. In the event of a delay in the payment of a sum of money, Kenter shall not be liable for costs other than those actually incurred for (extrajudicial) legal assistance subject to a maximum amount equal to no more than two points times the rate applicable in the case of the claim in accordance with the court-approved scale of costs applicable at the time when the Agreement was concluded.
- 4.4. Invoices must be comprehensive. Invoices shall in any event state the Purchase Order number, delivery date, as well as the item number(s), quantity(s) and description(s) of the Products and/or Services and the invoice amount (both including and excluding VAT). Invoices must also include the relevant Contractor's name, (billing) address, postal code, place of residence, requisite IBAN and BIC details, VAT number and Chamber of Commerce number. If an invoice is incomplete, Kenter may return it and the term of payment stipulated in Article 4.1 shall not proceed.
- 4.5. Where an Agreement provides that payment must occur on the basis of subsequent costing, in addition to the requirements mentioned in Article 4.4, the relevant Contractor shall be required to state in their invoices the days and hours spent along with a breakdown of the work performed.
- 4.6. All of a Contractor's invoices shall be sent to Crediteuren@Kenter.nu stating Kenter's purchase order number and other details required by Kenter when the Agreement was concluded.
- 4.7. (Partial) payment by Kenter shall not entail the latter's acceptance of the relevant Contractor's performance. Neither shall (partial) payment by Kenter be deemed to constitute an acknowledgement of a Contractor's claim.
- 4.8. Any payment made by Kenter shall first serve to reduce the principal amount, then to reduce any interest and then to reduce other costs.
- 4.9. Kenter shall in no way tender security or provide an advance.
- 4.10. Kenter shall be entitled to suspend its financial obligations in those cases referred to in Dutch law. Furthermore, Kenter shall at all times – and hence also in cases other than those regulated by law – be entitled to set off any payments, costs, damages and/or interest which the relevant Contractor owes and/or will owe Kenter against any payment(s) due to the Contractor.
- 4.11. A Contractor shall not be entitled to any withholding, deduction or setoff on any grounds whatsoever, and neither shall the Contractor be entitled to suspend its obligations towards Kenter. A Contractor shall also be deemed to waive (in advance) any lien that could be enforced against Kenter and any (legally stipulated) right to terminate the relevant Agreement]
- 5. Guarantee of quality and capacity**
- 5.1. For the expected (technical) lifetime of each Product (the manufacturer's warranty stipulated by the manufacturer of the relevant Product) but at any rate for a period of eighteen (18) months in so far as the manufacturer's warranty is shorter than this, the Contractor shall warrant that each Product which is delivered:
- is suitable and legally permitted for its intended purpose;
 - fully complies with the features undertaken to be provided in relation to its quality, origin, packaging and affixed trademarks or any specifications, drawings and/or samples supplied by Kenter and any requirements stipulated in the relevant Agreement;
 - is identical in all respects to any sample that serves as the basis for the sale by the relevant Contractor to Kenter;

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- d. complies with the strictest applicable national, European and international legal requirements and other safety regulations;
 - e. satisfies the strictest requirements stipulated in the health, safety, environmental and quality standards applicable within the industry;
 - f. is manufactured with good craftsmanship;
 - g. does not infringe third-party rights;
 - h. is free of defects.
- 5.2. A Contractor shall warrant that the quantity or number of Products supplied corresponds to the relevant Purchase Order subject to the proviso that (i) in the event that too few are supplied, the Contractor shall have a duty to deliver the quantity that is missing, and (ii) should too many be supplied, Kenter, acting at its own discretion, may decline to accept the excess Products supplied – in which case the Contractor shall have a duty to take back the excess supplied at its own expense – or to accept the excess Products supplied, in which case Kenter shall be granted a discount of two per cent (2%) in respect of the relevant Purchase Order (and Agreement).
- 5.3. Should it appear that the Products and/or Services do not satisfy the requirements set out in this Article 5, Kenter may:
- a. require the relevant Contractor to supply replacement Products at their own risk and expense or to ensure repairs as well as compensation for any damage suffered by Kenter as a result of the Contractor's shortcomings;
 - b. arrange for the Products and/or Services to be replaced by a Third Party at the relevant Contractor's risk and expense;
 - c. return the Products at the relevant Contractor's risk and expense, whether or not the Contractor takes care of this themselves, and Kenter may require that any payments which it has already effected be refunded to it;
 - d. cancel all or part of the relevant Agreement in the absence of any further notice of default or judicial intervention and without a duty to provide compensation for any damage.
- Kenter may adopt all of the aforementioned measures without prejudice to any other rights which it may exercise pursuant to the law.
- 5.4. In the event that Kenter requires a Contractor to supply replacement Products at their own risk and expense or to arrange for repairs in accordance with Article 5.3.a, a new term of warranty referred to in Article 5.1 shall commence in respect of the replaced or repaired (parts of) Products.
- 5.5. In the event that a Product recall is initiated, all associated costs shall be borne by the relevant Contractor and the latter shall indemnify Kenter against any damages or costs which it incurs as a result of the recall.
- 6. Right of inspection and acceptance test**
- 6.1. Kenter shall be entitled to inspect, analyse and/or subject Products and/or Services to an acceptance test or to arrange for this to be done at the relevant Contractor's expense. Kenter shall be so entitled prior to and in the course of Delivery.
- 6.2. Should Kenter wish to exercise this right, it shall inform the Contractor accordingly, in which case the Contractor shall provide such facilities as Kenter deems necessary for this purpose.
- 6.3. A Contractor shall always provide Kenter with every assistance to enable it to exercise the right stipulated in Article 6.1.
- 6.4. After rejecting any Products and/or Services that have been delivered, Kenter shall notify the relevant Contractor of this and, acting at its discretion, may exercise its rights as set out in Article 5.3.
- 6.5. The exercise or not of the rights referred to in this Article 6 shall not in any way

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affect Kenter's rights and powers in relation to the relevant Contractor in the event that the Products and/or Services prove not to meet the requirements stipulated in respect of them in the Agreement concerned or otherwise.

7. Packaging, transport and the environment

- 7.1. Subject to any relevant provisions in an Agreement, a Contractor shall ensure that the Products concerned are packed, secured and transported in a sound and environmentally friendly manner.
- 7.2. A Contractor shall be responsible for compliance with any national, international and supranational packaging and transport regulations. Where safety data sheets exist for a Product or its packaging, the relevant Contractor shall provide Kenter with these sheets by no later than twenty-four (24) hours prior to the time of Delivery, and a copy shall be supplied in Dutch with the Products. Kenter or a Third Party designated by it for that purpose shall be entitled not to take delivery of any Products if the foregoing regulations have not been complied with.
- 7.3. Any changes relating to the packaging and/or transport of Products must be submitted to Kenter for approval by no less than three (3) months before such changes become operational.
- 7.4. If a Contractor uses loaned packaging, this must be stated separately on the relevant waybill. Acting at their own risk and expense, a Contractor shall be required to take back any loaned packaging in accordance with Kenter's logistics terms and conditions.
- 7.5. When packing the Products, a Contractor shall only use sustainable packaging materials wherever reasonably possible.
- 7.6. Any packaging which deviates from the normal standard shall remain the relevant Contractor's property and the latter shall collect it in an environmentally friendly manner when Kenter first requests this. Should the Contractor fail to comply with this request, Kenter shall be entitled to

return the packaging to the Contractor at the latter's own risk and expense. In the case of packaging, to the extent that it falls under the category of chemical waste, a Contractor shall specify the manner in which such packaging will be removed by or on behalf of the Contractor. Kenter shall determine whether any packaging deviates from the normal standard and the relevant Contractor shall defer to Kenter's judgement in this respect.

8. Delivery

- 8.1. Delivery to Kenter shall occur DDP (Delivered Duty Paid) in accordance with the latest version of Incoterms at the location(s) specified by Kenter in the relevant Agreement.
- 8.2. A Contractor shall be required to effect delivery in accordance with the delivery time stipulated in the relevant Agreement. The agreed delivery time shall constitute a material deadline and shall start to run as of the conclusion of the Agreement.
- 8.3. Should Kenter be unable to take delivery of Products and/or Services from a Contractor at the agreed time, acting at Kenter's request, the Contractor shall postpone Delivery free of charge for a reasonable period of time to be determined by Kenter. In that case the Contractor shall have a duty to store, secure, insure and take all reasonable measures to prevent the Products from deteriorating until they are delivered to Kenter.
- 8.4. A Contractor shall have a duty to inform Kenter immediately if they know or anticipate that it will be impossible for the relevant Products and/or Services to be supplied or for this to occur on time, stating the reasons for and the likely duration of the delay. The foregoing shall not affect any of Kenter's rights, including its entitlement to terminate the relevant Agreement. A Contractor shall compensate Kenter for any damage which the latter suffers as a result of late delivery.
- 8.5. A Contractor shall provide all associated operating instructions, product

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- information, quality seals and/or certificates free of charge upon Delivery along with any ancillary materials.
- 8.6. In the event of a failure to meet an agreed delivery time, the relevant Contractor shall forfeit a penalty for such delay, payable with immediate effect, of one (1) per cent of the total value of the Purchase Order concerned subject to a minimum of EUR 1,000.00 for each day of delay without any duty on the part of Kenter to provide proof of any prejudice and subject to its other rights in relation to such failure to meet the material deadline referred to in the first sentence of this clause, including (but not confined to) its entitlement to seek performance and/or compensation.
- 8.7. A Contractor shall comply with all reasonable instructions issued by Kenter before, during and after Delivery.
- 9. Ownership and risk**
- 9.1. Subject to the provisions of Article 8 of these Conditions, full and unencumbered ownership of the relevant Products shall pass to Kenter at the time when it or a Third Party designated by it for that purpose takes receipt of the Products. Such transfer of ownership shall not affect Kenter's right to approve or reject the Products after taking delivery of them in accordance with Articles 5 and 6. Taking receipt and the passing of ownership shall therefore not imply acceptance of the number and quality of the Products delivered.
- 9.2. A Contractor shall not be permitted to deliver Products to Kenter subject to retention of title or any other proviso. Any stipulated retention of title and/or other security right in respect of the relevant Products shall only apply provided that Kenter consents to this In Writing. In the case of retention of title and/or any other security right, Kenter shall remain entitled to resell such Products as part of its ordinary business operations without it having a duty to provide compensation for any damage.
- 9.3. In the event that Kenter supplies items to a Contractor for the fulfilment of the Contractor's obligations, they shall remain Kenter's property. A Contractor may only alter, process, blend and/or mix such items with others after receiving Kenter's Written consent.
- 9.4. Where the items referred to in the previous clause are altered, processed, blended or mixed with items owned by the relevant Contractor or any Third Party, Kenter shall become the owner of the new items. The Contractor shall mark these items as Kenter's property at their expense. The Contractor shall bear all of the risks pertaining to such items for as long as they act as the custodian of those items.
- 9.5. A Contractor shall mark all items which it receives from Kenter pursuant to the relevant Agreement as the latter's property, shall store them separately from any objects which belong to the Contractor or a Third Party and shall insure them against any damage that may be caused to these items for as long as it acts as their custodian.
- 10. Additional work**
- 10.1. A Contractor shall not modify or supplement (the manner of performance of) a Product and/or the Service without Kenter's Written consent.
- 10.2. Where any additional work which Kenter requests or approves In Writing affects the agreed fee and/or delivery conditions, the relevant Contractor shall also require Kenter's prior Written approval for the amended fee and/or delivery conditions.
- 11. Default, suspension and rescission**
- 11.1. In the event that a Contractor fails to comply with one (1) or any of its obligations pursuant to the relevant Agreement or any other Agreement concluded pursuant to it, or to do so properly or on time, they shall be in default by operation of the law. In such a case Kenter shall be entitled to suspend the execution of the Agreement with

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immediate effect without further notice of default by means of a Written notice without it having a duty to provide compensation for any damage, such without prejudice to its other rights.

- 11.2. Subject to the provisions of the first clause of this Article 11, in the event that a Contractor fails to comply with one (1) or any of its obligations pursuant to the relevant Agreement or any other Agreement concluded pursuant to it, or fails to do so properly or on time, Kenter shall be entitled to terminate all or part of the Agreement with immediate effect without further notice of default or judicial intervention by means of a Written notice without Kenter having a duty to provide compensation for any damage, such without prejudice to its other rights.

- 11.3. In the event that a Contractor:
- is declared bankrupt, has the legally stipulated debt rescheduling procedure for natural persons declared applicable in their case, files for bankruptcy, applies for a moratorium on payments or the application of the legally stipulated debt rescheduling procedure for natural persons, proceeds to assign their estate or their assets (or part thereof) are attached;
 - is placed in the care of a guardian or otherwise loses the power of disposal over their assets or part thereof;
 - proceeds to close down or transfer their business or part thereof, which is deemed to include bringing their business into a company which already exists or which is to be incorporated, or proceeds to amend the objects of their business;
 - dies;
 - fails to comply with any of their obligations pursuant to the law, the relevant Agreement or these

Terms and Conditions, and/or fails to do so properly or on time; Kenter shall be entitled to suspend the execution of the Agreement with immediate effect, without further notice of default, or to terminate all or part of the Agreement by means of a Written notice in the absence of any notice of default or judicial intervention, in both cases without Kenter having a duty to provide compensation for any damage, such without prejudice to its other rights.

- 11.4. All claims which Kenter may have or acquire against a Contractor in the cases set out in this Article 11 shall fall due in full immediately.
- 11.5. Should Kenter terminate an Agreement in its entirety, it shall return any Products already delivered by the relevant Contractor to the latter at their risk and expense subject to the Contractor's duty to refund to Kenter all or part of any purchase price already paid by it.
- 11.6. If Kenter elects to retain all or some of the Products delivered by a Contractor, it shall pay the latter a reasonable proportion of the purchase price for that purpose.
- 11.7. Where Kenter rescinds an Agreement in its entirety, it shall pay a reasonable proportion of the fee for the Services which the relevant Contractor has already properly provided.
- 11.8. Any obligations which by their nature are also intended to remain applicable following the rescission of an Agreement (including but not confined to Articles 12, 14, 16, 17, 18 and 21) shall continue to apply between the Parties even after its rescission.

12. Liability, indemnification and insurance

- 12.1. A Contractor shall indemnify Kenter in full against all damage of any nature whatsoever that Kenter, its staff or its customers may suffer as a result of:
- a. the Contractor's failure to comply with any obligation pursuant to the relevant Agreement or to do so in full;

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- b. a defect in a Product supplied by them, as a result of which it does not provide the safety or properties that Kenter or any Third Party may reasonably expect;
 - c. the Contractor's provision of incorrect or incomplete information;
 - d. any other act or omission on the part of the Contractor, their staff or any other person whom they have engaged for the purposes of executing the relevant Agreement.
- 12.2. A Contractor shall indemnify Kenter in the full against any claim made by a Third Party for compensation for which the Contractor is liable pursuant to the first clause and shall indemnify Kenter in full against such claim by a Third Party. For the purposes of the application of what is stipulated in this Article 12.2, Kenter's employees as well as any other person who works for Kenter shall be deemed to be a Third Party.
- 12.3. Kenter shall not be liable for damage based on breach of contract or a wrongful act towards a Contractor, except in so far as there is intent or wilful recklessness on the part of Kenter.
- 12.4. A Contractor shall warrant that (i) they are adequately and sufficiently insured against all liability that may arise pursuant to an Agreement at their own expense and at all times, that (ii) they have punctually paid all insurance premiums due, and (iii) that they will continue to pay them throughout the term of the relevant Agreement. A Contractor shall provide Kenter with a copy of the relevant insurance policy when the latter first so requests.
- 12.5. Where a Contractor is entitled to an insurance payout in connection with their potential liability towards Kenter, the Contractor shall ensure that such payout is made directly to Kenter.
- 13. Force majeure**
- 13.1. In the event that a Contractor is prevented from complying with all or part of an

Agreement due to force majeure and Kenter may reasonably expect such force majeure to last longer than two (2) weeks, Kenter shall be entitled to suspend execution of its part of the relevant Agreement, or to rescind all or part of it – such at its discretion – without judicial intervention.

- 13.2. A failure on the part of a Contractor to comply with an Agreement for which they may therefore be held culpable shall not constitute force majeure in their case where this is due to a shortage of staff (whether or not due to a strike and/or illness), fire, a mechanical breakdown or any other disruption or stagnation of business (due to any circumstance whatsoever) – either in the case of the Contractor or their suppliers of Products and services – transport disruptions, virus attacks, (external) network problems, a delay in delivery on the part of their suppliers or a failure to make any, as well as a failure to obtain any stipulated government permits.
- 13.3. Where the relevant Contractor has partially complied with their obligations before the invocation of a suspension or rescission (due to force majeure), the Contractor shall be entitled to issue a pro rata invoice.

14. Industrial and intellectual property

- 14.1. In the event and to the extent that (claims to) industrial and/or intellectual property rights – including but not confined to copyrights, database rights and rights to know-how – arise while an Agreement is executed, they shall accrue to Kenter to the extent that they are reasonably necessary for the purposes of using the Products and/or Services. In so far as is necessary, these rights shall be assigned to Kenter in accordance with the relevant Agreement at such time as they arise. Kenter consents to such assignment now already in lieu of then.
- 14.2. Should any further act or deed be required for the transfer of the industrial and/or intellectual property rights referred to in

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Article 14.1, the relevant Contractor shall assist with this when Kenter first requests this without stipulating any additional conditions.

- 14.3. In so far as a Delivery (also) utilises existing industrial and/or intellectual property rights not held by Kenter, the relevant Contractor shall grant Kenter a non-exclusive and non-cancellable licence for an indefinite period of time. In this case the Contractor shall warrant that they are entitled to grant such licence.
- 14.4. A Contractor is hereby deemed to have waived any personality rights referred to in the Copyright Act [*Auteurswet*] in so far as the law permits this. A Contractor shall also be deemed to have made such declaration of waiver on behalf of those of their staff who are involved in the execution of the relevant Agreement.
- 14.5. A Contractor shall warrant that the Products which have been delivered do not infringe any (industrial and/or intellectual property) right held by a Third Party. A Contractor shall indemnify Kenter against any claim made by a Third Party pursuant to an (alleged) infringement of the rights referred to in the previous clause and shall compensate Kenter for any costs and damage resulting from such (alleged) infringement.
- 14.6. In the event that a claim is filed against Kenter or one of its clients, it shall notify the relevant Contractor and, acting at their own expense, the latter shall take every action to contest such (alleged) claim, which may include conducting legal proceedings if necessary. Acting at the request of the relevant Contractor, Kenter shall provide assistance for this purpose in return for compensation for any costs involved.

15. Ancillary materials

- 15.1. All ancillary materials – at any rate including but not confined to drawings, specifications, designs and samples – made available to a Contractor by Kenter for the performance of the relevant work shall be sent carriage paid and shall

remain Kenter's property under all circumstances.

- 15.2. The provisions of the preceding clause shall also apply in relation to such ancillary materials which the relevant Contractor has made and/or arranged to be made specifically for the Agreement concerned. The relevant Contractor shall be liable for any damage to such ancillary materials.
- 15.3. All ancillary materials – and any copies of them that have been produced – must be presented to Kenter immediately after Delivery (or in the event of the provision of Services, upon the expiry of the relevant Agreement) or returned to Kenter.
- 15.4. As long as any ancillary materials for the execution of an Agreement remain in the Contractor's possession, they shall be marked to indicate that they are the Kenter's property.
- 15.5. A Contractor shall use any ancillary materials referred to in this Article 15 at their own risk for the purposes of the execution of the Agreement and shall not show them to any Third Party, unless Kenter has explicitly given its prior consent In Writing.
- 15.6. A Contractor shall manage any ancillary materials at their own risk and expense, manage them with due diligence and insure them appropriately.
- 15.7. Should any ancillary materials which are or may be the property of Kenter be attached at the expense of a Contractor, the latter shall have a duty to notify Kenter of such attachment immediately, to inform the relevant judgment creditor that these ancillary materials are or may be Kenter's property and furthermore to do all in their power to lift such attachment.
- 15.8. A Contractor shall undertake to sign all statements concerning any ancillary material as Kenter deems advisable.

16. Non-disclosure

- 16.1. All personal data, data traceable to Kenter's Contractors and/or clients, its *modus operandi*, company data, models, design data, drawings, Documentation

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and other documents which Kenter makes available to a Contractor, as well as the know-how which a Contractor acquires through Kenter, are confidential and a Contractor shall refrain from using them for any purpose other than compliance with its obligations pursuant to its Agreement with Kenter. A Contractor shall at all times adopt adequate security measures to prevent unauthorised access to such data and/or data files.

- 16.2. A Contractor shall promptly return to Kenter all models, design data, drawings and other documents that Kenter has made available to the Contractor as soon as the relevant Agreement expires, is terminated or fails to materialise.
- 16.3. A Contractor shall not disclose or replicate any information such as that referred to in this Article 16 except after obtaining Kenter's Written consent. A Contractor shall have a duty to adopt appropriate measures to this end. Furthermore, a Contractor shall warrant that their (temporary assignment) staff as well as any Third Party engaged by them and their (temporary assignment) staff will also refrain from disclosing any information referred to in Clause (1) and will use it solely for the purposes of executing the relevant Agreement.
- 16.4. Where a Contractor is required to disclose technical data and/or Documentation to any Third Party or Parties (including employees) for the purposes of executing the relevant Agreement, they shall undertake to impose the same duty of non-disclosure as that referred to in this Article 16 on such Third Party or Parties after obtaining Kenter's Written consent.
- 16.5. Should a Contractor breach one (1) or more provisions of this Article 16, they shall immediately forfeit a penalty of EUR 25,000.00 – payable immediately to Kenter without any further notice of default being required – for each breach subject to Kenter's entitlement to seek full compensation.

17. Assignment of rights and duties

- 17.1. Without Kenter's prior Written consent, a Contractor shall not be permitted to assign one (1) or more rights and/or obligations pursuant to an Agreement to any Third Party in whole or in part. This clause shall be effective under property law within the meaning of Article 3:83(2) of the Civil Code.
- 17.2. A Contractor shall not outsource the performance of all or part of their duties pursuant to the relevant Agreement to any Third Party without Kenter's prior Written consent and shall indemnify Kenter against any liability under the Subcontractors Liability Act [*Wet ketenaansprakelijkheid*].
- 17.3. Kenter's consent to outsource one (1) or more obligations under an Agreement to a Third Party shall not discharge the relevant Contractor from their obligations pursuant to the Agreement. Under all circumstances a Contractor shall therefore remain liable under the Agreement concluded between them and Kenter.
- 17.4. In the event that a Contractor breaches one (1) or more provisions of this Article 17, they shall forfeit a penalty of EUR 25,000.00, payable immediately to Kenter, for each breach without any further notice of default being required subject to Kenter's entitlement to seek full compensation.
- 17.5. Kenter shall be entitled to assign its rights and obligations pursuant to an Agreement to a Third Party. A Contractor shall be deemed to have consented to such (contractual) assignment in advance.

18. Processing of personal data

- 18.1. Personal data (such as the contact details of Contractors and clients) shall be processed for the purposes of executing an Agreement. Kenter shall be designated as a data controller for the purposes of and in accordance with the applicable privacy legislation. The processing of personal data shall be governed by Kenter's privacy statement. The privacy statement provides more information on

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processing by Kenter. Kenter's privacy statement may be read on its website at <https://www.kenter.nu/privacy-statement/>.

18.2. A Contractor shall immediately report (security) incidents concerning delivered or ordered Products to Kenter and, if required by law, to the relevant authority (including the Dutch Data Protection Authority).

18.3. In so far as a Contractor processes personal data for the purposes of executing an Agreement in respect of which Kenter is the data controller within the meaning of the General Data Protection Regulation (GDPR) and the GDPR Implementation Act, the Contractor shall be deemed to be the processor in this respect. A Contractor shall be authorised to process such personal data only if and to the extent necessary for the purposes of executing the relevant Agreement, such solely in accordance with the data processing agreement annexed to the Agreement.

19. (Casual hiring and provisioning of) labour

19.1. When executing an Agreement a Contractor shall comply with all applicable legislation and regulations governing the casual hire and provisioning of staff (including their terms of employment), including but not confined to the Subcontractors Liability Act, the Labour Market Fraud (Bogus Schemes) Act [*Wet Aanpak Schijnconstructies*], the Foreign Nationals (Employment) Act [*Wet Arbeid Vreemdelingen*] and other applicable legislation and regulations. The relevant Contractor shall be liable for any punitive measures (including fines) pursuant to such legislation and regulations. A Contractor shall indemnify and hold Kenter entirely harmless in connection with any punitive action taken against it due to the Contractor or any person engaged by the latter acting in breach of the aforementioned legislation and regulations. If Kenter wishes to pursue legal remedies against any punitive action

taken, the relevant Contractor shall, at Kenter's first request, provide Kenter with all assistance in doing so.

19.2. When first requested by Kenter to do so, a Contractor shall provide Kenter with a recent and original Subcontractors Liability and Recipients' Liability Payment History Report [*Verklaring betalingsgedrag Keten- en Inlenersaansprakelijkheid*] issued by the Tax and Customs Administration office at the Contractor's own expense to the effect that all obligations pursuant to the Subcontractors Liability Act have been complied with in respect of those persons whom the Contractor has engaged for the purposes of executing the relevant Agreement.

20. Working conditions

20.1. A Contractor shall undertake to enable Kenter to fulfil the duty of care incumbent on it pursuant to Article 7:658 of the Civil Code. In the even that a Kenter employee suffers harm because Kenter was unable to fulfil its duty of care due to a Contractor's actions, the Contractor shall be liable for the damage suffered by Kenter.

20.2. A contractor shall ensure that their personnel comply with Kenter's instructions and directions.

20.3. A Contractor shall be responsible for the health and safety of their personnel and that of any Third Party whom they engage.

20.4. Kenter shall be entitled to require any person working for a Contractor for the purposes of executing the relevant Agreement to undergo a security screening in accordance with its normal rules. A Contractor shall provide every assistance for the purposes of such investigation and shall ensure that their personnel and any people whom they have engaged also provide every assistance for the purposes of such investigation. Kenter shall be entitled to deny any person access to its business premises if such person refuses to permit a prior investigation. Such denial shall not

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affect the relevant Contractor's responsibility for the execution of the relevant Agreement.

- 20.5. A Contractor shall warrant that their staff members will submit a recent Certificate of Good Conduct [*Verklaring Omtrent het Gedrag*] (VOG) to Kenter at latter's request before commencing work.

21. Miscellaneous

- 21.1. An Agreement between Kenter and a Contractor, and these Conditions shall be solely governed by and construed in accordance with the law of the Netherlands. The Vienna Sales Convention (Convention on International Sales of Goods 1980) shall not apply.
- 21.2. Any dispute arising pursuant to an Agreement with a Contractor and/or these Conditions shall be brought before a competent judge in the District Court of Gelderland, having its seat in Arnhem.
- 21.3. During the term of an Agreement and for a period of six (6) months thereafter, the relevant Contractor shall not employ any of Kenter's staff or arrange for them to work for the Contractor in some other way without Kenter's prior written consent.
- 21.4. Kenter shall be entitled to arrange for an independent expert to audit a Contractor's compliance with their obligations pursuant to an Agreement, as well as the accuracy of any invoices issued within a reasonable period of time.

Special provisions governing ICT performance

22. Implementation and acceptance

- 22.1. Unless an Agreement explicitly stipulates otherwise or any ICT performance cannot be effected by its nature, the relevant Contractor shall ensure that it is implemented.
- 22.2. Should such implementation involve the full or partial replacement of the systems, software and/or services at Kenter, it shall also include converting and migrating data files belonging to Kenter or to a Third Party to which Kenter is entitled from the old

system, software or service to the Software or Service to be supplied by the Contractor without compromising the completeness, integrity and metadata of the data concerned.

- 22.3. In the event that an implementation plan has not yet been drawn up when an Agreement is signed, it shall still be drawn up in joint consultation within a reasonable period of time, when Kenter first requests this. Amongst other things, such implementation plan shall set out – in so far as is applicable in each case – (i) a detailed description of the objectives, (ii) the project organisation including a division of responsibilities, (iii) the schedule, and (iv) how the acceptance procedure will be carried out.
- 22.4. Unless an Agreement explicitly stipulates otherwise, Kenter shall subject any ICT Performance to an acceptance procedure. The acceptance procedure shall at least determine (i) the manner in which Defects will be inspected, (ii) the arrangements applicable to the remediation of Defects, and (iii) an arrangement providing for the consequences of a rejection by Kenter as referred to in Article 6.4 of these Conditions.

23. Maintenance

- 23.1. Unless otherwise agreed, a Contractor shall perform Maintenance on any ICT Performance for the fee stipulated in the relevant Agreement. Maintenance shall commence upon the Acceptance of (the relevant part of) the relevant ICT Performance.
- 23.2. The provisions set out below shall serve as (minimum) conditions for the purposes of Maintenance, unless derogated from in the relevant Agreement or Service Level Agreement (SLA).
- 23.3. Unless otherwise agreed, such Maintenance shall include no less than the following services:
- a. Corrective Maintenance;
 - b. Preventive Maintenance;
 - c. Innovative Maintenance; and
 - d. user support.

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- 23.4. The time for the performance of Maintenance shall be determined in joint consultation. The basic principle in this respect is that Maintenance shall be carried out in such a way that it is least disruptive to Kenter's business processes. Furthermore, any Maintenance that is or may be disruptive to Kenter's business processes shall be announced in good time in advance.
- 23.5. A Contractor shall be deemed to have declared that – if and to the extent that this is not already provided for in the relevant Agreement – when first requested to do so by Kenter, they are prepared to conclude a Service Level Agreement in which concrete Maintenance service levels are set out and which includes measures pertaining to whether or not the agreed Service Levels have been met.
- 23.6. The consequences of failing to meet service levels shall be regulated in the Service Level Agreement on the understanding that the (partial) rescission of the relevant Agreement and/or Service Level Agreement may at any rate occur in the event that the same service levels are not met during multiple assessment periods. Any arrangements stipulated in the Service Level Agreement shall not affect Kenter's other rights, including its entitlement to secure compensation for any damage suffered by it in addition to the the relevant measure. Any penalties paid (as part of the agreed measures) shall be deducted from any compensation payable.
- 23.7. A Contractor shall ensure the appropriate recording of service levels and shall issue periodic reports on the results achieved in relation to the agreed service levels.
- 23.8. With regard to Preventive and/or Innovative Maintenance, a Contractor shall at the very least warrant that:
- a. any ICT Performance will remain compliant with the legislation and regulations governing the agreed use in a timely manner;
 - b. any ICT Performance will always remain suitable for data exchange with the other relevant parts of the application landscape (to the extent known to the Contractor) in a timely manner;
 - c. when Updates and/or Upgrades are released, the relevant ICT Performance will at least remain the same and will continue to permit the agreed use.
- 23.9. Acting at Kenter's request, a Contractor shall arrange the Implementation of Updates and Upgrades for a fee that is to be agreed. In that case the provisions governing Implementation and Acceptance shall apply mutatis mutandis.
- 24. Third-Party software**
- 24.1. Where any ICT Performance partially or entirely comprises Third-Party Software, as part of their offer the relevant Contractor shall:
- a. specify which part of any ICT Performance it accounts for;
 - b. supply any applicable (licensing and maintenance) terms and conditions;
 - c. in so far as there is a dependency between the Third-Party Software and the other parts of the relevant ICT Performance, clarify where that dependency lies and what effect that dependency will have on (the quality of) the ICT Performance to be provided by the Contractor.
- 24.2. As part of its Maintenance, a Contractor shall issue timely Updates and Upgrades in order to continue to ensure compatibility with any Third-Party Software on which the relevant ICT Performance depends.
- 24.3. In the event that there are any bugs in Third-Party Software, a Contractor shall be required to adopt preventive measures (whether or not by issuing Updates and Upgrades), so as to ensure that they do not produce Defects in its own ICT Performance.
- 24.4. The licensing and maintenance terms and conditions set out in Clause (1) of this Article 24 of the Conditions shall prevail

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over what is stipulated in the relevant Agreement but only as far as Third-Party Software is concerned and provided that the relevant Contractor has complied with the information obligations referred to in Clause (1) of this Article 24 of the Conditions.

25. Custom Software

- 25.1. Where the ICT Performance involves the development of (standard or customised) Software commissioned by Kenter, the relevant Contractor shall perform this work with due care in accordance with the specifications set out in the relevant Agreement and any information, documentation and designs provided by Kenter.
- 25.2. Unless otherwise agreed, a Contractor shall develop the Custom Software in co-creation with Kenter in accordance with a development method characterised by designing (parts of) the software in an iterative manner (e.g. Agile or Scrum). In this respect the Parties accept that the specifications will not be worked out in advance or not entirely so and may be adjusted in close consultation while the work is performed, amongst other things, for the purposes of a subsequent iteration. The Custom Software to be supplied shall comply with the most recently agreed (set of) specifications.

26. Remote services

- 26.1. Where and in so far as no service levels for the Availability of Remote Services are stipulated in the relevant Agreement and/or Service Level Agreement, a Service Level of 99.9% shall apply.
- 26.2. In the case of Remote Services, the relevant Contractor shall implement the Updates and Upgrades unless otherwise agreed. A Contractor shall have a duty to do so in such a way that the processes performed with the Remote Services are demonstrably controlled at all times.
- 26.3. Maintenance resulting in the inability to use or reduce the use of Remote Services shall in principle only take place outside

Kenter's regular office hours and shall be announced at least forty-eight (48) hours in advance. A Contractor shall be entitled to perform such Maintenance during Kenter's regular office hours only where the situation is urgent.

- 26.4. A Contractor shall not delete the data processed with the aid of Remote Services without consulting Kenter, unless the data is so obviously unlawful and the case is so urgent that one cannot wait for prior consultation with Kenter.
- 26.5. The Contractor shall employ a set of data security measures, processes and procedures when using Remote Services in accordance with the ISO 27001 standard (or its successors). Furthermore, a Contractor shall ensure that there is an appropriate degree of certainty with regard to the outsourced process in accordance with the ISAE3402 Type 2 standard (or its successors). Every year a Contractor shall issue (a) statement(s) prepared by an independent expert third party in the field to serve as as proof of their compliance with the aforementioned standards.
- 26.6. In the case of Remote Services the right of inspection referred to in Article 6 of these Terms and Conditions shall also include the right to attempt to breach security (so-called pen testing).
- 26.7. A Contractor shall be deemed to be aware of Kenter's dependence on the availability and correct operation of Remote Services and the data processed with their aid. In this respect, a Contractor shall not be entitled to impede or block the use of all or some of the Remote Services by means of technical measures, other than after the Contractor has given Kenter notice of default in respect of a culpable failure on the part of Kenter to comply with its obligations, has offered a reasonable period for compliance of at least sixty (60) days – with explicit notice that in the event of non-compliance, the use of the Remote Services will be restricted or blocked – and Kenter nevertheless culpably continues to fail to comply with those obligations. A Contractor may also not exercise this right

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of suspension in the event that Kenter invokes its right of suspension pursuant to any non-compliance on the part of the Contractor.

- 26.8. A Contractor shall be deemed to have declared itself willing – now in lieu of then – to make additional arrangements with Kenter in the case of Remote Services to mitigate any risks pertaining to continuity and dependence, including:
- a. making arrangements to periodically deliver back or to a third party the data processed by the Contractor ('data escrow'); and/or
 - b. entering into an agreement with a third party which provides for the latter to be severally bound or to stand surety for compliance with an Agreement; and/or
 - c. concluding a (tripartite) agreement with a third party which seeks to ensure that the latter (constantly) has all of the requisite data at its disposal to be able to effect (part of) the relevant ICT Performance pursuant to the relevant Agreement – whether or not in accordance with a new agreement – instead of the Contractor.

27. ICT Performance intellectual property

- 27.1. The following shall apply in respect of any ICT Performance in addition to what is stipulated in Clause 14 of these Conditions regarding intellectual property rights.
- 27.2. Unless otherwise agreed, all intellectual property rights pursuant to any ICT Performance effected by a Contractor shall be vested solely in the latter or its licensor(s). All rights to the data processed with the aid of any ICT Performance shall be vested in Kenter (and continue to do so), regardless of where this data is stored and regardless of whether or not the data has been processed after its initial receipt.
- 27.3. Unless otherwise stipulated in an Agreement, the relevant Contractor shall issue a Licence to any ICT Performance.

If a fee is periodically payable for such Licence, its term shall be equal to that of the Agreement. In any other case, a Licence shall be perpetual and irrevocable. A Licence shall in any case include the right to use the relevant ICT Performance (and all information or knowledge contained in it) for the agreed purpose, as well as for testing purposes, including any replication and publication which may be reasonably necessary for that purpose, temporarily or otherwise.

- 27.4. The intellectual property rights to Custom Software shall be vested in Kenter. Such rights are hereby deemed to have been assigned by the relevant Contractor to Kenter, which hereby accepts such transfer. This assignment shall cover all present and future rights in the broadest sense of the term. Furthermore, to the extent permitted by law a Contractor shall irrevocably waive any personality rights to Custom Software. A Contractor shall supply all the source code for the relevant Custom Software to Kenter. A one-off purchase price for such assignment is deemed to have been included in the fee agreed to for it. The assignment and transfer of the rights and aforementioned source code shall be effected subject to the suspensive condition of payment of the relevant fee agreed to.
- 27.5. In addition to what is stipulated in Article 12 of these Conditions regarding indemnification and possible continued undisturbed use, in the event of an (imminent) prohibition of the use of any ICT Performance and/or other adverse consequences for Kenter in connection with (potential) third-party rights, the relevant Contractor, acting at Kenter's discretion and at its own expense, shall:
- a. ensure that Kenter still acquires the right to continued use;
 - b. replace the infringing part with another non-infringing part;
 - c. modify the infringing part so that the infringement is terminated;
- 27.6. all three (3) foregoing options subject to Kenter's other rights, including its

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entitlement to terminate the relevant Agreement and to (replacement and/or additional) compensation.

described in this Clause 28 of these Conditions is attributable to the Contractor (in which case the extension shall be free of charge).

28. Exit work

- 28.1. Upon termination of an Agreement(s) on any grounds whatsoever, when first requested by Kenter to do so, the relevant Contractor shall do what is reasonably necessary to ensure that a new supplier or Kenter itself can effect similar ICT Performance for the benefit of Kenter without any impediment.
- 28.2. The reasonable measures referred to in the previous clause shall at any rate include (at Kenter's discretion):
- a. providing access to data;
 - b. destroying any data for which Kenter is responsible (subject to submission of proof of its destruction);
 - c. the technical dismantling and disassembly of (part of) the relevant ICT Performance.
- 28.3. When Kenter first requests this, the Parties shall prepare an exit plan setting out what needs to be done to prepare for and carry out the work described in this Article 28 of these Conditions.
- 28.4. Such exit work shall be carried out subject to subsequent costing, except where the ground for terminating the relevant Agreement(s) lies in culpable failure on the part of the relevant Contractor. In the latter case the Contractor shall perform the work free of charge (by way of damage limitation or at at any rate compensation).
- 28.5. Furthermore, a Contractor shall also be deemed to have declared their willingness to allow Kenter – if required – to extend its use of the relevant ICT Performance beyond the termination date for a reasonable period of time in the event that the work is not punctually completed in accordance with the exit plan. A fee shall be charged for this in proportion to the latest applicable usage fees (in respect of which any requisite extension of Third-Party Software may be charged in full), unless the late completion of the work

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