



## Terms and Conditions of Contract for Services

### BETWEEN:

- (1) **GÉANT Vereniging**, an association registered with the Chamber of Commerce in Amsterdam, Netherlands, with registered number (40535155) and registered office at Hoekenrode 3, 1102BR, Amsterdam, The Netherlands, VAT number NL007981752B01 (the "**Customer**"); and
  - (2) **The Supplier**
- in each case a "**Party**" and collectively the "**Parties**".

## 1 Interpretation

### 1.1 In these terms and conditions:

"Agreement"	means the contract between (i) the Customer and (ii) the Supplier constituted by the Supplier's countersignature of the Purchase Order and includes the Purchase Order and Annexes;
"Charges"	means the charges for the Services as specified in the Purchase Order;
"Confidential Information"	means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which (i) is known by the receiving Party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential;
"Customer"	means the person named as Customer in the Purchase Order;
"Data Protection Legislation"	Means applicable data protection legislation – in particular, but not limited to the European General Data Protection Regulation (Regulation (EU) 2016/679, "GDPR");
"Expiry Date"	means the date for expiry of the Agreement as set out in the Purchase Order;
"Key Personnel"	means any persons specified as such in the Purchase Order or otherwise notified as such by the Customer to the Supplier in writing;
"Purchase Order"	means the confirmation letter from the Customer to the Supplier to which these terms and conditions apply;
"Purchase Order Number"	means the Customer's unique number relating to the supply of the Services;
"Services"	means the services to be supplied by the Supplier to the Customer under the Agreement;
"Specification"	means the specification for the Services (including as to quantity, description and quality) as specified in the Purchase Order;
"Staff"	means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any sub-contractor of the Supplier engaged in the performance of the Supplier's obligations under the Agreement;
"Staff Vetting Procedures"	means vetting procedures that accord with good industry practice or, where requested by the Customer, the Customer's procedures for the vetting of

	personnel as provided to the Supplier from time to time;
“Supplier”	means the person named as Supplier in the Purchase Order;
“Term”	means the period from the start date of the Agreement set out in the Purchase Order to the Expiry Date as such period may be extended in accordance with clause 4.2 or terminated in accordance with the terms and conditions of the Agreement;
“VAT”	means value added tax; and
“Working Day”	means a day (other than a Saturday or Sunday) on which banks are open for business in the Netherlands.

1.2 In these terms and conditions, unless the context otherwise requires:

- 1.2.1 references to numbered clauses are references to the relevant clause in these terms and conditions;
- 1.2.2 any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;
- 1.2.3 the headings to the clauses of these terms and conditions are for information only and do not affect the interpretation of the Agreement;
- 1.2.4 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or bylaw made under that enactment; and
- 1.2.5 the word ‘including’ shall be understood as meaning ‘including without limitation’.

## 2 Basis of Agreement

- 2.1 The Purchase Order constitutes an offer by the Customer to purchase the Services subject to and in accordance with the terms and conditions of the Agreement.
- 2.2 The offer comprised in the Purchase Order shall be deemed to be accepted by the Supplier on receipt by the Customer of a copy of the Purchase Order countersigned by the Supplier within 7 days of the date of the Purchase Order.

## 3 Supply of Services

- 3.1 In consideration of the Customer’s Agreement to pay the Charges, the Supplier shall supply the Services to the Customer for the Term subject to and in accordance with the terms and conditions of the Agreement.
- 3.2 In supplying the Services, the Supplier shall:
  - 3.2.1 co-operate with the Customer in all matters relating to the Services and comply with all the Customer’s instructions;
  - 3.2.2 perform the Services with all reasonable care, skill and diligence in accordance with good industry practice in the Supplier’s industry, profession or trade;
  - 3.2.3 use Staff who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier’s obligations are fulfilled in accordance with the Agreement;
  - 3.2.4 ensure that the Services shall conform with all descriptions and specifications set out in the Specification;
  - 3.2.5 comply with all applicable laws; and



3.2.6 provide all equipment, tools and vehicles and other items as are required to provide the Services.

3.3 The Customer may by written notice to the Supplier at any time request a variation to the scope of the Services. In the event that the Supplier agrees to any variation to the scope of the Services, the Charges shall be subject to fair and reasonable adjustment to be agreed in writing between the Customer and the Supplier.

#### **4 Term**

4.1 The Agreement shall take effect on the date specified in Purchase Order and shall expire on the Expiry Date, unless it is otherwise extended in accordance with clause 4.2 or terminated in accordance with the terms and conditions of the Agreement.

4.2 The Customer may extend the Agreement for a period of up to 6 months by giving not less than 10 Working Days' notice in writing to the Supplier prior to the Expiry Date. The terms and conditions of the Agreement shall apply throughout any such extended period.

#### **5 Charges, Payment and Recovery of Sums Due**

5.1 The Charges for the Services shall be as set out in the Purchase Order and shall be the full and exclusive remuneration of the Supplier in respect of the supply of the Services. Unless otherwise agreed in writing by the Customer, the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

5.2 All amounts stated are exclusive of VAT. The Customer shall, following the receipt of a valid VAT invoice as outlined in clause 5.3, pay to the Supplier a sum equal to the VAT chargeable in respect of the Services.

5.3 The Supplier shall invoice the Customer as specified in the Agreement. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including without limitation the relevant Purchase Order Number and a breakdown of the Services supplied in the invoice period.

5.4 In consideration of the supply of the Services by the Supplier, the Customer shall pay the Supplier the invoiced amounts no later than 30 days after verifying that the invoice is valid and undisputed and includes a valid Purchase Order Number. The Customer may, without prejudice to any other rights and remedies under the Agreement, withhold or reduce payments in the event of unsatisfactory performance.

5.5 If the Customer fails to consider and verify an invoice in a timely fashion the invoice shall be regarded as valid and undisputed for the purpose of paragraph 5.4 after a reasonable time has passed.

5.6 If there is a dispute between the Parties as to the amount invoiced, the Customer shall pay the undisputed amount. The Supplier shall not suspend the supply of the Services unless the Supplier is entitled to terminate the Agreement for a failure to pay undisputed sums in accordance with clause 15.4. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 18.

5.7 If a payment of an undisputed amount is not made by the Customer by the date as mentioned in clause 5.4, then the Customer shall pay the Supplier interest at the statutory interest rate.

5.8 Where the Supplier enters into a sub-contract, in accordance with Section 9, the Supplier shall include in that sub-contract:

5.8.1 provisions having the same effects as clauses 5.3 to 5.7 of this Agreement; and

- 5.8.2 a provision requiring the counterparty to that sub-contract to include in any sub-contract which it awards provisions having the same effect as 5.3 to 5.7 of this Agreement.
- 5.8.3 In this clause 5.8, “sub-contract” means a contract between two or more suppliers, at any stage of remoteness from the Authority in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement.
- 5.9 If any sum of money is recoverable from or payable by the Supplier under the Agreement (including any sum which the Supplier is liable to pay to the Customer in respect of any breach of the Agreement), that sum may be deducted unilaterally by the Customer from any sum then due, or which may come due, to the Supplier under the Agreement or under any other agreement or contract with the Customer. The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Customer in order to justify withholding payment of any such amount in whole or in part.

## **6 Premises and equipment**

- 6.1 If necessary, the Customer shall provide the Supplier with reasonable access at reasonable times to its premises for the purpose of supplying the Services. All equipment, tools and vehicles brought onto the Customer’s premises by the Supplier or the Staff shall be at the Supplier’s risk.
- 6.2 If the Supplier supplies all or any of the Services at or from the Customer’s premises, on completion of the Services or termination or expiry of the Agreement (whichever is the earlier) the Supplier shall vacate the Customer’s premises, remove the Supplier’s plant, equipment and unused materials and all rubbish arising out of the provision of the Services and leave the Customer’s premises in a clean, safe and tidy condition. The Supplier shall be solely responsible for making good any damage to the Customer’s premises or any objects contained on the Customer’s premises which is caused by the Supplier or any Staff, other than fair wear and tear.
- 6.3 If the Supplier supplies all or any of the Services at or from its premises or the premises of a third party, the Customer may, during normal business hours and on reasonable notice, inspect and examine the manner in which the relevant Services are supplied at or from the relevant premises.
- 6.4 The Customer shall be responsible for maintaining the security of its premises in accordance with its standard security requirements. While on the Customer’s premises the Supplier shall procure that all Staff is compliant with all the Customer’s security requirements.
- 6.5 Where all or any of the Services are supplied from the Supplier’s premises, the Supplier shall, at its own cost, comply with all security requirements specified by the Customer in writing.
- 6.6 Without prejudice to clause 3.2.6, any equipment provided by the Customer for the purposes of the Agreement shall remain the property of the Customer and shall be used by the Supplier and the Staff only for the purpose of carrying out the Agreement. Such equipment shall be returned promptly to the Customer on expiry or termination of the Agreement.
- 6.7 The Supplier shall reimburse the Customer for any loss or damage to the equipment (other than deterioration resulting from normal and proper use) caused by the Supplier or any Staff. Equipment supplied by the Customer shall be deemed to be in a good condition when received by the Supplier or relevant Staff unless the Customer is notified otherwise in writing within 5 Working Days.

## **7 Staff and Key Personnel**

- 7.1 If the Customer reasonably believes that any of the Staff are unsuitable to undertake work in respect of the Agreement, it may, by giving written notice to the Supplier:



- 7.1.1 refuse admission to the relevant person(s) to the Customer's premises;
  - 7.1.2 direct the Supplier to end the involvement in the provision of the Services of the relevant person(s); and/or
  - 7.1.3 require that the Supplier replace any person removed under this clause with another suitably qualified person and procure that any security pass issued by the Customer to the person removed is surrendered,
- and the Supplier shall comply with any such notice.
- 7.2 The Supplier shall:
- 7.2.1 ensure that all Staff are vetted in accordance with the Staff Vetting Procedures;
  - 7.2.2 if requested, provide the Customer with a list of the names and addresses (and any other relevant information) of all persons who may require admission to the Customer's premises in connection with the Agreement; and
  - 7.2.3 procure that all Staff comply with any rules, regulations and requirements reasonably specified by the Customer.
- 7.3 Any Key Personnel shall not be released from supplying the Services without the agreement of the Customer, except by reason of long-term sickness, maternity leave, paternity leave, termination of employment or other extenuating circumstances.
- 7.4 Any replacements to the Key Personnel shall be subject to the prior written agreement of the Customer (not to be unreasonably withheld). Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.

## **8 Assignment and sub-contracting**

- 8.1 The Supplier shall not assign, sub-contract, novate or in any way dispose of the benefit and/ or the burden of the Agreement or any part of the Agreement without the written consent of the Customer. The Customer may, in addition to clause 5.8, in the granting of such consent, provide for additional terms and conditions relating to such assignment, sub-contract, novation or disposal. The Supplier shall be responsible for the acts and omissions of its sub-contractors as though those acts and omissions were its own.
- 8.2 Where the Customer has consented to the placing of sub-contracts, the Supplier shall, at the request of the Customer, send copies of each sub-contract, to the Customer as soon as is reasonably practicable.
- 8.3 The Customer may assign, novate, or otherwise dispose of its rights and obligations under the Agreement without the consent of the Supplier provided that such assignment, novation or disposal shall not increase the burden of the Supplier's obligations under the Agreement.

## **9 Intellectual Property Rights**

- 9.1 All intellectual property rights in any materials provided by the Customer to the Supplier for the purposes of this Agreement shall remain the property of the Customer but the Customer hereby grants the Supplier a royalty-free, non-exclusive and non-transferable licence to use such materials as required until termination or expiry of the Agreement for the sole purpose of enabling the Supplier to perform its obligations under the Agreement.
- 9.2 All intellectual property rights in any materials created or developed by the Supplier pursuant to the Agreement or arising as a result of the provision of the Services shall vest in the Supplier. If, and to the extent, that any intellectual property rights in such materials vest in the Customer by operation of law, the Customer has the obligation to transfer, or contribute to all acts necessary in transfer, the intellectual property rights and hereby gives his irrevocable power of attorney



to the Supplier to sign the deed of transfer and perform any other additional acts on behalf of Customer for the transfer of intellectual property rights.

9.3 The Supplier hereby grants the Customer:

9.3.1 a perpetual, royalty-free, irrevocable, non-exclusive licence (with a right to sub-license) to use all intellectual property rights in the materials created or developed pursuant to the Agreement and any intellectual property rights arising as a result of the provision of the Services; and

9.3.2 a perpetual, royalty-free, irrevocable and non-exclusive licence (with a right to sub-license) to use:

- (a) any intellectual property rights vested in or licensed to the Supplier on the date of the Agreement; and
- (b) any intellectual property rights created during the Term but which are neither created or developed pursuant to the Agreement nor arise as a result of the provision of the Services,

including any modifications to or derivative versions of any such intellectual property rights, which the Customer reasonably requires in order to exercise its rights and take the benefit of the Agreement including the Services provided.

9.4 The Supplier shall indemnify, and keep indemnified, the Customer in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by the Customer as a result of or in connection with any claim made against the Customer for actual or alleged infringement of a third party's intellectual property arising out of, or in connection with, the supply or use of the Services, to the extent that the claim is attributable to the acts or omission of the Supplier or any Staff.

## **10 Governance and Records**

10.1 The Supplier shall:

10.1.1 attend progress meetings with the Customer at the frequency and times specified by the Customer and shall ensure that its representatives are suitably qualified to attend such meetings; and

10.1.2 submit progress reports to the Customer at the times and in the format specified by the Customer.

10.2 The Supplier shall keep and maintain until 6 years after the end of the Agreement, or as long a period as may be agreed between the Parties, full and accurate records of the Agreement including the Services supplied under it and all payments made by the Customer. The Supplier shall on request afford the Customer or the Customer's representatives such access to those records as may be reasonably requested by the Customer in connection with the Agreement.

## **11 Confidentiality, Transparency and Publicity**

11.1 Subject to clause 11.2, each Party shall:

11.1.1 treat all information made accessible to them by the other Party, or its Staff, as Confidential Information and will safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party; and

11.1.2 not use or exploit the disclosing Party's Confidential Information in any way except for the purposes anticipated under the Agreement.



11.2 Notwithstanding clause 11.1, a Party may disclose Confidential Information which it receives from the other Party:

11.2.1 where disclosure is requested by the police, by a court decision of a competent jurisdiction or any other law enforcement authority and/ or required by applicable law;

11.2.2 to its auditors or for the purposes of regulatory requirements;

11.2.3 on a confidential basis, to its professional advisers;

11.2.4 where the receiving Party is the Supplier, to the Staff on a need to know basis to enable performance of the Supplier's obligations under the Agreement provided that the Supplier shall procure that any Staff to whom it discloses Confidential Information pursuant to this clause 11.2.4 shall observe the Supplier's confidentiality obligations under the Agreement; and

11.2.5 where the receiving Party is the Customer:

(a) on a confidential basis to the employees, agents, consultants and contractors of the Customer;

(b) on a confidential basis to any of its GEANT shareholders, the European National Research and Education Network providers (NRENs);

(c) to the extent that the Customer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions; or

(d) in accordance with clause 12

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Customer under this clause 11.

11.3 The Supplier shall take reasonable steps to ensure that the Staff shall not, make any press announcement or publicise the Agreement or any part of the Agreement in any way, except with the prior written consent of the Customer.

## **12 Processing of Personal Data and Security of Data**

12.1 The terms used hereunder shall have the same meaning as provided in the GDPR.

12.2 As a result of the Agreement, the Supplier may process personal data from the Customer in the capacity of processor and/or controller, to be determined by Customer in its sole discretion.

12.3 Where the Supplier processes personal data from the Customer in the capacity of controller, the Supplier shall:

12.3.1 guarantee that it fully complies with the provisions in this clause 12 and applicable data protection legislation (including the GDPR);

12.3.2 keep the personal data confidential and shall not disclose the personal data in any way to any of its employees or third party without the prior written approval of the Customer, except where such disclosure is required for the performance of the Agreement, or where the Personal Data need to be disclosed to a competent public authority to comply with an EU member state legal obligation or as required for audit purposes.

12.3.3 ensure that it has in place appropriate technical and organisational measures to protect

the personal data against accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to personal data transmitted, stored or otherwise processed;

- 12.3.4 provide the Customer with such information as the Customer may reasonably request to satisfy itself that the Supplier is complying with its obligations related to personal data;
  - 12.3.5 provide all such co-operation and information as the Customer may reasonably require in order to comply with its obligations under applicable data protection legislation, such as, without limitation, performing data protection impact assessments, responding to data subject requests and handling security incidents; and
  - 12.3.6 indemnify and keep indemnified the Customer against all claims, proceedings and/or actions brought by a competent public authority and/or data subject against the Customer with respect to the processing by the Supplier of the personal data received from the Customer or arising out of any breach by the Supplier and/or its processors of its data protection obligations under this clause 12;
- 12.4 Where the Supplier processes personal data from the Customer in the capacity of processor, the Supplier shall, in order to comply with Article 28(3) of the GDPR, be bound by the data processing agreement as defined in Annex 3 to the Agreement. The Parties agree to Populate Schedule 1 of Annex 3 and exchange signed copies, in advance of any processing.

### **13 Liability**

- 13.1 The Supplier shall not be responsible for any injury, loss, damage, cost or expense suffered by the Customer if and to the extent that it is caused by the negligence or wilful misconduct of the Customer or by breach by the Customer of its obligations under the Agreement.
- 13.2 Subject always to clauses 13.3 and 13.4:
- 13.2.1 the aggregate liability of the Supplier in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Agreement, the supply or failure to supply of the Services, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed a sum equal to 125% of the Charges paid or payable to the Supplier; and
  - 13.2.2 except in the case of claims arising under clauses 9.4, 12 and 17.3, in no event shall the Supplier be liable to the Customer for any:
    - (a) loss of profits;
    - (b) loss of business;
    - (c) loss of revenue;
    - (d) loss of or damage to goodwill;
    - (e) loss of savings (whether anticipated or otherwise); and/or
    - (f) any indirect, special or consequential loss or damage.
- 13.3 Nothing in the Agreement shall be construed to limit or exclude either Party's liability for:
- 13.3.1 death or personal injury caused by its negligence or that of its Staff;
  - 13.3.2 fraud or fraudulent misrepresentation by it or that of its Staff; or



13.3.3 any other matter which, by law, may not be excluded or limited.

13.4 The Supplier's liability under the indemnity in clause 9.4, 12.3.6 and 17.3 shall be unlimited.

#### **14 Force Majeure**

Neither Party shall have any liability under or be deemed to be in breach of the Agreement for any delays or failures in performance of the Agreement which result from circumstances beyond the reasonable control of the Party affected. Each Party shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than two months, either Party may terminate the Agreement by written notice to the other Party.

#### **15 Termination**

15.1 The Customer may terminate the Agreement at any time by notice in writing to the Supplier to take effect on any date falling at least 1 month (or, if the Agreement is less than 3 months in duration, at least 10 Working Days) later than the date of service of the relevant notice.

15.2 Without prejudice to any other right or remedy it might have, the Customer may terminate the Agreement by written notice to the Supplier with immediate effect if the Supplier:

15.2.1 (without prejudice to clause 15.2.4), is in material breach of any obligation under the Agreement which is not capable of remedy;

15.2.2 repeatedly breaches any of the terms and conditions of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Agreement;

15.2.3 is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Supplier receiving notice specifying the breach and requiring it to be remedied;

15.2.4 undergoes a change of control, which means any transfer of an interest in a party (or any of such Party's shareholders) resulting in a natural or legal person becoming having an interest of [25] per cent or more in such party provided such transfer has occurred after the date of execution of the Agreement;

15.2.5 breaches any of the provisions of clauses 7.2, 11, 12 and 16 or Data Protection Legislation;

15.2.6 becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Supplier (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Supplier's assets or business, or if the Supplier makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause 15.2.6) in consequence of debt in any jurisdiction; or

15.2.7 fails to comply with legal obligations in the fields of environmental, social or labour law.

15.3 The Supplier shall notify the Customer as soon as practicable of any change of control as referred to in clause 15.2.4 or any potential such change of control.

15.4 The Supplier may terminate the Agreement by written notice to the Customer if the Customer has not paid any undisputed amounts within 90 days of them falling due.

15.5 Termination or expiry of the Agreement shall be without prejudice to the rights of either Party accrued prior to termination or expiry and shall not affect the continuing rights of the Parties under this clause and clauses 2, 3.2, 6.1, 6.2, 6.6, 6.7, 7, 9, 10.2, 11, 12, 13, 15.6, 16.4, 17.3, 18



and 19.7 or any other provision of the Agreement that either expressly or by implication has effect after termination.

15.6 Upon termination or expiry of the Agreement, the Supplier shall:

- 15.6.1 give all reasonable assistance to the Customer and any incoming supplier of the Services; and
- 15.6.2 return all requested documents, information and data to the Customer as soon as reasonably practicable.

## **16 Compliance**

16.1 The Supplier shall promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under the Agreement. The Customer shall promptly notify the Supplier of any health and safety hazards which may exist or arise at the Customer's premises and which may affect the Supplier in the performance of its obligations under the Agreement.

16.2 The Supplier shall:

- 16.2.1 comply with all the Customer's health and safety measures while on the Customer's premises; and
- 16.2.2 notify the Customer immediately in the event of any incident occurring in the performance of its obligations under the Agreement on the Customer's premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

16.3 The Supplier shall:

- 16.3.1 perform its obligations under the Agreement in accordance with all applicable equality Law and the Customer's equality and diversity policy as provided to the Supplier from time to time; and
- 16.3.2 take all reasonable steps to secure the observance of clause 16.3.1 by all Staff.

16.4 The Supplier shall supply the Services in accordance with the Customer's environmental policy as provided to the Supplier from time to time.

## **17 Prevention of Fraud and Corruption**

17.1 The Supplier shall not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Agreement or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement.

17.2 The Supplier shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by the Staff and the Supplier (including its shareholders, members and directors) in connection with the Agreement and shall notify the Customer immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

17.3 If the Supplier or the Staff engages in conduct prohibited by clause 17.1 or commits fraud in relation to the Agreement or any other contract with the Customer, the Customer may:

- 17.3.1 terminate the Agreement and recover from the Supplier the amount of any loss suffered by the Customer resulting from the termination, including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Services and any additional expenditure incurred by the Customer throughout the remainder of the Agreement; or

17.3.2 recover in full from the Supplier any other loss sustained by the Customer in consequence of any breach of this clause.

## **18 Governing Law, Jurisdiction and Dispute Resolution**

- 18.1 The validity, construction and performance of the Agreement, and all contractual and non contractual matters arising out of it, shall be governed by Dutch law and shall be subject to the exclusive jurisdiction of the Dutch courts to which the Parties submit.
- 18.2 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement and such efforts shall involve the escalation of the dispute to an appropriately senior representative of each Party.
- 18.3 If the dispute cannot be resolved by the Parties within one month of being escalated as referred to in clause 18.1, the dispute may by agreement between the Parties be referred to a neutral adviser or mediator (the "**Mediator**") chosen by agreement between the Parties. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings.
- 18.4 If the Parties fail to appoint a Mediator within one month, or fail to enter into a written agreement resolving the dispute within one month of the Mediator being appointed, either Party may exercise any remedy it has under applicable law.

## **19 General**

- 19.1 Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under the Agreement, and that the Agreement is executed by its duly authorised representative.
- 19.2 A person who is not a party to the Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties.
- 19.3 The Agreement cannot be varied except in writing signed by a duly authorised representative of both the Parties.
- 19.4 The Agreement contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into the Agreement on the basis of any representation that is not expressly incorporated into the Agreement. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.
- 19.5 Any waiver or relaxation either partly, or wholly of any of the terms and conditions of the Agreement shall be valid only if it is communicated to the other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Agreement.
- 19.6 The Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in the Agreement. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.
- 19.7 Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of the Agreement (whether under the Agreement, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 19.8 If any provision of the Agreement is prohibited by law or judged by a court to be unlawful, void



or unenforceable, the provision shall, to the extent required, be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of the Agreement.

## **20 Notices**

- 20.1 Any notice to be given under the Agreement shall be in writing and may be served by personal delivery, first class recorded or, subject to clause 20.3, e-mail to the address of the relevant Party set out in the Purchase Order, or such other address as that Party may from time to time notify to the other Party in accordance with this clause:
- 20.2 Notices served as above shall be deemed served on the Working Day of delivery provided delivery is before 5.00pm on a Working Day. Otherwise delivery shall be deemed to occur on the next Working Day. An email shall be deemed delivered when sent unless an error message is received.
- 20.3 Notices under clauses 14 (Force Majeure) and 15 (Termination) may be served by email only if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in clause 20.1.



**Annex 1 - Charges**

As per the relevant Purchase Order documentation



**Annex 2 - Specification**

As per the relevant Purchase Order documentation

**Annex 3 – Data Processing Agreement**

[Click here to see Annex 3 - Data Processing Agreement pdf](#)