

**Special legal provisions for Contracts/ Orders/ Agreements (Framework Agreements) of the Buyer for purchase of Information & Communications Technology (ICT) Products and Services (further referred to as Special ICT legal provisions)**

These Special legal provisions for Contracts/ Orders/ Framework Agreements (further Framework Agreements) of the Buyer for purchase of information & Communications Technology (ICT) Products and Services (further referred to as Special ICT legal provisions) are integral part of the purchase Contract/ Order/ Agreement and are governing Contract/ Order/ Agreement realization.

Unless, otherwise specified in the Contract/ Order/ Agreement and in the Buyer's General Conditions of Purchase, the "Special legal provisions for Contract/ Order/ Agreement of the Buyer for purchase of Information & Communications Technology (ICT) Products and Services (further referred to as "Special ICT legal provisions")" shall be applied. The "Special ICT legal provisions" regulate the rights, obligations and relations between the Supplier and the Buyer (EVN Macedonia AD or the company in which EVN Macedonia AD is a founder or shareholder or majority shareholder).

Both parties, that is, the Supplier and the Buyer, are considered contractual parties. "Special ICT legal provisions" are an integral part of the Contract/ Order/ Agreement, even if they are not specified/submitted by the Buyer or are excluded from the Supplier's documents related to the Contract/ Order/ Agreement. All the conditions of the Supplier that contradict or opposites these "Special ICT legal provisions" shall not be applied, even in the event that the performance of the Supplier's deliver/ performance/ service / works on previous occasions has been undisputedly accepted despite the Buyer's familiarity with the previous conditions of the Supplier.

These "Special ICT legal provisions", as well as any changes to the "Special ICT legal provisions" which take effect from the date of their publication, are published on the Buyer's website ([Special ICT Legal Provisions \(evn.mk\)](https://evn.mk))

These "Special ICT legal provisions" are binding on the Supplier even if not stated in the Contract/ Order/ Agreement/Tender documentation or request for quotation.

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## **Chapter 1. General provisions**

### **1. General provisions**

1.1 The Supplier declares that it has seen the documents from the Public Call/Advertisement/Request for Offer/ Bid Inquiry/ Tender, and that he agrees with the provisions contained in the "Special ICT legal provisions" by submitting the offer and undertaking the obligations of the Contract/ Order/ Agreement. The Supplier, by submitting his offer, confirms/declares that he is fully aware of the local conditions and restrictions for the performance of the deliveries/ services/ works, for all possible difficulties that could arise during the performance of the Contract/ Order/ Agreement, including but not limited to the necessary warehouses, permits for import/ deliveries/ installations/ putting into service, the premises for the employees, the transport and access roads, the possibilities for appropriate handling and treatment of waste, existing electrical installations, water installations, etc. types of installations and that it took into account all the conditions when forming his price/offer.

The Supplier is responsible and undertakes all measures for the timely delivery of all materials/ services /works that he has committed to offer and deliver, in accordance with the submitted offer and/or concluded Contract/ Order/ Agreement.

In the unit prices of the individual positions are included, all service activities, actions and deliveries that are required for the quality performance of the Contract/ Order/ Agreement, within the period determined by the offer or the Contract/ Order/ Agreement, weather conditions that would occur during the works, the possible performance delays, etc., even in the event that such delays/conditions are not specifically stated in the respective positions of the offer/Contract/ Order/ Agreement.

### **2. Basics of the Contract/ Order/ Agreement**

2.1 The awarding of the Contract/ Order/ Agreement, any amendments and additions to the Contract/ Order/ Agreement are valid, if they are in written form (paper form of the Contract/ Order/ Agreement or electronically issued and approved Contract/ Order/ Agreement).

During the performance, the provisions arising from laws, standards, norms and other regulations related to Contract/ Order/ Agreement must be respected and applied.

During the execution of the Contract/ Order/ Agreement, as well as in case of a dispute, the following order of documents is valid and it is to be understood that the Contract/ Order/ Agreement consists of a number of counterparts and if so, the counterparts taken together constitute one document i.e., Contract/ Order/ Agreement:

- Contract/ Order/ Agreement
- Call-off Purchase order according to the Framework Agreement
- Applicable laws, by- laws, standards, regulations
- The General Conditions of Purchase submitted with the request for offer and the tender documentation
- The "Special ICT legal provisions" submitted with the request for offer and the tender documentation
- Tender documentation of the Buyer
- The performance documents and technical provisions according to the tender documentation
- Protocol of negotiations or e-auction or e-mail communication in function of protocol of negotiations
- Offer

The Buyer and the Supplier may agree to include Additional Provisions. Additional Provisions take effect only to the extent they are additional to, and do not detract from the parties' rights and obligations under, the terms and conditions of the "Special ICT legal provisions", provided that any Additional Provisions are included in order to enable the Buyer to comply with applicable legislative or policy requirements are deemed not to detract from the parties' rights and obligations.

### **3. Non exclusivity**

3.1 Unless expressly stated otherwise in the Contract/ Order/ Agreement, the Buyer may engage other Suppliers (or itself) to provide products, services and other deliverables the same as or similar to the Deliverables.

### **4. Realization of the agreement (valid only in the case of concluding a framework agreement)**

4.1 The Call-Off purchase order according to the Framework Agreement, which results from the Framework Agreement, is issued by the Buyer. Orders are valid only if they refer to works/positions specified in the Framework

Agreement. The Supplier agrees to receive the call-off purchase orders under the framework agreement and the obligations under them electronically approved by the authorized person of the Buyer, electronically by e-mail, to the e-address of the Supplier specified in the Framework Agreement.

If there are changes in the Supplier's e-mail address for receiving orders, the Supplier undertakes to immediately submit the data for the new e-mail address for receiving orders to the following e-mail address:

[evn-po-narachki@evn.mk](mailto:evn-po-narachki@evn.mk).

If the Supplier does not act on this obligation, the orders delivered to the e-mail address of the Supplier will be considered duly delivered to the Supplier.

## **5. Term / Validity of Contract/ Order/ Agreement**

5.1 Contract/ Order/ Agreement begins on the start date specified in the Contract/ Order/ Agreement and continues for the period set out in the Contract/ Order/ Agreement, unless any extension options are defined in the Contract/ Order/ Agreement and/ or are agreed with Annexes/ Extensions/ Amendments to the Contract/ Order/ Agreement. The Buyer may extend the Term on the same terms and conditions for any extension period(s) specified in the Contract/ Order/ Agreement by giving the Supplier written notice and upon mutual signing in written any Annex/ Extension/ Amendments.

## **6. Applicability of the "Special ICT legal provisions"**

6.1 These "Special ICT legal provisions" apply to all offers and Contract/ Order/ Agreement pursuant to which the Supplier delivers goods and/or provides services of any nature whatsoever and under whatever name to the Buyer.

6.2 Departures from and additions to these "Special ICT legal provisions" shall only be valid if they are agreed by the parties involved in writing.

6.3 The applicability of the Supplier's purchasing or other conditions is specifically excluded.

6.4 If any provision of these "Special ICT legal provisions" is null and void or is voided, the other provisions of these "Special ICT legal provisions" shall remain fully in effect.

The Supplier and the Buyer shall in this case consult each other for the purpose of agreeing new provisions to replace the null and void or voided provisions.

## **7. Offers**

7.1 All offers and other communications of the Supplier are subject to confirmation in writing. The Buyer guarantees that the information that it has provided, or that has been provided on its behalf to the Supplier and on which the Supplier has based its offer, is accurate and complete.

## **8. Price and payment**

8.1 All prices are exclusive of value added tax (VAT) and other levies imposed by the Law of R.N. Macedonia.

8.2 The Supplier may not derive any rights or expectations from a cost estimate or budget issued by the Buyer unless the parties have otherwise agreed in writing. An available budget (estimated value of the Agreement) made known to the Supplier by the Buyer shall only apply as a non-binding, estimated value agreed between the parties for the delivery/ performance to be delivered by the Supplier

8.3 Information from the Buyer's records shall count as an official information with respect to the performance delivered by the Supplier and the amounts owed by the Buyer for delivery of this performance

8.4 If a periodic payment obligation on the part of the Buyer applies, the Supplier shall be entitled to adjust, in writing and in accordance with the index or other standard included in the Contract/ Order/ Agreement, the applicable prices and rates to the term specified in the Contract/ Order/ Agreement.

8.5 The parties shall record the date or dates on which the Supplier shall charge the Buyer for the performance agreed in the Contract/ Order/ Agreement. Amounts owed must be paid by the Buyer in accordance with the agreed payment terms or the payment terms stated in the Single Contract/ Order/ Agreement. The Buyer may not suspend any payment and may also not set off any amounts owed.

8.6 The Supplier is obliged to issue an invoice which will be delivered to the Buyer in a way stated in the Contract/Order/Agreement. The payment terms and the dates of the payment included in the invoice must be in accordance the conditions stated in 8.6 in this "Special ICT legal provisions".

## **9. Term of the Contract/ Order/ Agreement**

9.1 If and insofar as the Contract/ Order/ Agreement concluded between the parties is a continuing performance, the Contract/ Order/ Agreement shall be entered into for the term agreed between the parties.

9.2 The term of the Contract/ Order/ Agreement shall be extended, each time by the period of time mutually agreed, unless the Buyer or Supplier terminate the Contract/ Order/ Agreement in writing with due observance of a notice period.

## **10. Confidentiality and transfer of personnel**

10.1 The Buyer and Supplier must ensure that all information received from the other party that the receiving party knows or should reasonably know is confidential and is kept secret. This duty of confidentiality shall not apply to the Supplier if and insofar as the Supplier is required to provide the information concerned to a third party in accordance with a court decision or a statutory requirement, or if and insofar as doing so is necessary for the proper performance of the Contract/ Order/ Agreement by the Supplier. The party that receives the confidential information may only use it for the purpose for which it was provided. Information shall in any case be deemed to be confidential if it has been qualified as such by one of the parties.

10.2 The Buyer acknowledges that software originating from the Supplier is always confidential in nature and that this software contains trade secrets of the Supplier and its Suppliers or the producer of the software.

10.3 During the term of the Contract/ Order/ Agreement and for one year following its termination, each of the parties shall not employ or otherwise directly or indirectly engage, for the purpose of performing work, employees of the Buyer who are or were involved in the performance of the Contract/ Order/ Agreement unless the Buyer has given prior written permission.

## **11. Privacy and data processing**

11.1 If necessary for the performance of the Contract/ Order/ Agreement, the Buyer shall on request inform the Supplier in writing about the way in which the Buyer performs its legal obligations regarding the protection of personal data.

11.2 The Buyer is fully responsible for the data that it processes in the context of using a service of the Supplier. The Buyer guarantees vis-à-vis the Supplier that the content, use and/or processing of the data are not unlawful and do not infringe any right of a third party.

11.3 The Supplier is fully responsible for the data that it processes in the context of cooperation with the Buyer. The Supplier guarantees vis-à-vis the Buyer that the content, use and/or processing of the data are not unlawful and do not infringe any right of a third party.

11.4 If necessary for the performance of the Contract/ Order/ Agreement, the Supplier shall on request inform the Buyer in writing about the way in which the Supplier performs its legal obligations regarding the protection of personal data.

## **12. Information Security**

12.1 If the Supplier is obliged to provide form of information security under the Contract/ Order/ Agreement, this security shall meet the specifications agreed in writing between the parties. If the Contract/ Order/ Agreement does not include an explicitly defined security method, the security provided shall meet a standard that is not unreasonable in terms of the state of the art, the sensitivity of the information and the costs associated with the security measures taken.

12.2 The access or identification codes and certificates provided by or because of the Supplier to the Buyer are confidential and must be treated as such by the Buyer, and may only be made known to authorized personnel in the Buyer's own organization. The Supplier is entitled to change the access or identification codes and certificates.

12.3 The Buyer must adequately secure its systems and infrastructure and have active antivirus software protection at all times.

## **13. Retention of title, reservation of rights and suspension**

13.1 All the items delivered to the Buyer shall remain in property of the Supplier until all amounts owed by the Buyer to the Supplier under the Contract/ Order/ Agreement concluded between the parties have been paid to the Supplier in full.

13.2 As and when necessary, rights shall be granted or transferred to the Buyer subject to the condition that the Buyer has paid all amounts owed under the Contract/ Order/ Agreement.

#### **14. Risk transfer**

14.1 The risk of loss, theft, misappropriation or damage of items, information (including user names, codes and passwords), documents, software or data files that are created, supplied or used in the context of performing the Contract/ Order/ Agreement shall pass to the Buyer at the time at which the Buyer or an appointed person of the Buyer comes into actual possession of the items and information referred to.

#### **15. Intellectual property**

15.1 If the Supplier is prepared to undertake the transfer of an intellectual property right, such a commitment may only be undertaken expressly and in writing, by specific, declaring into the Contract/ Order/ Agreement. If the parties agree in writing that an intellectual property right with respect to software, websites, data files, equipment or other materials specifically developed for the Buyer shall transfer to the Buyer, this shall be without prejudice to the Supplier's right or option to use and/or operate, either for itself or for third parties and without any restriction, the parts, general principles, ideas, designs, algorithms, documentation, works, programming languages, protocols, standards and the like on which the developments referred to are based for other purposes. The transfer of an intellectual property right shall likewise be without prejudice to the Supplier's right to complete developments, either for itself or for a third party, that are similar to or derived from developments that were or are being completed for the Buyer.

15.2 Unless agreed in the Contract/ Order/ Agreement that the Supplier will undertake the transfer of intellectual property rights, all intellectual property rights to the software, websites, data files, equipment and training, testing and examination materials, as well as other materials like analyses, designs, documentation, reports and offers, including preparatory materials in this regard, developed or made available to the Buyer under the Contract/ Order/ Agreement are held exclusively by the Supplier, its licensors or its Suppliers. The Buyer shall have the rights of use expressly granted under "Special ICT legal provisions", the Contract/ Order/ Agreement concluded in writing between the parties and as well as the law. The right accorded to the Buyer is non-exclusive and may not be transferred, pledged or sublicensed, unless otherwise agreed in the Contract/ Order/ Agreement.

15.3 The Buyer may not remove or change any indication concerning the confidential nature of or concerning the copyrights, brands, trade names or any other intellectual property right pertaining to the software, websites, data files, equipment or materials, or have any such indication removed or changed.

15.4 Even if not expressly provided in the Contract/ Order/ Agreement, the Supplier, may always take technical measures to protect equipment, data files, websites, software made available, software to which the Buyer is granted direct or indirect access, and the like in connection with an agreed limitation in terms of the content or duration of the right of use of these items. The Buyer may not remove or bypass such technical measures.

15.5 The Supplier indemnifies the Buyer against any claim of a third party based on the allegation that software, websites, data files, equipment or other materials developed by the Supplier itself infringe an intellectual property right of that third party, subject to the condition that the Buyer immediately informs the Supplier in writing about the existence and content of the claim and leaves the settlement of the claim, including any arrangements made in this regard, entirely to the Supplier. The Buyer shall provide the powers of attorney and information required to the Supplier and assist the Supplier to defend itself against such claims.

This obligation to indemnify shall not apply if the alleged infringement concerns

- (i) materials made available to the Supplier by the Buyer for use, modification, processing or maintenance or
- (ii) changes made or commissioned by the Buyer in the software, website, data files, equipment or other materials without the Supplier's written permission.

If it is irrevocably established in court that software, websites, data files, equipment or other materials developed by the Supplier itself is or are infringing any intellectual property right held by a third party, or if, in the opinion of the Supplier, there is a good chance that such an infringement is occurring, the Supplier shall if possible, ensure that the Buyer can continue to use, or use functional equivalents of, the software, websites, data files, equipment or materials supplied. Any other or further obligation to indemnify on the part of the Supplier due to infringement of a third party's intellectual property right is excluded.



15.6 The Buyer guarantees that making equipment, software, material intended for websites, data files and/or other materials and/or designs available to the Supplier for the purpose of use, maintenance, processing, installation or integration does not infringe any rights of third parties.

15.7 The Supplier is never obliged to perform data conversion unless doing so has been expressly agreed in writing with the Buyer.

## **16. Obligations to cooperate**

16.1 The parties acknowledge that the success of work in the field of information and communications technology depends on proper and timely cooperation between the parties.

16.2 The Buyer bears the risk of selecting the items, goods and/or services to be provided by the Supplier.

Measurements and particulars given in drawings, images, catalogues, websites, offers, advertising material, standardization sheets and the like are binding for the Supplier unless expressly stated otherwise by the Supplier.

16.3 If the Buyer deploys own employees and/or auxiliary persons in the performance of the Contract/ Order/ Agreement, these employees and auxiliary persons must have the knowledge and experience required.

If the Supplier's employees perform work at the Buyer's location, the Buyer must provide, on time and free of charge, the facilities required, such as a workspace with computer and network facilities. The Supplier shall not be liable for damage or costs due to transmission errors, malfunctions or the non-availability of these facilities unless the Buyer proves that this damage or these costs are the result of deliberate intent or recklessness on the part of the Supplier's management.

16.4 The workspace and facilities must meet all legal requirements. The Buyer shall make the company and security rules current in its organization known to employees and deployed by the Supplier prior to the start of the work.

16.5 If in connection with the Supplier's services and products, the Buyer makes software equipment or other resources available to the Supplier, the Buyer guarantees that all licenses or approvals that the Supplier may require in relation to these resources shall be obtained.

16.6 The Buyer is responsible for the management, including checking the settings, and use of the products supplied and/or services and / or works provided by the Supplier, and the way in which the results of the products and/ or services and / or works are used. The Buyer is also responsible for appropriately instructing users and for the use made by users for the delivered products/ services/ performed works.

16.7 The Buyer shall itself install, organize, parameterize and tune the software and support software required on its own equipment and, if necessary, modify the equipment, other software and support software and operating environment used in this regard and effect the interoperability that it desires, unless otherwise agreed in the Contract/ Order/ Agreement.

## **17. Obligations to provide information**

17.1 In order to enable proper performance of the Contract/ Order/ Agreement by the Supplier, the Buyer shall always provide all information reasonably required by the Supplier to the Supplier in a timely manner.

17.2 The Buyer guarantees that the information, designs and specifications that it has provided to the Supplier is or are accurate and complete. If the information, designs or specifications provided by the Buyer contain inaccuracies apparent to the Supplier, the Supplier shall contact the Buyer to make enquiries about the matter.

17.3 In connection with continuity, the Buyer shall designate a contact person or persons who shall act in that capacity for the duration of the Supplier's work. The Buyer's contact persons shall have the experience required, specific knowledge of the subject matter and a proper understanding of the objectives that the Buyer wishes to achieve.

17.4 The Supplier is only obliged to periodically provide information concerning the performance of the work to the Buyer through the contact person designated by the Buyer.

17.5 The Supplier agrees to notify the Buyer immediately upon becoming aware of any incident directly or indirectly related to the Buyer's services and data by email to [supplier-incident@evn.mk](mailto:supplier-incident@evn.mk), and to provide any information known to it to assist the Buyer in fulfilling its obligations.

## **18. Project and steering groups**

18.1 If both parties are participating in a project or steering group through one or more employees that they have deployed, the provision of information shall take place in the manner agreed for the project or steering group.

18.2 Decisions made in a project or steering group, in which both parties are participating, shall only be binding for the Supplier if the decisions are made in accordance with that which has been agreed between the parties in writing in this regard or, in the absence of written agreements in this context, If the Supplier has accepted the decisions in writing. The Supplier is never obliged to accept or implement a decision if, in its opinion, the decision cannot be reconciled with the content and/or proper performance of the Contract/ Order/ Agreement.

18.3 The Buyer guarantees that the persons that it has designated to participate in a project or steering group are authorized to make decisions that are binding for the Buyer.

## **19. Terms**

19.1 The Supplier has to make reasonable efforts to comply to the greatest extent possible with the terms and delivery periods and/or dates and delivery dates, whether or not these are firm deadlines and/or date, that has been specified in the Contract/ Order/ Agreement or that have been additionally agreed in written between the parties.

19.2 If a term is likely to be exceeded, the Supplier and Buyer shall consult each other about the consequences of the term being exceeded in relation to further planning.

19.3 In all cases, if the parties have agreed firm deadlines and delivery periods or delivery dates, the Supplier will be late if:

- (i) it exceeds the agreed time period
- (ii) Buyer and Supplier agreed in writing, for a new binding delivery date and the Supplier has exceeded this date.

The notice of default must describe the breach as comprehensively and in as much detail as possible in order to give the Supplier the opportunity to respond adequately.

19.4 If it has been agreed that the work/ delivery/ service under the Contract/ Order/ Agreement is to be performed in phases, the Supplier shall be entitled to postpone the start of a phase's work until the Buyer has approved the results of the preceding phase in writing.

## **20. Termination and cancellation of the Contract/ Order/ Agreement**

20.1 Each party shall only be authorized to rescind the Contract/ Order/ Agreement due to an attributable failure in the performance of the Contract/ Order/ Agreement if the other party, in all cases after a written notice of default that is as detailed as possible and that grants a reasonable term to remedy the breach has been issued, is culpably failing to fulfil essential obligations under the Contract/ Order/ Agreement. The Buyer's payment obligations and all obligations of the Buyer or a third party engaged by the Buyer to cooperate and/or provide information apply in all cases as essential obligations under the Contract/ Order/ Agreement, to the proportion of performed and accepted works/ deliverables/ services and if the done works/ deliverables/ services can function alone, out of the complete scope of the Contract/ Order/ Agreement.

20.2 If, at the time of termination, the Buyer has previously received goods or services or works in the execution of the Contract/Order/Agreement, the payment obligations related to these goods or services or works will not be revoked, unless the buyer proves that the Purchaser did not receives the substantial part of the supplies of such goods or services or works.

In addition to the previous, amounts invoiced by the Supplier prior to rescission in connection with what it already properly performed or delivered in the performance of the Contract/ Order/ Agreement shall remain payable in full and shall become immediately due and payable at the time of termination.

20.3 A Contract/ Order/ Agreement which, due to its nature and content, does not end in completion and which has been entered into for an indefinite period of time may be terminated by either of the parties in writing following consultation between the parties. Reasons for the termination must be stated.

If a notice period has not been agreed between the parties, a reasonable period must be observed when notice of termination is given. The Supplier is obliged to pay any compensation due to termination, if termination is caused by its non-performance. All of the above should be in accordance with the Buyer's General Terms of Purchase and /or Contract/ Order/ Agreement.

## **21. Changes and additional work**

21.1 If, at the request or prior consent of the Buyer, the Supplier has performed work or supplied goods or services that is or are outside the scope of the agreed work and/or provision of goods or services i.e. out of the scope of the

Contract/ Order/ Agreement, the Buyer shall pay for this work or provision of goods or services, if the same one was requested by the Buyer and it is indivisible part of the scope of the Contract/ Order/ Agreement, in accordance with the agreed prices or, if no rates have been agreed between the parties, in accordance with the Supplier's offer/ tender or publicly available Supplier's usual prices.

The Supplier for such a request shall require that a separate Annex/ Amendment to the Contract/ Order/ Agreement be concluded in writing for the purpose.

21.2 Insofar as a fixed price has been agreed for the provision of services, the Supplier shall, on request, inform the Buyer in writing about the financial consequences of the additional work or additional provision of goods or services as referred to in this article, and in such case, if the Buyer is agreed with the proposed financial consequences, the parties are obliged to conclude separate Annex

## **Chapter 2. Provision of services**

*The provisions of this 'Provision of services' chapter shall apply in addition to the general provisions of these "Special ICT legal provisions" if the Supplier provides services of whatever nature, whether or not set out in more detail in one of the other chapters of these "Special ICT legal provisions", to the Buyer.*

### **22. Performance**

22.1 The Supplier shall perform its services with care to the best of its ability, if applicable in accordance with the agreements and procedures agreed in writing with the Buyer. All services by the Supplier shall be performed on the basis of an obligation to use best endeavors unless and insofar as the Supplier has expressly promised a result in the written Contract/ Order/ Agreement and the result concerned has also been defined with sufficient determinability in the Contract/ Order/ Agreement.

22.2 The Supplier shall not be liable for loss or costs that are the result of the use or misuse of access or identification codes or certificates unless the misuse is the direct result of deliberate intent or recklessness on the part of the Supplier's management.

22.3 If the Contract/ Order/ Agreement has been entered into with a view to performance by one specific person, the Supplier shall always be entitled to replace this person with one or more persons who have the same and/or similar qualifications.

### **23. Service Level Agreement**

23.1 Any agreements concerning a service level (Service Level Agreements) shall only be expressly agreed in writing. The Buyer shall always inform the Supplier without delay about any circumstances that affect or that could affect the service level and its availability.

23.2 If agreements about a service level have been made, the availability of software, systems and related services shall always be measured such that unavailability due to preventive, corrective or adaptive maintenance or other forms of service announced by the Supplier in advance and circumstances beyond the Supplier's control are not taken into account. The availability measured by the Supplier will be considered as some evidence, for comparison with the evidence presented by the buyer.

### **24. Backups**

24.1 If the services provided to the Buyer under the Contract/ Order/ Agreement include making backups of the Buyer's data, the Supplier shall make a complete backup of the Buyer's data in its possession in accordance with the periods agreed in writing or once a week if such periods have not been agreed. The Supplier shall retain the backup for the duration of the agreed term or for the duration of the Supplier's usual term if agreements have not been made in this regard. The Supplier shall retain the backup with due care.

24.2 The Buyer remains responsible for the fulfilment of all administrative and retention obligations that apply to it by law.

## **Chapter 3. Software as a Service (SaaS)**

*The provisions of this 'Software as a Service' chapter shall apply in addition to the general provisions of these Special ICT legal provisions and the provisions of the 'Provision of services' chapter if the Supplier performs services under the name or in the field of Software as a Service (SaaS).*

*For the application of these Special ICT legal provisions, SaaS means a service by which the Supplier makes software available to the Buyer remotely through the Internet or another data network, and maintains this availability remotely, without providing a physical carrier with the software concerned to the Buyer.*

## **25. Provision of SaaS**

25.1 The Supplier shall only provide SaaS on the instructions of the Buyer. The Buyer may not allow third parties to make use of the services provided by the Supplier in the field of SaaS.

25.2 If the Supplier performs work relating to the data of the Buyer, its employees or users pursuant to a request or a competently issued order of a government agency or in connection with a legal obligation, all costs associated with this work shall be charged to the Buyer.

25.3 The Supplier may change the content or scope of the SaaS delivery model. If such changes result in a change in the Buyer's current procedures, the Supplier shall inform the Buyer about the matter as soon as possible and the costs of this change shall be borne by the Buyer. The Buyer may in this case give notice of termination of the Contract/ Order/ Agreement, which termination shall then take effect on the date on which the change takes effect, unless the change is related to changes in relevant legislation or other instructions issued by competent sides, or the Supplier bears the costs of this change.

25.4 The Supplier may continue to provide SaaS using a new or modified version of the software. The Supplier is not obliged to maintain, modify or add certain features or functionalities of the service or software specifically for the Buyer.

25.5 The Supplier may temporarily put all or part of the SaaS out of operation for preventive, corrective or adaptive maintenance or other forms of service. The Supplier shall not allow the period during which the service is out of operation to last longer than necessary and shall ensure if possible that this period occurs outside office hours.

## **26. Guarantee**

26.1 The Supplier guarantees that the software made available and held in the context of the SaaS is free of errors and functions without interruption. The Supplier shall make efforts to fix the errors in the software referred to in Article 31.3 within a reasonable term if and insofar as the matter concerns software developed by the Supplier itself and the Buyer has provided a detailed, written description of the defects concerned to the Supplier. Where there are grounds for doing so, the Supplier may postpone the fixing of defects until a new version of the software is put into operation, with prior consent of the Buyer. The Supplier is entitled to install temporary solutions, program bypasses or problem-avoiding limitations in the software.

26.2 Based on the information provided by the Supplier concerning measures to prevent and limit the effects of malfunctions, defects in the SaaS, corruption or loss of data or other incidents, the Buyer shall identify and list the risks to its organization and take additional measures if necessary. The Supplier declares that it is prepared to provide assistance, at the Buyer's request, to the extent reasonable and according to the financial and other conditions set by the Supplier, with respect to further measures to be taken by the Buyer. The Supplier is obliged to recover data that has been corrupted or lost.

26.3 The Supplier guarantee that the software made available and held in the context of the SaaS shall be adapted to changes in relevant legislation and regulations on time.

## **27. Protection of personal data**

27.1 Under legislation pertaining to the processing of personal data, such as the Personal Data Protection Act, the Buyer has obligations towards third parties, such as the obligation to provide information and allow the person concerned to inspect his or her personal data, and correct and delete the personal data of the person concerned. The Buyer is fully and solely responsible for the fulfilment of these obligations. The parties maintain that the Supplier is the 'processor' within the meaning of the Personal Data Protection Act with respect to the processing of personal data.

27.2 To the extent that doing so is technically possible, the Supplier shall provide support in the context of the obligations that the Buyer must fulfil as referred to in Article 27.1. The costs associated with this support are not included in the agreed prices and payments and shall be borne by the Buyer.

## **28. Commencement of the service; payment**

28.1 The SaaS provided by the Supplier shall commence within a reasonable term following the conclusion of the Contract/ Order/ Agreement and upon signing of Protocol of Acceptance by the Buyer. The Buyer shall promptly ensure that it has the facilities required to use the SaaS following the conclusion of the Contract/ Order/ Agreement.

28.2 The Buyer shall make the payment as specified in the Contract/ Order/ Agreement for the SaaS. In the absence of an agreed payment schedule, all amounts that relate to the SaaS provided by the Supplier shall be payable 30 days as of the end of the delivery / performance period

## **Chapter 4. Software**

*The provisions of this 'Software' chapter shall apply in addition to the general provisions if the Supplier makes software available to the Buyer for use other than on the basis of SaaS.*

## **29. Right of use and restrictions on use**

29.1 The Supplier shall make the agreed computer programs and agreed user documentation, further referred to as the "software", available to the Buyer for use during the duration of the Contract/ Order/ Agreement on the basis of a license for use. The right to use the software is non-exclusive and may not be transferred, pledged or sublicensed, except to be transferred to Buyer's subsidiaries.

29.2 The Supplier's obligation to make available and the Buyer's right of use extend only to the software's object code. The Buyer's right of use does not extend to the software's source code, unless the Supplier does not submit it free of charge. The software's source code and technical documentation prepared during the development of the software shall not be made available to the Buyer, unless the Buyer is prepared to pay a financial amount for the source code and technical documentation or the Supplier submits it free of charge with the signing of the Contract/ Order/ Agreement.

29.3 The Buyer shall always strictly comply with the agreed restrictions on the use of the software, regardless of the nature or content of these restrictions.

29.4 If the parties have agreed that the software may only be used in combination with certain equipment, the Buyer shall in the event of any malfunction of this equipment be entitled to use the software on other equipment with the same qualifications during the time that the original equipment remains defective.

29.5 The Supplier may require that the Buyer only start using the software after having received one or more codes needed for use from the Supplier, the Supplier's Supplier or the producer of the software. The Supplier is always entitled to take technical measures to protect the software against unlawful use and/or against use in a manner or for purposes other than the manner or purposes agreed between the parties. The Buyer shall never remove or bypass technical measures intended to protect the software or have such technical measures removed or bypassed.

29.6 The Buyer may only use the software in and for its own company or organization or subsidiaries and only insofar as doing so is necessary for the intended use. The Buyer shall not use the software for third parties, for example in the context of Software as a Service (SaaS) or outsourcing.

29.7 The Buyer may never sell, rent out, dispose of or grant limited rights to, or make available to third parties the software and the carriers on which the software is or will be recorded, in any way whatsoever for whatever purpose or under whatever title. The Buyer may also not grant, whether or not remotely (online), a third-party access to the software or place the software with a third party for hosting, not even if the third party concerned only uses the software for the Buyer.

29.8 If so requested, the Buyer shall cooperate without delay in an investigation into compliance with the agreed restrictions on use carried out by or for the Supplier.

Should the Supplier so demand, the Buyer shall grant the Supplier access to its buildings and systems. Insofar as such information does not concern the use of the software itself, the Supplier shall treat all confidential business information that it obtains from the Buyer or at the Buyer's business location in the context of an investigation as confidential.

29.9 The parties maintain that the Contract/ Order/ Agreement concluded between the parties, insofar as the object of this Contract/ Order/ Agreement is the making available of software for use, shall never be deemed to be a purchase Contract/ Order/ Agreement.

29.10 The Supplier must notify the Buyer of technical vulnerabilities of the software version. As soon as a version with overcome technical vulnerabilities and increased security is released, the Supplier notifies the Buyer.

29.11 The Supplier is not obliged to maintain the software and/or provide support to users and/or administrators of the software. If, contrary to the foregoing, the Supplier is asked to perform maintenance work and/or provide support with respect to the software, the Supplier may require that the Buyer enter into a separate, written Contract/ Order/ Agreement for the purpose.

### **30. Delivery and installation**

30.1 At its discretion, the Supplier shall deliver the software on the agreed type of data carrier or, if no agreements have been made in this regard, on a type of data carrier determined by the Buyer, or shall make the software available to the Buyer online. At the Supplier's discretion, any agreed user documentation shall be made available in printed or digital form in a Macedonian and/ or English language.

30.2 The Supplier shall only install the software at the Buyer's business location if this has been agreed between the parties. If no agreements have been made for the purpose, the Buyer shall itself install, organize, parameterize, tune and, if necessary, modify the equipment and operating environment used.

30.3 Each new version with overcome technical vulnerabilities and increased security, the Supplier is obliged to deliver to the Buyer, in accordance with article 30.1 and article 30.2, after receiving a written confirmation, for its acceptance by the Buyer.

### **31. Acceptance**

31.1 If the parties have not agreed an acceptance test, the Buyer shall accept the software in the state that it is in when delivered ('as is, where is'), therefore with all visible and invisible errors and defects, without prejudice to the Supplier's obligations under the guarantee scheme as set out in Article 35. In the aforementioned case, the software shall be deemed to have been accepted by the Buyer upon delivery or, if installation by a Supplier has been agreed in writing, upon completion of installation.

31.2 The provisions of paragraphs 29.3 up to and including 29.10 shall apply if an acceptance test has been agreed between the parties and is stated in the Contract/ Order/ Agreement.

31.3 In these general terms and conditions, 'error' means substantial failure of the software to meet the functional or technical specifications of the software expressly made known by the Supplier in writing and, if all or part of the software concerns customized software, to meet the functional or technical specifications expressly agreed in writing. An error only applies if it can be demonstrated by the Buyer and if it is reproducible. The Buyer must report errors without delay. Any obligation of the Supplier is limited to errors within the meaning of these terms and conditions.

31.4 If an acceptance test has been agreed, the test period shall amount to 14 days following delivery or, if installation by the Supplier has been agreed in writing, 14 days following the completion of installation. The Buyer may not use the software for production or operational purposes during the test period. The Buyer shall carry out the agreed acceptance test with qualified personnel and with sufficient scope and depth.

31.5 If an acceptance test has been agreed, the Buyer must check whether the software delivered meets the functional or technical specifications expressly made known by the Supplier in writing and, if and to the extent that all or part of the software concerns customized software, meets the functional or technical specifications expressly agreed in writing.

31.6 The parties shall deem the software to have been accepted:

- if the parties have agreed an acceptance test: on the first day following the test period, or
- if the Supplier receives a test report as referred to in Article 31.7 prior to the end of the test period: at the time at which the errors stated in this test report have been fixed, notwithstanding the presence of errors that, according to Article 31.8, do not prevent acceptance, or
- if the Buyer uses the software in any way for production or operational purposes: at the time at which this use occurs.

31.7 If it becomes apparent during performance of the agreed acceptance test that the software contains errors, the Buyer shall report the test results to the Supplier in writing in a clear, detailed and comprehensible manner no later than on the last day of the test period. The Supplier shall strive to the best of its ability to fix the errors referred to within a reasonable term. The Supplier shall be entitled to install temporary solutions, program bypasses or problem-avoiding limitations in this regard.

31.8 The Buyer may not refuse to accept the software for reasons that are not related to the specifications expressly agreed in writing between the parties and, furthermore, may not refuse to accept the software because of the existence of minor errors, these being errors that do not reasonably prevent the operational or productive use of the

software, the foregoing without prejudice to the Supplier's obligation to fix these minor errors in the context of the guarantee referred to in Article 35.

In addition, acceptance may not be refused because of aspects of the software that can only be assessed subjectively, such as aesthetic aspects of user interfaces.

31.9 If the software is delivered and tested in phases and/or parts, non-acceptance of a certain phase and/or part shall be without prejudice to the acceptance of a previous phase and/or a different part.

31.10 Acceptance of the software in one of the ways referred to in this article shall serve to discharge the Supplier of its obligations regarding making the software available and delivering the software and, if installation of the software by the Supplier has also been agreed, of its obligations regarding installation. Acceptance of the software shall be without prejudice to the Buyer's rights based on Article 29.8 regarding defects and Article 35 regarding the guarantee.

### **32. Availability**

32.1 The Supplier shall make the software available within a reasonable term following the conclusion of the Contract/ Order/ Agreement.

32.2 Following the end of the Contract/ Order/ Agreement, the Buyer shall return all copies of the software in its possession to the Supplier without delay. If it has been agreed that the Buyer must destroy the copies concerned at the end of the Contract/ Order/ Agreement, the Buyer shall report the destruction of the copies to the Supplier in writing without delay. At or following the end of the Contract/ Order/ Agreement, the Supplier shall be obliged to provide assistance for the purpose of a data conversion requested by the Buyer.

### **33. Payment for the right of use**

33.1 The Buyer must pay the amount owed for the right of use at the agreed times or, if a time has not been agreed:

- a if the parties have not agreed that the Supplier shall install the software:
  - when the software is delivered;
  - or, in the case of periodically owed payments for the right of use, when the software is delivered and subsequently at the start of each new right of use term;
- b if the parties have agreed that the Supplier shall install the software:
  - upon completion of installation and acceptance;
  - or, in the case of periodically owed payments for the right of use, upon completion of installation and subsequently 30 days as of finishing the right of use term.

### **34. Changes in the software**

34.1 Barring exceptions provided for by law, the Buyer may not change all or part of the software without the prior written permission of the Supplier. The Supplier is entitled to refuse or attach conditions to such permission. The Buyer shall bear the entire risk of all changes that it makes or changes made by third parties on its instructions, whether or not with the Supplier's permission.

### **35. Guarantee**

35.1 The Supplier shall strive to the best of its ability to fix errors within a reasonable term if these errors are reported in writing in a detailed manner to the Supplier within a period of three months following delivery or, if an acceptance test was agreed, within three months following acceptance. The Supplier guarantees that the software is suitable for actual use and/or the intended use. The Supplier also guarantees that the software will operate without interruption and/or that all errors will always be fixed. Fixing work shall be carried out free of charge

35.2 The Supplier may charge for the costs of fixing in accordance with its usual rates if such work is required as a result of user errors or improper use on the part of the Buyer, or as a result of causes that cannot be attributed to the Supplier. The obligation to fix errors shall cease to apply if the Buyer makes changes in the software on its own or has such changes made without the Supplier's written permission.

35.3 The fixing of errors shall take place at a location and in a manner determined by the Supplier, with prior consent of the Buyer. The Supplier is entitled to install temporary solutions, program bypasses or problem-avoiding limitations in the software.

35.4 The Supplier is obliged to recover data that has been corrupted or lost.

35.5 The Supplier does not have any obligation whatsoever, of whatever nature or content, with respect to errors reported after the end of the guarantee period referred to in Article 35.1, unless Service Level Agreement has not been signed.

### **36. Software of Suppliers**

36.1 If and insofar as the Supplier makes third-party software available to the Buyer, the license terms of the third parties concerned shall apply in the relationship between the Supplier and the Buyer with respect to the software instead of the provisions of these "Special ICT Legal terms" general terms and conditions that differ from those license terms, provided that the applicability of the license terms of the third party concerned was reported to the Buyer by the Supplier in writing and, in addition, a copy of the applicable license terms was made available to the Buyer prior to the conclusion of the Contract/ Order/ Agreement.

36.2 If and insofar as, for whatever reason, the terms of third parties referred to above are deemed not to apply or are declared inapplicable in the relationship between the Buyer and the Supplier, the provisions of these "Special ICT Legal terms" shall apply in full.

### **Chapter 5. Development of software and websites**

*The provisions of this 'Development of software and websites' chapter shall apply in addition to the Special ICT legal provisions of the Provision of services' chapter if the Supplier designs and/or develops software and/or a website for the Buyer and possibly installs the software and/or website.*

### **37. Specifications and development of software/a website**

37.1 If specifications or a design of the software or website to be developed have not already been provided prior to the conclusion of the Contract/ Order/ Agreement or are not provided when the Contract/ Order/ Agreement is concluded, the parties shall in consultation specify, in writing, the software or website to be developed and the manner in which the development is to be carried out.

37.2 The Supplier shall develop the software and/or website with due care in accordance with the expressly agreed specifications or design and, if applicable, having regard to the project organization, methods, techniques and/or procedures agreed in writing with the Buyer.

37.3 If the parties use a development method based on iterative design and/or development of the software or parts of the software or website or parts of the website (Scrum, for example), the parties shall accept that, at the start, the work shall not be performed on the basis of complete or fully detailed specifications, and also that specifications, which may or may not have been agreed on commencement of the work, may be changed, in consultation and with due observance of the project approach that forms part of the development method concerned, during the performance of the Contract/ Order/ Agreement.

During the performance of the Contract/ Order/ Agreement, the parties shall make decisions in consultation regarding the specifications that shall apply in the subsequent phase of the project (a team box, for example) and/or in the subsequent, constituent development process. The Buyer shall ensure that relevant end users permanently and actively contribute and cooperate with respect to, among other things, testing and (further) decision-making, and that the contributions and cooperation of these end users is supported by the Buyer's organization. The Buyer guarantees that the employees whom it deploys and who are appointed to key positions shall have the decision-making powers required for these positions. The Buyer guarantees expeditiousness with respect to the progress-related decisions that it must make during the performance of the Contract/ Order/ Agreement. If the Buyer fails to make clear progress-related decisions in a timely manner in accordance with the project approach that forms part of the development method concerned, the Supplier shall be entitled, though not obliged, to make the decisions that it deems to be appropriate.

37.4 The provisions of Article 31.1, Articles 31.4 up to and including Article 31.8 and Article 35.1 shall not apply if the parties use a development method as referred to in Article 37.3. The Buyer shall accept the software and/or website in the state that it is in at the end of the last development phase ('as is, where is').

The Supplier shall be obliged to fix errors after the last development phase unless otherwise agreed in writing.

37.5 In the absence of specific agreements on the matter, the Supplier shall commence the design and/or development work within a term that it deems reasonable following the conclusion of the Contract/ Order/ Agreement.



37.6 If so requested, the Buyer shall make it possible for the Supplier to perform work outside the usual working days and working hours at the office or location of the Buyer.

37.7 The Supplier's performance obligations with respect to the development of a website do not include making a content management system available.

37.8 The Supplier's performance obligations do not include maintaining the software and/or the website, and/or providing support to users and/or administrators of the software and/or the website. If, contrary to the foregoing, the Supplier must also perform maintenance work and/or provide support, the Supplier may require that the Buyer enter into a separate, written Contract/ Order/ Agreement for the purpose. The Supplier shall charge for this work in accordance with the Supplier's usual rates and concluded Service Level Agreement.

### **38. Delivery, installation and acceptance**

38.1 The provisions of Article 29 concerning delivery and installation apply with the necessary changes.

38.2 Unless, pursuant to the Contract/ Order/ Agreement, the Supplier must host the software and/or website on its own computer system for the Buyer, the Supplier shall deliver the website to the Buyer on a data carrier and in a form determined by the Buyer, or shall make the software and/or website available to the Buyer online.

38.3 The provisions of Article 30 of these general terms and conditions concerning acceptance apply with the necessary changes.

### **39. Right of use**

39.1 The Supplier shall make the software and/or the website developed by the instructions of the Buyer and any associated user documentation available to the Buyer for use.

39.2 The source code of the software and the technical documentation prepared during development of the software shall only be made available to the Buyer if this has been agreed in writing in the Contract/ Order/ Agreement, in which case the Buyer shall be entitled to make changes to the software.

39.3 The Supplier is obliged to make available the support software and program or data libraries required for the use and/or maintenance of the software.

39.4 The provisions of Article 29 concerning right of use and restrictions on use apply with the necessary changes

39.5 No restrictions on use of the software and/or website shall apply to the Buyer, contrary to the stipulation of Article 39.4, only if the content of the written Contract/ Order/ Agreement expressly shows that all design and development costs shall fully and exclusively be borne by the Buyer.

### **40. Payment**

40.1 In the absence of an agreed payment schedule, all amounts that relate to the design and development of software and/or websites shall be payable 30 days as of delivery/ performance date and Acceptance of the Buyer, and after submission of an invoice

40.2 The price for the development work includes the payment for the right to use the software or website during the term of the Contract/ Order/ Agreement.

40.3 The payment for the development of the software does not include a payment for support software and program and data libraries, and any installation services and any modification and/or maintenance of the software required by the Buyer. The payment also does not include the provision of support to users of the software, unless suitable Service Level Agreement has been signed.

### **41. Guarantee**

42.1 The provisions of Article 35 concerning the guarantee apply with the necessary changes.

42.2 The Supplier also guarantee that the website functions well with all types of existing equipment, at the moment of Acceptance of the Buyer and within the Warranty period (or Service Level Agreement period).

## **Chapter 6. Software maintenance and support**

*The provisions of this 'Software maintenance and support' chapter shall apply in addition to the general provisions of these general terms and conditions and the provisions of the 'Provision of services' chapter if the Supplier performs services in the field of software maintenance and support in the use of software.*

## **42. Maintenance services**

42.1 If agreed, the Supplier shall perform maintenance work with respect to the software specified in the Contract/ Order/ Agreement. The maintenance obligation includes fixing errors in the software within the meaning of Article 31.3 and, exclusively if agreed in writing, making new versions of the software available in accordance with Article 43.

42.2 The Buyer must report errors discovered in the software in detail. Following receipt of the report, the Supplier shall strive to the best of its ability to fix errors and/or implement improvements in later, new versions of the software in accordance with its usual procedures, within the time period defined in the Service Level Agreement or the Contract/ Order/ Agreement

Depending on the urgency and the Supplier's version and release policy, the results shall be made available to the Buyer in a manner and within a term determined by the Supplier. The Supplier is entitled to install temporary solutions, program bypasses or problem-avoiding limitations in the software. The Buyer shall itself install, organize, parameterize and tune the corrected software or the new version of the software made available, and, if necessary, modify the equipment and operating environment used.

42.3 The provisions of Articles 35.3 and 35.4 apply with the necessary changes.

42.4 If the Supplier performs maintenance work online, the Buyer shall promptly ensure that a proper infrastructure and network facilities are in place.

42.5 The Buyer shall extend the cooperation required by the Supplier in the context of maintenance, including temporarily ceasing use of the software and making a backup of all data.

42.6 If the maintenance work relates to software that was not supplied to the Buyer by the Supplier, the Buyer, if the Supplier believes this is necessary or desirable for the maintenance work, shall make the source code and the technical (development) documentation of the software, including data models, designs, change logs and the like, available. The Buyer guarantees that it is entitled to make the aforementioned items available. The Buyer grants the Supplier the right to use and change the software, including the source code and technical (development) documentation, in the context of performing the agreed maintenance work.

42.7 The maintenance work performed by the Supplier does not affect the Buyer's own responsibility for managing the software, including checking the settings and the way in which the results arising from operating the software are used. The Buyer shall itself install, organize, parameterize and tune the software and support software required and, if necessary, modify the equipment, other software and support software and operating environment used in this regard, and effect the interoperability that it desires.

## **43. New versions of software**

43.1 Maintenance shall include making new versions of the software available only if and insofar as this has been agreed in writing.

43.2 The Supplier may require that the Buyer enter into a further written Contract/ Order/ Agreement with the Supplier for a version with new functionality and that a further payment be made for this version. The Supplier may incorporate functionality from a previous version of the software in unaltered form, and guarantees that each new version includes minimum the same functionality as the previous version.

43.3 The Supplier may require that the Buyer modify its system (equipment, software and the like) if doing so is necessary for the proper functioning of a new version of the software.

## **44. Support services**

44.1 If the services provided by the Supplier under the Contract/ Order/ Agreement include the provision of support to users and/or administrators of the software, the Supplier shall provide, by telephone or email, advice on the use and functioning of the software specified in the Contract/ Order/ Agreement. The Supplier may set conditions with respect to the qualifications and the number of persons eligible for support. The Supplier shall handle properly substantiated requests for support within a reasonable term in accordance with its usual procedures. The Supplier guarantees the accuracy, completeness or timeliness of replies or the support offered. Support services shall be performed on working days during the Supplier's usual business hours i.e., compliant to concluded Service Level Agreement.

44.2 If the services provided by the Supplier under the Contract/ Order/ Agreement include the provision of standby services, the Supplier shall ensure that one or more staff members are available on the days and during the times specified in the Contract/ Order/ Agreement. The Buyer shall in this case be entitled in the event of urgency to call in

the support of staff members on standby if there is a serious malfunction in the operation of the software. The Supplier guarantees that all malfunctions will be repaired speedily as per agreed Service Level in the Contract/ Order/ Agreement.

44.3 The maintenance and other agreed services as referred to in this chapter shall be performed as from the date on which the Contract/ Order/ Agreement is concluded, unless the parties have agreed otherwise in writing.

#### **45. Payment**

45.1 In the absence of an expressly agreed payment schedule, all amounts that relate to the maintenance of the software and the other services as referred to in this chapter and laid down in the Contract/ Order/ Agreement shall be payable 30 days as of delivery / performance date, submission of an invoice and Buyer's Acceptance.

### **Chapter 7. Advice and consultancy**

*The provisions of this 'Advice and consultancy' chapter shall apply in addition to the general provisions of these Special ICT legal provisions and the provisions of the 'Provision of services' chapter if the Supplier provides services in the field of advice and consultancy.*

#### **46. Performance of advisory and consultancy services**

46.1 The completion time of an assignment in the field of advice and consultancy depends on various factors and circumstances, such as the quality of the data and information provided by the Buyer and the cooperation of the Buyer and relevant third parties.

Unless otherwise agreed in writing, therefore, the Supplier shall not commit to an assignment completion time in advance.

46.2 The Supplier's services shall only be performed on the Buyer's usual working days and during the Buyer's usual business hours.

46.3 The use that the Buyer makes of advice and/or a consultancy report issued by the Supplier shall always be at the Buyer's risk. The onus to prove that the advisory and consultancy services or the way in which they are performed are not in conformance with that which has been agreed in writing or may be expected from a competent Supplier acting reasonably is entirely on the Buyer, without prejudice to the Supplier's right to furnish evidence to the contrary through all means.

46.4 Without the Supplier's prior written permission, the Buyer may not disclose the Supplier's way of working, methods and techniques and/or the content of the Supplier's advice or reports to third parties. The Buyer may not provide the Supplier's advice or reports to a third party or otherwise make the Supplier's advice or reports public, unless otherwise agreed in the Contract/ Order/ Agreement.

#### **47. Reporting**

47.1 The Supplier shall periodically inform the Buyer, in the manner agreed in writing, about the performance of the work. The Buyer shall inform the Supplier in advance and in writing about circumstances of importance or circumstances that could be of importance to the Supplier, such as the manner of reporting, the issues to be addressed, the Buyer's prioritization, the availability of resources and personnel of the Buyer and special facts or circumstances or facts or circumstances of which the Supplier is possibly unaware. The Buyer shall ensure that the information provided by the Supplier is further disseminated and noted within the Buyer's organization and that it is assessed partly on the basis of this inspection, and shall inform the Supplier about this inspection and assessment.

#### **48. Payment**

48.1 In the absence of an expressly agreed payment schedule, all amounts that relate to the services provided by the Supplier as referred to in this chapter and laid down in the Contract/ Order/ Agreement shall be payable 30 days as of delivery/ performance date and submission of deliverable of the advisory/ consultancy work, as well as submitted invoice.

### **Chapter 8. Secondment services**

*The provisions of this 'Secondment services' chapter shall apply in addition to this "Special ICT legal provisions" general provisions of these general terms and conditions and the provisions of the 'Provision of services' chapter if*

*the Supplier makes one or more of its employees available to work under the management and supervision of the Buyer.*

#### **49. Secondment services**

49.1 The Supplier shall make the employee specified in the Contract/ Order/ Agreement available to perform work under the management and supervision of the Buyer. The results of the work are at the Buyer's risk. Unless otherwise agreed in writing, the employee shall be made available to the Buyer for 40 hours a week during the Supplier's usual working days.

49.2 The Buyer may only deploy the employee made available to perform work other than the agreed work if the Supplier has agreed to the performance of that other work in advance and in writing

49.3 The Buyer may only second the employee made available to a third party for the purpose of performing work under the management and supervision of that third party if this has expressly been agreed in writing.

49.4 The Supplier shall endeavor to ensure that the employee made available remains available to perform work for the duration of the Contract/ Order/ Agreement during the agreed days, except in the event of illness or if the employee leaves the Supplier's employment. Also, if the Contract/ Order/ Agreement has been entered into with a view to performance by one particular person, the Supplier shall always be entitled to replace this person with one or more persons who have the same qualifications.

49.5 The Buyer shall be entitled to request that the employee made available be replaced

- i. if the employee made available demonstrably fails to meet the expressly agreed quality requirements and the Buyer makes this known to the Supplier, with substantiation, within three working days following commencement of the work, or
- ii. in the event of prolonged illness on the part of the employee made available or if the employee leaves the Supplier's employment.

The Supplier shall handle such a request without delay as a matter of priority. The Supplier guarantees that replacement is always possible. The Buyer's payment obligations with respect to the work performed shall continue to apply fully.

#### **50. Term of the secondment Contract/ Order/ Agreement**

50.1 In derogation from the provisions of Article 49.4 of these general terms and conditions, if nothing has been agreed between the parties regarding the term of secondment, the secondment Contract/ Order/ Agreement shall be 2 years, in which case a notice period of one calendar month following any initial term shall apply for each party. Notice of termination must be given in writing.

#### **51. Length of the working week, working hours and working conditions**

51.1 The working hours, rest periods and length of the working week of the employee made available shall be the same as the Buyer's usual working hours, rest periods and length of the working week.

The Buyer guarantees that the working hours, rest periods and length of the working week are in compliance with relevant legislation and regulations.

51.2 The Buyer shall inform the Supplier about an intended temporary or permanent closure of its company or organization.

51.3 The Buyer is obliged towards the Supplier and the employee made available to comply with relevant legislation and regulations pertaining to workplace safety and working conditions.

#### **52. Overtime pays and travel time**

52.1 Costs and travel time shall be charged to the Buyer in accordance with the Supplier's usual rules and standards. If so requested, the Supplier shall inform the Buyer about the usual rules and standards in place for the purpose.

#### **53. Recipients' liability and other liability**

53.1 The Supplier shall ensure that amounts payable in relation to the employee made available under the Contract/ Order/ Agreement with the Buyer in terms of payroll tax, social insurance contributions and other personal tax are paid on time and in full. The Supplier indemnifies the Buyer against any and all claims of the tax authorities or agencies tasked with implementing social insurance legislation pursuant to the Contract/ Order/ Agreement with the Buyer, subject to the condition that the Buyer immediately informs the Supplier in writing about the existence and

content of the claim and leaves the settlement of the claim, including any arrangements made in this regard, entirely to the Supplier.

53.2 The Supplier accepts liability for the quality of the results produced by work performed under the management and supervision of the Buyer.

## **Chapter 9. Education and training**

*The provisions of this 'Education and training' chapter shall apply in addition to the general provisions of these Special ICT legal provisions and the provisions of the 'Provision of services' chapter if the Supplier provides services, under whatever name and in any manner whatsoever (for example in electronic form), in the field of education, training, workshops, seminars and the like (hereinafter referred to as 'training course').*

### **54. Registration and cancellation**

54.1 A course must be registered for in writing. Registration is binding following its confirmation by the Supplier.

54.2 The Buyer is responsible for the choice and suitability of the training course for the participants. A lack of prior knowledge on the part of a participant does not affect the Buyer's obligations under the Contract/ Order/ Agreement. The Buyer may replace a training course participant with another participant with the Supplier's prior written permission.

54.3 The consequences of cancellation of participation in a training course by the Buyer or participants are governed by the Supplier's usual rules.

A cancellation must always be effected in writing prior to the training course or the part of the training course concerned. Cancellation or non-attendance does not affect the Buyer's obligations under the Contract/ Order/ Agreement.

### **55. Provision of the training course**

55.1 The Buyer accepts that Supplier determines the content and depth of the training course.

55.2 The Buyer shall inform the participants about the obligations under the Contract/ Order/ Agreement and the rules of conduct and other rules prescribed by the Supplier for participation in the training course, and shall ensure compliance with these obligations and rules.

55.3 If the Supplier uses its own equipment or software to provide the training course, it guarantees that this equipment or software is free of errors and will function without interruption.

If the Supplier provides the training course at the Buyer's location, the Buyer shall ensure the availability of properly operating equipment and software.

55.4 Administering an examination or test does not form part of the Contract/ Order/ Agreement, unless otherwise agreed in the Contract/ Order/ Agreement.

55.5 The Buyer shall receive free of charge as included in the training course the documentation, training materials or training resources made available or produced for the training course.

The preceding stipulation also applies to any certificates of training or copies of such certificates.

55.6 If the training course is provided on the basis of e-learning, the provisions of the 'Software as a Service (SaaS)' chapter shall apply with the necessary changes to the greatest extent possible.

### **56. Price and payment**

56.1 The Supplier requires that the Buyer pays the amounts for the training course 30 days as of delivering the training course and submission of an invoice.

## **Chapter 10. Hosting**

*The provisions of this 'Hosting' chapter shall apply in addition to the general provisions of Special ICT legal provisions and the provisions of the 'Provision of services' chapter if the Supplier provides services, under whatever name, in the field of hosting and related services.*

### **57. Hosting services**

57.1 The Supplier shall perform the hosting services agreed with the Buyer.

57.2 If the Contract/ Order/ Agreement's scope is to make disk space of equipment available, the Buyer shall not exceed the agreed disk space unless the Contract/ Order/ Agreement expressly provides for the consequences of

doing so. The Contract/ Order/ Agreement shall include making disk space available on a server specifically reserved for the Buyer only if this has been expressly agreed in writing. All use of disk space, data traffic and other loading of systems and infrastructure shall be limited to the maximums agreed between the parties. The data traffic that is not used by the Buyer in a given period may not be transferred to a subsequent period. If the agreed maximums are exceeded, the Supplier shall charge an additional amount in accordance with the usual rates.

57.3 The Buyer is responsible for the management, including checking the settings, and use of the hosting service, and the way in which the results of the service are used. In the absence of specific agreements on the matter, the Buyer shall itself install, organize, parameterize and tune the software and support software required and, if necessary, modify the equipment, other software and support software and operating environment used in this regard, and effect the interoperability that it desires. The Supplier is not obliged to perform data conversion.

57.4 The Contract/ Order/ Agreement's scope shall include the provision or making available of backup, contingency and recovery services only if this has been expressly agreed in writing.

57.5 The Supplier may temporarily put all or part of the hosting service out of operation for preventive, corrective or adaptive maintenance, limited to maximal period of temporary put out of services to 99% availability, unless otherwise agreed with the Contract/ Order/ Agreement. The Supplier shall not allow the period during which the service is out of operation to last longer than necessary and shall ensure if possible that this period occurs outside office hours, and, according to circumstances, have this period commence following consultation with the Buyer.

57.6 If, pursuant to the Contract/ Order/ Agreement, the Supplier performs services for the Buyer with respect to a domain name, such as the application, extension or sale or transfer to a third party, the Buyer must observe the rules and working method of the body or bodies concerned. If so requested, the Supplier shall provide a written copy of the aforementioned rules to the Buyer. The Supplier accepts any responsibility for the accuracy and timeliness of the provision of services or achievement of the results intended by the Buyer. The Buyer must pay all costs associated with the application and/or registration in accordance with the agreed rates or, in the absence of agreed rates, the Supplier's usual rates. The Supplier does not guarantee that a domain name desired by the Buyer will be granted to the Buyer.

## **58. Notice and Take Down**

58.1 The Buyer shall at all times act with due care and lawfully towards third parties, particularly by respecting the intellectual property rights and other rights of third parties and the privacy of third parties, by refraining from disseminating information in a manner that is contrary to the law, from granting unauthorized access to systems and from spreading viruses or other harmful programs or data, and by refraining from committing criminal acts and violating any other legal obligation.

58.2 To prevent liability towards third parties or limit the consequences thereof, the Supplier is always entitled to take measures with respect to an act or omission of or at the risk of the Buyer. Should the Supplier so demand in writing, the Buyer shall delete data and/or information from the Supplier's systems without delay. If the Buyer fails to do so, the Supplier shall be entitled at its own discretion to delete the data and/or information itself or make it impossible to access the data and/or information. The foregoing shall be without prejudice to any other measures or the exercise of other legal and contractual rights by the Supplier against the Buyer.

58.3 The Supplier cannot be expected to form an opinion on the merits of the claims of third parties or the Buyer's defense, or be involved in any way whatsoever in a dispute between a third party and the Buyer. The Buyer shall deal with the third party concerned regarding the matter and inform the Supplier in writing. The information provided in this context must be properly substantiated by supporting documents.

## **Chapter 11. Purchase of equipment**

*The provisions of this 'Purchase of equipment' chapter shall apply in addition to the general provisions of these Special ICT legal provisions if the Supplier sells equipment, of whatever nature, and/or other items (corporeal objects) to the Buyer.*

## **59. Purchase and sale**

59.1 The Supplier shall sell the equipment and/or other items according to the nature and number agreed in writing and the Buyer shall purchase this equipment and/or these other items from the Supplier.

59.2 The Supplier guarantees that the equipment and/or items will on delivery be suitable for the Buyer's actual and/or intended use unless the intended purposes have been clearly specified in the written Contract/ Order/ Agreement without reservation.

59.3 The Supplier's obligation to sell includes assembly and installation materials, software, consumer items, batteries, stamps, toner items, cables and accessories, unless otherwise agreed in the Contract/ Order/ Agreement.

59.4 The Supplier guarantees that the assembly, installation and operating instructions that come with the equipment and/or items are free of errors and that the equipment and/or items have the characteristics stated in these instructions.

## **60. Delivery**

60.1 The equipment and/or items sold by the Supplier to the Buyer shall be delivered to the Buyer DDP (for domestic Supplier) or DAP (for foreign Supplier) warehouse, unless otherwise agreed in the Contract/ Order/ Agreement. The Supplier shall not deliver the items sold to the Buyer to a location designated by the Buyer, or have such items delivered to the designated location, only if doing so has been agreed in writing. The Supplier shall in this case inform the Buyer, if possible, in good time prior to the delivery, about the time at which the Supplier or transporter engaged by the Supplier intends to deliver the equipment and/or items.

60.2 The purchase price of the equipment and/or items does include the costs of transport, insurance, hauling and hoisting, the hiring of temporary facilities and the like. If applicable, these costs shall be charged to the Buyer.

60.3 If the Buyer asks the Supplier to remove old materials (such as networks, cabinets, cable ducts, packaging materials and equipment) or if the Supplier is legally obliged to do so, the Supplier accept this request if it has been given in written.

60.4. If the parties have concluded Contract/ Order/ Agreement in writing for the purpose, the Supplier shall unpack the equipment and/or items, its Supplier obligation for collection of packaging waste and safely transport the waste to the final destination (waste collection point or landfill) at its own expense in accordance with the applicable legal regulation.

60.5 If the Supplier accepts obligations by the provisions of Article 60.3 and/or Articles 60.4, it is necessary for the Supplier to submit to the Buyer Confirmation an agreement concluded with a collective agent who, exercises the extended responsibility for the management of:

- packaging waste or
- waste batteries and accumulators or
- waste electrical and electronic equipment (EEE).

Supplier, also need to provide confirmation of:

- -fees paid for waste management of packaging/batteries and accumulators/EEE or
- exemption from payment of fees if there is an agreement with a collective operator with packaging/batteries and accumulators/EEE or
- exemption from payment of fees if the supplier is registered as an independent handler of packaging waste/batteries and accumulators/EEE

60.6 If the parties have concluded Contract/ Order/ Agreement in writing for the purpose, the Supplier shall install, configure and connect the equipment and/or items or shall have the equipment and/or items installed, configured and connected. Any obligation of the Supplier to install and/or configure equipment does not include performing data conversion and installing software. The Supplier is not responsible for obtaining any licenses required.

60.7 The Supplier is always entitled to perform the Contract/ Order/ Agreement on the basis of partial deliveries.

## **61. Test assembly**

61.1 The Supplier shall only be obliged to place a test assembly with respect to the equipment in which the Buyer is interested, if doing so has been agreed in writing. The Supplier may attach financial and other conditions to a test assembly. A test assembly involves temporarily making the standard version of equipment available on approval, excluding accessories, in a space made available by the Buyer, prior to the Buyer's final decision regarding whether or not to purchase the equipment concerned. The Buyer is liable for the use, damage to and theft or loss of the equipment that forms part of a test assembly.

## **62. Area requirements**

62.1 The Buyer shall ensure an area that meets the requirements specified by the Supplier for the equipment and/or items, among other things in terms of temperature, humidity and technical area requirements.

62.2 The Buyer shall ensure that work that must be performed by third parties, such as structural work, is performed adequately and on time.

## **63. Guarantee**

63.1 The Supplier shall strive to the best of its ability to repair manufacturing faults in the equipment and/or other items sold, as well as in parts supplied by the Supplier within the scope of the guarantee, within a reasonable term and free of charge if these errors are reported in detail to the Supplier within a period of months following delivery as defined in the Contract/ Order/ Agreement. If, in the Supplier's reasonable opinion, repair is not possible or would take too long, or if repair would entail disproportionately high costs, the Supplier shall be entitled to replace the equipment and/or items free of charge with other, similar, though not necessarily identical, equipment and/or items. The guarantee does not include data conversion that is necessary as a result of repair or replacement. All replaced parts shall be the property of the Supplier. The guarantee obligation shall cease to apply if errors in the equipment, items or parts are entirely or partly the result of incorrect, careless or incompetent use or of external causes like fire or water damage, or if the Buyer makes changes, or has changes made, in the equipment or parts supplied by the Supplier within the scope of the guarantee without the Supplier's permission. The Supplier shall not withhold such permission on unreasonable grounds.

63.2 The Supplier shall charge for the costs of work and repair performed outside the scope of this guarantee in accordance with the Supplier's usual rates.

63.3 The Supplier shall not have any obligation whatsoever under the purchase Contract/ Order/ Agreement with respect to errors and/or other defects reported after the end of the guarantee period referred to in article 63.1.

## **64. Equipment from other Suppliers**

64.1 If and insofar as the Supplier sells third-party equipment, the conditions of sale of that third party shall apply in the relationship between the Supplier and the Buyer with respect to the equipment instead of the provisions of these Special ICT Legal provision that differ from those conditions of sale, provided that the applicability of the conditions of sale of the third party concerned was reported to the Buyer by the Supplier in writing and, in addition, a copy of the conditions of sale was made available to the Buyer prior the conclusion of the Contract/ Order/ Agreement.

64.2 If and insofar as, for whatever reason, the conditions of third parties referred to are deemed not to apply or are declared inapplicable in the relationship between the Buyer and the Supplier, the provisions of these Special ICT legal provision shall apply in full.

## **Chapter 12. Rent of equipment**

*The provisions of this 'Renting equipment' chapter shall apply in addition to the general provisions of these Special ICT legal provisions if the Supplier rents out equipment, of whatever nature, to the Buyer.*

## **65. Renting out and rent**

65.1 The Supplier shall rent out the equipment and associated user documentation specified in the rental agreement to the Buyer.

65.2 This renting out does not include making software available on separate data carriers. It also does not include making the consumer items required to use the equipment, such as batteries, toner items, cables and accessories, available.

65.3 The rent shall commence on the date on which the equipment is made available to the Buyer.

## **66. Prior inspection**

66.1 By way of prior inspection, the Supplier may draw up a description of the state of the equipment, including in terms of defects observed, in the presence of the Buyer prior to or when making the equipment available. The Supplier may require that the Buyer sign the report drawn up containing this description to indicate the Buyer's agreement prior to making the equipment available to the Buyer for use. The defects in the equipment stated in the aforementioned record shall be at the expense of the Supplier. If defects are observed, the parties shall agree on whether, and, if so, the manner and term in which, the defects stated in the record are to be repaired.



66.2 If the Buyer does not properly cooperate in the prior inspection referred to in Article 66.1, the Supplier shall have the right to carry out this prior inspection outside the presence of the Buyer and draw up the report itself. This report shall be binding for the Buyer.

66.3 If a prior inspection is not carried out, the Buyer shall be deemed to have received the equipment in a good and undamaged state.

## **67. Use of the equipment**

67.1 The Buyer shall only use the equipment in accordance with the equipment's designated use under the agreement and at the locations specified in the agreement in and for its own organization or company. Use of the equipment by or for third parties is prohibited, except within Buyer organization / by the Buyers subsidiaries. The right to use the equipment is non-transferable. The Buyer may not rent the equipment out to a third party or otherwise make it possible for a third party to use or make joint use of the equipment.

67.2 The Buyer shall itself install, assemble and make the equipment ready for use, unless otherwise agreed in the Contract/ Order/ Agreement.

67.3 The Buyer may not use the equipment or any part thereof as security in any way whatsoever or dispose of the equipment or any part thereof in another way.

67.4 The Buyer shall use the equipment carefully and maintain it with due care. The Buyer shall take adequate measures to prevent damage. In the event of damage to the equipment, the Buyer shall inform the Supplier without delay. The Buyer shall in all cases be liable towards the Supplier in the event of theft, loss or misappropriation of the equipment during the term of the rent.

67.5 The Buyer shall not entirely or partly change the equipment or add something to the equipment. If any changes or additions have nevertheless been made, the Buyer shall undo or remove these changes or additions no later than at the end of the rental agreement.

67.6 Defects in the changes or additions made to the equipment by or the instructions of the Buyer and all defects in the equipment arising from those additions or defects shall not be defects within the meaning of 'malfunction', explained in Article 70.3. The Buyer shall not have any claim against the Supplier with respect to these defects. The Supplier is obliged to perform repair or maintenance work with respect to these defects.

67.7 The Buyer is not entitled to any compensation in connection with changes or additions made by the Buyer to the rented equipment that are not, for any reason whatsoever, undone or removed at or following the end of the Contract/ Order/ Agreement.

## **68. Maintenance of the rented equipment**

68.1 The Buyer shall not maintain the rented equipment itself or have the equipment maintained by a third party. Rented equipment must be maintain only by Supplier of the rented equipment.

68.2 The Buyer shall immediately make defects that it observes in the rented equipment known in writing to the Supplier. The Supplier shall strive to the best of its ability to repair defects in the equipment that are at its expense within a reasonable term by means of corrective maintenance.

The Supplier is also entitled, though not obliged, to perform preventive maintenance on the equipment. If so requested, the Buyer shall give the Supplier the opportunity to perform corrective and/or preventive maintenance. The parties shall in consultation determine, in advance, the dates on which and the times at which maintenance is to take place. The Buyer is not entitled to replacement equipment during maintenance periods.

68.3 The obligation to repair defects excludes:

- repairing defects that the Buyer accepted when entering into the rental agreement;
- repairing defects that are the result of external causes;
- repairing defects that can be attributed to the Buyer, its staff members and/or third parties engaged by the Buyer;
- repairing defects that are the result of careless, incorrect or incompetent use or use that is contrary to the documentation;
- repairing defects that are the result of using the equipment in a manner that is contrary to its designated use;
- repairing defects that are the result of unauthorized changes or additions made to the equipment.

68.4 If the Supplier repairs the defects referred to in the preceding paragraph or has such defects repaired, the Buyer shall owe the costs associated with the repair work in accordance with the Supplier's usual rates.

68.5 The Supplier is always entitled to decide against repairing the defects and replace the equipment with other similar though not necessarily identical, equipment.

68.6 The Supplier is never obliged to recover or reconstruct data that has been lost.

### **69. Final inspection and return**

69.1 The Buyer shall return the equipment to the Supplier at the end of the rental agreement. The Buyer shall bear the costs of transport associated with the return, unless otherwise agreed in the Contract/ Order/ Agreement.

69.2 Prior to or no later than on the last working day of the rental period, the Buyer shall cooperate in a joint final inspection of the state of the equipment.

The findings of this final inspection shall be set out in a report jointly drawn up by the parties. This report must be signed by both parties. If the Buyer does not cooperate in the final inspection, the Supplier shall have the right to carry out this inspection outside the presence of the Buyer and draw up the report itself. This report shall be binding for the Buyer.

69.3 The Supplier shall be entitled to have the defects that are stated in the final inspection report and that are reasonably at the Buyer's risk and expense repaired at the Buyer's expense. The Buyer is liable for loss suffered by the Supplier due to temporary non-use of the equipment or the impossibility of renting out the equipment.

69.4 If the Buyer has not undone a change or removed an addition that it made to the equipment at the end of the rent period, the Buyer shall be deemed to have relinquished any and all rights to those changes and/or additions.

## **Chapter 13. Maintenance of equipment**

*The provisions of this 'Maintenance of equipment' chapter shall apply in addition to the general provisions of these Special ICT legal provisions and the provisions of the 'Provision of services' chapter if the Supplier maintains equipment of whatever nature for the Buyer.*

### **70. Maintenance services**

70.1 The Supplier shall perform maintenance with respect to the equipment specified in the maintenance agreement.

70.2 The Buyer is entitled to temporary replacement equipment during the time that the Supplier is in possession of the equipment designated to undergo maintenance, till the Supplier does not provide replacement equipment or new equipment.

70.3 The content and scope of the maintenance services to be performed and any applicable service levels shall be laid down in a written maintenance agreement (Service Level Agreement "SLA"). In the absence of a written maintenance agreement, the Supplier shall be obliged to strive to the best of its ability to repair malfunctions that have been properly reported to it by the Buyer within a reasonable term, as defined in the Contract / Order/ Agreement. In these Special ICT legal provision, 'malfunction' means non-compliance of the equipment with the equipment specifications expressly made known by the Buyer in writing or a failure of the equipment to meet specifications without interruption, as defined in the Contract/ Order/ Agreement. The Supplier is also entitled, to perform preventive maintenance, all as agreed in the Contract/ Order/ Agreement and/ or SLA.

70.4 The Buyer shall inform the Supplier of a malfunction in the equipment immediately after it has occurred by means of a detailed description.

70.5 The Buyer shall extend the cooperation required by the Supplier in the context of maintenance, including temporarily ceasing use of the equipment. The Buyer must grant the Supplier's personnel or third parties designated by the Supplier access to the place at which the equipment is located, extend the cooperation required and make the equipment available to the Supplier for the purpose of maintenance.

70.6 The Buyer shall ensure that a complete and properly functioning reserve copy of all software and data recorded in or on the equipment has been made prior to making the equipment available to the Supplier for maintenance.

70.7 At the Supplier's request, an employee of the Buyer who is knowledgeable about the matter at hand shall be present for consultation during the performance of maintenance work.

70.8 The Buyer is authorized to connect equipment and systems not supplied by the Supplier to the equipment and install software on the equipment.

70.9 If, in the opinion of the Supplier, it is necessary for the purpose of maintaining the equipment to test the equipment's connections with other equipment or software, the Buyer shall make the other equipment and software concerned, as well as the test procedures and data carriers, available to the Supplier.

70.10 The test material that is not included in the Supplier's normal range of equipment and that is required for the performance of maintenance work must be made available by the Buyer.

70.11 The Buyer bears the risk of loss or theft of, or damage to, the equipment during the period that it is in the Supplier's possession for the purpose of maintenance work. The Buyer may take out insurance against this risk at its own discretion.

## **71. Maintenance fee**

71.1 The maintenance fee does not include:

- costs of (replacing) consumer items like batteries, stamps, ink and ink cartridges, toner items, cables and accessories;
- costs of (replacing) parts and maintenance services for the repair of malfunctions that were entirely or partly caused by attempts at repair by parties other than the Supplier;
- work performed to overhaul the equipment;
- modifications to the equipment;
- moving, relocating, reinstalling equipment or work arising from such activity.

71.2 The maintenance fee shall be due regardless of whether or not the Buyer is using the equipment or not.

## **72. Exclusions**

72.1 Work performed to investigate or repair malfunctions that are the result of or connected with user errors, improper use of the equipment or external causes like failures of internet service, data network connections, power supplies or links to equipment, software or materials that are not within the scope of the maintenance agreement is excluded from the Supplier's obligations under the maintenance agreement.

72.2 The Supplier's maintenance obligations exclude the following:

- investigating or repairing malfunctions that are the result of or connected with a change of the equipment carried out by a party other than the Supplier or a party acting on behalf of the Supplier;
- use of the equipment in a manner that is contrary to the applicable conditions and a failure on the part of the Buyer to have the equipment maintained in a timely manner.

72.3 If the Supplier carries out an investigation and/or performs maintenance work in the context of the exclusions set out in Article 72.1 and/or Article 72.2, the Supplier shall be entitled to charge for the costs of that investigation and/or maintenance work in accordance with its usual rates. The foregoing shall not affect any amount payable to the Supplier by the Buyer in the context of maintenance services.

73.4 The Supplier is never obliged to recover data that has been corrupted or lost as a result of malfunctions and/or maintenance, unless otherwise agreed in the Contract / Order/ Agreement.