



# GENERAL PURCHASING CONDITIONS FOR IT

# Contents

A.	INTRODUCTION .....	6
1.	Field of application .....	6
2.	Definitions .....	6
3.	Hierarchy among documents.....	7
4.	Interpretation.....	8
B.	HARDWARE.....	8
5.	Shipment and delivery.....	8
6.	Transfer of Ownership.....	8
7.	Inspection of the TSO.....	9
8.	Serial defect.....	9
C.	STANDARD SOFTWARE .....	9
9.	Protection systems for standard software .....	9
10.	Source Code - Escrow .....	9
D.	SOFTWARE DEVELOPMENT AND IT-RELATED SERVICES .....	10
11.	Deliverables.....	10
12.	Source Code.....	10
13.	Open source software .....	10
14.	Team allocated to the performance of the Services .....	11
14.1	Team's definition and representative of the Contractor .....	11
14.2	Departure of a consultant of the Team .....	11
14.3	Replacement of a consultant upon request .....	11
15.	Consequence of the termination of the Contract.....	11
16.	Staff.....	12
16.1	General .....	12
16.2	Independence with regard to the TSO.....	12
16.3	Safety.....	12
17.	Subcontracting.....	12

<b>E.</b>	<b>GENERAL RULES .....</b>	<b>13</b>
18.	<b>TSO's cooperation .....</b>	<b>13</b>
19.	<b>Quality of services .....</b>	<b>13</b>
20.	<b>Documentation .....</b>	<b>14</b>
20.1	The TSO's Documentation .....	14
20.2	Contractor's Documentation .....	14
21.	<b>Modifications .....</b>	<b>14</b>
21.1	Modification proposed by the Contractor .....	14
21.2	Modification required by the TSO .....	14
21.3	Form .....	15
21.4	Disputes related to modification requests .....	15
21.5	Urgency .....	16
22.	<b>Fees and Prices .....</b>	<b>16</b>
22.1	General .....	16
22.2	Lump sum prices .....	16
22.3	Unit prices .....	16
22.4	Hourly/daily rates .....	16
22.5	Overtime by the Contractor .....	16
23.	<b>Service Providing in case of late payment .....</b>	<b>16</b>
24.	<b>Offsetting .....</b>	<b>16</b>
25.	<b>Deadlines and planning .....</b>	<b>17</b>
25.1	Deadlines .....	17
25.2	Planning .....	17
26.	<b>Acceptance .....</b>	<b>17</b>
26.1	Granting of acceptance .....	17
26.1.1	Acceptance procedures .....	17
26.1.2	Documents to be provided for acceptance .....	17
26.1.3	Unconditional acceptance .....	18
26.1.4	Acceptance with reservations .....	18
26.2	Refusal of acceptance .....	18
27.	<b>Warranty .....</b>	<b>18</b>
27.1	General .....	18
27.2	Obligations of the Contractor .....	18
27.3	Warranty period and extension .....	19
28.	<b>Maintenance and Technical support .....</b>	<b>19</b>

28.1	Scope .....	19
28.2	New version of the Software .....	19
28.3	Defect caused by the TSO .....	19
28.4	Term .....	19
<b>29.</b>	<b>Termination .....</b>	<b>20</b>
29.1	Termination for cause.....	20
29.2	Termination for Convenience .....	20
29.3	Termination for change in law .....	21
29.4	Right of replacement .....	21
<b>30.</b>	<b>Liability .....</b>	<b>21</b>
<b>31.</b>	<b>Insurance.....</b>	<b>21</b>
31.1	General .....	21
31.2	Workplace accidents and third-party motor insurance.....	22
31.3	Liability insurance.....	22
<b>32.</b>	<b>Force majeure .....</b>	<b>22</b>
<b>33.</b>	<b>Hardship .....</b>	<b>22</b>
<b>34.</b>	<b>Intellectual Property rights and transfer of know how .....</b>	<b>23</b>
34.1	Background IP.....	23
34.2	IP in Developments .....	23
34.3	IP in Standard Software .....	24
34.4	Moral Rights .....	24
34.5	Know how.....	24
34.6	Third Party Rights and Indemnification.....	24
<b>35.</b>	<b>Confidentiality .....</b>	<b>25</b>
35.1	Confidential Information .....	25
35.2	Confidentiality obligations.....	25
35.3	Confidentiality obligations duration.....	25
35.4	Disclosure .....	25
35.5	Breach of confidentiality and gross negligence .....	26
<b>36.</b>	<b>IT Security.....</b>	<b>26</b>
<b>37.</b>	<b>Processing of personal data .....</b>	<b>26</b>
<b>38.</b>	<b>Miscellaneous Provisions .....</b>	<b>27</b>
38.1	Non-exclusivity .....	27
38.2	Assignment .....	27
38.3	Languages .....	27
38.4	Independence between the Parties .....	27

38.5 Complaints ..... 28

38.6 Waiver ..... 28

38.7 Severability..... 28

38.8 Anti-competitive practices ..... 28

**39. Representations ..... 28**

39.1 Accuracy of the representations ..... 28

39.2 Absence of conflict of interest ..... 28

39.3 The Contractor’s status ..... 29

39.4 Anti-corruption and anti-bribery laws ..... 29

39.5 Binding obligations and absence of conflict with other obligations ..... 29

# A. INTRODUCTION

## 1. FIELD OF APPLICATION

The contractual relationships between the Contractor and the TSO (jointly referred to as the "Parties") are exclusively determined by these General Purchasing Conditions for IT ('GPC IT') and the other Contractual Documents as defined in Clause 2 below, if nothing else has been agreed by the Parties in accordance with these terms.

The English version will prevail in case of discrepancies between the original English version and its translations (Dutch, French and German). Wherever a Belgian or German law legal term or concept highlighted by italics has been used in these GPC IT, such Belgian or German law legal term or concept shall be authoritative. Furthermore, where the Contract including these GPC IT is subject to German/Belgian law, the language used in the original English version shall be construed as referring to the underlying concepts of German law/Belgian.

These GPC IT apply to all Contracts entered into by the TSO as a purchaser and/or principal for the supply of all IT products, IT-related developments and/or IT services. This shall include, without limitation, the following services (the "Services"):

- any delivery and installation of hardware, standard computer programs and software, including any software licence;
- the development, production, modification, customization, installation, implementation and testing of computer programs, databases, neural networks and any other software ("Software Development");
- any other IT-related services, including IT consultancy, IT training, support and maintenance services.

The Contract will determine the scope of the Contract and will qualify the Services.

When concluding a Contract with the TSO including these GPC IT, the Contractor authorizes all Affiliates of the TSO to order Services on basis of this Contract and, unless agreed otherwise in writing, the terms and conditions of this Contract (including these GPC IT) shall govern the contractual relationship between the Contractor and this Affiliate. If an Affiliate orders Services under this Contract, the TSO will not be responsible of the rights and obligations of this Affiliate.

## 2. DEFINITIONS

**Affiliated Company or Affiliate:** in relation to a company, any company, which directly or indirectly controls, is controlled by or is under joint control with that company (*verbundenes Unternehmen* if the Contract is subject to German law, *verbonden onderneming / société liée* if the Contract is subject to Belgian law). For this purpose, a company is deemed to control another company if it (a) owns, directly or indirectly, at least 50 percent of the capital of the other company, or (b) in the absence of such ownership interest, substantially has the power to direct or cause the direction of the management and set the policies of such company or entity.

**Background IP:** means any and all Intellectual Property Rights held, controlled, developed and/or acquired by a Party outside of the framework of the Contract.

**Best Practice:** means *volgens de regels van de kunst, dans les règles de l'art*, if the Contract, is subject to Belgian law and *Stand der Technik*, if the Contract is subject to German law. In particular as regards IT processes, Contractor will stick to ITIL.

**Bidder:** the company or group of companies (in case of a consortium) which submits a bid to the TSO.

**Contract:** any agreement based on the Contractual Documents between the TSO and the Contractor incorporating these GPC IT.

**Contractor:** the company or group of companies (in case of a consortium) that enters into a Contract with the TSO.

**Contractual Documents:** the documents defined as such in the PO.

**Days:** unless stated otherwise in the Contract, the term Days is to be understood as calendar days and includes Saturdays, Sundays, public holidays, holidays, and closing days.

**Documentation:** any plan, instruction for use, calculation or any other document drawn up in connection with the Contract.

**GPC IT :** These General Purchasing Conditions for IT.

**Intellectual Property Rights (IP):** means any and all rights, title and interest in copyrights (including, without limitation, copyrights in plans, drawings, programs, software (including source codes), databases and semiconductor topographies), databases rights, neighboring rights, patents, utility certificates and models, designs (whether registered or unregistered), trademarks and trade and business names, domain names, moral rights, trade secrets, confidentiality and other proprietary rights including all rights to know-how and other technical information, rights in the nature of unfair competition rights, rights to sue in passing off, the benefit of all registrations and applications to register any of the foregoing, any and all other rights similar or analogous to any of the foregoing whether arising or granted in any jurisdiction.

**Party:** The Contractor or the TSO (together the Parties).

**PO (Purchase Order):** written or electronically placed order (including its annexes) by the TSO to the Contractor;

**Safety Document :** any safety document annexed to or explicitly referred to in the Contract.

**Services:** the services to be performed by the Contractor as further described in the Contractual Documents.

**Site:** Any place or location operated or managed by the TSO, an Affiliate of the TSO or another contractor of TSO or of its Affiliates where activities relating to performance of the Services are carried out.

**Software:** All software (including Standard Software) provided by the Contractor as part of the Services.

**Specific Purchasing Conditions IT Belgium or Germany (SPC IT BE or GERMANY):** The Specific Purchasing Conditions for IT which contains terms specifically applicable to the performance of the Services by the Contractor under the Contract.

**Standard Software:** Any existing Software developed not exclusively for TSO, by the Contractor or by a third party, outside the framework of the Contract and provided by the Contractor as part of the Services.

**SPOC:** Single Point of Contact for a particular type of issues such as commercial, technical, administrative, etc. – specified in the Contract for the Contractor or in the PO for the TSO;

**TSO (Transmission System Operator):** one of the companies of the Elia group entering into a Contract.

**Week:** unless stated otherwise, the term Week corresponds to a calendar week made of seven Days and starting on Monday.

**Working Days (*Arbeitstage*) :** means all Days not including Saturdays, Sundays, public holidays, and mandatory closing days of the company or sector of the Contractor.

### 3. HIERARCHY AMONG DOCUMENTS

Terms of contract individually negotiated and agreed in writing between the Parties shall always take priority over general documents, including these GPC IT.

The documents issued by the TSO shall prevail over those of the Contractor. The bid of the Contractor, including any exceptions to / deviations from the other Contractual Documents proposed by the Bidder only apply if they are explicitly accepted by the TSO in the Contract and/or in the PO.

The Contractual Documents are to be taken as mutually explanatory of one another. The omission of an element in one of the Contractual Documents does not mean that it is not a part of the Contract if it appears in another Contractual Document.

If there is a contradiction between any Contractual Documents issued or executed by the TSO, the hierarchy of documents is generally specified in the Contract. If this is not the case, the priority of the documents shall be in accordance with the following sequence, so that the first mentioned document shall prevail:

- main body of the PO;
- any annexes to the PO in the following order:
  - o Safety Documents prevails over other annexes;
  - o Annex 1 prevails over Annex 2, Annex 2 over Annex 3 and so on;
- main body of the Contract;
- any annexes to the Contract in the following order:
  - o Safety Documents prevails over other annexes;
  - o Annex 1 prevails over Annex 2, Annex 2 over Annex 3 and so on;
- General Purchasing Conditions prevail over all other general documents with the exception of SPC IT BE or GERMANY which shall take precedence over the GPC IT.

## 4. INTERPRETATION

In these General Purchasing Conditions, except where the context requires otherwise:

- (a) words indicating one gender include all genders;
- (b) words indicating the singular also include the plural and words indicating the plural also include the singular;
- (c) "including" or "include" mean including or include but not limited to and introduces a non-exhaustive list of items;
- (d) provisions including the word "agree", "agreed" or "agreement" require the agreement to be recorded in writing; and
- (e) "written" or "in writing" means hand-written, type-written, printed or electronically made, and resulting in a permanent record (including e-mail).

The headlines shall not be taken into consideration in the interpretation of this General Purchasing Conditions and of the Contract.

## B. HARDWARE

## 5. SHIPMENT AND DELIVERY

If the Services include the shipment and delivery of hardware, the Contractor is responsible for the transport up to the address indicated by the TSO (and the installation of the hardware on Site if ordered by the TSO). The Contractor must comply with the delivery time agreed with the TSO. The deliveries must be made solely during the days and at the times agreed with the TSO, to the indicated address and, failing that, during working hours and on Working Days.

## 6. TRANSFER OF OWNERSHIP



Ownership of the hardware will be transferred with the delivery. Any retention of title is hereby rejected.

## **7. INSPECTION OF THE TSO**

The TSO will inspect the hardware in a usual manner in due course, taking into account the relevant circumstances. Hidden defects shall be notified to the Contractor no later than two Weeks after the TSO has identified those defects.

## **8. SERIAL DEFECT**

If the TSO reports a defect that makes a serial defect probable, poses a risk for the operation or significantly affects the usability (e.g. production defect, wrong choice of materials or incorrect assembly), the Contractor replace all units of the same design delivered so far, provided that the assumption of a serial defect mentioned above proves to be correct.

In case of a serial defect the Contractor will provide a root cause analysis of the problem as well as an impact study on the other Services of the same type.

## **C. STANDARD SOFTWARE**

### **9. PROTECTION SYSTEMS FOR STANDARD SOFTWARE**

The Contractor is obligated to deliver Standard Software without any dongle, hardlock and/or hardware keys. The Contractor shall take care that any Data Rights Management system used, if any, shall under no circumstances hinder the transfer of the Software from one hardware system to another. Any Software shall enable TSO to extract and/or export all of TSO's data.

### **10. SOURCE CODE - ESCROW**

If the Services include the supply of Standard Software developed and/or distributed by a third party and if requested by the TSO, the Contractor shall, upon request of the TSO, negotiate in good faith with this third party a software escrow agreement for source code escrow with an independent escrow contractor ("Escrow Agent") at TSO's costs. Such escrow agreement shall cover the Release Cases defined below.

If the Services include the supply of Standard Software developed by the Contractor and/or its Affiliate(s), the TSO may at any time request the Contractor to deposit the source code of the Software (including any current or future updates or other actualisations and any information regarding compiler) with an Escrow Agent in a suitable format. Such source code shall include any comments in order to allow a reasonably skilled programmer or analyst to resolve software errors, edit and develop the Software. Upon request of the TSO, the Contractor, unless sent online, will transfer the ownership of the deposited data carrier containing the source code and the accompanying materials to the TSO by depositing it with the Escrow Agent. The TSO accepts this transfer of ownership. The TSO undertakes to leave the source code and accompanying materials in the Escrow Agent's deposit except upon occurrence of the Release Cases defined below. The costs of the deposit will be borne by the Contractor and, vis-à-vis the TSO, are already compensated by the price agreed upon under Article 22

Upon occurrence of a Release Case (as defined below), the TSO shall be entitled to request and the Escrow Agent shall be allowed to convey the deposited source code and materials to the TSO. The Contractor grants the Escrow Agent the right to reproduce the source code, updates and technical documentations for the purposes of the escrow agreement.

The Contractor hereby already transfers to the TSO the non-exclusive right to use, reproduce and adapt the source code (including any current or future updates or other actualisations). The same applies for the technical documentation. Such rights shall include all forms of exploitation stipulated in Article 34.2 or have these acts carried out by a third party conditional on one of the cases listed below.

The terms and conditions of the escrow agreement shall include that the TSO shall be entitled to obtain a copy of the source code of the Software in the following cases ("Release Cases"):

- The Contractor agrees in writing to provide the source code to the TSO.
- The Contractor waives a significant part of its assets, is threatened with insolvency or an insolvency petition or similar remedy has been filed or insolvency proceedings or similar proceedings have been opened.
- The Contractor discontinues its business activities, is liquidated or stricken from the commercial register.
- An enforceable judicial decision orders the Contractor to provide the source code to the TSO.
- The Contractor refuses or fails to remedy significant defects or to provide information about necessary program interfaces or other cooperation necessary for the use of the Software.

The Contractor further undertakes to keep the source code material up-to-date on a regular basis.

## **D. SOFTWARE DEVELOPMENT AND IT-RELATED SERVICES**

### **11. DELIVERABLES**

Where the Services include the development, modification and/or customization of Software, the Contractor shall develop and deliver any Software as set forth in the Contractual Documents, which shall define the respective deliverables.

In case of any agile software development project, the Parties will agree on the respective sprints prior to the development in order to define the deliverables.

### **12. SOURCE CODE**

The Contractor shall provide, the source code of the Software in a suitable format and grant the TSO the right to use this source code, which in turn is secured by the deposited source code against non-fulfilment ("dual trust structure"). The TSO decides where it is stored and pay the costs. The Contractor shall not only provide the pure program code, but also any comments in order to allow a reasonably skilled programmer or analyst to resolve software errors, edit and develop the Software.

The Contractor hereby transfers to the TSO the exclusive right to use the source code, the technical documentation and their updates.

### **13. OPEN SOURCE SOFTWARE**

The Contractor will not use, implement or incorporate open source software, i.e. software whose source code readily available, in instances in which its Services include the development of software unless expressly permitted to do so in advance and in writing by the TSO. In instances where the Services involve the supply or programming of Software, the Contractor shall notify the TSO of any open source software used or incorporated into the Services in written form. Such notice shall include a comprehensive list of open source software used in the Services and the respective license agreements.

## **14. TEAM ALLOCATED TO THE PERFORMANCE OF THE SERVICES**

### **14.1 Team's definition and representative of the Contractor**

The team allocated to the performance of the Services shall be described in Annex 1 of the Contract ("the Team") along with the SPOC and its back-up. Each Team consists of at least one Lead Consultant and optional Support Consultants who shall be described as such in Annex 1. All contacts between the TSO and the Contractor concerning issues relating to the management/performance of the Contract shall be dealt with by the SPOC of the Contractor. In case the SPOC of the Contractor is unavailable, TSO shall be entitled to contact his back-up. The Contractor will promptly inform the TSO of the SPOC's unavailability.

### **14.2 Departure of a consultant of the Team**

If during the term of the Contract, a member of the Team (other than a Lead Consultant) leaves the Contractor, the Contractor shall provide the TSO with another consultant (hereinafter the "Replacement Consultant") which at least has similar knowledge to that of the departing consultant of the Team both in terms of experience (years) and expertise (Field of Specialization / Specialized Activities). If the Contractor is unable to meet this condition, the TSO will be entitled to request a review of the contractual fees by the Contractor. Unless otherwise agreed, the Contractor shall offer fees for the Replacement Consultant which are in line with the degree of experience and knowledge of departing/departed consultant of the Team. If the departed/departing consultant of the Team of the Contractor is a Lead Consultant, the TSO is entitled, after prior consultation with the Contractor, to terminate the Contract with 30 Days' notice without further compensation being owed to the Contractor. The TSO shall however compensate the Contractor for the work performed until the day of termination on the basis of – and in compliance with - the rules applicable under Article 29.2.

### **14.3 Replacement of a consultant upon request**

The TSO is entitled to request the immediate replacement of a consultant whose work in relation to the Services is reasonably considered by the TSO to be inadequate or inappropriate to the needs of the Contract and consequently ask for a change in the team set-up if said consultant is not providing/performing the Services according to those standards which can reasonably be expected from a consultancy firm such as the Contractor (hereinafter the "Unsatisfactory Consultant"). If (i) such issues have repeated themselves with a certain consistency over a six months period, (ii) the TSO has timely informed the Contractor in writing of those instances in which the TSO has been dissatisfied and on what grounds, and (iii) the TSO and the Contractor could not solve the problem in a collaborative and transparent way, the Unsatisfactory Consultant shall be replaced by another consultant (hereinafter the "Replacement Consultant") who at least has similar knowledge to that of the Unsatisfactory Consultant both in terms of experience (years) and expertise (Field of Specialization/Specialized Activities). If the Contractor is unable to meet this condition, the TSO shall have the right but not the obligation to:

- request the Fee to be adapted so that it is aligned with the degree of experience and knowledge of the Replacement Consultant; or to
- terminate with 30 Days' notice the Contract without further compensation being owed to the Contractor except for the work performed until the day of termination if the Unsatisfactory Consultant is a Lead Consultant.

## **15. CONSEQUENCE OF THE TERMINATION OF THE CONTRACT**

In case of termination of the Contract for whatsoever reason, the Contractor shall, upon request of the TSO, assist the TSO in the transition of the Services and customer data to the TSO or its new service provider ("Exit Services"). The Contractor shall, amongst others;

- hand over to the TSO and/or its new service provider all information and data (including data conversion information and interface specifications) to enable the TSO or its new provider to take over the performance of Services without interruption;
- provide appropriate training for the TSO or new service provider who will take over the Services.

The charges for Exit Services will be agreed upon between the Parties and will be based on the hourly rates of the Contractor agreed upon with the TSO in the Contract.

## **16. STAFF**

### **16.1 General**

The Contractor shall ensure that the staff performing the Services will have the appropriate professional qualifications and trainings.

Access to the TSO's premises by the Contractor or his employees is only permitted during normal working hours and provided that they comply with all Safety Documents.

### **16.2 Independence with regard to the TSO**

The Contractor and its staff remain entirely independent of the TSO and may at no point be considered employees of the TSO. The Contractor solely exercises authority over its staff and is responsible for them, bearing all of their salaries, bonuses, taxes, social security contributions and incidental wage costs or charges.

As far as the Contractor's employees are concerned, nothing in these GPC IT shall be construed to give TSO the power to exercise the employer's authority on such employees.

### **16.3 Safety**

If the Services are performed on Site, the Contractor must strictly comply with – and ensures that its staff, subcontractors, and suppliers do the same – the provisions relating to the well-being of the workers (including accident prevention regulations and use of tools and installations), access, and hygiene conditions stipulated in the last version of the Safety Documents and/or in any applicable laws and regulations. The Contractor agrees to bear all of the related expenses, which are supposed to be included in its prices, including waiting times. However, if a new version of a Safety Document is published by the TSO after the conclusion of the Contract and increases Contractor's costs, these costs will be charged to the TSO upon the condition to be duly evidenced by the Contractor.

The Contractor is liable for committing any breach of this obligation and agrees to bear all the consequences of the same. A breach of this obligation entitles the TSO to take any necessary measure, at the expense and risk of the Contractor, including the exclusion of staff from the Site. Any default of this obligation is considered to be a material breach allowing to TSO to terminate the Contract pursuant to Article 29.1.

In accordance with Safety Documents, if a member of the staff of the Contractor has an accident or a near-missed accident at work at the Site, the Contractor will notify it immediately to the TSO.

## **17. SUBCONTRACTING**

The Contractor is allowed to use subcontractors for the performance of its Services, subject to the prior written consent of the TSO. The Contractor shall provide prior notice to the TSO confirming its intention to subcontract the

performance of the Services and the identity of the intended subcontractors before entering into any subcontract. The TSO reserves the right to reject subcontractors in justified cases if the use of the subcontractor cannot reasonably be expected of the TSO, taking into account the interests of the TSO and the interest of the Contractor in employing the subcontractor for the respective Services. Such a justified case exists in particular if the use of the subcontractor would pose an IT security risk or if the subcontractor or his employees obviously do not have the necessary qualifications to perform the Service(s).

If subcontractors are used, the Contractor must agree (back-to-back principle) with the subcontractor that the latter will also comply with all obligations which the Contractor has towards the TSO, including the technical specifications, quality requirements, contractual deadlines and safety rules. Any approval of a subcontractor pursuant to this Article **Error! Reference source not found.** shall not release the Contractor of any of its liability under the Contract or create any legal or contractual relations between the TSO and any subcontractor. The Contractor shall remain fully and personally liable toward the TSO for the parts of the Contract that were subcontracted.

The Contractor shall not conclude any exclusivity agreements with its subcontractors that prevent them from directly entering into contractual agreements with the TSO. In the event of termination of the Contract, the TSO shall have the right (but no obligation) to take over the Contractor's rights and obligations under the contracts entered into with the subcontractors.

The transfer of the total performance to subcontractors/suppliers is excluded in accordance with paragraph one of this clause.

## **E. GENERAL RULES**

### **18. TSO'S COOPERATION**

There is no cooperation required from the TSO. If (and to the extent) the Contractual Documents provide that the TSO's cooperation is required for the Services, the Contractor shall request such measures or actions in writing at least 14 days in advance. The request shall specify the date by which the cooperation is required and sufficient details on the matter of the request.

### **19. QUALITY OF SERVICES**

The Contractor shall perform the Contract and the Services in good faith and with the level of professionalism, care, loyalty, conscientiousness and diligence as may be awaited from a company offering comparable services to those offered by the Contractor. The Contractor shall perform the Contract in compliance with all applicable laws and regulations, technical standards, Best Practice, the stipulations of the Contractual Documents and all relevant rules applicable on Site. This includes current programming standards, data protection and IT security standards.

Unless stipulated otherwise in the Contractual Documents, Contractor's obligations under the Contract are obligations of result, meaning that the Contractor must effectively meet and achieve obligations and requirements set by the Contract, and not just provide its best efforts.

The Contractor shall promptly notify the TSO of any information, situation, event, incident and/or matter which negatively affects or may negatively affect the performance of (including the continuation of) the Contract and/or Services under the Contract. The Contractor shall respond to the inquiries and communications of the TSO in a timely manner.

The Services shall be complete and fit for the purpose for which the Services are intended by in the Contract. They include all the elements required for full performance of the Contract or realization of the guaranteed performances and Services, even in the absence of any explicit mention thereof in the Contractual Documents.

If the Contractor has doubts about the proposed specifications, concepts, processes, data structures, ways of data processing, designs or other instructions given by the TSO or its other contractors, the Contractor shall promptly notify the TSO thereof in writing, if possible before starting to perform the respective Services.

## **20. DOCUMENTATION**

### **20.1 The TSO's Documentation**

By submitting his tender, offer or quotation, the Contractor confirms having received information from the TSO and familiarized itself with the Documentation needed to properly execute the Contract, having understood and accepting the invitation to bid, including but not limited to, the specifications and the basis of remuneration.

In case of additional information required to execute the Contract/PO, the Contractor will immediately ask the TSO for guidance in the relevant matter. Should there be any doubt during the performance of the Contract, the Contractor will clarify the issues with the TSO before starting the performance of the Contract/PO and in no case make any assumptions on its own.

The Contractor must notify the TSO of any anomaly within 15 Days of receipt of the Documentation.

If, despite inspection by the Contractor, there are shortcomings or incompleteness and/or a lack of plausibility or other errors in the Documentation, the Contractor shall not be entitled to any claims for an extension of the deadlines and/or for reimbursement of costs, regardless of the legal grounds.

### **20.2 Contractor's Documentation**

The Contractor shall provide all Documentation (with all necessary details) in accordance with the Contractual Documents to allow the TSO to verify the compliance of the Services and to make use thereof. The Contractor warrants that the Documentation is complete and correct. Unless otherwise provided in the Contractual Documents, the Documentation will be delivered before acceptance according to Article 26 . This communication will be done immediately after the Documentation is ready and no later than the due date set out in the Contractual Documents. The TSO may always ask for additional Documentation in order to verify that the Contractor complies with his contractual obligations.

Unless otherwise stipulated in the Contractual Documents, the TSO has thirty (30) Days from the date of its receipt to accept or reject the Documentation submitted by the Contractor. The Contractor shall make the requested changes without undue delay. The approval given by the TSO will in no way release the Contractor neither from any liquidated damages and/or penalties (as provided in the SPC IT BE or Germany) nor from its liability.

## **21. MODIFICATIONS**

### **21.1 Modification proposed by the Contractor**

If during the performance of the Services, the Contractor considers one or several modification(s) to the Services necessary or useful, he shall inform the TSO of this in writing without delay and motivate the need or the use for the modification. The timely notification aims to enable the TSO to timely inform any other party affected by the modification(s).

### **21.2 Modification required by the TSO**

Regardless of whether the Contractor gave a notification under Article 21.1 above, the TSO may at any time require one or several modification(s) to the Services, such as changes to the scope, in which case Article 21.3 shall apply.

The TSO shall always be entitled to require the Contractor to implement modifications that the TSO reasonably considers necessary in order for him to use of the Services, provided that they are within the scope of customary standard of the business.

Even if the Parties have not reached agreement on all elements of an addendum to the Contract pursuant to Article 21.3, the Contractor is obliged to implement a modification if requested by the TSO to do so. This shall not apply where the Contractor is not capable to provide the requested additional Services, where the scope of the modification request is unreasonable in view of the scope of the Services previously agreed upon or where the Contractor is prevented to do so on reasonable grounds. If the Contractor intends to reject a modification request, he must inform the TSO of this in writing without undue delay. An outstanding agreement on the elements of an addendum to the Contract shall not be considered as reasonable grounds to reject the modification request but shall instead be resolved in accordance with Article 21.4 below.

### **21.3 Form**

Upon receipt of a modification request, the Contractor shall indicate in writing to the TSO without undue delay what the consequences of the requested modification(s) would be, including price, deadlines, planning and/or any other consequences.

The TSO shall either formally agree to the modification(s) and its consequences or enter into negotiations with the Contractor without undue delay.

Any mutually accepted modification request must be set out in an addendum to the Contract and/or to the PO. If the Parties cannot agree on such addendum, Article 21.4 shall apply.

Having made such addendum or completed the process set out in Article 21.4 is a prerequisite for invoicing a modification.

### **21.4 Disputes related to modification requests**

If the Parties disagree on the question whether a modification request is necessary or whether respective Services are covered by the Contract already, TSO shall be entitled to refer this dispute to an expert designated jointly by the Parties or, in the absence of an agreement on an expert being achieved within two Weeks after a Party has made an according request, by the president of the Chamber of Commerce competent for the location of the registered office of the TSO. The expert shall be entitled to determine whether the requested Services are covered by the Contract already or whether a modification request is necessary. Such expert decision shall have preliminary binding effect, payments shall be made to the Contractor on that basis. However, each Party shall be entitled to have the expert's determination reviewed and, where applicable, revised by the competent court or arbitral tribunal.

If the Parties disagree on an addendum to the Contract following a specific modification request by TSO, the Contractor shall be obligated to perform the modification unless the Contractor has reasonable grounds to reject such a modification request. The Parties agree that such reasonable grounds to reject a modification shall be limited to technical impossibility of performance of such a modification or the lack of necessary resources at the Contractor.

If the Parties cannot agree on the remuneration for a modification request, the Contractor shall (upon request of the TSO) perform the requested modification without undue delay. TSO shall be entitled to refer this dispute to an expert designated as mentioned above. The expert shall be entitled to determine whether the requested Services are covered by the Contract already, fully or partially, or whether a modification request is necessary and, in case the modification was not fully covered by the Contract already, the fair remuneration for the modification.



## **21.5 Urgency**

For reason of urgency, the Parties will agree by email on technical aspects, price, deadlines, planning and/or any other consequence of the modification. Those aspects will be confirmed in an addendum for which a PO has to be issued.

## **22. FEES AND PRICES**

### **22.1 General**

Unless otherwise agreed in writing by the Parties, all prices shall be mentioned in the Contractual Documents in Euros and shall be fixed prices.

Prices cannot be revised unless otherwise mentioned in the Contractual Documents which will then specify the applicable formula.

Unless agreed otherwise in writing, prices shall include all costs in connection with the fulfilment of the Services by the Contractor and as the case may be any costs incurred for exchanging or converting foreign currency.

All prices shall be exclusive of value-added tax, but inclusive of any other taxes, duties and fees. The Contractor shall fulfill all formalities and legal requirements in connection with tax invoices in order to ensure a VAT refund where applicable. If, as a result of any action taken by the competent authorities (increased) VAT is claimed or it turns out that VAT was charged by the Contractor without justification, both Parties shall be obliged to correct the affected invoice accordingly and settle the resulting balance on that basis.

### **22.2 Lump sum prices**

Payment of the price is subject to acceptance of the Services in accordance with Article 26 and the procedures defined in the Contractual Documents.

### **22.3 Unit prices**

Payment of the price is subject to acceptance of the Services in accordance with Article 26 and the procedures defined in the Contractual Documents.

### **22.4 Hourly/daily rates**

Payment of the price is subject to acceptance of the Services in accordance with Article 26 and to agreed time sheets. By signing the time sheet, the TSO is only confirming that the hours were worked, not that the Services are compliant.

### **22.5 Overtime by the Contractor**

At the TSO's request, the Contractor will perform overtime (e.g. extra shift work, working nights, Sundays and holidays) in order to accelerate the Services in accordance with the applicable provisions of law and collective agreements. If the TSO orders in writing overtime to bring forward the agreed deadlines, the TSO will remunerate the overtime costs claimed by the Contractor if it is actually performed and if it was agreed by the Parties before the overtime was actually performed.

## **23. SERVICE PROVIDING IN CASE OF LATE PAYMENT**

The Contractor may only withhold or refuse Services if the TSO's payment obligation is undisputed or legally binding by judicial order and remains unpaid 30 Days after a notice sent by Contractor by registered letter.

The Contractor will refrain from blocking the respective user account in case of late payment.

## **24. OFFSETTING**



If there are undisputed claims and debts between the Parties, the TSO will have the exclusive right to offset its debts with its claims from the Contractor or to assert its right of retention or the exception of non-performance, as if all of the claims and debts have derived from a single contractual commitment.

## **25. DEADLINES AND PLANNING**

### **25.1 Deadlines**

All deadlines agreed in the Contractual Documents are binding. Unless otherwise indicated, the time period to perform the Services will start from the day after the Contract or, in case of a framework agreement, from the day after the PO is sent by the TSO. Any deviation from the deadlines requires the Parties' prior written agreement. The Contractor will not unreasonably withhold its consent to an extension of a deadline. The TSO's agreement to postpone the deadlines upon request from the Contractor will not release the Contractor neither from liquidated damages and/or penalties (as provided in the SPC IT BE or GERMANY) for late performance nor from its liability. Any postponement of deadlines caused by the TSO will not give rise to the payment of liquidated damages, penalties or liability by/of the Contractor.

### **25.2 Planning**

Where the Parties have provided a timetable or other planning for the Services, those planning shall be kept up-to-date by the Contractor. Updates made to the planning's, as well as their approval by the TSO, will in no way release the Contractor from its obligation to observe the initial deadlines or from its liability.

In case of a common root cause resulting in the delay of Services from different POs, the Contractor will immediately inform the TSO in order to redefine the planning together and decide which project(s) of the TSO and related POs should be treated as a priority, without prejudice to any other right or remedy available to the TSO.

## **26. ACCEPTANCE**

### **26.1 Granting of acceptance**

#### **26.1.1 Acceptance procedures**

Unless otherwise agreed in writing, Services are subject to acceptance.

Acceptance will be granted if the Service is completed in full and may be used in accordance with its intended purpose. Acceptance shall not be rejected in the event of minor default(s) and the TSO should not unreasonably delay acceptance. A number of minor defaults may result in a major default.

Unless the TSO requires the Contractor to use an electronic process for acceptance, described in the Contractual Documents, in which case this electronic process will prevail over the below described acceptance process, if the Contractor is of the opinion that the conditions for acceptance are fulfilled, it shall submit a written notice with the request to the TSO to sign the acceptance certificate. Within 30 Days after receipt of this request from the Contractor, the TSO shall either submit a signed acceptance certificate or refuse the acceptance by providing to the Contractor the reasons of such refusal.

In case the TSO does not respond within the above mentioned period of 30 days, the Contractor shall send a final notice by registered letter to the TSO with the request to respond within 30 days after the date of the registered letter's receipt. If the TSO does not respond within this additional period, the milestone linked to the acceptance shall be granted by the TSO to the Contractor.

#### **26.1.2 Documents to be provided for acceptance**

The TSO reserves its rights to deny acceptance if the copies of the contractually required Documentation for acceptance have not been submitted in advance to the TSO by the Contractor.

By the time of acceptance, the Contractor shall submit a complete file to the TSO. This file shall contain all the documents drawn up during performance of the Services, including detailed indications of all items and Services and, in case of developments of Software, the development documentation including documentation of the data model.

### **26.1.3 Unconditional acceptance**

Unconditional acceptance is granted if the Service meets all the requirements of the Contractual Documents, applicable law and complies with the Best Practice.

### **26.1.4 Acceptance with reservations**

Where applicable, the TSO will grant acceptance with reservations or comments in the event of minor default(s) which reasonably allow the Service to be used for its intended purpose and should not unreasonably delay acceptance.

The Contractor must cure such minor defaults and address these reservations or comments as soon as possible.

## **26.2 Refusal of acceptance**

If the Services do not comply with the contractual requirements (except for minor defaults), the TSO may refuse acceptance.

The Contractor must provide all modifications and improvements and/or, at the choice of the TSO, re-perform the non-compliant Services in whole or in part, without prejudice to any other right or remedy available to the TSO, as soon as possible.

All expenses linked to this refusal of acceptance shall be borne exclusively by the Contractor.

Unless the TSO decides to terminate the Contract in accordance with Article 29, the Contractor will take the necessary actions to make the Services compliant with the Contract. The acceptance procedure described in Article 26.1.1 will be repeated until acceptance is granted by the TSO.

## **27. WARRANTY**

### **27.1 General**

Without prejudice to its obligations and liabilities under applicable law, which is in no way diminished by this Article, the Contractor warrants (*gewährleistet* if the Contract is subject to German law, *waarborgt* or *garantie* if the Contract is subject to Belgian law) that its Services will be free from any defect that could affect them during the warranty period (including the general and particular warranties set out in the Contractual Documents).

If the warranty agreed between the Contractor and its suppliers or subcontractors has a duration or scope exceeding those deriving from the Contract, the Contractor agrees to subrogate the TSO in its rights with regard to its suppliers or subcontractors.

### **27.2 Obligations of the Contractor**

During the warranty period, the Contractor shall analyse any defective Services. The Contractor shall in accordance with the statutory law remedy any defects at its own expense, as well as all of their consequences, and shall replace every part of the defective Services as quickly as possible – and in any case within 15 Days, unless the scope of the activities to be performed for this purpose does not reasonably permit this –, taking all necessary measures to avoid the impairment of operations of the TSO. The Contractor bears all costs related to the remedying of defects, including transportation, transport of personnel and man-hours.

For each defect and/or other incident becoming evident during the warranty period, the Contractor will also provide as soon as possible, a root cause analysis of the problem as well as an impact study.

### **27.3 Warranty period and extension**

The warranty period starts at the acceptance in accordance with article 26 or 6 months after delivery in case no acceptance is foreseen.

Unless otherwise agreed in writing, the warranty period for the above warranty is twelve (12) months from the start of the warranty period defined in this Article. The expiration of the warranty period will not prevent the TSO to introduce a claim if the defect arose during the warranty period.

If, during the warranty period, all or part of the Services are unavailable, the entire warranty period in relation to such (part of the) Services shall be extended by the cumulative duration of all of these periods of unavailability.

If, during the warranty period, it is necessary to replace an element due to abnormal wear, breakage, or an operational defect, the extension of the warranty period applying to this element will not form an obstacle to the pronouncement by the TSO of a partial acceptance, insofar as the replacement of that element does not entail the decommissioning of the Services as a whole.

## **28. MAINTENANCE AND TECHNICAL SUPPORT**

### **28.1 Scope**

The Contractor shall take pro-active measures to avoid any bugs. The Contractor shall inform TSO on any material bugs known to the Contractor. The Contractor shall fix any bugs within an adequate time. Any critical bugs shall be fixed without undue delay.

### **28.2 New version of the Software**

The Contractor shall provide all Services throughout the term of the Contract, irrespective of the software versions installed in the protection systems. If the Contractor no longer guarantees the version of the Software installed in the Services or no longer updates the parameterisation Software installed in the PC(s), thereby making it impossible to set the Services and preventing the Contractor from providing the Services, the Contractor shall install a new version of the Software, which must be submitted to the TSO's prior approval, that version in question being the latest one developed by the Contractor. Failing this, the Contractor must develop a new version compatible with the Services provided under the Contract and shall also bear the cost of its development and installation at the TSO.

### **28.3 Defect caused by the TSO**

If a defect results from an external cause attributable to the TSO, the Contractor shall submit a quotation which shall be approved in writing by the TSO before proceeding with the remedial works. The Contractor shall remedy the defect as soon as possible after the written approval of the quotation by the TSO.

### **28.4 Term**

Unless provided otherwise in the Contract, the Contractor shall provide maintenance Services for the term provided in the Contractual Documents and at least 12 months after the acceptance of the Services. The Contractor is not entitled to charge any maintenance fee for the period before the acceptance.

In addition to its obligations regarding replacement, repair and warranty, the Contractor shall pursue the activities or the production necessary for use of the Services by the TSO for the expected lifetime of the Services. In this capacity, the Contractor undertakes to:

- be capable to provide identical Services for a sufficient period, from the expiry of the warranty period onwards. In any event, the Contractor will only terminate the production of a good or the provision of the service required for the use of the object of the Contract and not easily available on the market after having given the TSO prior notice of [12] months and having submitted to it all of the elements which the TSO requires to take over the monitoring;

- provide the technical support Services, on the Site if needed, for a sufficient period, from the expiry of the warranty period onwards, in order to assist the TSO with the installation, operations, processing, and maintenance. This technical support will not be borne by the TSO during the warranty period.

If the Contractor does not comply with these obligations, he will be liable for all costs and expenses incurred by the TSO.

## **29. TERMINATION**

### **29.1 Termination for cause**

Either Party shall have the right to terminate the Contract or the PO, in whole or in part, immediately and without prejudice of any other right or remedy available to it if this other Party:

- (a) suffers proven financial difficulties;
- (b) waives a significant part of its assets;
- (c) commits acts of fraud, gross negligence and/or wilful misconduct;
- (d) fails to comply with its legal and/or professional obligations;
- (e) breaches an essential obligation under the Contract, such as (and not limited to) its confidentiality obligations under Article 35 or its obligations under Article 34 of the Contract (intellectual property rights);
- (f) is threatened with insolvency or an insolvency petition or similar remedy has been filed or insolvency proceedings or similar proceedings have been opened;
- (g) is in material breach of the Contract and either that material breach is not capable of remedy or, if the material breach is capable of remedy, the Party in breach has failed to remedy the material breach within fifteen (15) Days after receiving written notice requiring it to rectify the material breach or any other term agreed upon by the Parties; or
- (h) in any other case provided in the Contract.

Moreover, the TSO shall have the right to terminate the Contract or PO, in whole or in part, by giving a 30 Days' written notice to the Contractor as stipulated in Articles 14.2 and 14.3.

The termination will be effective on the day of the termination notification. The Contractor must immediately return all documents, information, source codes, etc. provided by the TSO.

The Contractor will not oppose the takeover of the Services by the TSO or by a third party.

Termination for cause attributable to the Contractor will not give rise to the payment of any compensation by the TSO. However, Services which have been provided before the termination of the Contract by the Contractor shall be compensated according to the payment conditions as set out in the Contract, subject to potential counter-claims.

Nothing herein shall prevent the Parties to terminate the contract for cause in accordance with the applicable statutory provisions.

### **29.2 Termination for Convenience**

The TSO may terminate the Contract or the PO, in whole or in part, at any time without justification, observing a prior notice period of 30 Days. The notice period starts from the Day of the receipt of the termination notification. Upon termination of the Contract or the PO, the Contractor must return all documents, information, source codes, etc. provided by the TSO, unless the Contract or the PO was only terminated in part and the Contractor needs documents, information, source codes, etc. for the execution of the non-terminated part of the Contract or PO.

Termination of the Contract for convenience as mentioned in this Article 29.2 will be without prejudice to the TSO's obligation to pay to the Contractor the remuneration due under the Contract for the Services to be provided up to the

date of suspension or termination of the Contract (with only the first of these two dates being taken into account), subject to provision of such Services and compliance with the Contract.

If the Contractor has already received a compensation for suspension in accordance with Article 10 of the SPC IT BE or GERMANY, this compensation will not be due a second time.

The Contractor shall use reasonable efforts to limit the costs for the TSO in the event of such termination.

### **29.3 Termination for change in law**

Upon prior written notice, each Party is entitled to terminate the Contract and/or the PO, without further delay, if it can establish with reasonable evidence that due to a new and/or amended, regulation, rule, piece of legislation, decision, injunction and/or interpretation, which is legally binding upon the Parties, the further performance of the Contract, in whole or in part, by the Contractor and/or the TSO would no longer be legal and/or would entail a conflict with professional rules and regulations by which the Parties are bound.

### **29.4 Right of replacement**

In case of termination for cause attributable to the Contractor in accordance with Article 29.1, the TSO has the right to either remedy the Contractor's material breach itself or have a third party remedy the material breach at the expense of the Contractor. The right of replacement for this purpose will be exercised by simple notice of the TSO containing the TSO's wish for replacement. This letter will contain a request for the Contractor to promptly draw up an inventory of its Services, on a joint basis after due hearing of the Parties. If the Contractor fails to draw up or countersign this inventory, the declaration by the TSO's representative alone will be deemed valid. This right of replacement also applies in the event where the Contractor fails to observe its warranty obligation.

## **30. LIABILITY**

The interventions and/or approvals by the TSO will in no case reduce the liability of the Contractor.

Notwithstanding any remedies under the applicable contract law which shall not be affected or limited hereby, either Party shall indemnify and hold harmless the other Party, the other Party's personnel, and their respective agents, against and from all claims, damages, losses and expenses (including legal fees and expenses) resulting from a fault committed by the indemnifying Party in relation to the Contract execution.

Parties' total liability will be limited in aggregate for any matters arising under or in connection with the Contract to two times the value of the Contract or the value of the PO in case of a framework agreement or one million euro (1,000,000.00 EUR), whichever is higher. Liquidated damages and/or penalties (as provided in the SPC IT BE or GERMANY) are not included in the cap.

The limitations as foreseen in this Article shall not apply in case of death or bodily injury and in case the damage results from fraud, wilful misconduct or gross negligence or breach of contractual duties the performance of which is essential to achieve the purpose of the Contract and on which the other Party may rely. In case where the latter type of duty was breached by mere negligence, recoverable loss shall, however, be limited to loss typical for comparable scenario which was foreseeable at the time of the breach.

## **31. INSURANCE**

### **31.1 General**

The Contractor must subscribe to and maintain in effect all of the necessary insurance policies in view of the object of the Contract and/or the PO. The Contractor's liability shall not be limited to the insurance required as part of the Contract and/or the PO.

The insurance policies below as well as all those stipulated by the Contractual Documents must be in force before any performance of the Contract and/or the PO, for the entire duration of this performance and during the warranty periods if relevant. Proof of these insurance policies must be provided upon request to the TSO and the TSO may request a confirmation of maintenance of the policies from the insurer at any time.

The insurance policies must provide for a waiver of recourse in respect of the TSO and the Contractor must hold the TSO harmless against any claims raised by insurer(s). The insurance policies must consider the TSO and its agents as third parties with regard to the other policyholders.

### **31.2 Workplace accidents and third-party motor insurance**

The staff of the Contractor and its subcontractors must be covered by the Contractor's insurance for accidents in the workplace and during travel to and from work.

### **31.3 Liability insurance**

The professional or operating, contractual and extra-contractual (tort) liability of the Contractor must be insured for sufficient amounts while taking into account the risks of the Contract and/or the PO. This insurance obligation does not in any way imply any limitation on the liability of the Contractor or any warranties of the TSO against third-party's claims for amounts exceeding the insured limits or for uninsured risks.

## **32. FORCE MAJEURE**

In the event that a situation of force majeure, as defined below, is invoked by the TSO or the Contractor, performance of the obligations under the Contract which are impacted by the force majeure shall be suspended temporarily for the duration of the event giving rise to force majeure.

Force majeure shall mean any and all incidents which (i) could not reasonably have been predicted, (ii) arise after the conclusion of the Contract, (iii) are not attributable to negligence on the part of either Party and (iv) make the performance of the Contract temporarily or permanently impossible.

The Party invoking force majeure shall notify the other Party by means of written communication at the earliest possible opportunity and without undue delay, however at the latest within 5 (five) Working Days after the Party became aware, or should have become aware, of the situation of force majeure, of the reasons why it is unable to fulfil some or all of its obligations and the period during which it reasonably envisages being unable to fulfil them.

Nevertheless, the Party invoking force majeure shall make every reasonable effort to limit the consequences of its failure to fulfil its obligations to the other Party and third parties, and to resume the fulfilment of said obligations immediately after the event amounting to force majeure has ceased to exist.

In the event that the period of force majeure lasts for ninety (90) consecutive Days or more and one of the Parties, following the situation of force majeure, is unable to fulfil its core obligations under the terms of the Contract, either Party may terminate the Contract with immediate effect subject to sending a registered letter stating its reasons for the termination, on the understanding that any amount outstanding at the time the Contract is terminated remains payable pursuant to the terms and conditions thereof. Notwithstanding the above, where the TSO is entitled to terminate the Contract for force majeure, the TSO shall have the right to propose alternate means of securing performance of the relevant Services, including the performance by a third party pending resolution of the force majeure event.

## **33. HARDSHIP**

If an event, such as lockdown measures taken in the framework of a pandemic, which (i) could not reasonably have been predicted, (ii) arise after the conclusion of the Contract, (iii) are not attributable to negligence on the part of

either Party and (iv) modify substantially the contractual equilibrium settled by the Parties, the Parties will negotiate in good faith in order to reach a fair burden of the costs caused by such event. An increase of the cost of one Party of less than 10% will never be considered as a substantial modification of the contractual equilibrium. All costs invoked by the Parties will be duly evidenced.

## **34. INTELLECTUAL PROPERTY RIGHTS AND TRANSFER OF KNOW HOW**

### **34.1 Background IP**

Any and all Background IP held, controlled, developed and/or acquired by a Party outside of the framework of the Contract shall remain the exclusive property of that Party.

The Contractor hereby grants to the TSO, to the extent permitted by applicable law, a worldwide, perpetual, irrevocable, non-exclusive, transferable, sub-licensable, and fully paid up license to use the Contractor's Background IP to the extent necessary or useful for the operation and/or maintenance of the Services.

### **34.2 IP in Developments**

The Contractor shall, to the extent permitted by applicable law, transfer and assign to the TSO any and all Intellectual Property Rights in all information, plans, diagrams, technical-commercial results, designs, graphics, software, databases objects, measures, or other items in any form developed that come into existence and/or are created by the Contractor in the framework of or in relation to the Services and/or on any other development specifically designed, created or otherwise developed by the Contractor, its employees, agents, suppliers and subcontractors in the framework or in relation to the Contract ("Developments").

The transfer and assignment include, without limitation, the worldwide rights to reproduce, adapt, modify, expand, improve, make available to the public, rent, and distribute the Developments, partially or completely. This should apply both for internal and external use, for commercial and non-commercial purposes. The scope of the rights transferred shall be deemed to include the most extensive way permitted by applicable law. The Developments are deemed to be commissioned by the TSO. The Intellectual Property Rights in the Developments are exclusively assigned to the TSO, as they are generated, for the whole term of protection.

To the extent that the aforementioned Intellectual Property Rights in Developments as such cannot be transferred to the TSO under the applicable statutory law, respective, worldwide rights of use, without limitation, to reproduce, adapt, modify, expand, improve, make available to the public, rent, and distribute the Developments, partially or completely, and exploitation shall belong to the TSO. In such cases the Contractor transfers to the TSO for the whole term of protection the existing exclusive, perpetual, transferable and sublicensable rights to use and exploit the Developments for its own or third-party use and exploitation without restrictions in terms of time, territory and content. Insofar as the Contractor is not entitled to transfer the property rights and/or the rights of exploitation and use, the Contractor shall grant the TSO corresponding rights.

In this respect, the following applies:

- The transfer or granting of rights refers to all known and unknown types of use, including the rights for exploitation and use of the Developments on PCs, servers and other stationary computers, mobile services, in embedded systems (including control systems, robots and autonomous systems), on offline media (in all standards and file formats in each case), in the LAN, online via the Internet and in all other wireless or wired public or closed networks, as up/download, as software as a service, within the context of application service providing, via cloud computing (IaaS, PaaS, SaaS) and all other forms of decentralized (e.g. server client



environment, grid computing) or centralized computing (e.g. via servers and mainframes) and also use for the purpose of outsourcing or operation for and/or by third parties.

- TSO without further consent is entitled to transfer in full or in part, permanently or temporarily, the rights referred to above to third parties or to grant rights of use to third parties and to grant sublicenses.

The compensation for the transfer and licensing of these Intellectual Property Rights in the Developments is included in the remuneration set out under Article 22. The Contractor is responsible for obtaining from its agents and representatives, subcontractors and suppliers at no extra cost for the TSO the necessary rights to ensure that the transfer of ownership and licensing of these rights is made in favour of the TSO.

### **34.3 IP in Standard Software**

The Contractor grants to the TSO the right to use any Standard Software provided as part of the Services within its group of companies in accordance with Article 5 of the EU Software Directive 2009/24/EC. Any grant of rights shall be limited to a certain number of users if any limitation of users has been agreed on. The use of a Standard Software shall not be limited to a certain hardware or certain hardware capacity. TSO and its Affiliates shall be entitled to access the Standard Software via interfaces or bots from any third party software without an additional obligation to acquire licenses or pay for such use. TSO and its Affiliates may ask a third-party provider (outsourcing and cloud provider, BPO (Business Process Outsourcing) provider and/or provider of managed services) to host operate and/or use the Standard Software in favour of the TSO and/or its Affiliates.

### **34.4 Moral Rights**

The Contractor renounces, and shall procure that the authors renounce, its/their moral rights to the largest possible extent and the TSO has the right not to mention the name of the Contractor and/or the authors, as well as the right to modify Developments to the extent that the TSO considers necessary or useful for the use of these Developments.

### **34.5 Know how**

All documents and know-how communicated by the TSO in relation to the Contract remains the TSO's property.

### **34.6 Third Party Rights and Indemnification**

The Contractor shall hold harmless and indemnify the TSO from and against all claims, demands, loss, damages, liabilities, settlement amounts, costs or expenses whatsoever (including attorneys' fees and costs), arising, directly or indirectly, from any claim, action or proceeding initiated by a third-party claiming that the exploitation or the use of the Services infringes its Intellectual Property Rights. The Contractor shall make an arrangement with the third-party holder of the rights at its own expense, to pay royalties, secure the necessary transfers, licences, and authorisations or, in the absence of an agreement, modify the Services in order to avoid any infringement to third-party Intellectual Property Rights.

In the event of an action or proceedings for infringement brought against one Party (the Sued Party), caused by an act or omission of the other Party, the other Party undertakes to:

- intervene in the case for the Sued Party by defending the Sued Party's rights and interests and to hold it harmless from any pecuniary and other consequences which may result to the Sued Party from these actions and proceedings;
- bear all of the damages principally due to the holders of the Intellectual Property Rights, in principal, expenses and interest;
- reimburse to the Sued Party, on request, any general expenses including the fees of lawyers, experts, and technical advisers which the Sued Party has incurred by virtue of or on the occasion of these actions or proceedings;



- ensure the immediate adaptation, if necessary, of the contentious material, by replacing it, if needed, free of charge, with equivalent material exempted from any Intellectual Property Right infringement. All costs, risks, and dangers arising from it are exclusively borne by the other Party;
- ensure that every transaction between the other Party and the third party is subject to prior written authorisation by the Sued Party.

Prior approval by the TSO of the modifications to be made to the Services will in no way modify the obligations of the Contractor, especially in the event of new infringement proceedings following such modifications.

## **35. CONFIDENTIALITY**

### **35.1 Confidential Information**

Confidential Information shall be any and all information exchanged and/or made accessible under and/or in connection with the Contract, including any technical specifications, drawings, technical / operational data, know-how and any other kind of technical, financial, commercial and/or any other kind of information, in any form whatsoever (e.g. verbal, written, digitally stored or other) that is not (i) public knowledge at the time of disclosure or thereafter becomes public knowledge through no fault of the receiving Party, (ii) already known to and under the free disposal of the receiving Party before the disclosing Party gave it access to such information other than through a breach of confidentiality, or (iii) legally conveyed to the receiving Party by a third party without being subject to any kind of confidentiality duties. Neither Party shall seek to obtain Confidential Information through reverse-engineering of an item, unless such item has already been made publicly accessible or under mandatory copyright law provisions.

### **35.2 Confidentiality obligations**

The Contractor acknowledges to be aware of the TSO's specific confidentiality obligations regarding the management of the electricity transmission network.

The Parties shall keep secret, treat any Confidential Information as private and confidential, and not disclose it to any third party without the disclosing Party's prior written approval.

The Parties shall procure that only those of their employees, officers, agents and representatives and subcontractors have access to the Confidential Information (i) to the extent they have a strict need-to-know and (ii) who are subject to confidentiality obligations at least as strict as the ones set out in this Article. The TSO shall especially be entitled to submit any Confidential Information, including documents, technical data, software or simulation models, to neutral third parties for validation or technical consulting purposes.

No reference to the TSO, its names, brands, logos, photos, codes, designs and specifications regarding its form and use may be made by the Contractor in advertisements, promotional, and publicity efforts, publications or presentations of a technical, commercial or other nature without the prior written authorisation of the TSO.

### **35.3 Confidentiality obligations duration**

The confidentiality obligations will be in force for ten (10) years from the termination of the Contract or in the event that the Contract is not concluded, from the disclosure of the Confidential Information. After the end of the aforementioned period, the receiving Party shall upon written request of the disclosing Party immediately return or destroy all Confidential Information, copies and/or reproductions thereof and confirm return/destruction.

### **35.4 Disclosure**

The Parties shall be entitled to disclose Confidential Information on a strict need-to-know basis to legal and tax advisors as well as technical advisors and Affiliated Companies provided they are obliged to maintain confidentiality

substantially in accordance with the provisions of the Contract and that such a receiving Party or an Affiliated Company is not entitled to further forward it to third parties.

The TSO is entitled to disclose the Contract in particular to the regulator or to any of its contractors, who will be obliged to confidentiality, to the extent it is necessary to coordinate and match all interfaces.

The Parties are entitled to disclose Confidential Information to the extent it is required under (i) mandatory applicable law, or (ii) any legally binding court decision, or (iii) comparable administrative measure, all provided that the receiving Party informs the disclosing Party reasonably in advance of any such disclosure (to the extent in line with the applicable statutory law).

### **35.5 Breach of confidentiality and gross negligence**

Any breach of this obligation of confidentiality by the receiving Party is considered a material breach of the Contract and entitles the disclosing Party, pursuant to Article 29.1, to terminate any contractual relationship, transaction, or other relationship with the receiving Party immediately and without any indemnity being due by the disclosing Party to the receiving Party and to liquidated damages and/or penalties (as provided in the SPC IT BE or GERMANY), without prejudice to the right of the disclosing Party to obtain full compensation for any loss deriving from the said material breach of the contract. The liquidated damages and/or penalties (as provided in the SPC IT BE or GERMANY) will be due for each breach of a confidentiality obligations. The Contractor waives its right to invoke the continuation of the infraction with respect to intentional breaches.

## **36. IT SECURITY**

For the performance of its Services, the Contractor itself must observe rigorously - and take care that its staff, subcontractors, and suppliers do the same - the provisions relating to the well-being of the workers, access, environment, and hygiene conditions stipulated in Elia's General Safety Regulations and in any other laws and regulations in force.

The Contractor shall also take sufficient measures according at least to the Best Practices to ensure the security and integrity of all information and data of the TSO. This includes the Contractor's obligation to store and archive the information and data of the TSO securely and retrievable, and to effectively protect such information and data against unauthorized access or transmission, corruption, deletion, loss or other misuse.

The Contractor is liable for any breach of this obligation and agrees to bear all the consequences of the same. The Contractor agrees to bear all of the related expenses A breach of this obligation entitles the TSO to take any necessary measure, at the expense and risk of the Contractor, including the exclusion of staff from its premises. Any default of this obligation is considered to be a breach of an essential obligation. Any such breach may justify the termination of the Contract pursuant to Article 29.1.

## **37. PROCESSING OF PERSONAL DATA**

If the Contractor processes personal data for the TSO for the purposes of executing the Contract, the Contractor is regarded as a Processor within the meaning of the General Data Protection Regulation ('GDPR'). The Contractor shall not be entitled to use, either in part or in full, the personal data, as defined in article 4 of the GDPR, ("Personal Data") provided to it, in any way for any purpose other than for the execution of the Contract, except if required by law.

The TSO shall have the right to obligate the Contractor to conclude a Data Processing Agreement in accordance with a model provided by the TSO for that purpose. If the TSO does not consider this Data Processing Agreement

necessary, the provisions of this article shall apply to the performance of the Services by the Contractor. The Contractor shall process Personal Data in a proper and careful manner, in conformity with the applicable laws and regulations, especially in conformity with the arrangements set out in articles 24, 28 and 32 of the GDPR, as well as any applicable Code of Conduct of the TSO.

The Contractor shall (and will ensure that its subcontractors) apply appropriate technical and organizational measures to protect the security, confidentiality and integrity of Personal Data against loss or any form of unlawful processing. Taking account of the state of the art and the execution costs, these measures shall ensure an appropriate level of security with a view to the risks associated with processing and the nature of the Personal Data to be protected. The measures are partly aimed at preventing unnecessary collection and further processing of Personal Data. The Contractor shall record such measures in writing.

The Contractor, as Processor, will not (and will ensure that its subcontractors will not) transfer Personal Data to a country outside of the European Economic Area without the TSO's prior written consent.

The Contractor shall fully cooperate with the TSO in securing the following rights of data subjects within the meaning of articles 15, 16, 17, 18 and 19 of the GDPR (i) providing access to their personal data; (ii) deletion or correction of Personal Data; and/or (iii) providing proof that Personal Data has been deleted or corrected if previously incorrect, or – if the TSO challenges the position of the data subject concerned – registering that the data subject considers his/her Personal Data to be incorrect.

The Contractor shall assist the TSO in complying with the obligations regarding the security of Personal Data, reporting obligations in the event of data breaches, data protection impact assessments and prior consultations set out in articles 32 to 36 of the GDPR.

The TSO shall at all times be entitled (to commission a third party) to check if Personal Data is processed in accordance with the requirements of the GDPR and other applicable laws and regulations. The Contractor shall be obligated to grant access to the TSO or to third parties engaged by the TSO, and to fully cooperate in actually performing such checks.

## **38. MISCELLANEOUS PROVISIONS**

### **38.1 Non-exclusivity**

The conclusion of the Contract does not give the Contractor any right of exclusivity. Even during the validity period of the Contract, the TSO may order the performance of services identical or similar to those described in the Contractual Documents by other contracting parties or by its own services. On account of this, the Contractor may not invoke any right to compensation.

### **38.2 Assignment**

Parties may not assign or transfer all or part of the rights, claims, and obligations resulting from the Contract to third parties, other than Affiliates, without the other Party's prior approval.

### **38.3 Languages**

The language of the Contract is specified in the Contractual Documents and is to be applied to all of the documents. Without prejudice to the provisions on language and interpretation Article 1, in the event of contradiction and/or ambiguity, the version of a Contractual Document drawn up in the language of the Contract will prevail over any other version.

### **38.4 Independence between the Parties**

Either Party remains independent from the other. Neither the Contractor nor any person or third party designated by the Contractor to perform the Contract is the employee, associate, agent, representative or legal representative of the TSO.

No element of the Contract may be interpreted as creating an agency or distribution relationship between the Parties, creating a joint venture or permitting one Party to represent or commit the other Party regarding third parties.

### **38.5 Complaints**

If the Contractor wishes to submit a complaint, it must provide information on the grounds of this complaint by a registered letter to the TSO within 30 Days of the occurrence of the facts that caused it.

### **38.6 Waiver**

Failure or delay by a Party in exercising, any of its rights under the Contract or failure to react in the event of breach by the other Party of the Contract will not be considered as a waiver even implied, by this Party to exercise that right or any other right under the Contract at any subsequent time. A waiver must always be made expressly and in writing.

### **38.7 Severability**

Should any provision of these GPC IT be or become invalid in whole or in part or should there be an omission in these General Purchasing Conditions, this shall not affect the validity and enforceability of the remaining provisions of these GPC IT.

[If the Contract is governed by German law, in place of any general terms and conditions (*Allgemeine Geschäftsbedingungen*) which are invalid or not incorporated in the Agreement, the statutory provisions shall apply. However, the Parties shall use their best efforts to replace the statutory provision by an agreement which reflects as closely as possible the original economic purpose.

In all other cases, the Parties shall agree a valid provision to replace the invalid or unenforceable provision which reflects as closely as possible the original economic purpose, provided a supplementary interpretation of the Agreement (*ergänzende Vertragsauslegung*) does not have precedence or is not possible.]

### **38.8 Anti-competitive practices**

If the TSO discovers, at any moment, that the Contractor is guilty of any action, agreement, or understanding of a nature to distort normal competition conditions, the TSO is entitled to terminate the Contract without prior notice and without indemnity, and to liquidated damages and or penalties (as determined in the SPC IT BE or GERMANY), without prejudice to the right of the TSO to obtain full compensation for any loss deriving from the anti-competitive practice, as well as to exclude the Contractor from participating in any capacity in any contract which the TSO may conclude for a maximum period of 2 years as from the decision of exclusion. The liquidated damages and/or penalties will be due for any breach, including anti-competitive practice. The Contractor waives its right to invoke the continuation of the infraction with respect to intentional breaches.

## **39. REPRESENTATIONS**

### **39.1 Accuracy of the representations**

The Contractor represents, warrants, guarantees and covenants to the TSO that the representations and warranties provided in this Article are true and accurate at the date of the signing of the Contract (or at any other date specified in each case).

### **39.2 Absence of conflict of interest**

None of the Contractor, the legal or Beneficial Owner(s) (as defined below) of the participating interests in the Contractor, nor any immediate family member or other close relative of such legal or Beneficial Owner(s), currently have or at any time in the past have had any undisclosed Conflict Of Interest (as defined below) with respect to (any prospective business partner of) the TSO.

For the purpose of this Article, Conflict Of Interest means any situation where either a legal entity or an individual is in a position to exploit a professional or official capacity in some way to further either of his/its corporate or personal benefit.

For the purpose of this Article, a Beneficial Owner means any person who indirectly, whether under oral or written agreement, has or had a right to receive a monetary or other benefit from a participating interest in the Contractor.

### **39.3 The Contractor's status**

If the Contractor is a legal entity, the Contractor is duly incorporated and validly existing under applicable laws.

The Contractor is duly authorised to own its assets and to carry on its business as it is being conducted.

### **39.4 Anti-corruption and anti-bribery laws**

The Contractor represents, warrants and covenants that it is and will remain in compliance with all applicable legislation and regulation regarding anti-corruption ("Anti-Corruption Laws").

Neither the Contractor nor any of its Affiliates or officers has, in connection with the Contract and the transactions contemplated hereby, directly or indirectly made, and will not make, any contribution, gift, bribe, rebate, payoff, influence payment, kickback, promise or other payment to any person, private or public, including any public officials, whether in money, property or services to (i) obtain favourable treatment or secure any contracts, deeds, certificates, statements, agreements or commitments, or (ii) obtain special concessions (or compensate special concessions already obtained), in each case, in violation, in any material respect, of any Anti-Corruption Laws.

### **39.5 Binding obligations and absence of conflict with other obligations**

The Contractor confirms that the Contractor's obligations pursuant to the Contract are legal, valid, binding and enforceable obligations.

The entry into, and performance of the Contract and of the transactions contemplated hereby, by the Contractor, do not and will not conflict with:

- (a) any law applicable to the Contractor (including any Anti-Corruption Laws);
- (b) the Contractor's constitutional documents;
- (c) any agreement or instrument binding upon the Contractor or concerning any of their respective assets or constituting a default or termination event (however described) under any such agreement or instrument.