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## A. Definitions

**A1 Equipment** means all the computer hardware components, including those of third parties ('non INISI Equipment'), as specified in the Agreement.

**A2 Software Licence** means the non-exclusive, non-transferable right of use of computer software.

**A3 Designated Equipment** means the Equipment to be used for a computer program according to the Software Licence, as indicated in INISI's Product Specification or Order Confirmation. If the Designated Equipment is not specified, the Designated Equipment is taken to mean the Equipment on which the computer program is used for the first time.

**A4 Products** means any combination of Equipment and/or Software and/or Services. The constituent parts of the Products are subject to the conditions of the relevant parts of these General Terms and Conditions.

**A5 Product Specification** means all the specifications of the Products. The specifications may also contain guarantee provisions. In general these specifications will be appended to the Agreement. If no specific Product Specification is available for a particular Product, then the Product Description will refer to the description INISI provided in the written proposal.

**A6 Software** means computer software in object code and the relating user documentation as specified in the Agreement. Software also includes any software or firmware elements that form part of the Equipment and any Software corrections and updates provided to the Customer by INISI after delivery or after first use. Software also includes customized software developed by INISI for the Customer ('Customized Software').

**A7 Service** Service means the services referred to in the Order Confirmation, which are further described in the relevant service description(s) applicable at the time of acceptance by INISI of the Order.

**A8 INISI** means INISI b.v. and affiliated companies, with its registered office in Capelle aan den IJssel, The Netherlands.

**A9 Customer** means the Customer who places an order for the delivery of Products with INISI.

**A10 Order Confirmation** means a written confirmation of an order by INISI specifying which Products INISI will deliver, also referred to as Service Order.

**A11 Agreement** means the agreement consisting of the General Terms and Conditions and the Order Confirmation and any other documentation

and conditions referred to in the Order Confirmation.

**A12 General Terms and Conditions** means the INISI General Terms and Conditions, issued in December 2017. These Terms and Conditions are set out in different languages, English and Dutch (Standaard Voorwaarden van INISI b.v.) In case of conflict between these versions, the latter shall prevail.

## B. General Conditions

### B1 Applicability

Unless explicitly agreed otherwise by the parties in writing, the provisions of these General Terms and Conditions apply to all offers of and agreements with INISI in accordance with which INISI delivers Equipment, Software, Services, etc. to the Customer, even if such Equipment, Software, Services, etc. have not been described in further detail in these Terms. All offers are without obligation. An Agreement with INISI is effected as soon as it is signed by the Customer and INISI has sent an Order Confirmation.

Any purchasing or other conditions of the Customer explicitly do not apply, unless they have been accepted explicitly by INISI in writing.

Unless explicitly agreed otherwise, the Agreement replaces all previous correspondence, offers, declarations of intent, arrangements and promises between the parties, in whatever form, relating to the delivery of Products.

### B2 Invoicing and Payment terms

#### B2.1 Payments

- a) Payments are due in accordance with the provisions in this respect in these General Terms and Conditions and in the relevant Order Confirmation. Payments are to be made within eight days of the invoice date. INISI reserves the right to withdraw any credit granted at any time if there is reasonable cause to do so. The Customer is not entitled to setoff, unless INISI has given its explicit written consent.
- b) Unless stated otherwise in the relevant price list, Order Confirmation, Product Specification or offer, and with due observance of the provisions set out in the following sentence of this article, prices are inclusive of the costs of delivery, carriage paid, to the address within The Netherlands stated in the Agreement, and inclusive of goods in transit insurance but exclusive of VAT.
- c) Taxes, costs of necessary permits and permissions and any other costs relating to the delivery to or removal from the Customer's premises will be payable by the Customer.
- d) If the Customer fails to pay an amount due or fails to pay such amount within the stipulated period, INISI will be entitled to suspend its obligations under the Agreement as well as any guarantee, service and support obligations, without the Customer and/or any third parties being able to hold INISI liable for the adverse consequences.
- e) If payments are not made within the stipulated period, INISI will be entitled, without notice of default, to charge the Customer interest from the end of this period, equal to the current statutory default interest, plus the extrajudicial

- collection costs, set at 15% of the total amount due, plus any legal costs.
- f) If any delivery, installation or completion of any Service is delayed due to a circumstance attributable to the Customer, all amounts agreed in this respect will be paid by the Customer within eight days following the date on which INISI informs the Customer that it is ready for the delivery, installation or completion. Any costs reasonably incurred by INISI as a result of such delay are payable by the Customer.
- g) If it has been agreed that prices or costs are to be met outside of the Client's country of residence, INISI reserves the right, in the event of restrictions on the transfer of the contractual currency, from government or otherwise, to require payment in the currency of the country of residence of INISI or in any other freely convertible currency, considering a notice period of one month.

#### B2.2 Cancellation by the Customer

The Customer is entitled to cancel the Agreement or terminate the Agreement early (hereinafter jointly referred to as: 'cancellation'), provided it pays the following cancellation charges to INISI:

- a) In the event of Equipment or Software not yet delivered or in case of Service not yet initiated by INISI, an amount equal to 30% of the total amount that INISI would have received if such cancellation had not occurred, but reduced by 1% for each full month between cancellation date and the date that was specified for the delivery of the Equipment or the Software or the initiation of the Service. The indemnity will never be less than 25% of the total amount. In the event that INISI keeps Equipment and/or Software in stock for the Customer, or has ordered Equipment and/or Software for the Customer from a third party, which order cannot be cancelled: the sale value of the Equipment and/or Software concerned at the time of cancellation.
- b) The entire amount for the Equipment and/or Software and/or Services already initiated, plus a sum equal to 75% of the amount INISI would have received for the delivery of the remaining part of the Equipment and/or Software and/or Services had the cancellation not taken place.

Until INISI has received the cancellation charges, it may, at its discretion, consider the Agreement as not having been cancelled, arrange for deliveries, continue to provide the Service and charge the Customer for the costs involved.

Receipt of the cancellation charges by INISI does not affect INISI's right to institute proceedings for loss or damage suffered as a result of the cancellation by the Customer.

## **B3 Retention of ownership and rights**

### **B3.1 Ownership**

All Products delivered to the Customer remain the property of INISI until all amounts due by the Customer for Products delivered or to be delivered under the Agreement, including any interest and collection costs due, have been fully paid to INISI.

### **B3.2 Rights**

Rights shall be granted to Customer or, as the case may be, transferred to Customer unless (resolutive condition) that Customer has not paid the agreed charges in time and in full.

## **B4 Specifications**

### **B4.1 Replacement and modification**

INISI is entitled to deliver a replacement or modified version of the Equipment, Software or Service instead of the Equipment, Software or Service ordered by the Customer, provided their operation and capacity are not essentially different from the specifications of those originally ordered.

### **B4.2 Data transmission**

If transmission speeds relating to the Equipment are mentioned, they are always subject to the restrictions that may be imposed by a competent government agency or other institution on the use of telecommunications lines or regarding the availability of telecommunications equipment and lines.

## **B5 Care for and use of Equipment and Software**

The Customer will use the Equipment and the Software in the manner described in the Product Specification. The Customer will ensure that the Equipment and Software, including any routine maintenance to be carried out by the Customer and extensions or modifications carried out by the Customer with INISI's permission, are used correctly in accordance with the instructions reasonably given or to be given by INISI. The Customer will furthermore arrange for back-up provisions, restart procedures, accuracy checks, data security and any other necessary procedures, etc. that may be expected from a regular user.

## **Limitation of liability**

**B6.1** INISI's liability due to attributable shortcoming in the fulfilment of the Agreement, per event or series of related events, is limited to compensation for direct loss, not exceeding an amount equivalent to the price (excluding VAT) stipulated in that Agreement. In case of a continuing performance contract with a term exceeding one year, the price stipulated in the

Agreement will be fixed at the total amount of the compensation (excluding VAT) demanded for one year. Any liability on the part of INISI pursuant to this article will never exceed an amount of € 15,000.

'Direct loss' exclusively means:

- a) the reasonable costs that would be incurred by Customer to ensure that INISI's performance complies with the Agreement. However, such loss shall not be reimbursed if Customer has terminated the Agreement;
- b) the costs incurred by Customer in unavoidably keeping Equipment, Software and/or Services and any related facilities operational for a longer period of time, because INISI failed to deliver on a delivery date by which it was bound, minus any savings resulting from the late delivery;
- c) reasonable costs incurred in determining the cause and extent of the loss, in so far as the findings relate to direct loss.
- d) reasonable costs incurred to prevent or reduce the damage or loss, in so far as the Customer proves that these costs have resulted in a reduction of direct loss within the meaning of these General Terms and Conditions.

**B6.2** The total liability of INISI for damage due to death or personal injury or material property damage will in no case exceed € 25,000,- per event or series of events.

**B6.3** INISI accepts no responsibility or liability for any Products, Software or Services, etc., not delivered by it, nor for any modifications to any Product/Equipment carried out by third parties. The Customer indemnifies INISI against any claims of third parties on account of product liability resulting from a defect in a product or system which was delivered by the Customer to a third party and which included Equipment, Software and/or other materials delivered by INISI.

**B6.4** INISI shall in no event be liable for consequential loss or any other indirect loss, including loss caused by loss of operational time, loss of data, loss of profit, loss of savings and loss caused by stagnation.

**B6.5** Except for the cases specified in this Article, INISI shall be under no liability for damages whatsoever, regardless of the grounds on which a claim for damages may be based. The maximum amount specified in Article B6.1 will lapse if and insofar as the loss is a result of wilfulness or gross negligence on the part of INISI.

**B6.6** There shall be no breach of the Agreement by INISI and no liability towards Customer on the grounds of breach by INISI in the fulfilment of its obligations under the Agreement insofar as such breach is a consequence of non-fulfilment by Customer of its obligations under the Agreement.

## **B7 Intellectual property rights**

### **B7.1 INISI's intellectual property rights**

All intellectual property rights, in particular copyrights that can or will be exercised in respect of the Products and patents regardless of the place and time, shall vest in INISI or in INISI's licensors. In the event of modification or improvement of the Products, the intellectual property rights in respect of the modified or improved Products shall vest in INISI or in INISI's licensors.

### **B7.2 User licence**

With due observance of the provisions in this respect elsewhere in these Terms, INISI grants Customer, under INISI's copyright, patent and other intellectual property rights in The Netherlands, a non-exclusive, non-transferable licence to use the Equipment, Software and Service in the form and for the purpose for which it was provided.

### **B7.3 Modifications**

In the event of modification without the explicit permission of INISI made to the Equipment or part thereof (including but not limited to providing access to installed latent capacity without the explicit permission of INISI) or to the Software, INISI shall have the right to terminate forthwith the licence for the relevant Software used on such Equipment, or for such modified Software, and any continued use by Customer of such Software shall not be allowed.

An unauthorised modification made by or on behalf of Customer that results in the increased capacity of the Equipment or part thereof shall impose upon Customer an obligation to pay the licence fees for all Software used on such Equipment, in accordance with the prevailing fees for use of such Software with Equipment with such increased capacity.

### **B7.4 Confidential information**

The Parties agree not to use or to provide third parties with confidential information, unless such terms are inevitable in respect of compliance with these Terms. INISI Software is considered by INISI as confidential information of INISI and recognized by the Client as such.

### **B7.5 Instructions**

The Customer is obliged to comply with all regulations INISI has issued or will issue with regard to the use of trademarks, copyright and other proprietary rights of INISI and/or its licensors.

In particular, but without limitation of the foregoing provisions, Customer shall provide INISI at its first

request with information concerning the location and identification of all Equipment on which certain programs have been installed to allow INISI to verify licence fees payable by INISI to third parties.

### **B7.6 Diagnostic material**

If it considers such action necessary, INISI may provide Customer with diagnostic materials that may consist of and/or form part of diagnostic and test routines, programs, manuals and documentation. Customer shall not require a licence for its use of such diagnostic materials, on the understanding that Customer shall keep the facilities for INISI as an aid for the provision of Service by INISI. Customer shall use the diagnostic materials solely in the way and for the purpose designated by INISI. Customer will treat the diagnostic material and the results obtained by use as confidential and undertake not to disclose this to third parties. At reasonable times Customer shall allow INISI to check the use of the diagnostic materials and shall allow INISI to remove the diagnostic materials if INISI considers such action necessary. INISI shall have the right to take back the diagnostic materials at any time and in any way immediately after the end of an INISI Service for which they were used.

## **B8 Indemnification**

**B8.1** If legal proceedings are brought against the Customer based on a claim that the Products or any part of the Products infringes a patent or copyright valid in The Netherlands or a model legally registered in The Netherlands, INISI shall pay all the costs and damages that Customer may ultimately be ordered to pay in such legal proceedings that relate to the aforesaid claim, provided that:

- a) the Customer informs INISI as soon as possible after a third party has made a claim against it, whether in or out of court; and
- b) the Customer conducts the defence and settles the arrangement relating to such claim with INISI and in accordance with INISI's instructions; and
- c) Customer provides INISI in such a defence with all the cooperation that INISI may reasonably require; and
- d) the Customer has obtained INISI's written permission prior to incurring any costs as referred to in this article.

**B8.2** With the exception of the above provisions, INISI accepts no liability whatsoever towards the Customer and/or third parties engaged by the Customer with regard to patents, copyright, registered models or other intellectual property rights and, without limiting the generality of the foregoing, in particular accepts no liability towards the Customer for any infringements resulting from the circumstance that the Customer has used the

Products in a manner other than in accordance with the General Terms and Conditions, or from the use of the Products in combination with products not delivered by INISI, such as Equipment, Software or Services.

**B8.3** In the event of any claim relating to an infringement of copyright or any other intellectual property right with regard to the Products/Equipment, Software and/or Service, or an impending infringement in the opinion of INISI, INISI will be entitled, at its discretion and at its own expense, to obtain for the Customer the right to continuing use, to modify or replace the infringing Product in order to avoid infringement, or to agree to the return of such a Product while repaying the price paid less the depreciation referred to below in this article.

The depreciation of a Product that has been returned by virtue of the provisions of the preceding sentence will be 3% of the price paid for the Product by the Customer for each month that has passed between the original date of delivery to the Customer and the date of return.

## **B9 Suspension and termination**

### **B9.1**

If the Customer fails to fulfil any obligation under this Agreement and has not recovered that failure within fourteen days after receipt of a written notice of termination by INISI, INISI may at its discretion terminate the Agreement with immediate effect or suspend its obligations under the Agreement or any other Agreement with the Client until the Client has fulfilled its obligation. If INISI suspends its obligations under the previous sentence, it does not provide the Client with any ground for any claim against INISI.

**B9.2** If either Party is declared bankrupt or liquidated (other than solely for merger or restructuring) or if a receiver is appointed for any part of its business, the other Party may consider any of these circumstances as grounds for immediate dissolution of the relevant and/or any other Agreement, without prior notice.

**B9.3** Termination of the Agreement will not discharge the parties from their commitment to fulfil any obligations arisen prior to the termination, including the making of payments of which the due date has passed, or from their commitment to pay any amount due and payable as a result of the termination.

**B9.4** In case of termination, for whatever reason, the Customer will return to INISI all of INISI's property to which the Customer is no longer entitled under the Agreement. If the situation arises, the Customer will allow INISI to access its premises in order to repossess and remove the property referred to above.

## **B10 Resale and export**

**B10.1** Only if an agreement provides for resale and/or export of any Product by Customer, Customer is entitled to resell or export the Products in question mentioned in the Agreement. The Customer itself must ensure that the necessary permission and/or permits have been obtained from the competent bodies in the Netherlands and/or any other country, including, but not limited to, the Export Administration Regulations of the United States, that may apply to or influence such resale or export.

**B10.2** Equipment or Software may never be exported or sold if the Customer has reason to suspect that such Equipment or Software is intended to be used for purposes relating to nuclear, chemical or biological weapons or rocket technology.

## **B11 Employees**

**B11.1** The Customer and INISI agree that during the time that INISI delivers any Service to the Customer and during a period of 36 months thereafter, Customer will refrain from recruiting and/or hiring employees of INISI who are or have been involved, directly or indirectly, in the delivery of the service, and they will not hire these employees through third parties.

In case of violation of this stipulation by the Customer, the Customer will owe INISI an immediately payable penalty of € 50,000, without prejudice to INISI's right to claim compensation.

**B11.2** In the event that INISI employees need to carry out work on the Customer's premises, the Customer will provide workspace that meets all the statutory requirements.

## **B12 General**

### **B12.1 Transfer of rights**

The parties will not have the right to transfer the rights and obligations arising from the Agreement to any third party without the other party's written permission. This permission will not be withheld without reasonable grounds; the party granting permission has the right, however, to attach conditions to this permission.

### **B12.2 Notifications**

Unless stated otherwise in the Agreement, all required notifications must be made in writing (by email, post or fax) to the contact person referred to in this article at the address stated in the Agreement.

### **B12.3 Deviations**

Deviations from the present Terms are deemed not to apply and a discharge for accountable shortcomings or failures shall not be deemed to have been granted, unless a consent or discharge has been given in writing and signed by the Party giving such consent or discharge.

### **B12.4 Force Majeure**

Neither party can be held liable for any non-performance or delay in the compliance with its obligations under the Agreement due to circumstances beyond its reasonable control, including, but not limited to, not providing the necessary data, information or specifications in time (if and to the extent that the other party has undertaken to provide such data, information or specifications); changes to such provided data, information or specifications; bad weather conditions; fire; explosion; flood; strike; selective strikes; go-slow or other industrial disputes; accidents; riots or disturbances of public order; government acts and regulations; the impossibility of obtaining the necessary licence or permission; delays caused by suppliers or shortage of materials.

### **B12.7 Applicable law and disputes**

All agreements between INISI and Customer to which these terms apply are governed by Dutch law. Any disputes between the parties arising from the Agreement will be submitted to the competent court in the district of Rotterdam, even if the Customer is located abroad, unless INISI prefers the competent court at the Customer's location, in which case that court also has jurisdiction.

## **C. Conditions of sale regarding Equipment**

If INISI sells Equipment to the Customer, the provisions of this Article, 'Conditions of sale regarding Equipment', will apply in addition to the General Conditions of these General Terms and Conditions.

### **C1 Purchase and sale**

**C1.1** Customer shall purchase from INISI and INISI shall sell to Customer the Equipment specified in the Order Confirmation in return for payment by Customer of the prices and charges stated therein and subject to the provisions made in these conditions.

**C1.2** The Equipment is described in further detail in the relevant Product specification(s). No other specification, description, publication or written or verbal undertaking forms part of the Agreement, or is deemed to be referred to in the Agreement, unless parties have explicitly agreed otherwise in writing. If the Equipment contains Software, the Conditions of sale regarding Software set out below under D will also apply to such Software and those conditions shall prevail in respect of the Software in the event of irreconcilability with the Conditions of Sale for Equipment.

### **C2 Costs and payments**

The prices and costs will be paid as set out in the Order Confirmation and in accordance with the aforementioned General Conditions.

### **C3 Delivery and installation**

#### **C3.1 Delivery and risk**

The delivery to the Customer will be made to the address specified in the Order confirmation. The risk of loss of and damage to the Equipment will pass to the Customer on delivery.

#### **C3.2 Delivery and installation dates**

INISI will endeavour to deliver and/or install the Equipment on or around the agreed date but will not be liable for any delays in delivery or installation.

#### **C3.3 Arrangements to be made by the Customer**

If required, INISI will provide the Customer with the information necessary to enable the Customer to make the necessary arrangements in his/her premises for the delivery and/or installation of the Equipment.

The Customer will, at its expense and prior to the installation of the Equipment, arrange for the installation of all necessary connection points and cabling, carry out refurbishment work, if necessary, and obtain any required permits for the

installation of the Equipment and its connection to the telecommunications system.

### **C3.4 Installation**

Unless otherwise agreed, INISI shall install the Equipment at the premises of Customer in return for payment by Customer of the prevailing installation charges of INISI, as specified in the Order Confirmation. Unless agreed otherwise, the installation will be carried out during INISI's normal working hours, which are from 8.30 a.m. to 5 p.m. on Monday to Friday, public holidays excepted. The date on which the Equipment has satisfactorily run the INISI standard test will be considered to be the installation date.

If the installation is not carried out by INISI, the Equipment will be deemed to be installed on the date of delivery of the Equipment to the Customer.

### **C4 Equipment guarantee**

**C4.1** INISI guarantees that the Equipment complies in all material respects with the provisions of the Product Specification.

**C4.2** Unless otherwise specified in the relevant Product Specification or in the Order Confirmation, INISI guarantees that if any defect in the material or manufacturing defect of any part of the Equipment is discovered within the warranty period of the Equipment, INISI will take care of such defect by repairing, replacing or adjusting the Equipment or part thereof, at its discretion, provided that no modifications have been made to the Equipment other than by INISI and that the Equipment has been maintained and operated in accordance with the supplier's regulations.

For the purposes of this article the term 'part of the Equipment' will not include any Software or firmware elements contained in the Equipment (other than physical components to which these elements are inextricably linked). Such Software and firmware elements will be subject to the guarantee provisions as laid down in the Conditions of sale regarding Software set out below.

**C4.3** Any guarantees relating to non-INISI Equipment are exclusively determined by the guarantee provisions of INISI's supplier. In so far as these guarantee provisions are not included in the delivery of the Equipment, they will be provided by INISI immediately on demand.

**C4.4** INISI does not guarantee an error-free and uninterrupted operation of the Equipment.

**C4.5** The above guarantees replace all other explicit or implicit guarantees, including the guarantee that the Equipment is suitable for a certain purpose.



**C4.6** The guarantee period for any upgrades, modifications or replacement part for the Equipment will commence on the date of delivery of the Equipment concerned.

**C4.7** Unless the Customer and INISI have agreed that the work under guarantee will be carried out at the Customer's location, this work will be carried out at an address to be specified by INISI. The Equipment must be returned by the Customer, at the Customer's risk and expense, in appropriate packaging and with a detailed description of the alleged defect. INISI will return the Equipment to the Customer at the expense and risk of the Customer. Any parts replaced during repair work will become INISI's property.

**C4.8** If the Customer concluded a full maintenance contract when purchasing the Equipment, which enters into force on the date of installation, the repair of defects as described above under C4.2 that occurred during the guarantee period will be carried out in accordance with the provisions of the Service Agreement concluded, without any additional costs.

**C4.9** INISI's liability for defects in the Equipment delivered is limited to the compliance with the guarantee obligations set out in this article (C4).

## **D. Software License Terms**

**The Terms set out in this chapter "Software License Terms" are applicable, in addition to the General Terms and Conditions of these Standard Terms, if INISI sells or provides Software Licenses to the Customer.**

### **D1 Granting of licence**

**D1.1** Subject to payment by the Customer of any applicable licence fees as set out in the Order Confirmation and with due observance of the provisions in these Terms, INISI grants the Customer, exclusively for its own use, a non-exclusive, non-transferable licence to use the Software specified in the Order Confirmation for the purposes and number of users as specified in the Order Confirmation and/or in the relevant Product Specification, with due observance of any restrictions stated. The only Equipment to be used for the Software is the Equipment as specified by INISI. Any other use is not permitted, unless with the prior written consent of INISI. INISI may attach further conditions to such consent.

**D1.2** The Software is described in further detail in the relevant Product specification. Unless explicitly agreed otherwise in writing, no other specification, description, publication, promise – whether made in writing or orally – forms part of the Agreement or is deemed to be referred to in the Agreement.

### **D2 Delivery and installation of Software**

**D2.1** INISI will deliver the Software to the Customer on the agreed data carrier in terms of type and format and install the Software at the Customer's premises in so far as installation by INISI has been agreed in writing. INISI will endeavour to bring about the delivery of the Software and any applicable documentation at the agreed time, but accepts no liability for any delay in the delivery.

**D2.2** The Customer is allowed to make a backup copy, if this is necessary for the purposed use of the Software. Client will not produce any other copies of the Software than is permitted by him in accordance with the provisions of this article. On all copies of the Software, the Client will accept the INISI copyright and any other proprietary notices.

**D2.3** If an acceptance test of the installation of the Software has been agreed by the parties, the provisions of Article F3 will apply by analogy.

**D2.4** If no acceptance test has been agreed by the parties, the Customer will accept the Software in the condition it is in at the time of delivery, without prejudice to INISI's obligations arising from the guarantee provisions under D5.

### **D3 Licence fee**

**D3.1** The Software licence fee as set out in the Order Confirmation will be payable by the Customer from the commencement date as referred to in Article D9.1 and must be paid in advance.

**D3.2** INISI shall have the right to increase the periodic licence fees from time to time. If INISI wishes to exercise this right, it shall inform Customer by notification in writing of the increase in good time before the starting date of the new licence fee.

### **D4 Documentation**

With the Software INISI will provide a copy of the standard user documentation. This documentation serves as a support tool for the use of the Software and may not be copied by the Customer without INISI's written consent.

### **D5 Software guarantee**

**D5.1** INISI guarantees that the Software complies in all material respects with the provisions of the Product Specifications.

**D5.2** Unless agreed otherwise in writing, INISI guarantees, if within three months of delivery or installation of the Software it becomes evident that the Software contains a reproducible intrinsic defect and the Software has been used with the Designated Equipment and in the correct manner, unless stated otherwise, that it will do everything it can reasonably be required to do in order to resolve the defect by means of error correction or preventive action. INISI does not guarantee an uninterrupted and error-free operation of the Software, nor does it guarantee that all defects can be resolved by means of error correction or preventive action. Restoration of corrupted or lost data is not included in the guarantee.

If the Software is modified by or on behalf of the Customer without INISI's written permission, INISI's guarantee obligation will cease to apply.

**D5.3** The above guarantees replace all other explicit or implicit guarantees, including the guarantee that the Software is suitable for a certain purpose.

**D5.4** INISI's liability for defects in the Software is limited to the compliance with the guarantee obligations set out in this article (D5).

### **D6 Program support**

**D6.1** In addition to the provisions in this respect included in Article D5, INISI will provide service for the Software in so far as the Customer has concluded a service contract to that effect and provided that the Customer accepts and implements all maintenance releases or new

releases as instructed by INISI, unless otherwise agreed in writing.

**D6.2** In the event that the Customer does not enter into a service contract with INISI as referred to in Article D6.1 or if such contract is terminated, INISI will provide the Customer, at its written request, with program support, in so far as INISI will have the required knowledge at the time, at the applicable rates based on the number of hours of labour and materials used.

**D6.3** Should a modification or addition to the Software carried out by INISI result in an increase of INISI's support obligation, INISI will be entitled to terminate a previously agreed Service Contract as specified in E5.2, while offering another form of service provision at the same time.

### **D7 Third-party software**

Certain Software licensed by INISI may be licensed to INISI by third parties. Such Software is either subject to the licence conditions delivered with the Software or to the conditions of a third-party end user licence. The conditions referred to in the previous sentence will take precedence over the INISI conditions and will apply to the use of the Software by the Customer, including the guarantee provisions and limitations of liability included in these conditions.

### **D8 Confidentiality**

The Customer guarantees that the Software will only be used in accordance with the licence conditions and that they will not provide any information relating to the Software to third parties or make the Software or any part thereof available to third parties, unless this is done under the assurance of confidentiality and exclusively for the use with the Designated Equipment and after INISI's prior written consent. In the event of unauthorized use of the Software by the Customer, the Customer will owe INISI, without prejudice to any other rights and remedies available to INISI, an immediately payable amount equal to the fee such unauthorized user would have owed INISI in the case of authorized use.

### **D9 Commencement date; termination**

**D9.1** The date on which the parties have agreed on this, failing which, the date of delivery, will be considered to be the commencement date of each Software Licence granted.

**D9.2** Customer may terminate a Software licence for the Software subject to notice of at least three months. Termination shall be made known by registered letter. Termination shall not impose on INISI any obligation to refund any licence fees paid in advance.

**D9.3** Only if the Customer does not comply with one or more licence conditions may INISI

terminate the licence relating to the Software. Termination of a licence due to an attributable shortcoming on the part of the Customer will take place without prejudice to all of INISI's rights to compensation as well as any other rights and remedies available to INISI.

**D9.4** Within five days of the termination of a Software Licence the Customer will destroy or return the Software concerned, including any copies, documentation and parts, modified and combined software included, and subsequently notify INISI in writing that these steps have been taken. Termination will not discharge the Customer from its commitment to fulfil any obligations arisen prior to the date of termination.

### **D10 Reporting on the use of the licence**

In certain cases, at INISI's request, the Customer will confirm in writing that the use of the Software is in accordance with the conditions of the Software Licence. After having received a request by INISI to that effect in good time, the Customer will grant INISI permission to perform an audit, to which end the Customer will inform INISI of the location(s) where the Software is used.

## **E. Terms of Service**

**The Terms set out in this chapter "Terms of Service" are applicable, in addition to the General Terms and Conditions of these Standard Terms, if INISI sells or provides Services to the Customer.**

### **E1 Service**

**E1.1** INISI shall provide Service to Customer and Customer shall accept such Service in return for payment by Customer of the Service charges stated in the Order Confirmation.

**E1.2** The Service is specified in the relevant Product Specification(s). Unless explicitly agreed otherwise in writing, no other specification, description, publication, promise – whether made in writing or orally – forms part of the Agreement or is deemed to be referred to in the Agreement.

**E1.3** The Service does not include the performance of the work required for the correction of any form of design flaws.

**E1.4** Unless agreed otherwise between the parties in writing, the service will be provided by INISI during INISI's normal working hours, which are from 8.30 a.m. to 5 p.m. on Monday to Friday, public holidays excepted. Service provided outside of normal working hours will be charged in accordance with the special rates applied by INISI at that time.

### **E2 Scope of the Service**

**E2.1** Unless agreed otherwise in writing with INISI, the Service does not include repairs, replacements, modifications, error corrections or more working hours than normally required as a result of:

- a) incorrect installation, unless the installation was carried out by INISI;
- b) non-compliance by the Customer with the regulations specified by INISI relating to the use, operation and location;
- c) improper and/or careless use;
- d) misuse; negligence; accidents;
- e) modifications, changes or additions carried out by parties other than INISI;
- f) the use of Equipment, Software, consumables or accessories not delivered by INISI and in the opinion of INISI not suitable for use with the Products concerned;
- g) a lightning strike or other external contingencies;
- h) failure of electricity supply;
- i) telecommunications network failures;
- j) Service not provided by INISI or third parties on behalf of INISI.

**E2.2** INISI will supply the replacement parts required within the scope of the Service; these may be new or reconditioned parts or

reassembled parts that are functionally equivalent to new parts. Unless otherwise agreed, any parts replaced during repair work will become INISI's property.

**E2.3** If replacement or repair is normally carried out by removal of the relevant Equipment or part thereof from the Customer's premises by INISI and the Customer refuses this, INISI will be entitled to pass on any additional costs to the Customer and INISI will not accept any liability for any resulting delays or for remaining in default with regard to the service provision.

**E2.4** In the event that the Order Confirmation states that 'return for repair' or 'carry in' are applicable to Service concerning the Equipment, the Service will be provided in INISI's workshops and the Customer will, at its expense, deliver the Equipment or have it delivered, properly packaged and with a description of the alleged defect, at INISI's workshop. INISI will return the Equipment at the expense of the Customer. The risk of loss of and damage to the Equipment during transport will be borne by the Customer.

### **E3 Specialist service**

**E3.1** If the Service comprises implementation, training, support, advice and other specialist services:

- a) INISI will appoint employees with the required expertise and experience to provide such Service;
- b) the Customer will assign employees with expert knowledge of the matter and make any required resources available to INISI together with any information and facilities INISI may reasonably require to support its Service provision;
- c) the Customer will perform the necessary preparations and duties as described in the Order Confirmation or the relevant Product Specification(s);
- d) INISI will be entitled to charge extra costs in case of expansion or modification of or delay in the service provision other than as a result of negligence on the part of INISI or non-compliance by INISI with any obligation arising from the Agreement;
- e) any extra costs incurred by INISI employees, including, but not limited to, travel, accommodation and meal expenses, will be charged to the Customer as additional costs;
- f) INISI will be deemed to have provided the Service concerned as soon as the criteria for completion as stated in the Order Confirmation or, if applicable, in the Product Specification(s) have been met or, if the Service is provided on the basis of man hours spent and/or materials delivered, the agreed number of man hours have been spent and/or materials delivered.

**E3.2** A licence for the use of any program or material delivered by INISI based on the Service in question in accordance with the provisions above in Article D1 will be deemed to have been granted to the Customer as soon as INISI has received full payment of the applicable price or cost as specified in the Order Confirmation and in these Terms and Conditions. The Customer is not entitled to grant any sublicense or to make available any such program or material to any third party for use or maintenance purposes or any other purposes.

The Customer is not granted a license with regard to diagnostic material. On diagnostic material, the above General Terms and Conditions apply.

#### **E4 Performance**

In the provision of the Service INISI will exercise the care and skill reasonably to be expected of it.

#### **E5 Commencement and termination**

**E5.1** The commencement date of the Service relating to the Equipment is the date of installation or, in the case of previously installed Equipment, the commencement date stated in the Order Confirmation. If the parties have agreed that the Service will be provided for an indefinite period of time, either party will have the right to terminate the service provision with due observance of a notice period of at least three (3) months.

If a minimum term or a fixed term of Service provision has been agreed, the service provision may be terminated taking effect from the end of such minimum term or fixed term or at any time thereafter, also with due observance of a notice period of at least three (3) months.

**E5.2** The commencement date of the Service relating to the Software is the date of delivery or, if applicable, the date of acceptance or, in the case of previously delivered Software, the commencement date stated in the Order Confirmation. The Service will be provided for an indefinite period of time. The service provision may be terminated by either party exclusively taking effect from the end of any contract year with due observance of a notice period of at least three (3) months.

**E5.3** Notice of any termination must be given in writing. This does not affect the right to terminate granted to the parties elsewhere in the General Terms and Conditions.

#### **E6 Service costs**

**E6.1** INISI is entitled to adjust the fee for the provision of the Services from time to time based on the price index for Commercial Services ('Commerciële Dienstverlening, DPI'), as published by Centraal Bureau voor de Statistiek (CBS).

If INISI wishes to exercise this right, it must inform the Customer of such increase in writing and in good time before the commencement date of the increased price.

**E6.2** If INISI carries out maintenance to the Equipment at a time more than three years after the installation date of the Equipment, INISI reserves the right to increase the relevant service costs as from the time referred to above.

**E6.3** If INISI carries out maintenance to Equipment of which the useful life has expired in INISI's reasonable opinion, the costs relating to this maintenance will be payable by the Customer, provided that INISI informs the Customer of this in advance and the Customer does not object to these charges. The useful life will in any case be deemed to have expired if as a result of the age of the Equipment or parts thereof the costs incurred by INISI in all reasonableness no longer justify the provision of maintenance. If INISI proves that the useful life of the Equipment has expired, either party will be entitled to terminate the Agreement early, with due observance of a notice period of one (1) month.

**E6.4** The costs of parts, components, media, consumables and other deliveries and any travel and accommodation expenses must be paid separately by the Customer, if and to the extent that they have not been explicitly included in the Service costs.

#### **E7 Customer's obligations**

In the context of the Services to be provided by INISI under the Agreement, the Customer will:

- a) grant INISI full and free access to all relevant information, Equipment and Software;
- b) ensure that INISI employees are assisted by expert employees of the Customer who are familiar with the Customer's Products;
- c) provide INISI with suitable parking place, workspace and facilities, free of charge, and with safe storage space for the service equipment, spare parts and manuals;
- d) keep the most recent versions of the Software as used by the Customer available for INISI;
- e) agree to and/or take care of temporary disconnection of any equipment and/or software not delivered by INISI and/or not maintained by INISI, should this be necessary in the reasonable opinion of INISI to make a diagnosis and to detect any defects;
- f) if requested by INISI, set out clearly how the Equipment and Software are used and provide INISI with this information when so requested by it;
- g) at its own expense provide INISI with the telecommunications facilities and other facilities which INISI may reasonably require for diagnostic and test purposes.

## E8 Privacy and Security

- a) Personal data to be processed by INISI in the execution of the Service, are subject to the Data Protection Act (*Wet bescherming persoonsgegevens, Wbp*) or General Data Protection Regulation (GDPR), which in accordance with the terminology of that law, the Customer is regarded as the "controller" and INISI as the "processor".
- b) If and to the extent that, in the execution of the Service, personal data is processed, the Processor Agreement (see Article E9) also applies, unless the Customer wishes to conclude a specific (Sub) Processor Agreement, in which case the Customer shall ensure that a (Sub) Processor Agreement is concluded at or immediately after concluding the Agreement. This (Sub) Processor Agreement will be attached to the Agreement as Annex.
- c) INISI complies with the requirements of ISO 27001 and NEN7510. In order to continue to meet these requirements, it is required that the Customer performs a risk assessment on (the processing of) personal data. The requirements and results that emerge from this risk analysis should be applied under the (Sub) Processor Agreement. In this way INISI can ensure an appropriate level of security. If, following the risk analysis, new or additional requirements emerge, they should again be conveyed to INISI as part of the (Sub) Processing Agreement.
- d) The Customer guarantees that it will implement the required risk analysis and the resulting requirements and results are imposed on INISI by means of a (sub)processing contract. The requirements referred to in this article shall be imposed only to the extent that can reasonably be expected from INISI, and can be regarded as appropriate technical and organizational measures within the context of the Data Protection Act (*Wet bescherming persoonsgegevens, Wbp*) or General Data Protection Regulation (GDPR).

The Customer guarantees that the content, the use of and instruction for the processing of personal data is not unlawful and does not infringe any rights of third parties, and that there is compliance with all disclosure requirements and the authorization requirements set out in the Data Protection Act (*Wet bescherming persoonsgegevens, Wbp*), the General Data Protection Regulation (GDPR), the Telecommunications Act and other laws and regulations in this regard. The Customer indemnifies INISI against all claims and fully compensates INISI with respect to claims referring to this.

## E9 Processor Agreement

If, and in so far as INISI is responsible for the processing of its personal data on behalf of the Customer, the following Processor Agreement is part of the Agreement. INISI acts as "Processor" or "Sub Processor" and the Customer as "Responsible".

- a) This Processor Agreement will not enter into force earlier than the date of entry into force of the Agreement and will be in force during the term of the Agreement. If the Agreement ends, the Processor Agreement also terminates.
- b) The information entrusted to INISI is the Customer's ownership and is only processed and stored in the manner and location indicated by the Customer and for the sole purpose specified by the Customer.
- c) INISI, on the designation of the Customer, carries an appropriate level of security if the data is processed on systems administered by INISI; The costs for the specific security measures that are taken for the Customer shall be borne by the Customer.
- d) INISI employees adhere to the code of conduct as stipulated in the INISI integrity declaration, which includes a confidentiality statement.
- e) INISI shall in no case transfer personal data of the Customer to third parties unless the Customer explicitly instructs INISI or when INISI is or becomes legally obliged to do so.
- f) If and as soon as INISI is aware that the personal data processed by INISI may inadvertently fall into the hands of unauthorized third parties ("data breach"), INISI shall report this to the Customer as soon as possible. The Customer must then take appropriate actions, including reporting the data breach to the relevant authorities if required.

## **F. Development of Customized Software**

**The terms set out in this chapter "Development of customized software", are applicable in addition to the General Terms and Conditions of these Standard Terms, if INISI develops Customized Software for the Customer.**

### **F1 Development**

The Software to be developed and the manner in which it will be developed will be specified in the Customized Software Order Confirmation. INISI will develop the Customized Software with due care on the basis of the data provided by the Customer; the Customer will vouch for the accuracy, completeness and consistency of this data.

### **F2 Prices and costs**

**F2.1** With respect to the development of the Customized Software INISI distinguishes the following types of prices:

- a) Fixed prices: these are prices that are not subject to change for the provision of the services as specified in the Order Confirmation, with the exception of the provisions of the General Conditions, and that are independent of the costs actually incurred by INISI.
- b) Indicated prices: these are prices that may be reviewed as a result of the costs actually to be incurred by INISI.
- c) Subsequent calculation: the Customer will pay INISI for all man hours and computer time spent and materials delivered.

**F2.2** The prices referred to under F2.1b and F2.1c are the current prices on the dates specified. INISI is entitled to increase the prices from time to time, of which the Customer will be notified before the commencement date of the adjusted prices.

**F2.3** Unless stated otherwise in the Order Confirmation, the prices apply to the development of the Customized Software at the Customer's office, at one of INISI's offices or at another agreed place on working days during INISI's normal working hours. The standard prices include travel time up to a maximum of 1 hour a day and a kilometre allowance up to a maximum of 80 km a day, based on full working days, without any interim moves during normal working hours. If, at the request of the Customer, work is to be performed at the Customer's office for a short period of time, the working hours and the travel time, with a minimum of four hours a day and a maximum of a full working day and with due observance of the provisions relating to travel time and travel distance, will be charged at the then current hourly rates.

If the parties agree that work is to be performed outside of INISI's normal working hours, the Customer will owe INISI a fee in accordance with the relevant INISI rates applicable at that time.

**F2.4** Additional travel time and travel expenses as well as any accommodation expenses reasonably incurred by INISI for the performance of the Agreement will be paid by the Customer to INISI in accordance with the then current hourly rates of INISI, in so far as applicable.

**F2.5** Unless agreed otherwise by the parties, the prices do not include any costs for data carriers, printing paper and other materials, or the costs for computer time, etc.

**F2.6** The Customer will owe the agreed price(s) as stated in the provisions of Article B2. If no payment dates are stated, INISI will charge the Customer at the end of each month such part of the price(s) as relevant to the services provided in that month.

### **F3 Acceptance**

**F3.1** Each specification or other document produced by INISI as part of the Service that requires the Customer's approval, will be approved by the Customer in writing or returned with the Customer's comments within fourteen days of receipt. Written detailed questions that require an answer in connection with the progress of the work will be answered by the Customer in writing within three working days.

If the Customer fails to comply with this requirement, the scheduled delivery date(s) for any part of the Customized Software will be postponed for a period at least equal to the duration of the delay or, in case of final acceptance, the Customized Software will be deemed to have been accepted in its entirety.

**F3.2** The delivery of the Software will immediately be followed by an acceptance test, to be designed and carried out in accordance with a project plan to be agreed by the parties.

The duration of the acceptance period is specified in a project plan. During the acceptance period, the Customer presents a detailed report (test report) describing the tests and related results. This report specifies the incorrectly functioning parts, refers to the relevant parts of the specification in question and generally contains sufficient details to correct the defects. Assistance will be granted by INISI at Customer's request.

**F3.3** The acceptance test consists of conducting a collection of test cases compiled by the Customer and made available to INISI at least four weeks before the Software is submitted for acceptance and afterwards remained substantively unchanged, with the exception of correction of defects found.

**F3.4** If the defects found in the acceptance test do not prevent the Software from functioning properly, or the defects are of minor importance, the Customer is not entitled to interrupt the acceptance test. Such defects cannot prevent acceptance.

**F3.5** The acceptance is made by means of a written notice of acceptance by the Customer, respectively, in the ways specified in F3.8 and F3.9, after which INISI has fulfilled its obligations to the Customer under this Agreement, except with respect to its obligations as hereinafter referred to as "warranty".

**F3.6** As acceptance criteria will serve only that the tests yield results in accordance with the relevant specifications, with deviating test input being identified by appropriate error messages.

**F3.7** However, if during the acceptance test, one or more defects in the Software prevent the progress or completion of the acceptance test, after the Customer has notified INISI of this in writing, the acceptance test will be interrupted until INISI has repaired these defects, after which INISI will also inform the Client in writing, and in consequence the acceptance test will be resumed immediately. The period between the occurrence of the impediment and the elimination of this is deemed to fall outside the acceptance test period of two weeks.

**F3.8** If INISI has received no notice of acceptance or no notice of interruption of the acceptance test within three calendar days after the end of the acceptance period, the Customized Software will be deemed to have been accepted by the Customer. The Customized Software is also deemed to be tacitly accepted if the Customer is effectively using the Customized Software in production.

**F3.9** If, as a result of circumstances due to the Client, the acceptance test (s) cannot be executed in a timely manner, acceptance (of each part) of the service will be deemed to have taken place on the date on which INISI by its own means has determined proper functioning of the Service.

**F3.10** Upon receipt of the test report referred to in F3.2, INISI will repair any defects specified therein as soon as possible and at no additional cost to the Customer, provided that these defects relate to the agreed specifications of the Software.

In order to verify that these defects have indeed been restored, the same test run, in which the respective defects were identified by the Customer will be repeated within three business days. Upon acceptance, delivery is completed, after which the Client is responsible for the delivered Product.

**F3.11** If the assistance referred to in F3.2 is provided, the hours worked will be charged on a time and material basis at the usual rates.

## **F4 Modifications and contract extras**

**F4.1** Modifications to the technical or functional specifications of the Customized Software, including additions to the Customized Software, may be requested by the Customer and/or recommended by INISI at all times.

**F4.2** As soon as possible, but in any case within four weeks of receipt of a request or recommendation for modification of the technical or functional specifications of the Customized Software, the parties will respond in writing to such a request or recommendation. If INISI has already started the development activities, it will be entitled to attend to the modification requests after acceptance of the Customized Software concerned. Unless agreed otherwise in writing, requests for modification will not result in suspension of the parties' obligations.

**F4.3** INISI will notify the Customer in writing of the expected consequences of any requested or recommended modifications for the price and the delivery date(s) of the Software.

**F4.4** Modifications will only be carried out after they have been laid down in an appendix to the Agreement, signed by the parties.

## **F5 Guarantee**

**F5.1** INISI will resolve any defects that become evident in the accepted Customized Software within a period of three months of the date on which the acceptance referred to under F3.5 has been completed, without any extra costs for the Customer, provided INISI has been notified of these defects in accordance with the description in F3.2 and the defects relate to the agreed specifications of the Customized Software.

**F5.2** The guarantee referred to under F5.1 will not apply:

- a) if modifications have been made to the Software by employees other than INISI employees;
- b) if the defects that become evident could reasonably have been detected during the acceptance test.

**F5.3** In order to verify whether the defects referred to under F5.1 have indeed been resolved, the Customer will repeat the test run during which the defects in question were detected within three working days. The delivery will be deemed completed on approval, after which the responsibility for the Product delivered will pass to the Customer.

**F5.4** INISI's liability for any defect in the accepted Customized Software is limited to the compliance with the guarantee obligations arising from the provisions of Article F5.



## **F6 Performance**

**F6.1** For the performance of the Agreement INISI will assign employees with expert knowledge of the matter.

**F6.2** At first request, the Customer will, at its own expense, make any information and facilities available to INISI that may reasonably be required for the performance of the Agreement.

**F6.3** Prior to the commencement of the work by INISI, the Customer will assign an employee with expert knowledge of the matter as a contact, who is authorized to undertake commitments towards INISI on behalf of the Customer concerning the progress of the Agreement.

## **F7 Exclusive rights and confidentiality**

**F7.1** INISI is entitled to the copyrights, patents and other intellectual property rights arising from the Agreement. INISI is authorized to keep a copy of the products it delivers under the Agreement.