



General Terms and Conditions of Purchase (ICT)

PART A: GENERAL PROVISIONS

Article 1 Definitions

The following terms shall have the meaning as set out thereafter:

Acceptance

The written consent by Action that the individual components of the Solution each separately and in mutual conjunction comply with the Requirements.

Acceptance Test

The test respectively test procedure to determine and demonstrate that the individual components of the Solution individually and collectively comply with the Requirements.

Action

The relevant Action group company that purchases the Solution.

Action Data

All data that:

- (a) Action enters in the Cloud Services or allows Supplier to enter in the Cloud Services; and/or,
- (b) are created with or for the Cloud Services, including log files, usage statistics, Action-specific configuration, Action-specific data models, documentation and Action-specific designs; and/or
- (c) are submitted by Action to, or processed by Supplier in connection with any other Hosting Services than the Cloud Services.

Additional Work

An assignment from Action to Supplier for adjustments and/or additions and/or extensions of the Solution and/or implementation period thereof.

Affiliate

Any (other) company or legal entity controlled, directly or indirectly, by Action Holding B.V. (itself included).

Agreed Use

The use that Action (and/or any of its Affiliates) intends to make of the Solution as known to Supplier - or as Supplier may reasonably be expected to know - at the time of the conclusion of the Agreement on the basis of the Requirements and/or on the basis of the information referred to in Article 3, in so far as such use is not expressly excluded or limited in the Agreement.

Agreement

Any agreement concluded between Action and a Supplier with regard to the procurement and supply of the Solution including its Annexes and these Conditions, such as a SOW or an agreement resulting from Action's acceptance of an Offer by signing an order or agreement, or Supplier's acceptance of an Order.

Annex

Any attachment to a SOW, Services Description, Order or other agreement between Action and Supplier which attachment forms an integral part of the Agreement.

Applicable Law

Any and all applicable international (e.g. European), national and local (i) laws, statutes, regulations, directives, conventions, standards and rules, (ii) judgements and orders issued by authorities or courts, (iii) binding collective agreements, and (iv) regulatory approvals, permits, and licenses, of each and all

countries where Supplier (including any Subcontractor) is based, and where the Solution is to be manufactured, used, supplied, delivered, or performed.

Article

A clause of these Conditions.

Cloud Services

The combination of:

- (a) the right to use the Software, granted by the Supplier to Action;
 - (b) the management, maintenance, making available of and continuous availability of the Software and the Action Data for use via the Internet from the Hosting Environment by the Supplier;
 - (c) all additional services to support Action when using the Cloud Services,
- all as specified in the Agreement.

Conditions

These general terms and conditions of purchase, as amended from time to time, which form an integral part of the Agreement.

Contract Price

The price (including any and all forms of remuneration, incentives and the like) for the Solution, as specified in the Agreement.

Custom Software

Software to be developed by Supplier specifically for Action, including the accompanying Documentation as specified in the Agreement.

Defect

A failure (in whole or in part) of the Solution to comply with the Requirements.

Documentation

Information in any form, whether or not electronic, about procedures and management measures, computer data, source codes, functional designs, technical designs, and other particulars relevant for the Solution.

DPA

A data processing agreement, concluded by Action and Supplier pursuant to article 9 hereof.

ESG Standards

All statutory and/or internationally recognized environmental, social and governance standards and requirements as applicable from time to time (inter alia for environmental protection, occupational health and safety, labor, and human rights as well as responsible corporate governance), including those resulting from the EU Corporate Sustainability Reporting Directive ("CSRD").

Hardware

Computer hardware or other equipment, including accompanying Documentation, to be supplied by Supplier pursuant to the Agreement and as specified therein.

Hosting Environment

A fully equipped, managed, hosted and maintained computer hardware environment, including the operating system and other auxiliary software, set up by Supplier, from where Supplier will make the Software and/or the Hosting Services available for use to and by Action, and where the Supplier will store the Action Data, all as specified in the Agreement.

Hosting Services

Any Services, other than Cloud Services, through which Supplier provides Action with computing infrastructure, computing resources, storage space and/or bandwidth, such as



but not limited to web hosting services and data storage services, as specified in the Agreement.

Installation

The installation, placement and connection of the Solution and/or the installation and setting up of Software by Supplier.

Key Personnel

Personnel used by Supplier, whether employed by Supplier or engaged by Supplier as an independent contractor, to whom the fulfilment and performance of the Agreement with Action has been addressed and dedicated.

Maintenance and Support Services

Any Services to be performed by Supplier with the aim to maintain, improve and/or support the Solution, as specified in the Agreement.

Object Code

Translation of the Source Code into a code that can be directly read and executed by a computer

Offer

An offer from Supplier for the sale and supply of the Solution, including Additional Work proposals.

Order

Any purchase order issued by Action under or in connection with the Agreement for the procurement and supply of the Solution.

Order Confirmation

The document or other written communication issued by Supplier to Action confirming the Order.

Part(y)/(ies)

Action and/or Supplier.

Personnel

The personnel (whether employed by Supplier or engaged by Supplier as an independent contractor) used by Supplier in the performance of the Agreement and/or made available by Supplier to Action under the Agreement, including Key Personnel.

Requirements

The specifications, qualities, performance criteria and other characteristics that the Solution must meet pursuant to the Agreement and/or Applicable Law.

Services

The services to be provided by Supplier under the Agreement, which may include Cloud Services, Maintenance Services, Hosting Services, professional services, training services, and/or other IT services, all as specified in the Agreement.

Services Description

The document(s) describing the organization, technical, commercial and other details of the Solution, including without limitation its development, provision and/or implementation. The Services Description is an integral part of the Agreement and may also bear the name 'services schedule' or any similar name and/or may be included in the SOW.

Service Levels

Requirements such as availability, response times and repair times included in the SLA in respect of Cloud Services, Hosting Services, Maintenance and Support Services and other agreed Services.

SLA

A technical and detailed specification of the Solution and for each specified part of those Solution the Service Levels that such specific part in particular must meet. The SLA may be a separate document or an Annex to a Services Description or a SOW, but always is an integral part of the Agreement.

Software

The set of program rules to be provided by Supplier and capable of being used, either directly or indirectly, to achieve a particular, defined result. Software can be classified as Standard Software or Custom Software and does include accompanying Documentation.

Solution

The Hardware, Software, Documentation and/or Services to be provided by Supplier to Action, as specified in the Agreement.

Source Code

The entirety of program instructions of the Software in their original programming language, including the accompanying Documentation, intended for execution by a computer and in such a form that it can be used by a programmer who has knowledge and experience of the programming method and technology to modify the Software.

Standard Software

Software with accompanying Documentation developed for general use that is made available to Action on a non-exclusive basis.

Statement of Work (SOW)

A statement of work agreed in writing by the parties setting out or referencing the Solution (or any part thereof) to be provided by Supplier under the terms of this Agreement.

Subcontractor(s)

Any party (including natural persons) engaged by Supplier, or in turn by any such party itself, in the performance of the Agreement.

Supplier

The natural person(s) or legal entity providing the Solution to Action under the Agreement.

Article 2 Applicability of these Conditions

1. These Conditions are applicable to and form an integral part of all Agreements.
2. The applicability of any and all general terms and conditions (of sales or other) of Supplier are explicitly excluded.
3. Any reference to general terms and conditions (of sales or other) of Supplier that may appear on any Offer or Order Confirmation, invoice, packing slip or the like used by Supplier, shall remain without effect, unless Parties explicitly agreed in writing to deviate from Article 2.2 of the Conditions.
4. Where these Conditions provide that a specific condition shall apply 'unless expressly agreed otherwise', this shall be read and interpreted as that all deviations from this Conditions must be made in writing and must identify the provision from which Parties wish to deviate.
5. Unless and to the extent a SOW provides otherwise, Action shall only have an obligation to purchase and take delivery of the Solution (i) upon acceptance by Action of an Offer issued by Supplier by means of an Order issued to Supplier; or (ii) if no prior Offer has been issued by Supplier: (a) upon acceptance by Supplier of Action's Order by means of an Order Confirmation or, in the absence of an Order Confirmation, (b) upon the expiration of five working days after the date of the Order.
6. Unless the Agreement provides otherwise, in the event of a conflict, contradiction, discrepancy or unclarity between any term of any of the documents constituting the Agreement, the following order of precedence will apply:
 - (i) the DPA;

- (ii) the SOW;
- (iii) the Services Description;
- (iv) the SLA;
- (v) these Conditions;
- (vi) the Order;
- (vii) any other Annexes.

Article 3: Objectives

1. To determine Action's intended use of the Solution, Supplier must familiarise itself sufficiently with:
 - (i) the objectives of Action in concluding the Agreement;
 - (ii) the organisation of Action in so far as relevant for the Agreement.
2. In discharging the duty of inquiry referred to in Article 3.1, Supplier must also form an opinion on the feasibility and suitability of the Solution within the parameters specified by Action for this purpose.
3. Supplier shall inform Action of any and all third-party products and/or services required (including the correct version and/or model). If the Agreement provides that Supplier bears overall project responsibility, Supplier shall be responsible for purchasing such third party products and/or services and shall bear the risk of (and be liable for) any failures by the applicable third parties to provide its products and/or services in accordance with the Requirements. If Supplier does not bear overall project responsibility, Action shall be responsible for purchasing, installing and maintaining such third-party products and/or services, at Action's expense, and Supplier shall not be liable for any such third-party products and/or service. However, in case Supplier does not bear overall project responsibility, Supplier does warrant the interoperability between any such third party products and the Solution, provided that Action has installed the correct version of such products.
4. For the purposes of Article 3.1, Action will provide Supplier with all information requested, provided that, where Action considers such information confidential, the confidential nature of such information is properly protected by confidentiality arrangements between the Parties. If anything is unclear, Supplier will make timely inquiries.

Article 4: Personnel

1. Supplier will only use Personnel with adequate training, education, experience and skill to provide the Solution.
2. Supplier will replace Key Personnel only with the prior written consent of Action. Action may not withhold its consent unreasonably and may attach conditions to its consent.
3. Action may demand the replacement of Key Personnel if it considers that its continued assignment to the performance of the Agreement is no longer desirable for reasons connected with the individuals concerned.
4. Where Key Personnel is replaced, Supplier may not charge any costs for such replacement to Action, unless Supplier shows that there was no reasonable basis for the request for replacement and Supplier can adequately demonstrate any extra costs associated with the replacement.
5. Where Key Personnel is replaced, Supplier will provide replacements at the same rate and ensure that their expertise, qualifications and experience are at least equal to or exceeding those of the original Key Personnel or

satisfy the conditions agreed by the Parties.

6. Supplier is at all times exclusively and fully responsible and liable for the timely, full and correct fulfillment of any and all obligations and payments, of whatever nature and on whatever ground, concerning the employment (e.g. compensation and benefits, taxes, social security contributions, working permits and other levies) and working conditions (e.g. working hours) in respect of its Personnel (or any of its Subcontractors). Supplier shall indemnify and hold Action and its Affiliates harmless against any and all claims, costs (including legal/court fees), penalties, judgments and any other type of actions in relation to such matters.
7. Without prejudice to Supplier's obligations and Action's rights pursuant to Article 4.6, Supplier shall provide, upon Action's first request, immediately and at all times all documentation, declarations, and the like, including those issued by the competent (tax/social security) authorities, and any other assistance reasonably required to verify and evidence compliance by Supplier and its Subcontractors with their obligations pursuant to Article 4.6, failing which Action may terminate the Agreement in whole or in part with immediate effect. Action may, at its discretion, allow certain declarations or evidence to be provided in the form of a statement by an independent certified auditor appointed in consultation with Action.
8. Supplier shall ensure that its personnel conducts itself on any site and premises of Action or any of its Affiliates in accordance with the regulations and rules of conduct applying there (e.g. regarding security, safety, and health) and will comply with any instructions and formalities in that regard.

Article 5: Network Access

If Supplier deems it necessary for the provision of the Solution to obtain access to Action's network, Supplier must – in its Offer - inform Action thereof in writing. Only if Supplier has received written consent from Action, it will be authorized to obtain access to the extent necessary. Action may attach conditions to its consent or revoke or alter its consent at any given moment, without causing Action to become liable for damages.

Article 6: Security

1. When performing the Agreement, Supplier shall comply with Action's security policy, including information security, as communicated by Action from time to time. Supplier shall bear the cost of all changes to: (i) its methods of operating; (ii) its reporting, audit and (information) security obligations; and (iii) other changes to its systems, which are required as a result of changes to legislation. Where requested by Action, Supplier shall on a periodic basis conduct a security risk assessment of the Solution and shall have its statement certified by a qualified, independent and reputable third party at its own costs.
2. Notwithstanding Supplier's obligations under Article 6.1, Supplier shall maintain appropriate administrative, physical, and technical safeguards for the protection of the confidentiality and the integrity of any Action Data. These safeguards include measures against access, use, modification and disclosure of Action Data other than as reasonably required or permitted under the Agreement

and/or these Conditions.

Article 7: Permits, licenses and other authorizations

If and to the extent Supplier or any of its Personnel requires any licenses, permits, registrations or other authorizations of any governmental or semi-governmental body, agency or organization in connection with the Agreement, Supplier shall obtain such licenses, permits, registrations and other authorizations (at its own costs). Supplier shall indemnify and hold Action harmless from any claims of such governmental or semi-governmental bodies, agencies, or organization or of third parties.

Article 8: Cooperation with third parties

1. Where the Solution is meant to work in conjunction with, or to interoperate with equipment or software to be supplied by one or more other supplier(s) ("Interoperability"), Supplier agrees to cooperate – at its own expense - in good faith with such other supplier(s) and share – at its own expense - with both Action and such other supplier(s) all information reasonably required to ensure Interoperability.
2. Where information to be provided by Supplier is considered by Supplier as Supplier's confidential information, Supplier may request that such other supplier(s) enter into confidentiality undertakings reasonably acceptable to Supplier. Where reasonably necessary, to be determined by Action in its sole discretion, Supplier shall – at its own expense - attend meetings with such other supplier(s) at Action's business location.

Article 9: Data Processing

In the event Supplier is to be a processor of Action personal data under the definition of EU General Data Protection Regulation (GDPR), Supplier shall sign and execute Action's DPA.

Article 10: Assignment and Subcontracting

1. Supplier shall not assign, transfer, pledge or otherwise encumber any of its rights, obligations or claims resulting from the Agreement to a third party without Action's prior written consent, under pain of such being null and void.
2. Supplier is not permitted to outsource, subcontract or otherwise have third parties perform the Agreement without the prior consent of Action in writing. Notwithstanding any consent given by Action, Supplier is and will remain at all times fully responsible and liable for the due performance and observance of the Agreement and the Conditions by its Subcontractor(s), and for the acts and omissions of any Subcontractor as if it were its own acts and omissions. Supplier shall ensure that its Subcontractor(s) comply with all Supplier's obligations under the Agreement and the Conditions, and any representation, warranty or commitment by Supplier shall extend to its Subcontractor(s). Supplier is and remains also exclusively responsible for complying with any and all obligations towards its Subcontractor(s).

Article 11: Services Description

1. If no Services Description has been provided by Supplier (as part of its Offer or otherwise) or, where such Services Description has been provided but Action in its sole

discretion determines that such Services Description is not sufficient, Action may request Supplier – and Supplier shall grant such request – to provide Action at Supplier's expense with a proposal for one or more of such Services Descriptions.

2. The Services Description(s) shall describe, without limitation and where applicable, the Requirements of the Solution, the applicable time schedule, project management procedure and applicable procedures for risk management, change management and Acceptance. Parties shall discuss Supplier's proposal in good faith with the aim to agree upon its contents. If Parties are unable to agree upon the Services Description(s), Action shall have the right to terminate the Agreement in whole or in part without any liability to Supplier.

Article 12: Contract Price and Payment

1. Unless expressly agreed otherwise by Action and Supplier in writing, all prices stated in the Agreement are fixed for the duration of the Agreement and represent the full, all-inclusive remuneration for the Solution, except for value added tax. No additional costs, fees (including collection fees), taxes, levies, duties or expenses can be charged to Action.
2. Unless expressly agreed otherwise in writing, invoices shall be sent following actual delivery of the Solution, and in accordance with the invoicing instructions specified in the Agreement.
3. Payment shall be made 60 (sixty) days following receipt of the invoice, or, if shorter, within the maximum payment term permitted under the law governing the Agreement.
4. Payment does not in any way imply Acceptance by Action of the Solution, nor a waiver of any right arising from the Agreement. Supplier shall not suspend or interrupt any delivery or service performance in case of (alleged) late payment by Action.
5. Action may set-off any amounts due by Supplier to Action, whether disputed or not, against any amounts due by Action to Supplier.

Article 13: Additional Work

1. Action has, at all times, the right to request Supplier to perform Additional Work. Supplier may not unreasonably refuse to perform Additional Work.
2. If Action wishes Supplier to perform Additional Work, it must notify Supplier in writing. Supplier shall provide a written proposal, an Offer, for such Additional Work as soon as reasonably possible. Such proposal shall include at a minimum the cost, time schedule and functionality associated with the Additional Work.
3. Supplier shall not work on, and Action shall not be liable for any costs or expenses in connection with, any Additional Work unless and until Parties have agreed on all issues relating thereto, and Action has provided Supplier with its written acceptance of Supplier's proposal.

Article 14: Delivery Dates

1. Unless explicitly agreed otherwise by Action and Supplier in writing with the explicit statement that such is intended as a deviation from these Conditions, the delivery dates and/or time schedule(s) set out in the Agreement, are essential and binding for Supplier.

2. If and as soon as Supplier knows or reasonably anticipates that it may not be able to meet a delivery date and/or time schedule, notwithstanding any other remedy available to Action under the Agreement or Applicable Law, it shall instantly inform Action thereof in writing, stating the expected duration of the delay and the circumstances causing such delay. Supplier shall, at its own expense, provide Action with an action plan for the mitigation of the delay and shall, upon Action's written approval, execute such plan. Supplier shall bear the costs of the execution of the action plan, unless (and to the extent that) the delay is attributable to Action.

Article 15: Inspection and Acceptance Testing

1. Action has the right to inspect the Solution, or have them inspected by a third party expert, (i) at any time before or during the delivery of the Solution or (ii) upon the delivery of the Solution. Supplier acknowledges that inspection of the Solution by or on behalf of Action does not release Supplier from its warranty obligations or any other obligations under the Agreement.
2. Supplier shall cooperate with such inspection at its own expense and shall provide Action or its third party expert access to all premises, records, documents and/or other data reasonably required by Action or its third party expert for the purpose of the inspection.
3. Action is entitled to reject the Solution if, upon inspection, the Solution does not comply with the Requirements or are not delivered in time (i) at the agreed delivery date, (ii) within the agreed time schedule, or (iii) at the agreed delivery location.
4. In case of rejection, Action may - at its sole discretion - (i) procure a replacement solution from a third party at the expense of Supplier; or (ii) require Supplier to, within 5 (five) business days after (notification of) rejection, (a) immediately remedy the non-conformity and deliver a substitute Solution that does comply with the Requirements, or (b) take back any delivered Solution, in whole or in part as designated by Action, with corresponding repayment of funds already transferred by Action to Supplier. Any rejected Hardware remains at the risk and (storage) expense of Supplier and shall be collected by Supplier within 5 (five) business days after (notification of) rejection, failing which Action may cause the Solution to be destroyed or returned at Supplier's expense.
5. Action also has the right to conduct Acceptance Testing of the Solution (i) at any time before or during the delivery of the Solution or (ii) upon the delivery of the Solution. Supplier acknowledges that Acceptance of the Solution by Action does not release Supplier from its obligations under the Agreement and/or Applicable Law.
6. Acceptance Testing shall be carried out in accordance with procedures specified by Action, unless such procedures have been specified in the Agreement, in which case such agreed procedures shall be followed.
7. If, after Acceptance Testing, Action confirms that the Solution conforms in all respects to the Requirements, the Solution has been Accepted.
8. Action will identify in reasonable detail, in writing, any discrepancies between the test results and the Requirements for any particular Solution to Supplier within twenty (20) business days after the test date. If this term

passes without written and specified notification of complaints, the Solution in question is assumed to have been Accepted.

9. Within ten (10) business days from the date on which Action informs Supplier that the Solution in question have failed Acceptance Testing, Supplier shall commence with the correction of the Solution. Supplier shall perform such corrective work at its own expense. Parties shall determine in good faith the period in which Supplier is required to make the Solution fully compliant with the Requirements (the "Grace Period").
10. If, after the expiry of the Grace Period, Supplier has not delivered the Supply in question to Action in a form that satisfies, in all material respects, the Requirements, then, notwithstanding any other remedy available under the Agreement or under applicable law, Action shall be entitled to dissolve (in Dutch: 'ontbinden') the applicable Agreement in whole or in part. Alternatively, Action may at its discretion elect to accept the Solution "as is", subject to a pro rata refund of the applicable charges to reflect the reduced functionality or performance of the Solution.

Article 16: Audits

1. For the duration of the Agreement and for a period of six (6) months thereafter, Supplier shall allow Action, its auditors (including, internal audit personnel and external auditors), any authorized supervisory bodies and/or such inspectors as Action may from time to time designate in writing, access at all reasonable times to (i) its facilities or part thereof at which or from where Supplier is providing the Solution; (ii) its Personnel and auditors; (iii) its policies, procedures, processes and controls; (iv) its hardware, software, internet facilities, telecommunication facilities, network facilities; and (v) its data and records relating to the Solution, for the purpose of performing audits and inspections of the Solution to verify, among other things: (i) the accuracy of its charges and invoices; (ii) verify the integrity of Action Data and examine the systems that process, store, support and/or transmit such Action Data; (iii) examine the performance of the Solution, including (a) verifying compliance with the Service Levels; (b) examining practices and procedures, including but not limited to, (information) security practices and procedures, disaster recovery and backup processes and procedures and network capacity and routing procedures, systems, general controls and the efficiency of its operation to the extent relevant to the level of its performance or charges under the Agreement; (iv) verify compliance with the terms of the Agreement and these Conditions; (v) verify compliance with any legislative, judicial or regulatory provision; (vi) verify the adequacy of controls exercised on the provision of the Services; (vii) conduct any supply chain (transparency) due diligence under or further to any Applicable Law, such as but not limited to due diligence on adherence to ESG Standards throughout Action's value chain; and (viii) ascertaining the cause of any breach of (information) security.
2. If access is needed to any Subcontractor's facilities, personnel, policies, procedures processes and/or data records to perform the audit pursuant to this Article 16, Supplier shall use best efforts to ensure that such Subcontractor provides access and cooperation to Action,

its auditors and/or inspectors.

3. Action shall give at least five (5) business days' notice of an audit and shall in such notice indicate: (i) the specific scope of such audit; (ii) processes to be followed by Supplier in such audit; (iii) preparation to be completed by Supplier prior to the commencement of such audit; provided that Action shall be entitled to immediate access for purposes of this Article 16 (and shall not be obliged to give notice to Supplier) to the extent that (i) the audit results from a (information) security incident or (ii) is initiated by a supervisory body.
4. Promptly after the issuance of any audit report or findings, Supplier and/or, if Action so requests, its relevant Subcontractor(s) shall meet with Action to review such audit report and findings. Supplier shall, at its own expense, undertake remedial action to promptly address and resolve any deficiencies, concerns and/or recommendations arising out of any audit.
5. Action shall be responsible for the costs of the audit except any costs and expenses incurred by Supplier to comply with its obligations in terms of this Article 16 and the Agreement, provided that to the extent that any audit report or finding indicates any non-compliance by Supplier with the terms of the Agreement, Supplier shall be responsible for Action's reasonable costs for external auditors used for the audit.

Article 17: Intellectual Property Rights

1. Unless the Agreement provides otherwise, insofar as the intellectual property rights that arise in the context of the Agreement are not already vested in Action by operation of law, all such intellectual property rights shall transfer from Supplier to Action. Supplier undertakes unconditionally to execute and deliver any and all documents and do all such other things that may be required or desirable to transfer the ownership of the referenced intellectual property rights to Action, or to any Affiliate designated by Action, and register such rights in the name of Action (or designated Affiliate).
2. The Requirements and all (other) documentation, images, designs, drawings, models, sketches, slides, software and any other materials provided by Action, or any of its Affiliates, to Supplier in the context of the Agreement are and remain the sole exclusive property of Action (or the relevant Affiliate), shall be used solely for the proper performance of the Agreement, and shall be returned by Supplier to Action, or the relevant Affiliate, promptly upon its first request.
3. Supplier shall indemnify and hold Action harmless from and against any and all losses, costs, damages, expenses (including reasonable legal fees), fines, liabilities, legal or administrative proceedings and actions, of whatever nature, resulting from or in connection with any claim of a third party that is based on the allegation that the Solution infringes upon any intellectual property or other proprietary right of such third party.
4. If a third party makes a claim against Action for an alleged infringement of its intellectual property or other proprietary rights, Action will:
 - (a) notify Supplier thereof as soon as reasonably possible, and
 - (b) render Supplier every reasonable cooperation in the

defence against that claim at Supplier's expense.

5. If Action's use of the Solution is, or is likely to be, restricted or prohibited as a result of the claims of a third party, Supplier will, after consulting Action, at its discretion:
 - (a) acquire a right of use from this third party so that Action can continue to use the relevant Solution without interruption and limitation for the Agreed Use in accordance with the Agreement; or if this is not reasonably possible
 - (b) replace the Solution concerned by functional and, in terms of result, equivalent Solution that does not infringe third-party rights and that provides Action without interruption and limitation with the Agreed Use in accordance with the Agreement.
6. The obligations to indemnify set out in this Article 17 do not apply to the extent that a third-party claim is caused by or the result of:
 - (a) any changes made to the Solution by Action without Supplier's consent;
 - (b) use of the Solution outside the scope of the agreed restrictions on use, instructions or licence terms.

Article 18: Confidentiality

1. Supplier shall throughout the duration of the Agreement and any time thereafter (i) refrain from disclosing the existence and the content of the Agreement and any information provided by Action, or any of its Affiliates, or otherwise acquired by Supplier in the context of the Agreement, including – for the avoidance of doubt – any reference to a past or present relationship between Supplier and Action, (ii) take any and all appropriate measures to prevent disclosure, and (iii) return or destroy the information upon Action's first request.
2. Supplier shall establish and maintain adequate organizational and technical safeguards against the destruction, theft, use, disclosure, contamination, seizure, or loss of all data provided, used or generated in connection with the Solution in the possession or control of Supplier.

Article 19: Compliance/ESG

1. Supplier represents and warrants it will adhere to (i) Applicable Laws, ESG Standards, and (other) ethical and responsible standards of behavior, including, without limitation, those dealing with health and safety, (fair) labor (e.g. remuneration, working hours and conditions, posting workers (abroad), independent workers), non-discrimination, human rights, trade controls (trade embargos and sanctions), and (ii) the principles contained in the policies of Action (to be found on company.action.com or made available and/or accessible to Supplier by other means), or where Supplier has adopted equivalent principles offering at least the same minimum standards, to those equivalent principles.
2. Supplier represents and warrants that it refrained and shall refrain from (i) any act of corruption or bribery, such as, directly or indirectly, promising, offering, providing or accepting any improper monetary or other advantage to or from anyone (such as employees or agents of Action, or any of its Affiliates, and government officials) in connection with the Solution, and (ii) seeking any competitive advantage through fraud, misrepresentation, or other illegal means and will respect antitrust and other

competition laws.

3. Supplier must act in an environmental conscious and sustainable manner and is expected to contribute to Action's commitment to improve its environmental footprint by incorporating sustainability principles in its products and services.
4. Supplier will explore and review on an on-going basis opportunities to improve environmental sustainability and will provide all (reasonable) information on its environmental footprint and progress as required by Action's at its first request.
5. Supplier will provide, at Action's first request, all (reasonable) collaboration, support, information and documents (i) as required by Action to meet any reporting and disclosure requirements and standards under or further to Applicable Law and/or ESG Standards, and/or (ii) as otherwise may be needed by Action to determine and/or report the environmental footprint of its operations and value chain; this includes the right for Action to share any such information and documents with third parties for the purpose of calculating or otherwise determining its environmental footprint (including its value chain).

Article 20: Insurance and Indemnity

1. Supplier represents that it has and shall maintain in force, at its cost and expense, proper and adequate insurance that meets the standard expected from a business conducting similar or comparable activities as Supplier. This insurance shall as a minimum provide coverage for comprehensive (all risk) professional, general and product liability, taking into account the nature of the Solution and the potential risks and liabilities under the Agreement. Supplier shall also ensure that its insurance will include coverage for (information) security risks, including without limitation (information) security breaches. Unless the Agreement provides for a higher coverage, the insurance shall provide coverage for no less than EUR 1,000,000 (one million euros) per occurrence and EUR 2,500,000 (two and a half million euros) per calendar year. Upon Action's first request, Supplier shall submit insurance documents evidencing such coverage.
2. Supplier shall indemnify and hold Action and its Affiliates harmless from and against any and all losses, costs, damages, expenses (including reasonable legal fees), fines, liabilities, legal or administrative proceedings and actions, and third party claims, of whatever nature, resulting from or in connection with any (i) defective or nonconforming Solution; (ii) delay in delivery or performance; (iii) breach of any of Supplier's obligations, representations, or warranties under the Agreement (including the Conditions); (iv) negligence; (v) violation of any Applicable Law; and/or (vi) other act or omission of Supplier, its Subcontractor(s) or their respective Personnel or agents in performing the Agreement.

Article 21: Force Majeure

1. In the event that Supplier is prevented from performing any of its obligations under the Agreement for reason of force majeure, Supplier shall notify Action immediately, but in any event within 2 (two) business days from its occurrence, in writing thereof, stating the nature and anticipated duration of the force majeure, its effect(s) on Supplier's

obligation(s), and the efforts (to be) taken to mitigate such effect(s). If Supplier fails to comply with the foregoing, Supplier will not be entitled to invoke force majeure.

2. Force majeure on the part of Supplier shall in any event not include shortage of staff, materials or resources or (third party) services, staff sickness, strikes, sit-ins, lockouts, breach of contract by third parties contracted by Supplier, financial problems of Supplier, nor the inability of Supplier to secure the necessary licenses in respect of the Solution or the necessary legal or administrative permits or authorizations in relation to the Solution.

Article 22: Extraordinary Event

1. Action shall be released from any obligation to purchase, procure or take delivery of any Solution under the Agreement if and when an extraordinary event (including any related event or development) beyond the reasonable control of Action, whether or not foreseeable, has directly or indirectly an impact on the needs of Action (or of any of its Affiliates for which it is procuring) for the Solution.
2. Further and without prejudice to Article 22.1, Action and Supplier shall, each acting reasonably, discuss the resulting consequences for the Agreement and agree on an appropriate modification thereof. If Parties are unable to agree upon such appropriate modification, Action shall have the right to terminate the Agreement in whole or in part without any liability to Supplier.

Article 23: Termination

1. Termination for convenience

Action may at any time terminate (in Dutch: 'opzeggen') by taking into account a reasonable notice period to be determined in good faith to the sole discretion of Action, in whole or in part, the Agreement including, for the avoidance of doubt, any SOW upon written notice to Supplier without any liability. Where Supplier has incurred expenses before termination, Action shall reimburse Supplier for expenses made until the date of termination which can be proven by Supplier, calculated on the actually incurred expenses and not exceeding the Contract Price of the applicable Solution, if Supplier (i) actually incurred the expenses, (ii) was unable to avert incurring such expenses after receipt of the termination notice, and (iii) is unable to put the expenses to use otherwise, and (iv) could deem the expenses necessary and reasonable. Except for Action's obligation to reimburse expenses as set out above, Action shall not be liable for any losses, costs, expenses or damage incurred by Supplier as a result of Action's termination under this Article 23.1. If Action has reimbursed expenses in accordance with (i) – (iv) the amount reimbursed shall be credited against renewed Agreements for the same Solution.

2. Termination for cause

Action may at any time dissolve (in Dutch: 'ontbinden') the Agreement in whole or in part, including for the avoidance of doubt any SOW, upon written notice and without any compensation whatsoever, if Supplier fails to comply with all or part of the Agreement, under the condition that Action has first provided Supplier with a formal letter of notice allowing Supplier to remedy its failure(s) within thirty (30) calendar days. However, if (i) Supplier has failed to meet a delivery date or time schedule, (ii) the failure is

of such a nature that it cannot be remedied within such thirty (30) days' period, or (iii) in the event of gross negligence or misconduct on the part of Supplier, no such formal letter of notice is required and Action may terminate (in Dutch: 'ontbinden') the Agreement with immediate effect.

3. Termination for insolvency

Action shall have the right to suspend the performance of its obligations under the Agreement or to terminate (in Dutch: 'opzeggen' or 'ontbinden', to the sole discretion of Action) the Agreement, in whole or in part, including for the avoidance of doubt any SOW, in the event that: (i) Supplier files a voluntary petition of bankruptcy, moratorium, or any voluntary proceeding relating to insolvency, receivership, liquidation, assignment for the benefit of creditors or similar proceeding under Applicable Law; (ii) Supplier becomes the subject of a petition of bankruptcy or any proceeding relating to insolvency, receivership, liquidation, assignment for the benefit of creditors or similar proceeding and such petition or proceeding is not dismissed within thirty (30) days from filing of such petition or proceeding; or (iii) Supplier ceases to or threatens to cease to carry on business in the ordinary course.

4. Exit support

If the Agreement or SOW ends for any reason whatever, Supplier shall, upon Action's first request, take whatever action is necessary to ensure that a new supplier can, without impediment, assume responsibility for performing and/or providing similar services and/or solutions as under the Agreement or such SOW. Supplier shall also immediately return to Action all documents, books, papers and other items, including data and information carriers, made available to it by Action. Other than in a case where the Agreement has been terminated pursuant to the provisions of Article 23.2 or Article 23.3, in which case such services shall be provided free of charge, Supplier will perform the services referred to in this Article 23.4 at the rates and on the terms specified in the Agreement or, in the absence thereof, at the rates generally applied by Supplier and on such reasonable terms as may be agreed.

Article 24: Acquisitions and divestitures

1. In the event of a divestiture, re-organization or sale as a result of which an Affiliate to whom the Solution is being supplied shall cease to be an Affiliate ("Divested Entity"), then Action shall give Supplier written notice of such divestiture, reorganization or sale and shall in the notice elect to (i) require Supplier to continue to provide the Solution to the Divested Entity on the then current terms and conditions for such period as specified in such election notice; or (ii) require Supplier to discontinue the provision of the Solution to the Divested Entity with effect from a date specified in such election notice.
2. In the event of an acquisition or merger, Supplier shall, at Action's request, provide the Solution to the entity acquired by or merged with Action or an Affiliate under the same terms and conditions as agreed with Action in the Agreement, provided that Supplier shall decrease its pricing so as to reflect the increase in volume as a result of the acquisition or merger.

Article 25: Miscellaneous

1. If any provision under the Agreement including these Conditions shall be, in whole or in part, unenforceable or invalid, the other provisions, and any remaining part of the relevant provision, shall remain valid and in full force and effect. The unenforceable or invalid provision(s), or part thereof, shall be deemed to be reformed to the extent necessary to be valid and enforceable and to achieve as much as possible the intended purpose of the unenforceable or invalid provision(s). If Parties are unable to agree upon such a reformation, Action shall have the right to terminate the Agreement in whole or in part without any liability to Supplier.
2. Any right or remedy granted to Action under the Agreement and/or these Conditions, is without prejudice to any other right or remedy available to Action, whether by operation of law, agreement or otherwise. A delay or failure by Action to exercise any of its rights, powers or remedies under the Agreement (including these Conditions) shall not operate as a waiver of that right, power or remedy.
3. All warranties given by Supplier, shall survive any delivery, inspection, acceptance, and payment of the Solution.
4. The Agreement including these Conditions and all rights, remedies, indemnities and warranties thereunder to which Action is entitled, shall also extend to the benefit of, and be enforceable by, its Affiliates and Action's successors. This provision is considered to be a third party clause pursuant to section 6:253 of the Dutch Civil Code.

Article 26: Governing Law

The Agreement including the Conditions are governed exclusively by Dutch law. The applicability of the United Nations Convention on Contracts for the International Sale of Goods of 1980 is expressly excluded.

Article 27: Dispute Resolution

1. Internal Escalation

The Parties will first use their respective reasonable efforts to amicably resolve any dispute or failure to agree (a "Dispute") that may arise out of or relate to the Agreement or any breach thereof, including unlawful acts.

2. If a Dispute is not resolved amicably within a reasonable period agreed between the Parties (not to exceed thirty (30) days from the date of either Party's notification to the other Party that a Dispute has arisen) each Party may submit the Dispute to the competent court in Amsterdam, the Netherlands, to the exclusion of the jurisdiction of any other courts.

3. Arbitration

Instead of submitting a Dispute to the court in Amsterdam, Parties may agree to have such Dispute resolved by means of arbitration in accordance with the Arbitration Regulations of the Stichting Geschillen Oplossing Automatisering (SGOA), which has its registered office in The Hague, the Netherlands. Arbitration will take place in Amsterdam, the Netherlands. The language to be used in the arbitral proceedings shall be English.

4. Urgent Relief

Nothing contained in this Article 27 shall restrict either Party's freedom to commence an urgent relief procedure at the competent court to procure or ensure performance of obligations, preserve any legal right or remedy or to

prevent the misuse of any of its confidential Information or the infringement of its intellectual property rights.

Part B: Specific provisions for Hardware

Article 28: Applicability

The provisions of this Part B apply, in addition to the provisions of Part A, to the sale and delivery of Hardware. In the event of any conflicts, discrepancies or unclarity between any provision of Part B and any provision of Part A, the provision of Part B shall prevail.

Article 29: Delivery and transfer of title

1. Unless expressly agreed otherwise by Action and Supplier in writing with the explicit statement that such is intended as a deviation from these Conditions, delivery of the Hardware is made Delivered Duty Paid, (Incoterms 2020 or any subsequent version), properly packed, clearly marking the Order reference and accompanied by the appropriate (transport and other) documents, duly completed and executed, as well as all product documents and manuals as required by the Agreement and/or by Applicable Law.
2. Title and interest in the Hardware will be transferred to Action at delivery, unless the price for the Hardware has already been paid to Supplier, in which case title and interest will be transferred at the time of payment.

Article 30: Warranties

1. Supplier guarantees that, upon delivery, the Hardware shall be new and further, during the warranty period set out in the Agreement, that the Hardware shall be (i) fit for the Agreed Use; (ii) in conformity with the Requirements and approved samples; and (iii) of sound workmanship, good quality and free from faults in design, construction, manufacture and material.
2. Should any Hardware fail to conform to the warranties set out above, Action shall notify Supplier of such failure and Supplier shall react within 10 business days after receipt of such notification with a preliminary assessment of the possible causes of the failure. Upon receipt of such assessment, notwithstanding any other remedy available to Action under the Agreement and/or Applicable Law, Supplier shall, as instructed by Action, (i) replace the non-conforming Hardware; (ii) repair the non-conforming Hardware; or (iii) reimburse the Contract Price of the non-conforming Hardware. The non-conforming Hardware shall be replaced or repaired and, in the event that such replacement or repair could not be effected at Action's location, returned to Action, as soon as reasonably possible, but not later than 10 business days after the date of Action's written notification of the failure or, if later, Action's notification of the required remedy. Supplier shall pay for the cost of repair or replacement of the non-conforming Hardware, including shipping costs and all other reasonable costs and expenses incurred by Action in connection with such non-conforming Hardware.
3. For replaced Hardware the agreed warranty period starts again - for a new full warranty period - on the date of acceptance by Action of the replaced Hardware.

Article 31: Installation

Where the Agreement provides for assembly, commissioning, installation or any other work to be carried out by Supplier with respect to the Hardware, Supplier guarantees that the work shall be executed in accordance with the agreed Requirements.

Part C: Specific provisions for Software

Article 32: Applicability

The provisions of this Part C apply, in addition to the provisions of Part A, to the provision of Software. In the event of any conflicts, discrepancies or unclarity between any provision of Part C and any provision of Part A, the provision of Part C shall prevail.

Article 33: General Software warranties

1. Supplier warrants during the warranty period set out in the Agreement that:
 - (a) the Software is fit for the Agreed Use;
 - (b) the Software complies and will continue to comply with the Requirements;
 - (c) the Software is free of Defects, viruses, worms, trojan horses and/or any other malicious or (potentially) harmful software;
 - (d) the Software does not contain any technical features, functions or other extraneous elements that could prevent the Agreed Use at any time, whether temporarily or otherwise;
 - (e) where Action has access to the Source Code, the Software is documented in such a manner that a relevant expert third party can carry out the maintenance independently.
 - (f) if Supplier is not the owner of the Standard Software, it has been authorised by the owner to grant licenses to Action that fully cover, back-to-back, the licenses granted by Supplier to Action, including without limitation the warranties provided by Supplier to Action. Supplier will provide Action, at Action's request, with a copy of the authorisation.
2. Supplier shall remedy, free of charge, any Defects that occur during the warranty period set out in the Agreement. If Parties have entered into an SLA, Defects shall be corrected in accordance with the provisions of the SLA.

Article 34: Custom Software

1. Where the Agreement provides for the provision of Custom Software, such Custom Software and the development and supply thereof shall be specified in a SOW.
2. Action shall be entitled to, and Supplier shall provide Action with, the Source Code, Object Code and Documentation relating to the Custom Software and any improved and new versions thereof.
3. Unless the Agreement provides otherwise, all intellectual property rights with regard to the Custom Software shall vest in Action.

Article 35: Delivery and Installation of Software

1. Supplier shall deliver the Software in the manner as set out

in the Agreement (including the SOW).

2. Except to the extent the Agreement (including a SOW) provides otherwise, Supplier shall be responsible for the Installation of the Software on Action's equipment.

Article 36: Software licenses

1. To the extent that Action does not own the intellectual property rights with respect to the Software, Supplier grants to Action the licenses set out in the Agreement. If the Agreement does not describe the licenses granted by Supplier to Action, Supplier grants to Action a license, with the right to grant sub-licenses, to use the Software on Action's equipment for Action's internal business purposes in accordance with and during the term of the Agreement (including without limitation for the Agreed Use). If the Agreement provides that Supplier owns the intellectual property rights with respect to Custom Software, such license shall be exclusive for Custom Software. Such license shall be non-exclusive for Standard Software. The license shall extend to the number of users set out in the Agreement (and in the absence of such number, all personnel of Action and its Affiliates shall be deemed to have the right to use the Software). Action and its Affiliates may use the Software themselves, but may also allow suppliers, clients and other business relations to use the Software, if this is considered desirable for its business operations.
2. The licence set out above does in any event include the right to use all functionalities of the Software that are accessible to Action and its Affiliates, even if they are not mentioned in the Documentation. Also, Action and its Affiliates shall have the right to make, save and regularly test copies of the Software and keep them on hot standby for the purposes of testing and disaster recovery.
3. The license set out above includes the right to transfer the Software to other equipment of Action and its Affiliates than the equipment on which the Software was initially installed.
4. At Action's written request, Supplier shall enter into an escrow agreement with Action. Under such agreement, Supplier shall periodically deposit a copy of the Source Code of the most recent versions of all Software within a reasonable period upon availability thereof, as well as all accompanying Documentation, with an escrow agent reasonably acceptable to Action. The costs relating to the performance of the escrow agreement, including without limitation the costs of the escrow agent, shall be paid by Supplier.
5. The escrow agreement shall provide that the Source Code and Documentation shall be released to Action in the following triggering events:
 - (a) insolvency proceedings have been opened without appeal on the assets of Supplier, or if this opening has been declined due to lack of assets; or
 - (b) an order is made for the winding up of Supplier, Supplier passes a resolution for winding up (other than for the purposes of a solvent reconstruction or amalgamation) or a liquidator of Supplier is appointed; or
 - (c) Supplier enters into a compromise or arrangement with creditors; or
 - (d) a liquidator has been appointed over all or any part of Supplier's assets; or

- (e) Supplier is dissolved.

Part D: Specific provisions for Services

Article 37: Applicability

The provisions of this Part D apply, in addition to the provisions of Part A, to the provision of Services. In the event of any conflicts, discrepancies or unclarity between any provision of Part D and any provision of Part A, the provision of Part D shall prevail.

Article 38: General provisions applying to all Services

1. Supplier warrants that it (i) shall perform the Services with promptness, diligence, in a workmanlike manner and in accordance with high professional standards and best practices; (ii) shall use adequate numbers of qualified individuals with suitable training, education, experience and skill to perform the Services; (iii) shall comply with all Applicable Law in relation to the Services; (iv) shall provide all support related to the Services that is required by Action in order to meet Action's requirements imposed by Applicable Law; (v) shall implement all measurement and monitoring tools and procedures required to measure and report performance of the Services as set forth in the Agreement; (vi) shall provide monthly performance reports as set out in the Agreement; and (vii) shall ensure that the deliverables of the Services meet the Requirements.
2. During the performance of the Services, Supplier shall at all times act as an advisor to and independent contractor of Action and nothing in this Agreement shall constitute the appointment of Supplier as the agent of Action. Supplier shall not have the power, and shall not indicate to any third party that it has the power, to bind or commit Action to any third party in any way whatsoever.

Article 39: Cloud Services

1. Where the Agreement provides for the provision of Cloud Services, applicable Service Levels shall be set out in an SLA.
2. Rights to use the Cloud Services are granted in accordance with the metric system, as set out in the Agreement. Action will use the Cloud Services themselves, and is entitled to grant suppliers, clients and/or other business relations rights to use the Cloud Services, if Actions deems such use necessary for its business operations.
3. Software provided through the Cloud Services shall be subject to the warranties set out in Article 33.1.
4. In addition, Supplier warrants to Action that by implementing modifications in the Cloud Services, including without limitation the Software and the Hosting Environment, Supplier will ensure, at no additional cost, that during the term of the Agreement, the Cloud Services:
 - (a) will continue to comply with all Applicable Law;
 - (b) will enable Action to continue to use the Cloud Services in accordance with the Requirements;
 - (c) will keep pace functionally and technically with general technological developments and developments in the market for which the Cloud Services are intended to be used;
 - (d) will remain connected and can continue to be used in an integrated manner by Action and other permitted users, with the external systems with which they will or can be connected as described in the Agreement and/or the

Requirements;

- (e) will operate in a stable and reliable manner and will continue to comply with the Service Levels as defined in the SLA;
- (f) furthermore, Supplier will proactively and reactively assist Action and other permitted users in a professional and customer-friendly manner when Action, and other permitted users use the Cloud Services, in accordance with the SLA.
5. When carrying out maintenance, or otherwise implementing modifications relating to the Cloud Services, Supplier will comply with the requirements set out below, unless explicitly agreed otherwise in writing with Action in the relevant case. Supplier must:
- (a) not degrade any existing functionality or materially and adversely impair the performance of the Cloud Services;
 - (b) not make any modifications that may have an impact on the interfaces and links between the Cloud Services and the systems and databases connected with the Cloud Services;
 - (c) not make any modifications that involve investments for Action in operations or connected systems;
 - (d) always ensure that the impact of the modification is made sufficiently clear in advance to enable timely anticipation and response by Action;
 - (e) ensure that the Software will continue to function fully in accordance with the Requirements in combination with the modification made;
 - (f) ensure that the timing of implementing modifications is always agreed with Action in advance, unless such modifications have no substantial impact on Action.
6. Action will not block on unreasonable grounds and/or attach unreasonable conditions to its consent to implement a modification in the Cloud Services.
7. As part of the Contract Price for the Cloud Services, Action has a standard entitlement to the use of new functionalities of the Software that Supplier develops and makes available on the market on a 'cloud' basis.
8. Supplier will ensure that the Hosting Environment meets and will continue to meet the specific requirements stated in the Agreement respectively the Requirements.
9. All work on, expansion of or modifications to the Hosting Environment, which are necessary to ensure the Cloud Services comply with the Agreement and the Requirements and to safeguard the performance of the Cloud Services, will be carried out by the Supplier as part of the Contract Price.
10. The Supplier will configure the Cloud Services, and the Hosting Environment in particular, in such a manner that any use or misuse of the Cloud Services by other users has no negative impact (such as reduced performance) on Action's use of the Cloud Services.
11. All Action Data and all data derived therefrom, including derived anonymous statistical data, are explicitly deemed to be Action's confidential information.
12. The Supplier will not use or analyse the Action Data in any manner whatsoever other than to the extent strictly necessary for the delivery of the Cloud Services to Action. To the extent there is a technical necessity to analyse the Action Data (to carry out a virus scan, for example, or to determine the storage space needed for the Action Data), the derived data generated for that analysis will not be used for any other purpose. Any other type of use and/or analysis of the Action Data is strictly prohibited. This means that Supplier is expressly prohibited from using Action Data to collect aggregated and/or anonymised usage data, for the purpose of generating market statistics, for example, unless the results obtained are solely made available to Action.
13. Supplier will deliver the Cloud Services in accordance with the SLA.
14. If Supplier fails to comply with or is potentially unable to comply with a Service Level in accordance with the SLA, Supplier will inform Action as soon as possible and propose measures to eliminate the shortcoming and prevent recurrence. Without prejudice to Action's other rights, Supplier will:
- (a) redeliver or subsequently deliver the relevant Service in accordance with the applicable Service Level, if this is reasonably possible and Action considers this desirable; and
 - (b) deploy as soon as possible all additional resources that are reasonably necessary to prevent recurrence.
15. If measurement data for a specific Service Level are lacking or insufficiently reliable, the service level will be deemed unachieved for the relevant measurement period, unless:
- (a) the lack or insufficient reliability of the measurement data is the fault of Action or third parties for whom Action is responsible; or
 - (b) Supplier can otherwise prove that the particular service level has in fact been achieved.
- Article 40: Hosting Services**
1. Where the Agreement provides that Supplier shall provide Hosting Services, applicable Service Levels shall be set out in an SLA.
2. The provisions of Article 39 shall apply – mutatis mutandis – to such Services, with the exception of subsection 3 and subsection 7.
- Article 41: Maintenance and Support Services**
1. Supplier shall provide Maintenance and Support Services as specified in - and in accordance with - the Agreement (including the applicable SOW, Services Description and/or the SLA).
2. Maintenance and Support Services shall be provided during the service windows set out in the Agreement (including the applicable SOW, Services Description and/or the SLA). If no service window has been specified, Maintenance and Support Services shall be provided 24 hours a day, seven days a week.
3. Supplier shall provide Maintenance and Support Services during the term specified in the Agreement (including the applicable SOW, Services Description and/or the SLA). If no term has been specified, Maintenance and Support Services shall be provided for the duration of the Agreement, from the date of Acceptance of the Solution. During the warranty period applicable to the Solution that is the subject of Maintenance and Support Services, no maintenance fee is due.
4. Supplier will perform Maintenance and Support Services at or from its premises. Supplier will perform Maintenance and Support Services at Action's premises only where reasonably necessary.
5. Maintenance and Support Services that may disrupt the



business operations of Action will, in principle, be performed outside Action's normal working hours.

6. If disruption of the business operations referred to in Article 41.5 is inevitable, given the importance of resolving the Defect immediately, Supplier will give Action timely notice of this before starting its Maintenance and Support activities.
7. Supplier will report to Action on the progress of the work in the manner specified in the Agreement (including the applicable SOW, Services Description and/or SLA), or as otherwise expressly agreed in writing.
8. Supplier will use a work-around solution only with the consent of Action. Unless the parties agree differently in a specific case, Supplier will replace a work-around solution as quickly as possible with a final solution.
