

PURCHASE CONDITIONS: PART I: GENERAL MODULE VERSION DECEMBER 2023

ARTICLE 1.- APPLICABILITY AND STRUCTURE OF PURCHASE CONDITIONS

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| <p>1.1 These Purchase Conditions have a modular structure. These Purchase Conditions consist of a general module that also applies to all initiatives, requests, offers and Agreements referred to in paragraph 4 of this article, unless an exception is made in these Purchase Conditions or otherwise expressly or due to the nature of the articles. The modules relating to a specific subject appear below this general module. Depending on the purpose and subject matter of the initiatives, requests, offers and Agreements referred to in paragraph 4 of this article, the provisions of this general module and the provisions of one (1) or more specific modules always apply to them.</p> <p>1.2 The purpose and subject matter of the initiatives, requests, offers and Agreements referred to in paragraph 4 of this article determine which specific module(s), in addition to the general module of these Purchase Conditions, applies/are applicable to them. The parties may only expressly agree otherwise in writing.</p> <p>1.3 In the event of any conflict between provisions of the Agreement and provisions of these Purchase Conditions, the provisions of the Agreement will prevail. In the event of any conflict between provisions of this general module of these Purchase Conditions and provisions of a specific module thereof, the provisions of the specific module shall take precedence. In the event of any conflict between provisions of a specific module of these Purchase Conditions and provisions of another specific module thereof, the provisions of the specific module that most relate to and are most relevant to the purpose and subject matter of the initiatives, requests, offers and Agreements referred to in paragraph 4 of this article shall take precedence. In the event of disagreement between ENGIE NL and the Other Party, the Parties will consult on this. Should such consultation not lead to agreement, ENGIE NL will determine which specific module(s) of these Purchase Conditions is/are relevant to the purpose and subject matter of the initiatives, requests, offers and Agreements referred to in paragraph 4 of this article.</p> <p>1.4 The provisions of these Purchase Conditions form an integral part of the Agreement and also apply to all initiatives, requests, offers and agreements, in which ENGIE NL acts as the initiating, requesting and/or purchasing Party with regard to (future) Items of Work and/or Services.</p> <p>1.5 Capitalised terms shall have a meaning specific to these Purchase Conditions to the extent that they are defined in Annex 1 (Purchase Conditions – Definitions) of this general module of the Purchase Conditions.</p> | <p>1.6 By signing the Agreement, the Other Party declares that it has taken note of and agreed to the Purchase Conditions.</p> <p>1.7 Deviations from an initiative, request, offer, the Agreement and/or these Purchase Conditions can only be agreed between the Parties in writing and must be included in the Agreement.</p> <p>1.8 The Other Party's general condition(s), however described, is/are not applicable. ENGIE NL hereby expressly rejects the applicability thereof, unless expressly agreed otherwise by the Parties in writing in the Agreement.</p> <p>1.9 Unless otherwise agreed in writing between the Parties, during the term of the Agreement only the Purchase Conditions associated with this Agreement apply and new versions of the Purchase Conditions do not apply. In the event of an extension of the Agreement, for whatever reason, the most recent version of the Purchase Conditions applied by ENGIE NL at that time will in any event apply to that extended Agreement from the time of this extension.</p> <p>1.10 If it is established according to Dutch law that any stipulation that forms part of these Purchase Conditions and/or of the Agreement will be null and void or is voidable, the remaining part of Agreement and/or these Purchase Conditions will remain in force and the relevant stipulation between the Parties will immediately be replaced by a stipulation that does remain in force according to Dutch law and that approximates the purpose and purport of the original stipulation as much as possible.</p> <p>1.11 In the event of changes in laws and regulations relevant to the Agreement and/or Purchase Conditions, which entail that provisions in the Agreement and/or these Purchase Conditions cannot remain in full force, the Agreement and/or these Purchase Conditions will, in so far as necessary, be amended in ENGIE NL's reasonable opinion, with the original content and purport of the Agreement and/or these Purchase Conditions amended as such being guaranteed as much as possible. In the event that ENGIE NL or the Other Party is obliged or entitled, respectively, to amend these Purchase Conditions and/or the Agreement as a result of a decision by the competent authority or a competent (judicial) body and/or as a result of a change in laws and regulations relevant to the Agreement and these General Purchase Conditions (this also includes adjustments to taxes, levies and surcharges), as well as in the event of changes in the structure of the only market in which the Parties operate as a result of the applicability of these Purchase Conditions, ENGIE NL will determine, after consultation with the Other Party, whether and, if so, how the Agreement and/or these Purchase Conditions will be amended accordingly.</p> <p>1.12 These Purchase Conditions can be cited as the "<i>ENGIE NL Purchase Conditions, version December 2023</i>".</p> |
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ARTICLE 2.- OFFERS AND CONCLUSION OF AGREEMENTS

- 2.1 An irrevocable offer by the Other Party follows a request from ENGIE NL.
- 2.2 An offer is valid for ninety (90) days, unless otherwise stipulated in writing by ENGIE NL.
- 2.3 If a written statement, including the Purchase Order, follows an offer by the Other Party, the Agreement will be concluded when ENGIE NL has sent that written statement to the Other Party and that written statement has reached the Other Party. Nevertheless, a statement that has not reached the Other Party or has not reached it in good time also takes effect if this is failure to reach the Other Party or to do so in good time is a result of the Other Party's own act, an act by persons for whom the Other Party is responsible or liable and/or other circumstances that concern the capacity of the Other Party and which justify the Other Party bearing the disadvantage.
- 2.4 A verbal agreement between the Parties and/or a verbal (purchase) order may only be executed and/or will only be executed after ENGIE NL has confirmed this agreement and/or the verbal (purchase) order in writing or after ENGIE NL has sent a purchase order number to the Other Party regarding the verbal agreement between the Parties and/or a verbal (purchase) order, notwithstanding receipt thereof by the Other Party with due observance of the provisions of the second sentence of paragraph 3 of this article.
- 2.5 In the case of framework agreements, the Agreement is concluded every time the Purchase Order is sent by ENGIE NL for a (partial) delivery of Works, Goods and/or Services within the framework of the framework agreement, with the provisions of the second sentence of paragraph 3 of this article applying mutatis mutandis.
- 2.6 ENGIE NL has the right to make changes and/or additions to its request and/or to the offer received from the Other Party. In that case, the Agreement will not be concluded until ENGIE NL receives written confirmation from the Other Party with regard to the amended or supplemented offer and ENGIE NL in turn accepts this written confirmation from the Other Party in writing. ENGIE NL has the right to require the Other Party, with due observance of the principles of reasonableness and fairness, to make changes to the nature and scope of the Goods, Work and/or Services to be delivered. Such changes may not be of such a nature that the Other Party, as may reasonably be assumed, would not have entered into the Agreement under the conditions included prior to the change if it had been aware of the changes in advance. ENGIE NL may notify the Other Party of the aforementioned changes verbally and these will subsequently be recorded in writing and will form part of the Agreement after verbal notification.

- 2.7 If and in so far as the provisions in paragraphs 1 to 6 of this article take place in full or in part by electronic means, this will be equated with the provisions in paragraphs 1 to 6 of this article, and corresponding conditions must be observed in regard to the purpose and purport as follows from the provisions in paragraphs 1 to 6 of this article. Furthermore, in the event that when ENGIE NL enters into the Agreement digitally and/or (can) digitally issue initiatives, requests and/or offers in a digital environment of and/or used for the benefit of the Other Party, conditions, including the conditions of the Other Party, must be accepted in order to be able to arrive at an Agreement or an initiative, request and/or offer by ENGIE NL, such acceptance has no legal effect and does not constitute acceptance by ENGIE NL of those conditions and the relevant acceptance must only be considered a factual act in order to arrive at the Agreement or the initiative, request and/or offer on the part of ENGIE NL under the conditions included therein, except in so far as expressly agreed otherwise in writing between the Parties.
- 2.8 The Parties warrant that Agreements, including amendments thereto, will at all times be entered into and signed by authorised persons or representatives of the respective Party, failing which an unauthorised representation cannot be invoked against the other Party.

ARTICLE 3.- PRICES, TAXES AND SUBSIDIES

- 3.1 Unless otherwise agreed in writing in the Agreement, the agreed prices and rates are fixed and are in euros (€). The agreed prices and rates are exclusive of VAT and/or other (future) taxes, levies and/or surcharges. The agreed prices may be increased by VAT, other (future) taxes, levies and/or surcharges and these amounts will be borne by ENGIE NL and ENGIE NL must guarantee correct remittance and/or payment thereof, unless it is provided by law that the Other Party is prohibited from passing on these (future) taxes, levies and/or surcharges to ENGIE NL in connection with the conclusion and/or execution of the Agreement or it is provided by law that a party, as the Other Party in the position vis-à-vis ENGIE NL under an Agreement with ENGIE NL, is obliged to pay and pay these (future) taxes, levies and/or surcharges.
- 3.2 Unless otherwise agreed in writing by the Parties in the Agreement, the prices and rates agreed in the Agreement are inclusive of the costs of transport, storage, customs clearance, insurance and/or packaging, as well as inclusive of the costs for the Other Party and any third party engaged by the Other Party for the provision of Services and/or the performance of Work and all additional costs in that respect, such as those of testing, tools and equipment. Travel and accommodation costs and travel hours will only be reimbursed by ENGIE NL if and in so far as agreed in writing in the Agreement.
- 3.3 If and in so far as, in connection with the conclusion of the Agreement and/or the execution thereof, the Other Party may be eligible for any subsidy, an exemption and/or a

reduction of the (future) taxes, levies and/or surcharges applicable at such time and/or the costs of transport, storage, customs clearance, insurance and/or packaging and/or the Other Party wishes to claim such, the foregoing will be entirely and solely at the expense and risk of the Other Party. If ENGIE NL's cooperation is necessary for the Other Party to be eligible for the provisions of the previous sentence, ENGIE NL will, in principle, cooperate with this unless it reasonably provides otherwise and ENGIE NL will be entitled to charge the Other Party a reasonable fee for this. In the event of cooperation by ENGIE NL, this will be entirely at the expense and risk of the Other Party and, in derogation from the provisions of **Article 9 (Liability and Penalty)** of these Purchase Conditions, this may never lead to liability or any other obligation on the part of ENGIE NL.

ARTICLE 4.- PAYMENT, INVOICING AND SECURITY

- 4.1 Payment of amounts owed by a Party shall take place in accordance with the provisions as included in the Agreement concluded between ENGIE NL and the Other Party and on condition that, in the event that ENGIE NL must pay the invoiced amounts, the invoice has been approved by ENGIE NL and ENGIE NL has approved and/or accepted the delivery/partial delivery and/or performance/partial performance in accordance with the provisions to that end in the Agreement and/or the Purchase Conditions. If no specific arrangements have been made, a payment term of sixty (60) days after the invoice date applies to each of the Parties with regard to an amount owed by it to the other Party, unless the law prescribes a different term and provided that all delivery and other conditions have been met. Upon delivery of Goods, Work and/or Services in parts, invoicing and payment in parts will follow accordingly.
- 4.2 If and in so far as ENGIE NL has objections to invoices, ENGIE NL will communicate its objections to the Other Party with substantiation and this will result in ENGIE NL having the right to suspend and/or limit the payment of all or part of the invoiced amounts against which the objections have been raised. In such a case, the Parties shall consult with a view to finding a solution to the dispute regarding the relevant invoice.
- 4.3 ENGIE NL is entitled to have payment of amounts invoiced to it made to the Other Party by a third party if this is included in the Agreement. In such a case, ENGIE NL will not be jointly and severally liable for the fulfilment of the payment, but may be obliged to pay if it has been established in a final and conclusive court decision that the aforementioned third party imputably failed to make payment and it has been established that ENGIE NL is the beneficiary and/or party involved for whose benefit the Other Party executed its performance under the Agreement.

- 4.4 ENGIE NL has the right, after it has informed the Other Party thereof in writing and/or by email, to make payments for the Other Party to third parties, for example to subcontractors and/or suppliers engaged by the Other Party in the performance of its obligations under the Agreement, if, among other things but not exclusively, the progress of the Work and/or the provision of Services and/or supply of Goods would be jeopardised in the absence of such payment, or for any other reason whatsoever as reasonably determined by ENGIE NL with a view to the correct execution of the Agreement. These payments will be deducted from what ENGIE NL owes the Other Party. In addition, these payments constitute a discharging payment on the part of ENGIE NL.
- 4.5 Unless otherwise agreed in writing in the Agreement, the invoice will only be submitted by the Other Party and on a monthly basis in arrears, with submission of documents in which the costs are itemised according to the categories specified in the Agreement.
- 4.6 In order to secure the proper performance of the Other Party's obligations under the Agreement, ENGIE NL is authorised, in cases to be determined by ENGIE NL, to require the Other Party to provide appropriate credit security, in ENGIE NL's reasonable opinion, in accordance with the conditions set by ENGIE NL to that end. If and in so far as ENGIE NL requires a bank guarantee, this must be a bank guarantee upon first demand, issued by a banking institution acceptable to ENGIE NL, whereby this banking institution must irrevocably, independently and autonomously act as guarantor during the period as requested by ENGIE NL. The costs of the bank guarantee and/or any other security will be borne by the Other Party.
- 4.7 Payment by ENGIE NL does not in any way constitute a waiver of rights. Furthermore, payment cannot be interpreted as acknowledgement of the soundness of the delivery of Goods, Services and/or the execution of the Work and does not release the Other Party from any liability and/or other obligation with regard to such delivery and/or execution.
- 4.8 As long as ENGIE NL is covered by a statement as referred to in Article 2:403(1)(f) of the Dutch Civil Code (DCC), the Other Party is not entitled under any circumstances to require any (additional) credit security from ENGIE NL, unless expressly agreed otherwise by the Parties in writing.
- 4.9 ENGIE NL is authorised at all times to set off claims of the Other Party against ENGIE NL with claims that ENGIE NL has against the Other Party and/or any other legal entity within its group as referred to in Article 2:24b DCC for any reason whatsoever, regardless of whether the Other Party's claim for payment against ENGIE NL has passed to a third party. Unless expressly agreed in writing in the Agreement, the Other Party will never be entitled to suspend any payment to ENGIE NL and/or to set off any

claim of ENGIE NL against it and/or any other legal entity within its group as referred to in Article 2:24b DCC.

ARTICLE 5.- QUALITY AND GUARANTEES REGARDING THE OTHER PARTY

The Other Party warrants that:

- a. it has the required expertise to perform the Agreement and is thus able to perform the Agreement correctly and in a timely manner;
- b. it has, before issuing its quotation to ENGIE NL, made itself aware of ENGIE NL's requirements, wishes and expectations and is not aware of any circumstances that would result in ENGIE NL not having concluded the Agreement or not having concluded it in the same form or under the same conditions;
- c. every quotation issued by it is correct and gives a complete picture of the offer made;
- d. if the execution of the Agreement requires the cooperation of employees of ENGIE NL, this has been included in the quotation and the Agreement and ENGIE NL has explicitly agreed to this as such, sufficiently demonstrated by the Other Party;
- e. in so far as ENGIE NL does not impose any further requirements regarding the Goods and/or Services to be provided and/or the Work to be performed, such Goods, Services and/or Work are in any event of good quality and at least satisfy the usual requirements of soundness and efficiency of a professional market party, as well as satisfying all statutory requirements and customary sector regulations regarding quality, safety, health and the environment;
- f. the delivered Goods and/or Services and/or the Work performed meet the intended purpose, comply with the usual safety, environmental, usage and health regulations and continue to comply with these during the normal period of use;
- g. the delivered Goods, Services and/or Work comply with the Agreement, are free of defects and are suitable for the purpose for which ENGIE NL wanted to obtain them;
- h. it will only engage employees, including any third party, who meet the requirements of professional competence and expertise and who in any event have a good command of the Dutch and/or English language;
- i. it will comply with the house rules, rules of conduct and safety regulations that apply at the ENGIE NL site where the Goods are delivered, Services are provided and/or the Work are performed, and will make these known to its employees and third parties working for it and will ensure that these are strictly complied with, and that it has set up its own organisation in such a way that its own house rules, rules of conduct and safety regulations at least meet the level of that of ENGIE NL and are also complied with and implemented as such and, in that respect, also has an employee employed by it who is more specifically involved in this and/or has been appointed for it;

- j. before making the Goods and/or Work, including any ICT Performance, available for an acceptance procedure, it has ascertained that these are compliant in order to comply with this acceptance procedure;
- k. ENGIE NL has the right to use the delivered Goods and/or Services and/or the Work to be performed for their purpose after delivery, without any (legal) restriction or encumbrance;
- l. after delivery, it will be able to provide parts for the delivered Goods and/or (updates/upgrades for the) Software or Work and/or Services for a period of at least five (5) years;
- m. in the event that it engages a third party for the purposes of the Agreement and/or the execution thereof, such third party is not permitted to also engage a third party itself for the purposes of the performance of the activities within the framework of the Agreement for which ENGIE NL engaged the first-mentioned third party. The Parties may deviate from the foregoing if explicit written arrangements have been made between the Parties to that end in the Agreement;
- n. it keeps such records with regard to the Agreement and its execution that these always show the costs incurred and obligations entered into, as well as which persons from, or acting for, the Other Party are executing the Agreement. Based on this data, ENGIE NL must be able to identify and retrieve information on these persons, including their (temporary) residence or domicile;
- o. after a request to that effect from ENGIE NL in writing, including by electronic means, it will provide copies of documents relating to the Agreement to ENGIE NL free of charge within the specified period. If no time limit has been indicated, the documents will be provided as soon as possible.

ARTICLE 6.- CONFIDENTIALITY

- 6.1 The Other Party will keep confidential all information that it has become aware of, either directly or indirectly, from or about ENGIE NL both during the negotiations regarding the Agreement and during the term of the Agreement, as well as for one (1) year after its termination, regarding which it has been established that it is of a confidential nature or the confidentiality of which it should reasonably be aware. This obligation does not apply to information that:
 - a. was already known to the Other Party prior to the commencement of the negotiations with ENGIE NL, unless this information was provided under confidentiality;
 - b. is known to the public;
 - c. must be disclosed by or pursuant to the law, an order from a court and/or a decision to that effect by the competent authority, including a supervisory authority. In such a case, the Other Party will inform ENGIE NL in advance and will only disclose information the

disclosure of which is strictly necessary to comply with the obligation.

- 6.2 In the execution of the Agreement, the Other Party will oblige its personnel and/or third parties engaged by it to observe the same confidentiality in writing or will cause its personnel and/or these third parties to sign the confidentiality statements submitted by ENGIE NL.
- 6.3 Without ENGIE NL's prior written consent, the Other Party may not advertise the execution of the Agreement in any way, nor maintain contact, directly or otherwise, with ENGIE NL's client(s).
- 6.4 The Parties mutually undertake to use the confidential information received from the other Party exclusively for the purpose for which this information was provided to them.
- 6.5 The Other Party will not implicitly or explicitly mention the Agreement in publications (including press releases and statements on websites) or advertising and will not use ENGIE NL's name as a reference, unless prior written permission to do so has been given.

ARTICLE 7.- INTELLECTUAL PROPERTY

- 7.1 The Other Party guarantees that the use or consumption, including resale, of the Goods, Services and/or Work produced by it or on its behalf, or of the auxiliary materials purchased or manufactured by it for the benefit of ENGIE NL, will not infringe any intellectual property right, comparable rights and/or other rights of third parties.
- 7.2 In so far as the Goods or auxiliary materials or Services to be delivered or the Work or activities performed by or on behalf of the Other Party are subject to an intellectual property right and/or similar right of third parties, the Other Party shall, with due observance of the provisions of paragraph 5 of this article, ensure that ENGIE NL acquires the perpetual right of use or the perpetual right of consumption at no additional cost to ENGIE NL beyond the agreed (purchase) price. ENGIE NL has the right, at the Other Party's expense, to directly agree the right of use or the right of consumption with the relevant third party or third parties, and the Other Party will support ENGIE NL at its own expense and follow ENGIE NL's instructions in that regard in order to enable ENGIE NL to enjoy the aforementioned rights of use or consumption, respectively.
- 7.3 If it turns out that the use or consumption by ENGIE NL as referred to in the second paragraph of this Article infringes or threatens to infringe an intellectual property right, a comparable right and/or any other right of third parties, the Other Party will be obliged, at ENGIE NL's sole discretion:
- to either replace the relevant Goods, auxiliary materials or Services and/or Work with equivalent goods, services or Work that do not infringe the rights of third parties;
 - to either obtain a perpetual right of use or a perpetual right of consumption for the relevant Goods, Services, auxiliary materials and/or Work;
 - to either change the relevant Goods, auxiliary materials or Services and/or Work in such a way that the infringement is eliminated, such in consultation with ENGIE NL and without additional costs arising for ENGIE NL outside the agreed (purchase) price or the possibilities for use and/or consumption being more limited than those with regard to the original Goods, auxiliary materials or Services and/or Work to be delivered.
- 7.4 The Other Party indemnifies ENGIE NL against claims by third parties that these third parties direct to ENGIE NL in connection with the exercise by ENGIE NL of the rights of use and/or consumption rights as listed in the previous paragraph of this article and it will compensate ENGIE NL for any and all damage and costs resulting therefrom. ENGIE NL also has the right, if third parties hold ENGIE NL liable with regard to an infringement of their (intellectual) property rights and/or comparable rights, to terminate the Agreement in writing, out of court, in whole or in part, without prejudice to its other rights. ENGIE NL will only exercise its right to terminate the Agreement after prior consultation with the Other Party.
- 7.5 Unless the Parties agree otherwise in writing in the Agreement, all worldwide intellectual property rights – including copyrights, design rights, database rights, trademark rights and patent rights – and/or comparable rights arising from or resulting from the execution of the Agreement by the Other Party, its personnel and/or third parties engaged by it, including all (intellectual property) rights vested in, ensuing from or contained in Customised Software and/or methods and techniques used especially for ENGIE NL for installation, implementation or other work, will belong exclusively to ENGIE NL. In the event of delivery of Standard Software, the provisions of **Article 18(1) (Transfer of ownership and risk upon delivery of Goods)** apply. The Other Party will transfer all the aforementioned intellectual property rights and/or comparable rights to ENGIE NL at its own expense in accordance with the applicable requirements. This transfer of rights in advance is accepted now for then by the Parties. The Other Party guarantees that it is authorised to effect the transfer envisaged in this article and indemnifies ENGIE NL against any and all damage and costs in the absence of such authority.
- 7.6 If a further deed is required for the transfer of such rights as referred to in paragraph 5 of this article, the Other Party hereby irrevocably authorises ENGIE NL, by signing the Agreement, to draw up such a deed or have it drawn up and to sign it on behalf of the Other Party, without prejudice to the Other Party's obligation to cooperate in the transfer of such rights at ENGIE NL's first request, without being able to impose conditions and/or charge additional costs. Furthermore, by signing the Agreement, the Other Party irrevocably authorises ENGIE NL to have the

transfer of the intellectual and other property rights and/or comparable rights registered in the relevant registers. In so far as the transfer (in advance) envisaged in this article has not yet taken place, ENGIE NL has an exclusive and irrevocable right, until that time, to use the (intellectual property) rights that are the subject of the intended transfer. The fee for the transfer in advance of rights and right of use referred to in this article is included in the fees or price for the Goods, Services and/or (Works).

- 7.7 By signing the Agreement, the Other Party waives all personality rights accruing to it with regard to the delivered Goods, components, Services and/or Work performed, to the extent that legislation allows such waiver. The Other Party guarantees that the employees involved on its side in the employment contract between these employees and the Other Party, as well as the third parties otherwise involved by the Other Party in the contract for services between these third parties and the Other Party, these employees or third parties waive any personality rights accruing to them, to the extent that the applicable legislation allows such a waiver.
- 7.8 If there is a difference of opinion regarding the ownership of the (results of) deliveries made of the intellectual and other property rights and/or comparable rights, the point of departure is that such ownership is vested in ENGIE NL until such time as, in ENGIE NL's reasonable opinion, proof to the contrary has been provided.
- 7.9 All intellectual property rights and/or comparable rights on goods and/or services delivered and/or made available by ENGIE NL to the Other Party, including software and systems of ENGIE NL delivered by third parties and/or services performed by third parties for the purpose of the execution of the Agreement, are vested exclusively in ENGIE NL (or these third parties), unless agreed otherwise in writing in the Agreement. If and in so far as ENGIE NL, in connection with and/or in the context of the delivery of Goods, Services and/or the performance of Work by the Other Party, has developed something and/or devised something or has made a contribution, any associated and/or created intellectual property rights accrue exclusively to ENGIE NL, unless otherwise agreed in writing in the Agreement.

ARTICLE 8.- TRANSFER TO THIRD PARTIES AND CHANGE IN DIVISION OF OWNERSHIP

- 8.1 ENGIE NL is permitted to transfer the Agreement and/or its rights and obligations described in the Agreement with the Other Party, in whole or in part, to third parties. In the aforementioned cases, ENGIE NL will inform the Other Party of this in advance. The Other Party will cooperate in the aforementioned transfer.
- 8.2 The Other Party will not transfer the Agreement and/or its rights and obligations ensuing for it from the Agreement in whole or in part to third parties, nor may it outsource same

to third parties, unless prior written consent has been obtained from ENGIE NL. In addition, ENGIE NL is entitled to attach conditions to the aforementioned consent to transfer. Notwithstanding the foregoing, the Other Party will always remain liable for the proper execution of the Agreement. In the event that ENGIE NL believes on reasonable grounds that the third party does not meet, or does not fully meet, what may be expected with regard to the execution of its part of the Agreement, the Other Party is obliged to replace this third party, or have them replaced, at ENGIE NL's first request.

- 8.3 If the Other Party's legal form is converted into a different legal form, the Other Party legally merges with another company, or legally divides or spins off its business into another legal entity, the Other Party transfers its business and/or parts thereof to another party, or if the (administrative) divisions of ownership with regard to the Other Party's business change, the Other Party is obliged to inform ENGIE NL of this in writing in advance. In the event of a transfer of undertaking as referred to above, the Other Party is obliged vis-à-vis ENGIE NL to transfer the Agreement to the new undertaking, in so far as the latter continues its activities to which the Agreement relates and the Other Party is obliged to ensure that this new undertaking will continue the Agreement in full. ENGIE NL is entitled to attach conditions to its consent to such a transfer or change of (administrative) divisions of ownership, including requiring (additional) security. In the aforementioned cases, ENGIE NL is also entitled to suspend and/or terminate the Agreement without notice of default or judicial intervention, without ENGIE NL being obliged to pay any damages.
- 8.4 The Agreement will remain in force if ENGIE NL's legal form is converted into a different legal form, ENGIE NL legally merges with another company, or legally spins off its business into another legal entity, or if ENGIE NL transfers its business to someone else and/or the (administrative) divisions of ownership within and/or with regard to ENGIE NL change. All this is subject to objections on the part of ENGIE NL.
- 8.5 In urgent cases and if, after consultation with the Other Party, it must reasonably be assumed that the Other Party cannot or will not perform its obligations under the Agreement, or cannot or will not do so in good time or properly, ENGIE NL is authorised to require the Other Party to outsource all or part of the execution of the Agreement to third parties at its own expense, risk and costs. All this shall not release the Other Party from its obligations under the Agreement. ENGIE NL is also authorised, at its own discretion, to perform the Other Party's obligations under the Agreement itself or to have them performed by third parties at the Other Party's expense and risk.

ARTICLE 9.- LIABILITY AND PENALTY

- 9.1 The Other Party – including the persons and/or employees charged with the management – is liable for and in that case obliged to compensate any and all damage (including costs) suffered by ENGIE NL as a result of or in connection with the execution of the Agreement, unless there is deliberate recklessness and/or intent on the part of ENGIE NL.
- 9.2 The Other Party indemnifies ENGIE NL against all third-party claims for compensation of damage as referred to in the first paragraph of this article. In this paragraph, third parties include employees of ENGIE NL and those working for ENGIE NL. The Other Party's liability or indemnification described in paragraph 1 and paragraph 2, respectively, will apply mutatis mutandis in the event of ENGIE NL's reselling to and/or making available to third parties of the Goods, Services and/or Work performed or made available by the Other Party to ENGIE NL.
- 9.3 The Other Party indemnifies ENGIE NL against all third-party claims relating to breaches committed by the Other Party of agreements concluded between the aforementioned third parties and the Other Party and/or violations of statutory provisions relating to the Goods, Services and/or Work delivered and/or to be delivered.
- 9.4 The liability of ENGIE NL – including the persons and/or employees charged with the management – for damage suffered by the Other Party, third parties engaged by the Other Party and/or its personnel is excluded, unless that damage is the result of deliberate recklessness and/or wilful intent on the part of ENGIE NL. In such a case, to the extent permitted by law, any obligation to compensate damage will be capped at the value of the relevant Purchase Order to which the damage relates. Furthermore, only direct damage is eligible for compensation.
- 9.5 The Other Party is obliged to adequately insure itself against its liability and risks in connection with the (execution of the) Agreement and, in so far as ENGIE NL requests this in writing, to submit proof thereof. ENGIE NL expressly rejects any claim by the Other Party to a maximum compensation for damage (including costs) in connection with the maximum payment by its insurer; the Other Party can never invoke such a restriction against ENGIE NL.
- 9.6 The Other Party will fail attributably in the performance of its obligation(s) under the Agreement as from the agreed delivery or supply date, without any notice of default being required, if the Other Party fails to deliver or supply the Goods and/or perform or complete the Work and/or Services as agreed in the Agreement on the agreed delivery or supply date and/or does not comply with the agreed obligations before or on the agreed delivery or supply date.
- 9.7 If Work and/or Services have not been performed or Goods have not been delivered or supplied as specified in the Agreement within the agreed period at the agreed place and/or manner, and/or as specified in the Agreement and/or the Purchase Order, the Other Party will be in default without any further prior notice of default being required and the Other Party will owe ENGIE NL an immediately payable penalty of 1% of the price of the relevant Purchase Order and/or Agreement, plus VAT, for each day that the default continues, up to a maximum of 15% of the price of the relevant Purchase Order and/or Agreement, plus VAT. If only in the reasonable opinion of ENGIE NL the performance in question has become permanently impossible, the penalty in its entirety will be owed from the moment that ENGIE NL has determined that the performance in question has become permanently impossible.
- 9.8 The right to the penalty referred to in paragraph 7 of this article does not affect ENGIE NL's right to claim performance of the Agreement, nor the right to full, additional and/or replacement damages.
- 9.9 A claim for damages by the Other Party must be submitted to ENGIE NL in writing no later than twelve (12) months after the Other Party has discovered or could reasonably have discovered the damage, failing which the right to damages lapses.
- 9.10 ENGIE NL's use, or not, of its powers in connection with the Agreement, the execution thereof and/or these Purchase Conditions will never lead to liability on the part of ENGIE NL and/or an obligation on the part of ENGIE NL to compensate any damage that may have arisen from this act and/or omission; nor will the foregoing lead to any other obligation on the part of ENGIE NL.
- 9.11 If, as a result of an attributable failure on the part of the Other Party and/or an attributable conduct or omission on the part of the Other Party, a penalty is imposed on ENGIE NL by a government regulator, which penalty is directly related, in whole or in part, to the aforementioned failure, conduct or omission, the Other Party will indemnify ENGIE NL against (that part of) the penalty. This indemnification by the Other Party for ENGIE NL is not subject to the limitations of liability and the limitations regarding the obligation to pay damages pursuant to this article.
- 9.12 The Other Party will indemnify ENGIE NL against any and all claims, rights and legal claims that third parties allege to have against ENGIE NL with regard to the Agreement and/or the execution thereof and/or can assert against ENGIE NL at any time, including those pursuant to tax, health insurance and social insurance legislation relating to the Other Party's personnel and/or third parties engaged by the Other Party. In that context, the Other Party will fully indemnify ENGIE NL in this respect. This indemnification by the Other Party for ENGIE NL is not subject to the limitations of liability and the limitations regarding the obligation to pay damages pursuant to this article.

ARTICLE 10.- INSURANCES

- 10.1 The Other Party warrants that it is adequately insured in connection with the execution of the Agreement and that insurance payments adequately cover any damage that may have occurred during the execution of the Agreement by the Other Party. At ENGIE NL's request, the Other Party must produce the insurance policies that the Other Party is obliged to take out on the basis of the aforementioned provisions. If and in so far as ENGIE NL reasonably deems this necessary, it is entitled to make a copy of these policies (electronically). ENGIE NL will treat these policies confidentially and will not provide them to third parties without the prior written consent of the Other Party, unless the law, a judicial decision and/or a decision by a competent authority obliges ENGIE NL to do so.
- 10.2 If the Other Party is entitled to claim payment under an insurance contract in connection with its possible liability vis-à-vis ENGIE NL, the Other Party must ensure that these payments are made directly to ENGIE NL; to that end, ENGIE NL may, at its discretion, require that:
- The Other Party takes out the insurance contract for the benefit of ENGIE NL, or that
 - The Other Party will transfer any insurance claim to ENGIE NL (in advance, whether or not as part of the conclusion of the Agreement).
In that event, the Other Party will grant ENGIE NL an irrevocable power of attorney to receive a payment of damages.
- 10.3 Any excess on an insurance taken out by the Other Party will be borne by the Other Party, in which respect the Other Party must transfer the amount associated with the excess to ENGIE NL in the event that the insurance company in any way deducts this excess from and/or takes it into account in the payment of the damages as described in paragraph 2 of this article.
- 10.4 Insurance by the Other Party will not limit its liability or lead to joint liability on the part of ENGIE NL and will not affect any claims by ENGIE NL vis-à-vis the Other Party for compensation of any damage pursuant to and/or in connection with the Agreement or execution thereof.
- 10.5 With due observance of the provisions of paragraph 1 of this article, prior to the commencement of the Work and/or the provision of Services, the Other Party must have taken out, have in effect and bear the costs of a "construction all risks insurance" (CAR) that also covers the Work and/or the Service, with ENGIE NL being mentioned in the policy as both co-insured party and (co-)beneficiary. Said CAR policy must provide sufficient primary cover to be able to meet the Other Party's statutory and contractual obligations. Any excess will at all times remain the responsibility of the Other Party, as will damage not covered by the policy. In the event of damage, the Other Party undertakes to notify ENGIE NL immediately in

writing, including by electronic means, and is obliged to correctly comply with all obligations laid down in the policy.

- 10.6 Without prejudice to everyone's liability pursuant to the law and/or the Agreement, at ENGIE NL's discretion and with explicit notification to the Other Party, ENGIE NL may take out CAR insurance partly for the benefit of the Other Party by virtue of the signing of the Agreement by both Parties, and the Other Party is obliged to cooperate in this at its own expense. The provisions of the last two sentences of paragraph 5 of this article apply mutatis mutandis to the provisions of the first sentence of this paragraph.
- 10.7 The Other Party must immediately report any disaster, and do so in writing to ENGIE NL. This applies in particular if injury and/or damage occurs or may occur to persons, goods, the environment, Work, (the result of the provision of) Services and/or Goods, or in the event that it must be assumed that the disaster will impede and/or restrict the correct compliance with and/or execution of the Agreement.
- 10.8 The Other Party must cooperate, free of charge, in any investigation to be conducted into the disaster by and/or on behalf of ENGIE NL, as well as by the competent public and other authorities. In addition, the Other Party must follow all directions and instructions given by and/or on behalf of ENGIE and/or given by the competent public and other authorities at its own expense. The Other Party will also cooperate in any notification to the competent public and other authorities free of charge. The Other Party will also ensure that third parties engaged by and/or on its behalf also comply with the provisions of this article.

ARTICLE 11.- INFORMATION, SAFETY AND SECURITY

- 11.1 The Other Party warrants that all Software or systems supplied by it to ENGIE NL and/or made available or used by it for the performance of the Goods, Services and/or the Work are always sufficiently safe and secure based on the principle of "*best available techniques*". This security operates against physical and digital threats (such as viruses, Trojan horses, worms, spyware, spam, phishing and rootkits) and/or against other forms of threat or menace that (potentially) jeopardise and/or could or do damage the confidentiality, correct functioning, correct realisation, integrity and/or availability of the Goods, Services or Works themselves or the (ICT) network or other parts of ENGIE NL's information provision in any way (including cyber incidents). In that respect, the Other Party will fully indemnify ENGIE NL for the consequences thereof, as well as being obliged to compensate ENGIE NL for the damage suffered and costs incurred in connection therewith and/or ensuing therefrom.
- 11.2 Without ENGIE NL's explicit written consent, making an electronic or other connection with digital and/or electronic systems and (ICT) networks, including ENGIE NL's office and PAS-related automation systems, is not permitted. Making a "*connection*" is understood to mean: a

connection between, on the one hand, the ENGIE NL electronic (digital) (ICT) network and/or systems and, on the other hand, external (own) resources of the Other Party and/or third parties engaged by the Other Party, such as PC or laptop, data carriers such as USB sticks, memory cards and/or any electronic (digital) (ICT) network and/or systems (or part thereof).

- 11.3 Upon request, the Other Party must be able to sufficiently demonstrate, in the reasonable opinion of ENGIE NL, that the equipment, Software, systems, networks or resources to be used are free of digital and/or other types of threats as set out in paragraph 1 of this Article. In doing so, ENGIE NL reserves the right at all times (in consultation with the Other Party) to carry out an audit itself or to set additional safety requirements and to test these where appropriate. In addition, ENGIE NL may require the Other Party to investigate and/or scan the (own) external resources referred to in paragraph 2 of this Article with the resources and methods designated by ENGIE NL.
- 11.4 The Other Party must immediately report suspicious software and/or (possible) digital and/or other forms of threats to ENGIE NL, in which respect any connection that may have been established must be limited and/or terminated immediately (in full and/or in part) and in which respect the Other Party must follow any instructions of and/or conditions imposed by ENGIE NL. The aforementioned instructions and consents from ENGIE NL notwithstanding, the Other Party remains responsible for the connection made and the consequences caused by the suspicious software and/or (possible) digital and/or other types of threats.
- 11.5 With regard to the provisions of this article, the Other Party must, upon request and if agreed, comply more specifically with known set certifications, standards, norms, guidelines and national or international regulations that monitor the use, behaviour or supply of Software (ICT) networks and/or systems, such as, but not limited to, the ISO/IEC 27001:2005 standard for information security.
- 11.6 If any ICT resources of ENGIE NL are used, the Other Party, as well as the third parties engaged by the Other Party, must at all times comply with the provisions of the “ENGIE NL ICT Code of Conduct” or the most recent version thereof.

ARTICLE 12.- TERMINATION, DISSOLUTION, ATTRIBUTABLE NON-PERFORMANCE, FORCE MAJEURE

- 12.1 ENGIE NL is at all times authorised, even if there is no attributable failure on the part of the Other Party, to terminate the Agreement prematurely by means of a written notification to the Other Party, provided that sufficient serious reasons are stated. If and in so far as ENGIE NL proceeds with the aforementioned premature termination, ENGIE NL will, in principle, observe a notice

period it deems reasonable in that respect, but cannot be required to do so.

- 12.2 Immediately after receipt of the written notification as referred to in paragraph 1 of this article, the Other Party will cease execution of the Agreement, subject to other written instructions from ENGIE NL. ENGIE NL and the Other Party will then consult on the consequences of such premature termination, in which respect the Other Party will, in principle, be entitled to reasonable compensation, not consisting of compensation in respect of production loss, lost profit and/or loss suffered. The provisions of this paragraph do not apply to the cases referred to in paragraphs 3 and/or 5 of this article.
- 12.3 If the Other Party fails in the performance of the Agreement, and/or if the Other Party must reasonably be deemed not to be able to fulfil its obligations (any longer), and/or if the Other Party offers any benefit to (an employee of) ENGIE NL and/or violates any boycott scheme and/or other statutory prohibition and/or order, and/or in the event of the Other Party's bankruptcy or suspension of payments and/or in the event of a shutdown, liquidation or takeover or any similar situation of the Other Party's business and/or changes the division of ownership within and/or the management of the Other Party, ENGIE NL will be entitled:
- to unilaterally terminate all or part of the Agreement immediately or – if performance is not permanently impossible in full or in part after expiry of a demand period communicated by ENGIE NL in writing – by means of a written notification to the Other Party and/or;
 - to suspend payment obligations or set off payments, whether or not against damage suffered and/or still to be suffered by ENGIE NL as a result of the termination and/or;
 - to assign the execution of the Agreement to third parties in full or in part at the Other Party's expense and/or to take the situation into its own hands, all without ENGIE NL being obliged to pay any damages and/or other obligations and without prejudice to any rights accruing to ENGIE NL, including ENGIE NL's right to full damages, penalties and performance.
- 12.4 All claims that ENGIE NL may have or acquire against the Other Party in the cases listed in paragraph 3 of this article will be immediately due and payable in full, plus collection costs and statutory commercial interest.
- 12.5 In so far as the Other Party can rightly invoke force majeure as referred to in Article 6:75 DCC, there is no default, the Other Party is, in principle, not obliged to pay damages and, in principle, is not liable to pay a penalty, provided that the Other Party has notified ENGIE NL in writing of the failure and the cause thereof without delay and in any event within the period agreed for the performance of the obligations. The Other Party will not be entitled to invoke force majeure in the event of a lack of personnel, strikes, epidemics, illness of personnel and/or shortcomings, whether or not as a result of force majeure,

committed by third parties engaged by the Other Party or on which the Other Party depends for the correct execution of the Agreement, nor in the event of late delivery or unsuitability of goods required for the performance of the Services and/or Work, nor in the event of liquidity or solvency problems. After the force majeure situation has ended, ENGIE NL will be entitled to demand subsequent delivery of the Services and/or Work not delivered and/or not realised during the force majeure situation.

- 12.6 If the Other Party invokes force majeure as referred to in Article 6:75 DCC and/or any form of suspension of its obligations under the Agreement, ENGIE NL will be entitled to suspend its payment obligations. If the situation of force majeure lasts longer than two (2) consecutive months, ENGIE NL may terminate the Agreement by registered letter with immediate effect without this giving rise to any obligation for ENGIE NL to pay damages and/or other obligation.
- 12.7 Obligations which, by their nature, are intended to continue even after termination of the Agreement will continue to apply after termination of the Agreement. These obligations include: guarantees, liability, confidentiality, intellectual property rights, indemnification for infringement of intellectual and other property rights, choice of law and settlement of disputes.

ARTICLE 13.- ETHICS, SUSTAINABLE DEVELOPMENT AND PERSONAL DATA

- 13.1 The Other Party undertakes to correctly comply with ENGIE NL's codes of conduct, including codes of conduct relating to established rules on sustainable development and social responsibility.
- 13.2 In particular, but not exclusively, the Other Party undertakes (i) not to make use of child labour, slave labour, prison labour or any other form of forced or involuntary labour, (ii) to refrain from unauthorised trade practices, the violation of boycott measures issued by the Netherlands, the EU and/or the UN, as well as corruption, (iii) to avoid any form of discrimination within its company or towards subcontractors and their (hired) personnel and (iv) to show respect for the environment, to actively protect the environment and to minimise the burden on it during the design, manufacture, use and removal or recycling of Goods, the performance of Services and/or Work, and also (v) to observe in particular proper compliance with safety regulations and health protection regulations, including working time legislation, as well as (vi) compliance with competition and anti-money laundering legislation when carrying out its business and other activities, including its activities under and/or in connection with the execution of the Agreement. The Other Party also warrants that it has correctly complied with the provisions of the previous sentence for at least six (6) calendar years prior to the signing of the Agreement.

- 13.3 In addition, following a written and reasoned request to that end from ENGIE NL, the Other Party will draw up a vigilance plan in accordance with the relevant requirements in the French legislation "*Loi de Vigilance*" ("*LOI n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre*") ("*Loi de Vigilance*"). In the aforementioned request, ENGIE NL will indicate the period within which the Other Party must have the requested vigilance plan ready and made available to ENGIE NL and also indicate at what point the Other Party must act in accordance with the provisions of the requested vigilance plan. At the Other Party's written request, ENGIE NL may support the Other Party in drawing up the required vigilance plan free of charge.
- 13.4 If ENGIE NL suspects shortcomings regarding the Other Party's compliance with the obligations referred to in this Article, ENGIE NL may at any time request clarification, information and explanation from the Other Party regarding the suspected shortcomings. The Other Party undertakes, upon first request, to provide ENGIE NL with the above requested details, limited to the business activity of the Other Party for a maximum period of the past seven (7) years (calculated from the time the information is requested) and supported by the necessary evidence, and to observe the required accuracy and completeness and respect the shortest possible deadline.
- 13.5 If, in the opinion of ENGIE NL, the Other Party fails to comply with the provisions of this article, this will be regarded as an attributable failure in the performance of its obligations vis-à-vis ENGIE NL within the meaning of **Article 12 paragraph 3 (Termination, dissolution, attributable non-performance, force majeure)** of these Purchase Conditions. In a case referred to in this article, ENGIE NL also has the option, at the Other Party's expense, depending on the situation and at its sole discretion, (i) to have an independent investigation carried out and/or (ii) to request the Other Party to take reasonable and proportionate measures to (immediately) discontinue and/or terminate the violation of the provisions of this article.
- 13.6 Each Party must manage, use and/or process the "*Personal Data*" within the meaning of the General Data Protection Regulation 2016/679/EU obtained from the other Party in the context of the Agreement, including the relevant negotiations, in accordance with the relevant provisions of the General Data Protection Regulation 2016/679/EU and related national and/or European regulations. If and to the extent that a Party is not itself the "*Controller*", "*Processor*", "*Third Party*" and/or "*Recipient*" of "*Personal Data*" within the meaning of the General Data Protection Regulation 2016/679/EU, this Party shall ensure that these third parties comply with the provisions of the General Data Protection Regulation 2016/679/EU and related national and/or European regulations, whereby the respective Party accepts liability in accordance with the provisions of the Agreement and these Purchase

Conditions in the event that these third parties do not comply with the provisions of the General Data Protection Regulation 2016/679/EU and related national and/or European regulations. To the extent that the Other Party qualifies as a “*Processor*” within the meaning of Article 4 of the General Data Protection Regulation 2016/679/EU, ENGIE NL has the authority to require the Other Party to conclude a “*processing agreement*” between the Parties within the meaning of Article 28(3) of the General Data Protection Regulation 2016/679/EU in accordance with the relevant model provided by ENGIE NL prior to the intended processing. With regard to the subject matter of the aforementioned “*processing agreement*”, in the event of a conflict between the provisions regarding that subject in that “*processing agreement*” and the provisions regarding that subject in these Purchase Conditions, the provisions regarding that subject in the “*processing agreement*” take precedence.

- 13.7 If and in so far as a Party does not, cannot or may not already have the other Party’s “*Personal Data*” as referred to in paragraph 6 of this Article at its disposal by virtue of the Agreement or in the pre-contractual phase in that regard, that Party and/or a third party engaged by that Party will only have such “*Personal Data*” of the other Party at its disposal and/or process these (or have these processed) if one or more grounds under the bases for doing so, as set out in the General Data Protection Regulation 2016/679/EU and related national and/or European regulations, provide a basis for doing so. Each Party has the right to request its “*Personal Data*” as referred to in paragraph 6 of this Article from the other Party, after which this other Party must provide these data as soon as possible. Furthermore, in that case, each Party has the right to update its “*Personal Data*” as referred to in paragraph 6 of this article.
- 13.8 During the discussions and/or correspondence about entering into the Agreement, and/or when the Agreement is concluded, ENGIE NL will provide the Other Party with contact details of where the Other Party can confidentially report violations of the provisions of this article at ENGIE NL and/or any entity within the group, as referred to in Article 2:24b DCC, of ENGIE NL.

ARTICLE 14.- APPLICABLE LAW, DISPUTES

- 14.1 The Agreement and/or these Purchase Conditions and all agreements ensuing therefrom and/or related thereto are governed exclusively by Dutch law. The applicability of the Vienna Sales Convention is expressly excluded.
- 14.2 All disputes, including (i) those that are only regarded as such by one of the Parties, (ii) that may arise between the Parties as a result of and/or in connection with the Agreement and/or these Purchase Conditions and/or ensuing or related agreements, respectively, (iii) that arise from and/or are related to the execution of the Agreement and/or these Purchase Conditions or the aforementioned

agreements, respectively, will be submitted exclusively to the competent court in Zwolle, the Netherlands.

- 14.3 In derogation from the previous paragraph, ENGIE NL may unilaterally decide that, to the exclusion of the ordinary court, disputes will be submitted to and decided by one or more (unequal number of) arbitrators in accordance with the regulations of the Netherlands Arbitration Institute (NAI) in Rotterdam, whereby these disputes thus submitted will be settled “*de jure*”.

PURCHASE CONDITIONS: PART II: SPECIFIC MODULE – DELIVERY OF GOODS VERSION DECEMBER 2023

ARTICLE 15. APPLICABILITY AND STRUCTURE OF THIS SPECIFIC MODULE FOR THE DELIVERY OF GOODS

- 15.1 In addition to the general module of these Purchase Conditions, the delivery of Goods by and/or on behalf of the Other Party to and/or for the benefit of ENGIE NL is subject to the provisions of this specific module and/or the provisions included in another specific module of these Purchase Conditions for all initiatives, requests, offers and Agreements in which ENGIE NL acts as initiator, requester and/or client. In addition, the provisions of the general module and this specific module of these Purchase Conditions apply to the extent that the Parties have laid this down in writing in the Agreement, or if and to the extent that it must be assumed according to standards of reasonableness and fairness that, in view of the characteristics of the delivery of Goods and/or in view of the purport and purpose of other applicable specific modules of these Purchase Conditions, bearing in mind the foregoing, application of the provisions of this specific module must be considered relevant for the correct execution of the Agreement.
- 15.2 The provisions of this specific module of the Purchase Conditions form an integral part of initiatives, requests and offers in which ENGIE NL acts as initiator, requester and/or client in so far as it refers to this specific module, or forms part of the Agreement in so far as the Parties have agreed this in writing in the Agreement. In so far as the foregoing is not the case, the provisions of this specific module nevertheless form part of initiatives, requests, offers and Agreements in which ENGIE NL acts as initiator, requester and/or client, if and to the extent that, in its reasonable opinion in accordance with the standards of reasonableness and fairness, ENGIE NL assumes that, in view of the characteristics of the delivery of Goods and/or in view of their purport and purpose, bearing in mind the foregoing, application of the provisions of this specific module must be deemed relevant for the correct execution of the Agreement.

ARTICLE 16.- DELIVERY OF GOODS

- 16.1 The delivery or supply of Goods by and/or on behalf of the Other Party will take place in accordance with the relevant provisions of the Agreement and these Purchase Conditions. Unless otherwise agreed in writing between the Parties, the delivery or supply of Goods by and/or on behalf of the Other Party will take place in accordance with the legal regime “*Delivered Duty Paid*” (DDP) as described and referred to in the most recent version of the “*Incoterms*”, issued by the International Chamber of Commerce in Paris.

- 16.2 With regard to the delivery of Goods, delivery will also take place at the agreed delivery location and will take place promptly at the agreed time, or at least, if and in so far as applicable and/or agreed in writing, will take place within the agreed period. If and in so far as the Other Party uses third parties and/or goods, whether or not from these third parties, and/or from ENGIE NL, and/or personnel of and/or engaged by ENGIE NL, this will be entirely at the expense and risk of the Other Party and will not release the Other Party from its responsibility and liability under the agreed Incoterms. Furthermore, if the Other Party uses personnel and/or goods of and/or engaged by ENGIE NL in the context of the foregoing, ENGIE NL is entitled to charge the Other Party the costs for this.
- 16.3 As soon as the Other Party knows or should know that it will fail in the performance of the Agreement, it is obliged to immediately notify ENGIE NL of this in writing, stating reasons, and the Other Party will be in default by operation of law in accordance with Article 6:83(a) in conjunction with Article 6:83(c) DCC. Without prejudice to ENGIE NL's rights under these Purchase Conditions or the law, the Parties will consult whether, and if so, how, the situation that has arisen can still be settled to ENGIE NL's satisfaction. Damage and/or costs in connection with the foregoing will be at the expense and risk of the Other Party.
- 16.4 If ENGIE NL requests the Other Party to postpone the supply and/or delivery of Goods due to a reason or circumstance relevant to it, the Other Party shall store the Goods properly packaged and recognisably intended for ENGIE NL, take all reasonable measures to prevent, secure and insure against deterioration in the quality of the Goods, against payment to be agreed in writing for the costs demonstrably incurred for that purpose. In such a case, ENGIE NL will not be in default, nor can it be held liable for any damages or other obligation.
- 16.5 Supply and/or delivery of Goods is also understood to mean supply and/or delivery of Goods, including all associated parts and auxiliary materials and all associated documentation such as test certificates and drawings, quality, testing and guarantee certificates, and maintenance and instruction books with manual.
- 16.6 The Other Party is not authorised to make partial supplies of and/or regarding Goods, nor is it authorised to make partial deliveries. If it has nevertheless been agreed in writing that partial supplies and/or partial deliveries will be made, for the purpose of these Purchase Conditions, delivery or supply is also understood to mean a partial delivery or a partial supply.
- 16.7 The Other Party will strictly observe the security and other (house) rules applicable at ENGIE NL, as well as correctly follow all related instructions. Any costs in connection with this will be borne by the Other Party itself.

ARTICLE 17.- PACKAGING AND SHIPMENT OF GOODS

- 17.1 The Other Party must ensure that the Goods to be delivered are properly and well packaged and marked, as well as being provided with all necessary relevant documents necessary for their realisation, origin, dispatch, transport, destination and/or (future) use or consumption. The Other Party shall also ensure that the Goods to be delivered reach their destination in good condition. The Other Party shall bear the costs and shall be liable for damage caused by or in connection with the foregoing.
- 17.2 The Other Party must provide the Goods to be delivered with (i) a clearly visible packing list, (ii) dispatch advice and/or copy invoice, which in any event always states: (a) name and address of supplier, (b) purchase order number, (c) net weight, (d) country of origin, € invoice value of the delivery, (f) Other Party's VAT number, (g) commodity code, (h) number of packages, (i) method of transport and (j) delivery location.
- 17.3 The Goods to be delivered may not be packaged in packaging that is, or is suspected to be, harmful to the environment, or that could in any other way constitute a threat to safety, welfare and/or health, as assessed by ENGIE NL according to the state of the art.
- 17.4 All packaging, replacement and/or residual materials from the Goods to be delivered will, in principle, remain the property and/or at the expense and risk of the Other Party, and the Other Party will therefore, at its own expense, cost and risk, take back and destroy the material and recycle or reuse it as much as possible, unless agreed otherwise in writing. If, at the Other Party's request, the material is destroyed and/or removed or returned by ENGIE NL, this will be at the Other Party's risk and expense and ENGIE NL will be entitled to charge the Other Party for this.

ARTICLE 18.- TRANSFER OF OWNERSHIP AND RISK UPON DELIVERY OF GOODS

- 18.1 The ownership and risk of Goods will pass from the Other Party to ENGIE NL at the time of the actual delivery thereof, or, in the event of additional Work being delivered, including Services, delivery or completion will take place in respect thereof if, in the opinion of ENGIE NL, all conditions set for that purpose in the Agreement and/or the Purchase Order have been met.
- Damage arising during transport, loading or unloading, delivery, assembly or installation shall always be at the Other Party's expense.
- The ownership and risk of rights will pass from the Other Party to ENGIE NL at the time of signing of a written Agreement drawn up for that purpose by the Other Party and ENGIE NL.
- Standard Software will be supplied by the Other Party with an unconditional, uninterrupted, non-exclusive right of use for ENGIE NL. This also applies to Customised Software,

unless the transfer of copyrights has been agreed. The provisions of paragraph 1 of this article apply to the transfer of the risk.

- 18.2 In the event of postponement of delivery of Goods in accordance with the provisions of **Article 16(4) (Delivery of Goods)** of these Purchase Conditions, the ownership of the relevant Goods shall pass from the Other Party to ENGIE NL as soon as the Goods are stored at or on behalf of the Other Party identifiable as the property of ENGIE NL or as Goods in respect of which ENGIE NL has been designated as the rightful claimant. Notwithstanding the above transfer of ownership and/or transfer of rights, ENGIE NL has not yet accepted the delivered Goods at that time. This can only take place at the time of final delivery of the relevant Goods as agreed in the Agreement.
- 18.3 In cases other than those described in paragraph 3 of this article, ENGIE NL is also authorised to demand that the transfer of the ownership and/or rights with regard to the Goods and/or the materials and parts intended for this will take place at an earlier time than stipulated in paragraph 1 of this article. In the event of a down payment, ownership of the related Goods will pass to ENGIE NL as soon as ENGIE NL performs its payment transactions, irrespective of whether the Other Party has received the amounts to be received pursuant to those payment transactions.

ARTICLE 19.- QUALITY AND GUARANTEES REGARDING DELIVERED GOODS

- 19.1 The Other Party warrants that the Goods delivered:
- a) function in accordance with and comply with the Agreement;
 - b) (i) are new, unless otherwise agreed in writing; (ii) possess the properties promised; (iii) are suitable for the purpose for which they were supplied; (iv) are free of flaws, design, construction, material and manufacturing defects and third-party rights;
 - c) in the case of Software: does not contain any undefined functionalities, diseases or viruses and that the technical and functional properties comply with the agreed specifications;
 - d) comply with applicable statutory and/or other regulations with regard to, but not limited to, the environment, anti-corruption, privacy and working conditions;
 - e) are complete and ready for use and that all auxiliary materials required for proper functioning are supplied, even if they are not named;
 - f) are made of new and sound material and are packaged in environmentally friendly and degradable material;
 - g) upon delivery, must not be older than three (3) months, to be calculated from the date of manufacture;
 - h) upon delivery, also contain all the necessary assembly and maintenance material necessary for undisturbed

- enjoyment, consumption and/or use thereof by ENGIE NL in accordance with the Agreement;
- i) upon delivery, also contain all necessary spare parts, or at least that these can be made available for the delivered Goods by the Other Party, immediately and/or in the short term, as the case calls for.
- 19.2 If the delivered Goods, regardless of the results of any testing, prove not to comply with the provisions of paragraph 1 of this article, the Other Party will repair or replace the delivered Goods – at its own discretion and immediately after ENGIE's first written notice – with Goods that do comply with the provisions of paragraph 1 of this article, unless ENGIE NL prefers to dissolve the Agreement, in accordance with the provisions of these Purchase Conditions.
- 19.3 With the exception of a longer manufacturer's warranty period or a longer warranty period issued by the Other Party, the warranty period for delivered Goods shall be two (2) years after acceptance by ENGIE NL in accordance with the provisions of **Article 20 (Testing, inspection, acceptance regarding the delivery of Goods)**, calculated from the time referred to in **Article 18 (Transfer of ownership and risk upon delivery of Goods)**, or paragraph 4 of this article, respectively, calculated from the completion of the repair or replacements as referred to in paragraph 2 of this article and ENGIE NL agreeing to such. If the delivered Goods concern the delivery of spare parts, the guarantee period commences after installation or use thereof, however with a maximum of five (5) years after acceptance, calculated from the moment referred to in **Article 18 (Transfer of ownership and risk upon delivery of Goods)**. The expiry of the guarantee period does not affect the rights that ENGIE NL can derive from the law and the Agreement.
- 19.4 The guarantee agreed in these period(s) will in any event entail that the Other Party will remedy any defect and/or non-conformity reported by ENGIE NL to the Other Party in writing within the guarantee period as soon as possible, at the Other Party's expense and risk, including the additional costs. If the Other Party has changed, repaired or replaced the Goods or parts thereof initially delivered on the basis of this obligation, the full guarantee period will again take effect with regard to these Goods or parts.
- 19.5 Where Software is being delivered and the Other Party works with releases, the most recent version will be delivered and versions thus delivered will be maintained and supported for at least five (5) years after delivery to ENGIE NL. This will be done free of charge for the duration of the warranty period.
- 19.6 The Other Party warrants that it will keep the knowledge and capacity required for the proper performance of warranty work available during the warranty period.
- 19.7 Upon ENGIE NL's first request, the Other Party will allow ENGIE NL to inspect the quality assurance system it applies.
- 19.8 The Other Party guarantees that all Goods delivered are fully in accordance with the applicable regulations, including, but not limited to, the CE testing requirements, in evidence of which the Goods delivered will bear the CE mark. In the case of machines, equipment and processes requiring chemical raw and/or auxiliary materials, the Other Party will hand over the so-called "*Veiligheid Informatie Bladen*" ("*Material Safety Data Sheets*") in the Dutch language (or other specifically agreed language) to ENGIE NL upon delivery. If and in so far as applicable, Goods must comply with Directive 1907/2006/EU on the Registration, Evaluation, Authorisation and Restriction of Chemicals (*REACH*). In addition, the Other Party must provide all information that is or could reasonably be necessary for the proper, safe use and/or proper functioning of the delivered Goods.
- 19.9 The Other Party guarantees that the Goods meet the relevant requirements set by or pursuant to the law and do not contain any prohibited substances and/or preparations. The Other Party also guarantees that the Goods do not contain any substances that cannot be processed in a regular manner of waste processing. Upon request, the Other Party will provide insight into the extent to which care for the environment has been taken into account in the design and production. The Other Party will correctly and fully inform ENGIE NL if the Goods contain substances and/or preparations that are dangerous or harmful to people, goods and/or the environment.
- 19.10 The Other Party will be responsible, during and after the Goods production process, for testing the (partially) produced Goods. ENGIE NL will obtain a copy of the test report free of charge if ENGIE NL so requests. If reasonably possible, the Other Party will use a quality assurance system in accordance with or equivalent to NEN-EN-ISO 9001.
- 19.11 The Other Party indemnifies ENGIE NL against all claims by third parties regarding defective Goods and/or Goods that do not meet the conformity requirements within the meaning of the product liability provisions and/or sales provisions of the Dutch Civil Code.
- 19.12 In urgent situations or in the event that the Other Party fails to comply with its guarantee obligations, ENGIE NL has the right to perform (provisional) repairs and/or replacements with regard to the delivered Goods itself, or have these performed at the Other Party's expense, without prejudice to the Other Party's guarantee obligations.
- 19.13 The Other Party undertakes, at its own expense, to take all measures that may contribute to preventing stagnation at ENGIE NL and that may contribute to limiting the additional costs to be incurred and/or damage to be suffered by

ENGIE NL in the context of the performance of its own obligations as Other Party under the Agreement.

- 19.14 With the intention of ensuring that the Other Party can properly perform its obligations pursuant to and/or in connection with the Agreement, the Other Party shall, at ENGIE NL's first request, provide ENGIE NL with all relevant information in that regard, relating to its business operations. This includes financial reports, ratios, profits, etc. This information will be used and treated confidentially by ENGIE NL solely for the proper execution of the Agreement.
- 19.15 If ENGIE NL purchases Goods, Services and/or Work pursuant to the Agreement in the context of a subsidy provided by the European Union or other subsidy providers, the Other Party is prepared to lend its full cooperation to checks, reviews and audits, which may or may not be carried out at the premises of the Other Party itself, by representatives of the European Union or other subsidy providers.

ARTICLE 20.- TESTING, INSPECTION, ACCEPTANCE REGARDING THE DELIVERY OF GOODS

- 20.1 In the event of the delivery or completion of Goods and/or Works, ENGIE NL will be entitled to test these in accordance with ENGIE NL's procedures, unless agreed otherwise in writing, and the Other Party will be obliged to cooperate at its own expense and to follow ENGIE NL's instructions at its own expense.
ENGIE NL is also entitled to conduct inspection(s) and test(s) regarding the nature and progress of the production process, the supplies and/or the execution of the Work and the procedures, machinery and raw materials used in that respect. ENGIE NL has the right to return rejected Goods at the expense and risk of the Other Party and/or to suspend and/or terminate the purchase thereof in whole or in part and/or to suspend and/or terminate the purchase of rejected Work in whole or in part.
- 20.2 At the request of ENGIE NL, the Other Party is obliged to cooperate in an inspection or test by ENGIE NL and/or an independent testing institute. Upon first request, the Other Party will provide a statement of the components of the Goods to be supplied and used and/or Work executed, as well as with regard to packaging and the progress of the relevant production process.
- 20.3 With regard to Software, the acceptance procedure will be performed by the Other Party in the presence of ENGIE NL personnel or by persons or bodies contracted and/or designated for that purpose by ENGIE NL. Irrespective of the acceptance of the Software, ENGIE NL reserves the right to reject the Software for a period of thirty (30) days after acceptance, if it proves to contain imperfections. ENGIE NL will not reject the Software if the imperfections are not essential and do not impede the proper functioning of the Software with a view to its intended purpose.

However, the Other Party shall remedy the imperfections immediately at its own expense in consultation with and to the satisfaction of ENGIE NL.

- 20.4 If, upon delivery or supply of the Goods and/or Work, these are rejected in full or in part, ENGIE NL will notify the Other Party of this, or have it notified, in writing. This notification will be considered a notice of default. ENGIE NL will thereby give the Other Party the opportunity to still deliver in accordance with the assignment, within a reasonable period. If the Other Party does not avail itself of this opportunity, or if it fails to properly deliver within the period set by ENGIE NL, ENGIE NL has the right to suspend and/or dissolve the Agreement in full or in part without further notice of default.
- 20.5 In the event of (partial) rejection of the delivered Goods and/or Work during or after the delivery or supply thereof, the ownership and risk will be deemed to have remained with the Other Party and will therefore never have passed to ENGIE NL.
- 20.6 ENGIE NL has the right to repair or replace the Goods or have them repaired or replaced at the Other Party's expense if, after consultation with the Other Party, it may reasonably be assumed in ENGIE NL's opinion that the Other Party cannot or will not adequately repair or replace the Goods, or cannot or will not do so in a timely fashion and/or properly. Costs and risks in connection with the foregoing will be borne by the Other Party. This does not release the Other Party from its obligations under the Agreement. ENGIE NL may refrain from such consultation if urgent circumstances require ENGIE NL to do so.
- 20.7 Tests, inspections and the ensuing results and/or consequences within the meaning of this article will never release the Other Party from any obligation or liability regarding Goods and/or Work under the Agreement.

ARTICLE 21.- SPARE PARTS AND MAINTENANCE OF GOODS

- 21.1 The Other Party will be obliged to keep spare parts, components, special tools and/or (measurement) equipment of the same quality in stock and to supply them at market rates and conditions during a period of service that is generally accepted to apply to the relevant Goods Item and/or Work delivered and/or performed, even if the production of that Goods Item has meanwhile been terminated and/or suspended or the Work has been realised. ENGIE NL may require the Other Party to inform it in writing of the time of termination and/or suspension of the production and/or its realisation.
- 21.2 If the replacement of parts by the Other Party leads or may lead to changes in the functioning of the Goods Item and/or the Work, such replacement will only take place with the written consent of ENGIE NL.

- 21.3 The Other Party warrants that it is willing and able to maintain the Goods delivered and/or Work realised for a period of at least five (5) years after delivery or realisation, or, if agreed, acceptance, and to have the necessary spare parts, components, special tools and/or (measurement) equipment of the same quality available in that respect.

**PURCHASE CONDITIONS: PART III: SPECIFIC
MODULE – PROVISION OF SERVICES AND
PERFORMANCE OF WORK VERSION DECEMBER
2023**

**ARTICLE 22.- APPLICABILITY AND STRUCTURE OF THIS
SPECIFIC MODULE FOR THE PROVISION OF SERVICES AND
PERFORMANCE OF WORK**

- 22.1 In addition to the general module of these Purchase Conditions, the provision of Services and/or the performance of Work by and/or on behalf of the Other Party to and/or for the benefit of ENGIE NL is subject to the provisions of this specific module and/or the provisions included in another specific module of these Purchase Conditions for all initiatives, requests, offers and Agreements in which ENGIE NL acts as initiator, requester and/or client. In addition, the provisions of the general module and this specific module of these Purchase Conditions apply to the extent that the Parties have laid this down in writing in the Agreement, or if and to the extent that it must be assumed according to standards of reasonableness and fairness that, in view of the characteristics of the provision of Services and/or the performance of Work and/or in view of the purport and purpose of other applicable specific modules of these Purchase Conditions, bearing in mind the foregoing, application of the provisions of this specific module must be considered relevant for the correct execution of the Agreement.
- 22.2 The provisions of this specific module of the Purchase Conditions, by and/or on behalf of the Other Party, form an integral part of initiatives, requests and offers in which ENGIE NL acts as initiator, requester and/or client in so far as it refers to this specific module, or forms part of the Agreement in so far as the Parties have agreed this in writing in the Agreement. In so far as the foregoing is not the case, the provisions of this specific module nevertheless form part of initiatives, requests, offers and Agreements in which ENGIE NL acts as initiator, requester and/or client, if and to the extent that, in its reasonable opinion in accordance with the standards of reasonableness and fairness, ENGIE NL assumes that, in view of the characteristics of the provision of Services and/or the performance of Work and/or in view of their purport and purpose, bearing in mind the foregoing, application of the provisions of this specific module must be deemed relevant for the correct execution of the Agreement.

ARTICLE 23.- REPRESENTATION OF PARTIES

- 23.1 Prior to the commencement of the provision of Services and/or the performance of Work, the Parties will provide each other in writing with the names and other relevant details of the persons involved in the execution of the

Agreement on their behalf and/or through them and/or who are authorised to represent the Parties in all matters relating to the execution of the Agreement.

- 23.2 With regard to the representation referred to in paragraph 1 of this article, the Parties will inform each other in writing of the size and duration of the representation, which persons are involved, and of all changes in that respect.

**ARTICLE 24.- RULES FOR THE PROVISION OF
SERVICES AND THE PERFORMANCE OF WORK**

- 24.1 ENGIE NL will inform the Other Party before the execution of the Agreement commences of the generally applicable regulations at the ENGIE NL sites where the provision of Services and/or the performance of the Work must take place and, if and in so far as relevant, of the content of the further regulations specifically applicable on site (such as, but not limited to, the Port Regulations). The Safety, Health and Environment (HSE) regulations as formulated in the current ENGIE NL HSE Regulations form part of the Agreement with corresponding specifications. If and in so far as the Other Party also has its own regulations, as described above, the provisions of ENGIE NL described above take precedence in the event of a conflict.
- 24.2 The provisions of paragraph 1 of this article do not affect the obligation for the Other Party, its personnel and its subcontractors to actively and independently familiarise themselves with the applicable house rules and HSE and other regulations in good time and prior to the provision of the Services and/or the performance of the Work and to act accordingly. The Other Party will also ensure that it adequately monitors the correct compliance with the aforementioned house rules and HSE and other regulations by its personnel and the third parties it engages. In addition, the Other Party will enable ENGIE NL, at its own expense, to also investigate and verify the aforementioned correct performance, as well as to enter into talks with the Other Party about this and whether or not, if ENGIE NL reasonably deems this necessary, to take additional measures and/or require these of the Other Party.
- 24.3 ENGIE NL reserves the right, within the scope of a strict policy it pursues with regard to HSE (e.g. "ZERO TOLERANCE ON UNSAFE BEHAVIOUR" and "FAIR CULTURE"), to check strict compliance with the regulations prior to (e.g. upon issue of the work permit), as well as during the provision of the Services and/or the performance of the Work (via the ENGIE NL work supervisor or otherwise) and, where it deems this necessary, to give directions and instructions that must be complied with and in respect of which ENGIE NL is entitled to charge costs to the Other Party.
- 24.4 In the event of a violation by the Other Party, including its own personnel and/or engaged personnel, of the rules

referred to in paragraph 1 of this article, as determined by ENGIE NL, ENGIE NL has the authority:

- a) to deny the person or persons concerned access to the site with immediate effect and/or;
- b) to suspend the provision of Services and/or the performance of the Work with immediate effect, unless ENGIE NL prefers to terminate the Agreement, in accordance with the provisions of **Article 12 (Termination, Dissolution, Attributable Non-Performance and Force Majeure)** of these Purchase Conditions and/or;
- c) to take measures and/or have measures taken by the Other Party and/or a third party for the purpose of being able to reverse the consequences of a violation of the rules referred to in paragraph 1 of this article and/or to mitigate the consequences thereof. Costs related to this as calculated by ENGIE NL will be borne by the Other Party.

ARTICLE 25.- DOCUMENTATION FOR THE PROVISION OF SERVICES AND/OR THE PERFORMANCE OF WORK

- 25.1 The Other Party must check specifications, drawings and other documentation that it has received from ENGIE NL for the execution of the Agreement for completeness and correctness.
- 25.2 The Other Party must inform ENGIE NL as soon as possible in writing of any inaccuracies or incompleteness in the documentation as referred to in paragraph 1 of this article. The Other Party will make ENGIE NL proposals for improvements or amendments. The improvements and/or amendments will form part of the Agreement after written and/or electronic approval by ENGIE NL.
- 25.3 If the Other Party has not notified ENGIE NL in writing of any objections to this documentation within two (2) weeks after receipt of the documentation referred to in paragraph 1 of this article, it will be deemed to have agreed to the documentation referred to in paragraph 1 of this article and it will no longer be able to invoke any inaccuracy or incompleteness thereof.
- 25.4 Simultaneously with the delivery of the Services and/or the Work, the Other Party must submit to ENGIE NL, without additional costs, all quality and guarantee certificates, testing data, user manuals, drawings, specifications, technical and revision data relating to the Services and/or the Work, and – if necessary – an EC declaration of conformity, as well as the relevant technical file.
- 25.5 ENGIE NL may reproduce, modify and disclose for use within its organisation documentation as referred to in paragraph 4 of this article, without owing any further fee, provided that any copyright indications appearing on it are respected.
- 25.6 The documentation referred to in paragraph 4 of this article must provide an accurate, complete and detailed

description of the performance of the Other Party with regard to the Work and/or the provision of Services, as well as the functions thereof. Using this documentation, ENGIE NL can easily take note of all possibilities of the Other Party's performance with regard to the Work and/or the Services and test them (or have them tested) and maintain them (or have them maintained).

ARTICLE 26.- PREPARATION AND EXECUTION OF WORK AND THE PROVISION OF SERVICES AND EXTRA WORK IN THAT RESPECT

- 26.1 The Other Party warrants that the provision of Services and/or the Work to be performed will be prepared and executed in accordance with the general requirements of professionalism and expertise, as well as pursuant to such requirements and standards from the relevant sector, in accordance with the Agreement and all related regulations and documents, as well as in accordance with directions and instructions from ENGIE NL, such that the provision of Services and/or the Work performed will lead to the agreed result.
- 26.2 Within one (1) week after the conclusion of the Agreement, the Other Party must submit a detailed time plan to ENGIE NL for the Provision of the Services and/or the Work to be performed ("**Work Plan**").
- 26.3 The Work Plan must be approved by ENGIE NL in writing and/or electronically and, after approval, will form part of the Agreement. ENGIE NL may attach conditions to such approval. Approval by ENGIE NL does not affect the Other Party's responsibility for the accuracy or feasibility of the Work Plan. The Other Party must comply with the ENGIE NL HSE plan in the event of revision or similar work before the execution of the Work and/or the provision of Services is started. Upon request, the Other Party must draw up a "Task Risk Analysis" (TRA) in accordance with the model used at ENGIE NL, submit it to ENGIE NL for approval and execute it accordingly.
- 26.4 Without prejudice to the provisions of **Article 27 (Stagnation)** of these Purchase Conditions, the Other Party must provide ENGIE NL with a written progress report for each agreed period and will keep ENGIE NL continuously informed in writing of whether or not the milestones specified in the Work Plan have been achieved in the execution of the Work and/or the Services provided.
- 26.5 Extra work may only be performed and/or modifications may only be permitted if ENGIE NL has so requested in writing and/or if ENGIE NL has given the Other Party prior written permission to this end. The Other Party will not start the extra work until it has received a (supplementary) written assignment from ENGIE NL for that purpose. Additional work that the Other Party and/or the third party contracted by it could reasonably have foreseen when concluding the Agreement will never be regarded as "extra work".

- 26.6 Extra work will only be eligible for payment by ENGIE NL if the Purchase Order for these has been issued by ENGIE NL in writing. In principle, extra work for which ENGIE NL has written permission will be paid for at the prices and rates agreed in the Agreement, unless ENGIE NL expressly agrees in writing to different rates and prices for the extra work. The terms and conditions of the Agreement apply to extra work.
- 26.7 Extra work must be reported to ENGIE NL's decision-making representative and its purchasing department in good time (before the commencement of the extra work). The request for extra work must be accompanied by a clear and complete calculation of the necessary materials, labour and other cost items. If, in the opinion of the Other Party, bearing in mind the goal of the Other Party to avoid extra work, such extra work affects and/or threatens to affect the agreed completion period, the Other Party must indicate and explain this to ENGIE NL in the extra work request. Subsequently, the Parties must consult with each other as soon as possible regarding any postponement of the completion period and the consequences that postponement will have for, for example, any agreed penalty in the event of late completion and/or other costs.
- 26.8 If, in the opinion of ENGIE NL, the (estimated) consequences that extra work and/or a change or intended change concerning the Work and/or the provision of Services will have on the (total) price and/or (the timing of) delivery/completion are unreasonable, given the nature and scope of the Work, the provision of Services or the extra work or, alternatively, the entirety of the Work, the entire provision of Services and/or the change, ENGIE NL has the right to dissolve or terminate the Agreement in whole or in part by means of a written notification, unless this would be manifestly unreasonable.

ARTICLE 27.- STAGNATION

- 27.1 If it is foreseen that the execution of the Agreement does not or will not be completed in accordance with the Agreement and/or the Work Plan, the Other Party is obliged to inform ENGIE NL of this as soon as possible and to make proposals to ENGIE NL at its own initiative to prevent or limit the stagnation.
- 27.2 In urgent cases and if, after consultation with the Other Party, it must reasonably be assumed that the Other Party will not or cannot comply with the obligation described in paragraph 1 of this article within the period set for that purpose, or, in the reasonable opinion of ENGIE NL, is and/or will not be able to prevent and/or limit the stagnation, ENGIE NL is authorised, at the Other Party's expense and risk, to engage third parties to prevent or limit the stagnation. This does not release the Other Party from its obligations under the Agreement, nor does it release the Other Party from any liability as a result.

- 27.3 If business circumstances so require, the Other Party must, at ENGIE NL's request, interrupt or suspend its Work and/or the provision of Services or have them interrupted or suspended. ENGIE NL may attach conditions to resumption. Further consultation will be held between the Parties regarding the financial implications and/or other consequences.

ARTICLE 28.- COOPERATION WITH THIRD PARTIES AND EXECUTION OF WORK BY ENGIE NL ITSELF

- 28.1 The Other Party is obliged to allow third parties to whom ENGIE NL has given a written assignment to that end to perform activities and/or work on or in the vicinity of the Work. If the Other Party must cooperate with third parties, the Work will be coordinated by ENGIE NL in order to minimise inconvenience for the parties involved. The execution of Work that may inconvenience third parties, or the performance of activities and/or work by third parties that may inconvenience the Other Party in the context of the correct performance of the Agreement, must be discussed in advance with ENGIE NL. The coordination by ENGIE NL does not in any way release the Other Party from its responsibilities and/or obligations under the Agreement.
- 28.2 The Other Party is obliged to allow ENGIE NL to perform activities and/or work on or in the vicinity of the Work. Prior to commencement, the parties will consult with each other to ensure that there is as little inconvenience as possible for the parties involved. The Other Party is obliged to allow ENGIE NL to perform activities and/or work with regard to the Other Party's Work. If the Other Party must cooperate with ENGIE NL, the Work will be coordinated by ENGIE NL in order to minimise inconvenience for the parties involved. The coordination by ENGIE NL does not in any way release the Other Party from its responsibilities and/or obligations under the Agreement.

ARTICLE 29. ACCEPTANCE OF WORK AND SERVICES BY ENGIE NL

- 29.1 An acceptance procedure will take place when, in the reasonable and expert opinion of the Other Party, the Work and/or the requested Service, or an agreed part thereof, is or are ready for commissioning in accordance with the Agreement for the benefit of ENGIE NL. ENGIE NL is authorised to interrupt and/or suspend the acceptance procedure if it is of the opinion that the Work or Services, or an agreed part thereof, are not yet ready. In the context of the foregoing, ENGIE NL is authorised to give the Other Party directions and instructions that the Other Party must follow at its own expense and risk.
- 29.2 The acceptance procedure as referred to in paragraph 1 of this article will be performed by the Other Party in the presence of ENGIE NL or persons or bodies designated by ENGIE NL. Unless agreed otherwise in writing, acceptance

will take place in accordance with the applicable procedures of ENGIE NL. If necessary, the Other Party must provide the required operational and maintenance training to ENGIE NL personnel.

- 29.3 In the event that, after positive completion of the acceptance procedure as referred to in paragraph 1 of this article, it nevertheless appears within the period included in the Agreement at any time within that period that the Work and/or Services provided do not meet the agreed terms and conditions in the Agreement, even though, given the nature and characteristics of the Work and/or Services provided, given the required and customary requirements in that regard, this could reasonably have been expected by ENGIE NL, the acceptance by ENGIE NL will lapse after a written declaration to that effect has been made to the Other Party.

ARTICLE 30.- VICARIOUS TAX LIABILITY IN THE MATTER OF THE PERFORMANCE OF WORK AND THE PROVISION OF SERVICES

- 30.1 If and in so far as the Dutch Wages and Salaries Tax and Social Security Contributions (Liability of Subcontractors) Act [Wet Ketenaansprakelijkheid], the Dutch Labour Market Fraud (Bogus Schemes) Act [Wet Aanpak Schijnconstructies] and/or any other relevant current and future laws and regulations apply and/or are applicable to the Agreement, the Other Party must correctly comply with all obligations ensuing from these laws and regulations.
- 30.2 The Other Party is obliged to cooperate in the creation of guarantees for the collection of taxes, pension contributions and/or social security contributions relating to the Work and/or the Services, and will also pay its personnel or third parties engaged by the Other Party for the Work and/or the Services the agreed and legally owed wages (or CLA wages, as appropriate), as well as paying timely and correct health insurance and pension and/or social security contributions, with ENGIE NL being indemnified in this regard. The above applies to the Other Party as an obligation to be imposed on third parties in the event of the applicability of **Article 8 (Transfer to third parties and change in division of ownership)** of these Purchase Conditions.
- 30.3 In cases to be determined by ENGIE NL, ENGIE NL is authorised to pay part of the price, either by way of a blocked account or directly to the relevant bodies and/or the agreed and/or legally owed wages (or CLA wages, as appropriate) to the personnel deployed by the Other Party and/or third parties in the Work and/or the provision of Services, directly to such deployed personnel and/or those third parties.
- 30.4 Without prejudice to the provisions of the previous paragraphs of this article, the Other Party must comply with the statutory obligations for all employees engaged by or through the Other Party for the Work and/or Services

provided, in particular those pursuant to legislation on social (insurance) law and tax legislation. ENGIE NL reserves the right to monitor and implement this point.

- 30.5 The Other Party will ensure that any taxes and contributions it owes are correctly declared and paid. The Other Party indemnifies ENGIE NL and will fully compensate it for all claims of the tax and/or social insurance authorities and/or health insurance company regarding taxes, social insurance contributions, health insurance contributions and/or penalties and interest imposed in connection with and/or ensuing from the position of said authorities and/or bodies that, contrary to the express intention of the Parties, one or more employees engaged by the Other Party and/or by any third party engaged by and/or for the Other Party, are nevertheless considered to be employed by ENGIE NL for tax and/or social insurance purposes. The limitation of liability as set out in **Article 9 (Liability and penalty)** of these Purchase Conditions does not apply.
- 30.6 In the event that the legal relationship described in the Agreement with regard to employees of the Other Party and/or any third party engaged by and/or for the Other Party should be regarded, contrary to the position and intention of the Parties, by the tax authorities and/or the implementing institutions in the context of social security as an employment relationship and/or employment contract between ENGIE NL and the Other Party and/or a third party made available by and/or for the Other Party, and that ENGIE NL should therefore be obliged to withhold and/or remit, or be obliged to pay, wage tax and/or social security contributions, ENGIE NL will be entitled to deduct this wage tax and/or these social security contributions, as well as any costs and damage ensuing therefrom, from any payments to the Other Party and/or to charge these amounts, including any penalty and/or additional tax, to the Other Party.
- 30.7 At ENGIE NL's request, the Other Party will submit to ENGIE NL within thirty (30) days statements proving that the Other Party has paid turnover tax, wage tax, national insurance contributions and employee insurance contributions, pension contributions and/or other relevant contributions correctly and in good time for all persons engaged in connection with the Agreement. These statements must be drawn up and certified as originals by the relevant Tax and Customs Administration, the UWV and/or any other relevant government body. In addition, following a request to that effect from ENGIE NL, the Other Party must, within sixty (60) days after the end of each quarter, provide a statement drawn up and signed by a chartered accountant in which the chartered accountant states that all relevant obligations under or pursuant to the aliens legislation and the tax and social security legislation and pension legislation have been met for the preceding period. The costs of these statements will be borne by the Other Party, as well as all risks and consequences in the event that such a statement is not obtained and/or not obtained in good time and/or not obtained correctly.

- 30.8 If the Other Party does not have a registration number with the UWV, it will submit documents and/or evidence relating to the agreed work within thirty (30) days of ENGIE NL's request, such as previously a Declaration of Independent Contractor Status (VAR), which demonstrate in accordance with the legislation applicable at the time that there is no employment relationship under an employment contract within the meaning of Article 7:610 DCC, as a result of which the person engaged by the Other Party must be considered self-employed. If and in so far as the Other Party cannot provide the aforementioned in good time and/or correctly and/or the aforementioned does not meet the requirements set for that purpose and/or is in any way inconsistent with reality, ENGIE NL has the right to suspend all payments to the Other Party under the Agreement and to retain this amount, without owing any interest as a result and/or the right to (partially) set off any amount and/or penalty charged to it in connection with the foregoing and/or to charge the Other Party, without prejudice to any other right accruing to ENGIE NL from the Agreement and/or the law.
- 30.9 At ENGIE NL's first request, the Other Party will be obliged to request ENGIE NL's prior written consent if and in so far as it intends to engage contractors, subcontractors and/or any other third party in the realisation of the Work and/or the provision of Services. In that case, the Other Party undertakes to also impose this obligation on the contractor(s), subcontractor(s) and/or other third parties engaged by it, who must impose this obligation on the contractor(s), subcontractor(s) and/or third parties engaged by them, etc. If the Other Party fails to impose the obligation referred to above on the contractor(s), subcontractor(s) and/or other third parties engaged by it, ENGIE NL will be entitled to pay part of the price by means of a direct deposit with the Tax and Customs Administration. ENGIE NL may recover any damage and/or costs by and/or due to liability attribution under the vicarious tax liability and/or hiring liability directly from the Other Party, which Other Party will compensate ENGIE NL. The limitation of liability as set out in **Article 9 (Liability and penalty)** of these Purchase Conditions does not apply.
- 30.10 The Other Party must, at its own expense, take all measures and/or cooperate in measures that ENGIE NL deems necessary in order to prevent and/or limit as much as possible the liability of and/or the consequences thereof for ENGIE NL in the context of the Dutch Wages and Salaries Tax and Social Security Contributions (Liability of Subcontractors) Act, the Dutch Labour Market Fraud (Bogus Schemes) Act and/or the applicable tax and/or social security legislation, including the reverse charge mechanism for VAT.

ARTICLE 31.- EXCAVATION WORK

- 31.1 In the event that, pursuant to a Purchase Order, the Other Party is required to perform excavation or other Work in the subsoil within the framework of the agreed Work and/or Services to be provided, the Other Party must, as groundwork contractor, independently investigate, prior to such Work, the precise location of underground cables and pipes, including empty pipes, underground support works and protection works, including those intended for the transport of solid, liquid or gaseous substances, energy and/or information. The Other Party as groundwork contractor is regarded as the party under whose responsibility, management and supervision the excavation work is performed. As part of its obligations, the Other Party must at least report in good time to the Cables and Pipelines Information Centre (KLIC) in accordance with the Dutch Underground Grids and Networks Information Exchange Act [Wet Informatie Uitwisseling Ondergrondse Netten] with the Land Registry and/or other relevant bodies.
- 31.2 In the event of damage occurring to works as referred to in paragraph 1 of this article and/or in the event of other damage or a different type of damage, such as subsidence damage, the Other Party will be liable for full compensation thereof. Where appropriate, the Other Party must indemnify ENGIE NL in this respect against third-party claims on any basis whatsoever, including claims for compensation of damage and costs.

PURCHASE CONDITIONS: PART IV: SPECIFIC MODULE – PERSONNEL OF THE OTHER PARTY, HIRING AND/OR ENGAGING SELF-EMPLOYED PERSONS AND/OR PERSONNEL, WHETHER OR NOT VIA A THIRD PARTY FOR THE BENEFIT OF THE AGREEMENT VERSION DECEMBER 2023

ARTICLE 32.- APPLICABILITY AND STRUCTURE OF THIS SPECIFIC MODULE FOR PERSONNEL OF THE OTHER PARTY AND THE HIRING AND/OR ENGAGING OF SELF-EMPLOYED PERSONS AND/OR PERSONNEL, WHETHER OR NOT VIA A THIRD PARTY

- 32.1 In addition to the general module of these Purchase Conditions, in relation to personnel of the Other Party, the hiring or in any other way engaging a self-employed person and/or personnel, whether or not via a third party for the benefit of ENGIE NL and/or the Agreement, is subject to the provisions of this specific module and/or the provisions included in another specific module of these Purchase Conditions for all initiatives, requests, offers and Agreements in which ENGIE NL acts as initiator, requester and/or client. In addition, the provisions of the general and this specific module of these Purchase Conditions apply to the extent that the Parties have laid this down in writing in the Agreement, or if and to the extent that it must be assumed according to standards of reasonableness and fairness that, in view of the characteristics of the deployment of personnel of and/or by the Other Party, hiring or the characteristics regarding the engagement in any other way of a self-employed person and/or personnel, whether or not via a third party for the benefit of ENGIE NL and/or the Agreement and/or in view of the purport and purpose of other specific modules of these Purchase Conditions, bearing in mind the foregoing, application of this specific module of the Purchase Conditions must be deemed relevant for the correct execution of the Agreement.
- 32.2 The provisions of this specific module of the Purchase Conditions form an integral part of initiatives, requests and offers in which ENGIE NL acts as initiator, requester and/or client in so far as it refers to this specific module, or forms part of the Agreement in so far as the Parties have agreed this in writing in the Agreement. In so far as the foregoing is not the case, the provisions of this specific module shall nevertheless form part of initiatives, requests, offers and Agreements in which ENGIE NL acts as initiator, requester and/or client, if and in so far as, in its reasonable opinion in accordance with the standards of reasonableness and fairness, it is assumed by ENGIE NL that, in view of the characteristics of the deployment of personnel of and/or by the Other Party, the hiring or the characteristics regarding the engagement in any other way of a self-employed person and/or personnel, whether or not via a third party, for the benefit of ENGIE NL and/or the Agreement and/or in view of the purport and purpose of other specific modules of these Purchase Conditions,

bearing in mind the foregoing, application of this specific module of the Purchase Conditions must be considered relevant for the proper execution of the Agreement.

ARTICLE 33.- PERSONNEL OF THE OTHER PARTY

- 33.1 Personnel, including persons engaged by the Other Party in any way from third parties, of and/or working for the Other Party must satisfy the general requirements of professional competence and expertise, as well as the conditions and requirements of professional competence applicable to the relevant sector, and must also be in possession of the applicable relevant certification. Unless agreed otherwise in writing with ENGIE NL, the Other Party (both the organisation and the personnel of the Other Party) must have at its disposal and act in accordance with the Health, Safety and the Environment Checklist for Contractors (VCA). The foregoing also applies in the context of the Other Party's presumed certified Health, Safety and Environment (HSE) management system.
- 33.2 If, in the opinion of ENGIE NL, the provisions of paragraph 1 of this article are not complied with, ENGIE NL will be entitled to order the removal of the relevant personnel and the Other Party will be obliged, with due observance of the provisions of paragraph 1 of this article, to replace the personnel immediately. The costs associated with this, including the costs associated with the training period for the replacement, will be at the expense and risk of the Other Party.
- 33.3 ENGIE NL is authorised to require that personnel of and/or working for the Other Party, including subcontractors and/or other persons engaged by the Other Party in any way, identify themselves, provide further contact details and/or provide details of their place of residence. ENGIE NL is also authorised to request the aforementioned data from the Other Party. In the event that ENGIE NL makes such requests, the Other Party must cooperate immediately, unless it is not authorised to comply with such requests pursuant to applicable laws and regulations.
- 33.4 The Other Party declares with regard to its personnel, including subcontractors and/or other persons engaged by the Other Party in any way, that the identity has been established in accordance with the statutory regulations, that the required permits to perform work have been issued, that the training data have been checked and that the required confidentiality statements have been signed.
- 33.5 Where the Agreement is a contract for services, the Other Party will ensure that personnel and/or persons made available by the Other Party to ENGIE NL are not deployed by competitors of ENGIE NL in the fulfilment of assignments that are closely related in terms of content, for a period of at least three (3) calendar months after termination and/or dissolution of the assignment and/or of the Agreement, unless the Parties agree otherwise in writing. In all cases, the Parties will describe as accurately

as possible the area of work and the competitors to which this clause is declared applicable.

- 33.6 Personnel of the Other Party, including persons engaged by the Other Party in any way, will, if there is a contract for services within the meaning of Article 7: 400 DCC, execute its Work or provide the Services in complete independence and determine itself the manner of fulfilment of, as well as the implementation of, the assignment. Any instructions or guidelines issued by ENGIE NL to the Other Party and/or the relevant person in the context of the assignment will be aimed solely at the effective fulfilment thereof, without intervening in the manner of fulfilment, which the Other Party and/or the relevant person will decide on exclusively. The foregoing is with due observance of the requirement that the intended result is achieved in accordance with the agreed terms and conditions in the Agreement and/or that safety and environmental regulations are not violated and/or that other hazardous situations arise and/or may arise for ENGIE NL. If and in so far as ENGIE NL reasonably believes that the provisions of the previous sentence are being violated, ENGIE NL is entitled to intervene and, if necessary, give guiding instructions, appoint replacements and/or take care of the fulfilment itself. The costs associated with the foregoing will be at the expense and risk of the Other Party. The foregoing does not affect any responsibility and/or obligation of the Other Party under the Agreement.
- 33.7 If, in the opinion of ENGIE NL, it is necessary to do so for the execution of the Agreement, then in the absence of personnel or third parties deployed by the Other Party, the Other Party will replace such personnel or third parties as soon as possible and in the most careful manner possible.
- 33.8 The Other Party must submit a valid residence permit and a valid work permit to ENGIE NL for persons deployed at ENGIE NL in the context of the execution of the Agreement and who fall under the criteria of the Foreign Nationals (Employment) Act, as well as, in so far as applicable and required by law, an E101/A1 certificate.
- 33.9 The Other Party will provide ENGIE NL with officially recognised certificates and/or officially recognised quality marks available or developed in the Other Party's sector (or, in the absence thereof, [common] equivalents widely used in the relevant sector of the Other Party for that purpose) with regard to and evidencing salary payment, including salary payment, payment of social and other contributions, pension payment and/or any other payment of compensation for the work performed, regarding the persons hired and/or engaged by the Other Party in the execution of the Agreement. An example in this respect is a certificate issued by the Dutch Labour Standards Foundation to the Other Party, based on NEN 4400-1 or NEN 4400-2.

ARTICLE 34.- HIRING OF SELF-EMPLOYED PERSONS

- 34.1 The provisions of this article apply in the event that ENGIE NL enters into and concludes an Agreement with an Other Party in the form of a natural person who personally performs the agreed Work and/or Services for the benefit of ENGIE NL and where that Agreement is to be regarded as a contract for services within the meaning of Article 7:400 DCC. The provisions of this article also apply in the event that ENGIE NL enters into and concludes an Agreement with an Other Party in the form of a legal entity where this legal entity is only managed and administered by one (1) natural person who personally performs the agreed Work and/or Services for the benefit of ENGIE NL and where this Agreement can be regarded as a contract for services within the meaning of Article 7:400 DCC.
- 34.2 The Parties declare that they expressly do not intend to conclude an employment contract with each other by entering into the Agreement and only wish to contract with each other on the basis of a contract for services within the meaning of Article 7:400 DCC. The Parties undertake vis-à-vis each other that their actual conduct in the performance of the mutual contractual obligations is in line with that which is customary in the execution of a contract for services within the meaning of Article 7:400 DCC.
- 34.3 The Other Party, as the contractor under the Agreement, will perform its Services and/or Work in complete independence and will determine for itself the manner of performance thereof, as well as how it will perform its Services and/or Work, as long as the conditions of the Agreement are met. In so far as ENGIE NL, as the client under the Agreement, gives the Other Party, as the contractor under the Agreement, instructions or guidelines in connection with the performance of its Services and/or Work, these will serve solely for the effective fulfilment of the contractual arrangements, without substantially intervening in the manner of execution of the Agreement, since in principle the Other Party decides on this, unless the correct execution of the Agreement and/or the result intended under it is jeopardised. As contractor, the Other Party is entirely free to also work for third parties on the condition that it notifies ENGIE NL in writing, both at the start and during the Agreement, of the third party for which it is also working. ENGIE NL will treat this information confidentially.
- 34.4 The Other Party must perform the Work and/or Services in person, with due observance of the terms and conditions of the Agreement, and is not permitted to be replaced by a third party, unless ENGIE NL has given written permission for this. The Other Party is not permitted to perform the Work and/or Services by supplying third parties pursuant to a verbal or written agreement between the Other Party and such third party.
- 34.5 ENGIE NL enters into the Agreement with the Other Party precisely because ENGIE NL expects the Other Party to have the most appropriate and specific knowledge and

skills to deliver the intended Work and/or Services in accordance with the terms and conditions of the Agreement, whereby these most appropriate and specific knowledge and skills are not and/or not sufficiently available to ENGIE NL and whereby the Work and/or Services to be delivered are of a temporary nature and/or are delivered for a specific period of time with a maximum duration of 11 months from the start of the Agreement, unless it is expressly agreed otherwise and in a substantiated manner in writing in the Agreement and/or an extension thereof.

- 34.6 The gross (converted) hourly rate, as calculated by ENGIE NL, that ENGIE NL pays to the Other Party as compensation for its Services and/or Work, will be at least equal to the gross statutory minimum rate applicable at that time for self-employed persons, unless the Parties have expressly agreed otherwise in writing in the Agreement and have substantiated this as such with reasons.
- 34.7 The Other Party must have at its disposal the relevant documents and/or permissions from the competent (public) authorities from which it follows that the Services and/or Work that the Other Party provides to ENGIE NL as a self-employed person without personnel, as referred to in paragraph 1 of this article, comply with a correct performance of an assignment within the meaning of Article 7:400 DCC, as well as comply with the requirements under the Dutch Employment Relationships Deregulation Act ("DBA Act") in that context and from which it follows that the requirements from the Dutch Labour Market Fraud (Bogus Schemes) Act and/or other current and future laws relevant in this respect are not being violated. Unless the Parties expressly agree otherwise in writing in the Agreement, the Other Party warrants that its contract for services constitutes a (model) contract as approved by the Tax and Customs Administration pursuant to the DBA Act and that this approval will be obtained in good time to start the assignment, as well as remaining in effect during the delivery of the agreed Services and/or Work, or that its contract for services meets other (future) statutory requirements as referred to above. The Other Party must provide ENGIE NL with a copy of the aforementioned relevant documents, in any event no later than two (2) months after the commencement date of the Agreement. During the term of the Agreement, the Other Party must ensure, at its own expense, that the aforementioned documents are extended and/or updated at least annually, in so far as necessary, and that a copy thereof is submitted to ENGIE NL within one (1) month after the aforementioned extension and/or update.
- 34.8 If the circumstances and facts on the basis of which the relevant documents as referred to in paragraph 7 of this article have been issued change, the Other Party must immediately inform ENGIE NL of this in writing, on pain of forfeiture of an immediately exigible penalty of €100 for each day or part of a day that the Other Party refrains from

doing so, without any notice of default being required on the part of ENGIE NL vis-à-vis the Other Party. This penalty is owed without prejudice to ENGIE NL's right to compensation for the damage actually suffered.

- 34.9 The Other Party will be responsible for the correct payment of any tax and/or social security contributions in connection with the performance of the Work and/or Services. The Other Party indemnifies ENGIE NL in the event that ENGIE NL is sued by the tax, social insurance authorities and/or any other (public) body in respect of the Agreement with regard to wage tax, unpaid social insurance contributions (both employer's and employee's share) and/or unpaid contributions regarding the statutory health insurance surcharge schemes that relate to the payments made to the Other Party and the penalties and interest on underpaid tax to be imposed by these authorities and/or bodies. Where appropriate, ENGIE NL may set off the contributions, penalties and/or interest it has paid against all that it owes at that time or will owe the Other Party for any reason whatsoever, without prejudice to ENGIE NL's right to compensation for the damage actually suffered.
- 34.10 The Other Party declares that it is properly insured and indemnifies ENGIE NL against all claims of its own, including those relating to illness, incapacity for work and/or pension, arising during the execution of the Agreement. A similar indemnification to ENGIE NL also applies if the Other Party engages third parties in the execution of the Agreement under the terms and conditions of that Agreement. The Other Party indemnifies ENGIE NL against all claims by third parties due to damage that the Other Party may inflict on third parties during the performance of the Services and/or Work. If and in so far as the Other Party hires third parties for the purposes of the Services and/or Work under the terms and conditions of the Agreement, the Other Party warrants to ENGIE NL that it will promptly and without delay pay the (wage) taxes, social security contributions and/or the amounts related to surcharges under the Health Insurance Act. The Other Party will be obliged to provide ENGIE NL with proper proof in that regard on request.
- 34.11 The fee for the Services and/or Work provided as referred to in this article will only be paid by ENGIE NL to the Other Party under the terms and conditions of the Agreement for the duration, number of hours and/or other relevant terms and conditions in that respect, as stated in the Agreement. Extra hours and/or any extra work will not be paid by ENGIE NL, unless agreed otherwise in writing between the Parties. ENGIE NL is authorised to require proof of the number of hours actually worked in the context of the Services and/or Work performed and may suspend payment of the fee(s) as included in the Agreement (in whole or in part) until the Other Party is able to provide such proof. The fees paid by ENGIE NL to the Other Party in accordance with the Agreement also serve to pay taxes, levies and contributions.

34.12 Immediately after termination of the Agreement, the Other Party is obliged to return all property of ENGIE NL to the latter, including all data carriers containing data from and/or about ENGIE NL and any duplicates, copies or extracts thereof.

ARTICLE 35.- ENGAGEMENT/HIRING OF PERSONNEL THROUGH A THIRD PARTY

35.1 The provisions of this article apply in the event that ENGIE NL enters into and concludes an Agreement with an Other Party that, on the basis of a temporary employment relationship, secondment, payrolling and/or similar relationship, transfers personnel and/or others as referred to in **Article 34(1) (Hiring of self-employed persons)** to ENGIE NL for the performance of Work and/or Services.

35.2 The Other Party warrants that upon entering into the Agreement, as well as for the entire duration thereof, it will have the correct permits and other permissions, as well as (industry) certificates and other quality certification required by ENGIE NL with regard to the provisions of paragraph 1 of this article.

35.3 With regard to the person made available and/or posted by the Other Party on behalf of ENGIE NL pursuant to paragraph 1 of this article on the basis of the Agreement, no employment contract, contract for services or any other agreement will arise as a result of such provision and/or placement between ENGIE NL and this person.

35.4 The Other Party warrants that the person made available by it for ENGIE NL and/or the person posted with ENGIE NL has the correct knowledge, skills and characteristics to be able to perform the requested Work and/or to provide the requested Services. If ENGIE NL is of the opinion on reasonable grounds that the aforementioned person does not meet the conditions set by ENGIE NL, ENGIE NL is entitled to demand replacement, which replacement hired by the Other Party will continue the requested Work and/or Services for ENGIE NL at the earliest possible date, without extra costs, unless otherwise agreed in writing in the Agreement. If and in so far as the Other Party fails to comply with the aforementioned obligation in good time and correctly, ENGIE NL will be entitled to immediately terminate the Agreement due to non-compliance with that obligation, without any notice of default being required first.

35.5 The person seconded and/or otherwise posted by the Other Party to ENGIE NL on the basis of the Agreement will perform his/her Services and/or Work in accordance with the terms of the Agreement and will follow instructions and/or guidelines issued by ENGIE NL in connection with the performance of his/her Services and/or Work. Only if this has been agreed in writing with the Other Party and/or the individual will the individual be permitted to also work for third parties.

35.6 In principle, the Work and/or Services to be provided are of a temporary nature and/or take place for a specific period with a maximum duration of 11 months from the start of the Agreement, unless it has been expressly agreed otherwise in writing and in a substantiated manner in the Agreement and/or an extension thereof.

35.7 ENGIE NL does not pay any fee to the person who performs the Services and/or Work on the basis of paragraph 1 of this article and cannot be obliged to do so. Pursuant to paragraph 1 of this article, ENGIE NL will only pay a remuneration to the Other Party in accordance with the terms and conditions of the Agreement, whereby the Other Party guarantees that the gross (converted) hourly rate, as calculated by ENGIE NL, that the Other Party thus pays to the person seconded and/or otherwise made available, for its Services and/or Work will be at least equal to the gross hourly wage applicable from time to time that is paid by ENGIE NL to its employees who perform activities similar to the person seconded and/or otherwise made available on the basis of an employment contract with ENGIE NL, in which case if there is no employee present at ENGIE NL who performs work similar to the person seconded and/or otherwise made available on the basis of an employment contract, the Other Party will pay that person at least a remuneration equal to the gross hourly wage that ENGIE NL would have paid to an employee if it had employed such an employee on the basis of an employment contract. Deviations from the foregoing are only possible if the Parties have expressly agreed them in writing in the Agreement and have substantiated them as such with reasons.

35.8 The Other Party must have the relevant documents, permits and/or consents from the competent (public) authorities from which it follows that the Other Party complies with the relevant statutory regulations applicable from time to time, the provisions of the Agreement and, in particular, the provisions of this article. The Other Party warrants that it and/or the persons seconded by it and/or otherwise posted with ENGIE NL comply with the requirements pursuant to the relevant statutory regulations applicable from time to time, including the DBA Act in that context and the requirements from the Dutch Labour Market Fraud (Bogus Schemes) Act. The Other Party must provide ENGIE NL with a copy of the aforementioned relevant documents, in any event no later than two (2) months after the commencement date of the Agreement. During the term of the Agreement, the Other Party must ensure, at its own expense, that the aforementioned documents are extended and/or updated at least annually, in so far as necessary, and that a copy thereof is submitted to ENGIE NL within one (1) month after the aforementioned extension and/or update.

35.9 If the circumstances and facts on the basis of which the relevant documents as referred to in paragraph 8 of this article have been issued change, the Other Party must immediately inform ENGIE NL of this in writing, on pain of forfeiture of an immediately exigible penalty of €100 for

each day or part of a day that the Other Party refrains from doing so, without any notice of default being required on the part of ENGIE NL vis-à-vis the Other Party. This penalty is owed without prejudice to ENGIE NL's right to compensation for the damage actually suffered.

- 35.10 The Other Party itself is responsible for the correct payment of any tax and/or social security contributions in connection with the performance of the Work and/or Services for the benefit of ENGIE NL by the personnel that the Other Party has seconded to ENGIE NL and/or otherwise made available to ENGIE NL in that context. If and in so far as in the aforementioned relationship the personnel thus referred to are responsible for the correct payment of any tax and/or social security contributions in connection with the performance of the Work and/or Services for ENGIE NL, the Other Party warrants that this is also done correctly. The Other Party indemnifies ENGIE NL in the event that ENGIE NL is sued by the tax, social insurance authorities and/or any other (public) body in respect of the Agreement with regard to wage tax, unpaid social insurance contributions (both employer's and employee's share) and/or unpaid contributions regarding the statutory health insurance surcharge schemes that relate to the payments made to the Other Party and/or by the Other Party to its personnel, as well as indemnifying ENGIE NL as to the penalties and interest on underpaid tax to be imposed by these authorities and/or bodies. Where appropriate, ENGIE NL may set off the contributions, penalties and/or interest it has paid against all that it owes at that time or will owe the Other Party for any reason whatsoever, without prejudice to ENGIE NL's right to compensation for the damage actually suffered.
- 35.11 The Other Party declares that it is properly insured, and also declares that its personnel are also properly insured and indemnifies ENGIE NL against all claims of its own and those of its personnel, including those relating to illness, incapacity for work and/or pension, arising during the execution of the Agreement. A similar indemnification to ENGIE NL also applies if the Other Party engages third parties in the execution of the Agreement under the terms and conditions of that Agreement. The Other Party indemnifies ENGIE NL against all claims by third parties due to damage that the Other Party and/or personnel seconded and/or otherwise made available to third parties during the performance of the Services and/or Work. If and in so far as the Other Party hires third parties for the purposes of the Services and/or Work under the terms and conditions of the Agreement, the Other Party warrants to ENGIE NL that it will promptly and without delay pay the (wage) taxes, social security contributions and/or the amounts related to surcharges under the Health Insurance Act. The Other Party will be obliged to provide ENGIE NL with proper proof in that regard on request.
- 35.12 The fee will only be paid by ENGIE NL to the Other Party under the terms and conditions of the Agreement for the duration, number of hours and/or other relevant terms and conditions in that respect, as stated in the Agreement.

Extra hours and/or any extra work will not be paid by ENGIE NL, unless agreed otherwise in writing between the Parties. ENGIE NL is authorised to require proof of the number of hours actually worked in the context of the Services and/or Work performed and may suspend payment of the fee(s) as included in the Agreement (in whole or in part) until the Other Party is able to provide such proof. The fees paid by ENGIE NL to the Other Party in accordance with the Agreement also serve to pay taxes, levies and contributions.

- 35.13 Immediately after termination of the Agreement, the Other Party is obliged to return, and the Other Party warrants that the persons it has seconded to ENGIE NL and/or persons made available to ENGIE NL in any other way will return, all property of ENGIE NL to the latter, including all data carriers containing data from and/or about ENGIE NL and any duplicates, copies or extracts thereof.
- 35.14 During the Agreement or after any end of deployment initially agreed therein of the personnel referred to and/or after any end of the Agreement within the context of this article, ENGIE NL is entitled to enter into an employment contract and/or any other agreement directly with the persons seconded and/or otherwise made available by the Other Party to ENGIE NL as referred to in this article. Any restriction in this respect in the Other Party's terms and conditions used is hereby expressly rejected.

PURCHASE CONDITIONS: PART V: SPECIFIC MODULE – ICT MATTERS VERSION DECEMBER 2023

ARTICLE 36. APPLICABILITY AND STRUCTURE OF THIS SPECIFIC MODULE FOR ICT MATTERS

- 36.1 In addition to the general module of these Purchase Conditions, the delivery and/or performance of ICT matters by and/or on behalf of the Other Party to and/or for the benefit of ENGIE NL is subject to the provisions of this specific module and/or the provisions included in another specific module of these Purchase Conditions for all initiatives, requests, offers and Agreements in which ENGIE NL acts as initiator, requester and/or client. In addition, the provisions of the general module and this specific module of these Purchase Conditions apply to the extent that the Parties have laid this down in writing in the Agreement, or if and to the extent that it must be assumed according to standards of reasonableness and fairness that, in view of the characteristics of the ICT matters to be delivered and/or performed by and/or on behalf of the Other party and/or in view of the purport and purpose of other specific modules of these Purchase Conditions, bearing in mind the foregoing, application of this specific module of the Purchase Conditions must be considered relevant for the correct execution of the Agreement.
- 36.2 The provisions of this specific module of the Purchase Conditions form an integral part of initiatives, requests and offers in which ENGIE NL acts as initiator, requester and/or client in so far as it refers to this specific module, or forms part of the Agreement in so far as the Parties have agreed this in writing in the Agreement. In so far as the foregoing is not the case, the provisions of this specific module are nevertheless part of initiatives, requests, offers and Agreements in which ENGIE NL acts as initiator, applicant and/or client, if and in so far as, in its reasonable opinion in accordance with the standards of reasonableness and fairness, ENGIE NL assumes that, in view of the characteristics of the ICT matters to be delivered and/or to be performed and/or in view of the purport and purpose of other specific modules of these Purchase Conditions, bearing in mind the foregoing, application of this specific module of the Purchase Conditions must be deemed relevant for the proper execution of the Agreement.
- 36.3 The provisions of this article mean, among other things, that the terms and conditions of this specific module apply to all initiatives, requests, offers, legal acts and/or Agreements relating to ICT hardware, ICT software and/or any peripheral equipment connected to it, including cables, wiring, wireless connections and/or any other connection, as reasonably determined by ENGIE NL, in which ENGIE NL acts as requesting Party and/or client with regard to the Work and Services to be performed, and/or the assignments to be carried out, in any way whatsoever, by

the Other Party in connection with the foregoing, whether or not in combination with the delivery of Goods.

ARTICLE 37.- CONCLUSION OF ICT PERFORMANCE AGREEMENT

- 37.1 Prior to making an offer and/or issuing a quotation to ENGIE NL, the Other Party will have sufficiently familiarised itself with (i) the objectives in connection with which ENGIE NL wishes to enter into the Agreement and/or (ii) the organisation and the ICT Application Landscape of ENGIE NL and other relevant aspects, in so far as these pertain to the Agreement.
- 37.2 If and in so far as the Other Party has insufficient information to comply with the obligation referred to in paragraph 1 of this article, it must inquire with ENGIE NL about this. ENGIE NL will provide all reasonably required information to the Other Party, unless it is of a confidential nature and cannot reasonably be provided under a confidentiality agreement. In addition, ENGIE NL will ensure that the information provided has been determined as accurately and correctly as possible, but it cannot guarantee its correctness, complete accuracy and/or completeness. The information thus provided will therefore be used at the Other Party's own expense and risk, and ENGIE NL cannot be held responsible for such use by the Other Party.
- 37.3 When making an offer and/or issuing a quotation for carrying out the ICT Performance, the Other Party will take into account the information referred to in the previous two paragraphs of this Article.
- 37.4 Unless otherwise agreed in writing and without prejudice to the provisions of **Article 38(2) (Execution of the Agreement as it relates to ICT Performance)**, the Other Party must carry out a risk analysis with regard to the ICT Performance envisaged by ENGIE NL prior to the conclusion of the Agreement. The Other Party must share and discuss this risk analysis with ENGIE NL, after which the offer, quotation and/or the (proposed) Agreement can still be amended if ENGIE NL considers there to be reasonable grounds for doing so. The risk analysis shall be based in particular on the information referred to in paragraphs 2 and 3 of this Article. The Other Party must address any risks identified and the control measures required in that context in the offer and/or quotation to ENGIE NL.
- 37.5 If the ICT Performance includes all or part of the delivery of, and/or Work with regard to, Third-Party Software and/or depends on Third-Party Software, the provisions of **Article 49 (Third-Party Software)** also apply.

ARTICLE 38.- EXECUTION OF THE AGREEMENT AS IT RELATES TO ICT PERFORMANCE

- 38.1 Agreed terms for the delivery or completion of the ICT Performance shall be deemed to be fixed and final within the meaning of Article 6:83(a) DCC, unless agreed otherwise in writing. If performance is not forthcoming within the agreed periods, the Other Party will be in default without any further notice of default being required, unless the Other Party proves that the failure to meet the deadlines is not legally attributable to the Other Party. The ICT Performance to be delivered or completed, including the Application Landscape, Software, the Goods belonging to the ICT Performance, the ICT Corrective Maintenance, ICT Preventive Maintenance and ICT Innovative Maintenance, is at all times an obligation of result, regardless of the working method. User support is a best-efforts obligation, unless agreed otherwise in writing.
- 38.2 The risk analysis referred to in **Article 37(4) (Conclusion of Agreement for ICT Performance)** can also only be performed after the conclusion of the Agreement if ENGIE NL has informed the Other Party of this in writing. This risk analysis must in any event be performed prior to Implementation and must be discussed with ENGIE NL. If the Other Party's proposal regarding the manner in which the risks identified are dealt with is not acceptable to ENGIE NL, ENGIE NL will be entitled to terminate the Agreement with immediate effect, without being liable for damages and/or being obliged to pay any other obligation, but against payment of the costs incurred by the Other Party up to that point, including the costs for performing the risk analysis. The Other Party must substantiate these costs so that ENGIE NL can easily verify them.
- 38.3 In so far as it ensues from the Agreement that the Other Party is responsible for the transport and/or storage of the Goods belonging to the ICT Performance, the Other Party bears the risk of damage and/or loss during the transport and/or storage.

ARTICLE 39.- ESCROW AGREEMENT

- 39.1 In the case of Software being delivered, the Other Party declares by entering into the Agreement that it has concluded an escrow agreement with an escrow agency with ENGIE NL as beneficiary. With the escrow agreement and this Agreement, the Other Party undertakes and guarantees, for the sake of the continuity of ENGIE NL's business operations, that all current and future Software, with (a copy of) the Source Code and the accompanying technical information and documentation, have been deposited or will be deposited immediately after the delivery of (versions of) the Software, including releases, Updates and Upgrades.
- 39.2 Without prejudice to the provisions of paragraph 1 of this article, the Other Party warrants that the deposit also includes all other (source) files and technical information and documentation that ENGIE NL reasonably requires for the regular use, independent error recovery, function enhancing, maintenance and management of the Software

in the event of a Ground for Surrender defined below (hereinafter: **"Purpose of the Escrow"**).

- 39.3 For each client, including ENGIE NL, its own version of the Software will be deposited and maintained. Upon ENGIE NL's first request, the Other Party will provide a copy of the escrow agreement.
- 39.4 Without prejudice to the provisions of paragraph 1 of this article, ENGIE NL itself may, if so desired, become a party to the escrow agreement between the Other Party and the escrow agency. ENGIE NL has the right to designate an escrow agency with which the Other Party must conclude an escrow agreement.
- 39.5 By entering into the Agreement, the Other Party declares that the escrow agreement guarantees ENGIE NL the right to free issue to and use by ENGIE NL, bearing in mind the Purpose of the Escrow, of all Software, its Source Code and other files and information placed on deposit, in any event if:
- The Other Party ceases its business operations without having validly transferred the concluded Agreement to one or more third parties, and/or
 - the Other Party is declared to be in a state of suspension of payments and/or bankrupt, and/or
 - the Other Party is no longer able or willing to comply with (maintenance) obligations; and
 - a (different) ground for surrender as referred to in the escrow agreement occurs (hereinafter each individually: **"Ground for Surrender"**).
- 39.6 If a Ground for Surrender occurs, ENGIE NL will be irrevocably authorised to continue to use the Software and other files and information placed on deposit, bearing in mind the Purpose of the Escrow. The fee for this use is already included in the fee for the Software.
- 39.7 Unless otherwise agreed in writing between the Parties, the escrow agreement will be entered into and maintained for an indefinite period at the Other Party's expense.
- 39.8 ENGIE NL is authorised to conduct a verification investigation to verify the Other Party's deposit obligations. In principle, the costs of any verification investigation will be borne by ENGIE NL. However, these costs will be borne by the Other Party if the verification investigation shows that the Other Party has failed in its filing obligations, as a result of which the Source Code and/or the other documentation filed is insufficient and/or insufficiently suitable for the intended use, as reasonably determined by ENGIE NL.
- 39.9 The Other Party warrants that the rights stipulated for the benefit of ENGIE NL, bearing in mind the Purpose of the Escrow, are correctly and properly included in the escrow agreement for the benefit of ENGIE NL.

ARTICLE 40.- IMPLEMENTATION OF THE ICT PERFORMANCE

- 40.1 Unless expressly agreed otherwise in the Agreement and/or, in ENGIE NL's reasonable opinion, the ICT Performance cannot, by its nature, be implemented in ENGIE NL's organisation with a view to its purpose, the Other Party will ensure the ICT Implementation of the ICT Performance in ENGIE NL's organisation in accordance with the provisions of the Agreement and the ICT Implementation Plan.
- 40.2 If, at the time of signing the Agreement, no ICT Implementation Plan has yet been drawn up, this will be drawn up in mutual consultation between the Parties at the first request of one of the Parties within a reasonable period. In that case, the Other Party will be responsible for the ICT Implementation Plan. The costs for drawing up the ICT Implementation Plan are included in the price listed in the Agreement.
- 40.3 If it is agreed that an ICT Implementation Plan will be drawn up, if ENGIE NL so requests and/or if an ICT Implementation Plan is drawn up, this will in any event deal with the following:
- a) a detailed description of the objectives and results of the ICT Performance and its components and scope of application in order to arrive at the ICT Implementation of the ICT Performance in accordance with the provisions of the Agreement, as well as the starting points and the preconditions and the applicable frameworks and standards, also in light of the risk analysis performed as referred to in **Article 37 (Conclusion of the ICT Performance Agreement)**;
 - b) the project organisation, including the method of reporting and the method of project management, the project approach and project management and monitoring thereof;
 - c) the division of work and responsibilities, including the deployment and availability required of ENGIE NL;
 - d) an overview of the required ICT Links, their functional specifications and any cooperation from third parties required for their installation;
 - e) the partial deliveries and/or other benchmarks for the proper success of the agreed ICT Performance and the functional specifications for any partial deliveries and/or other benchmarks that must be met, whether or not in relation to the ICT Agreed Use);
 - f) the timetable of the ICT Implementation, including, but not limited to, partial deliveries and/or other benchmarks, in accordance with the planning requirements set in the Agreement;
 - g) the manner in which each partial delivery and/or any other benchmarks are delivered;
 - h) the manner in which the ICT Acceptance Procedure will be performed;
 - i) the manner in which the ICT Conversion, data migration and/or cut-over will take place;
 - j) the manner in which ENGIE NL will be familiarised by means of training courses by and/or on behalf of the Other Party with the use and (technical and functional) management of the ICT Performance, the system

application and/or the user documentation, in so far as agreed;

- k) the manner in which the quality verification, testing and after-care are performed by the Other Party with regard to the ICT Performance, as well as the manner in which the ICT Performance delivered is completed in connection with the end and/or achievement of the agreed result, including the ICT Exit Plan.

40.4 The Other Party will periodically submit a written progress report to ENGIE NL as agreed in the Agreement and/or the ICT Implementation Plan.

40.5 If, during the ICT Implementation, it appears that, inter alia but not exclusively with a view to the correct and intended functioning of the ICT Performance and the correct and intended continued functioning of the ICT Application Landscape, adjustments to the ICT Application Landscape are necessary, in the reasonable opinion of ENGIE NL, which the Other Party has not provided for in the offer, quotation, Purchase Order and/or the risk analysis referred to in **Article 37(4) (Conclusion of ICT Performance Agreement)**, but which should have been provided for by the Other Party in the reasonable opinion of ENGIE NL, the Other Party must carry out these adjustments, following any directions from ENGIE NL within that context, and the costs for the relevant adjustments will be borne by the Other Party.

40.6 Unless agreed otherwise in writing, interim completion dates, in derogation from **Article 38(1) (Execution of the Agreement as it relates to ICT Performance)**, are not deadlines, but the end date for the ICT Implementation included in the Agreement and/or the ICT Implementation Plan is a deadline within the meaning of Article 6:83(a) DCC.

40.7 The Other Party hereby declares that it is willing and able to perform Work and/or provide Services related to the ICT Implementation during the term of the Agreement, at the request of ENGIE NL, after the end of the (initial) ICT Implementation. Such Work or Services will then be performed at the rates stated in the Agreement for that purpose or, in the absence thereof, at the rates agreed in writing between the Parties for that purpose. The provisions of this Article 40 apply mutatis mutandis to the performance of such aforementioned Work or the provision of Services.

ARTICLE 41.- ACCEPTANCE OF ICT PERFORMANCE

41.1 If no ICT Implementation Plan has been drawn up and/or the ICT Implementation Plan does not contain a description of the manner in which the Acceptance Procedure is performed, a written test protocol will be laid down at ENGIE NL's first written request indicating the manner in which the ICT Acceptance Procedure will be performed. When drawing up the aforementioned test

protocol, the provisions of **Article 40(3) (Implementation of the ICT Performance)** apply mutatis mutandis.

- 41.2 Unless the Agreement, ICT Implementation Plan or test protocol referred to in paragraph 1 of this article provide otherwise, the ICT Acceptance Procedure is as follows:
- after each delivery of (parts of) the ICT Performance, the relevant delivery will be tested for ICT Defects. ENGIE NL and/or the person carrying out the tests will draw up a test report, which will be signed by the Parties. This test report will record whether the ICT Performance has ICT Defects and furthermore whether the ICT Performance has been (partially) approved or rejected;
 - within a reasonable period, or at least within the period specified for that purpose in the Agreement, after the date on which the test report is signed, the Other Party will issue a schedule within which the ICT Defects laid down in the test report will be remedied at the Other Party's expense;
 - After expiry of the period referred to under b., the Other Party will again subject (the part of) the updated and/or adjusted ICT Performance to the ICT Acceptance Procedure.
- 41.3 The periods and (adjusted) schedules used in the context of the ICT Acceptance Procedure must be in line with the overall scheduling of the Agreement or the ICT Implementation Plan and may not lead to delays.
- 41.4 If all or part of the ICT Performance is rejected for ICT Defects when the (full) ICT Acceptance Procedure is completed for the second time, ENGIE NL is entitled to:
- dissolve the Agreement – in whole or in part – out of court, without further notice of default, whereby the Other Party is then also liable within the framework of **Article 9 (Liability and penalty)** for the damage suffered and/or to be suffered by ENGIE NL; and/or
 - without prejudice to its right to compensation within the framework of **Article 9 (Liability and penalty)** for the damage already suffered, to allow the Other Party to still repair the Defects at its own expense; and/or
 - to accept the ICT Performance conditionally subject to a condition to be agreed in writing, in which respect the provisions under a of this paragraph will apply if the Other Party does not meet the conditions set in the event of conditional acceptance in good time.
- 41.5 For ICT Defects that cannot be resolved within the agreed schedule, as reasonably determined by ENGIE NL, it may be decided in writing by mutual consent to temporarily install an acceptable work-around and/or to find a solution for this later with the aim of sticking to the schedule for the realisation of the ICT Performance as agreed in the Agreement, in accordance with those conditions.
- 41.6 ICT Defects that (individually or jointly) do not preclude the use for productive purposes of (the relevant part of) the ICT Performance, as reasonably determined by ENGIE NL, cannot constitute grounds for non-acceptance thereof

by ENGIE NL, without prejudice to the Other Party's obligation to nevertheless repair the Defects ICT in the short term so that the provisions of the Agreement regarding the ICT Performance are fully complied with.

- 41.7 If the ICT Performance is delivered in partial deliveries, an ICT Acceptance Procedure will take place after each partial delivery and, after approval by ENGIE NL of the last part of the ICT Performance, a full ICT Acceptance Procedure will then take place, in which the entire ICT Performance, as well as the connection of the partial deliveries, will be assessed for ICT Defects. Acceptance and approval by ENGIE regarding the agreed ICT Performance will only be forthcoming after the successful completion of the full ICT Acceptance Procedure in respect of the entire ICT Performance.

ARTICLE 42.- ICT PERFORMANCE MAINTENANCE AND SUPPORT

- 42.1 Unless otherwise agreed in writing in the Agreement, the Other Party will perform ICT Maintenance on the ICT Performance subject to the terms and conditions and price and/or prices described in the Agreement. The obligation of ICT Maintenance commences from the moment of approval by ENGIE NL upon initial delivery of the ICT Performance as a result of a successfully completed full ICT Acceptance Procedure in respect of the entire ICT Performance.
- 42.2 The conditions described below in this article are (minimum) conditions for correct ICT Maintenance, unless this has been deviated from in writing in the Agreement and/or the written Service Level agreements.
- 42.3 Unless otherwise agreed in writing between the Parties, the ICT Maintenance comprises at least the following services:
- ICT Corrective maintenance;
 - ICT Preventive maintenance;
 - ICT Innovative Maintenance;
 - ICT User support.
- 42.4 The time at which the ICT Maintenance is performed will be determined in mutual consultation between the Parties. The point of departure in this respect is that ICT Maintenance takes place in such a way and at such a time that this is the least disruptive to ENGIE NL's business operations and business processes. ICT Maintenance that disrupts or may disrupt ENGIE NL's operations and/or business processes will furthermore be announced in good time by and/or on behalf of the Other Party, in which respect the Other Party will explain why such ICT Maintenance must in all reasonableness be performed in that manner and at that time, as well as what mitigating measures the Other Party and/or third party engaged by the Other Party has taken to limit the (expected) disruption.

- 42.5 In the context of ICT Maintenance, the Other Party must in any event be reachable 24 hours a day every calendar day, unless agreed otherwise in writing in the Agreement, and will ensure that a third party engaged by it is also reachable in any event during the aforementioned period.
- 42.6 The Other Party declares that it is prepared – if and in so far as this has not already been provided for in the Agreement – to make, at ENGIE NL's first request, one or more additional written working agreements regarding the Service Levels (SLA), in which specific Service Levels with regard to the ICT Maintenance referred to in paragraph 3 of this article are laid down and in which measures are included with regard to whether or not the agreed Service Levels are achieved.
- 42.7 The consequences of not achieving the Service Levels agreed in writing are laid down in the Agreement and/or relevant SLA, on the understanding that (partial) termination of the Agreement and/or the SLA(s) is in any event possible if the Service Levels agreed in writing are not achieved during several measurement periods in succession. Any measures stipulated in the SLA will not affect ENGIE NL's other rights, including the right to recover from the Other Party the damage and costs incurred by it in addition to the measure. Penalties and/or sanctions paid as part of the aforementioned measures will be deducted from any damages to be paid to ENGIE NL by the Other Party.
- 42.8 If and in so far as the Other Party proves, on the basis of sound substantiation with documents, that an ICT Defect is not attributable to it, it is not obliged to remedy this. If ENGIE NL nevertheless orders the aforementioned repair, the Other Party will be entitled to charge ENGIE NL separately for the costs involved in the repair.
- 42.9 In the context of Preventive and/or Innovative ICT Maintenance, the Other Party guarantees at least:
- that the ICT Performance will always continue to comply, in a timely manner, with the relevant laws and regulations and the conditions and purpose of the Agreement;
 - that the ICT Performance will always remain suitable, in a timely manner, for the exchange of data with the other relevant parts of the ICT Application Landscape and will continue to satisfy the agreed ICT Interoperability Requirements in that context;
 - that the ICT Performance, by means of the timely issue of ICT Updates and/or ICT Upgrades, will always continue to meet the required quality standards specified in the Agreement and/or the associated SLAs;
 - that when issuing ICT Updates and/or ICT Upgrades, the agreed level of performance of the ICT Performance and the ICT Application Landscape will at least remain the same and that the ICT Performance and the ICT Application Landscape will continue to satisfy the ICT Agreed Use.
 - what has been agreed in the SLA.
- 42.10 At ENGIE NL's request, the Other Party will provide the ICT Implementation of ICT Updates and/or ICT Upgrades, for a fee to be agreed if this has not yet been agreed in the Agreement. In that case, the provisions regarding ICT Implementation, ICT Acceptance Conditions and approval apply mutatis mutandis.
- 42.11 Except in the situation referred to in **Article 54(4) (Maintenance and Availability of Cloud Services)**, ENGIE NL is entitled to refuse the use and/or ICT Implementation of ICT Updates and/or ICT Upgrades, without this affecting the ICT Maintenance to be provided by the Other Party, on the understanding that:
- there is no attributable failure on the part of the Other Party in the context of ICT Maintenance if a certain ICT Defect has been remedied in an ICT Update and/or ICT Upgrade and ENGIE NL refuses to put that ICT Update and/or ICT Upgrade into operation;
 - ENGIE NL, at its discretion, may lag behind for a maximum of 24 months and/or 2 versions in the commissioning of the ICT Update and/or ICT Upgrade, failing which the Other Party will be entitled after the expiry of that period to charge ENGIE NL the demonstrable additional costs for the continued provision of ICT Maintenance on (the relevant part of) the ICT Performance used by ENGIE NL.
- 42.12 The Other Party will periodically report to ENGIE NL on its compliance with the agreed Service Levels, which will in any event include the availability of the ICT Performance and the level of the services, including the ICT Maintenance of the ICT Performance, as well as the planned Innovative ICT Maintenance. The content and frequency of this report are described in more detail in the SLA.
- 42.13 After receipt of the report as referred to in paragraph 12 of this article, ENGIE NL will determine whether the Other Party has met its obligations under the Agreement and/or SLA regarding the ICT Maintenance, including the Service Levels guaranteed by it, whether or not by hiring a third party in accordance with **Article 50 (Right to audit and cooperation with audits regarding the ICT Performance at ENGIE NL)**.
- 42.14 The Other Party hereby declares that, in so far as it was originally agreed that the Other Party would not perform any or only parts of the ICT Maintenance referred to in paragraph 3 of this article, it will still enter into consultations at ENGIE NL's first request in order to arrive at an Agreement and/or SLA for the performance of additional Work and/or Services with regard to ICT Maintenance.

ARTICLE 43.- ADDITIONAL PRICE AND PAYMENT CONDITIONS FOR ICT PERFORMANCE

- 43.1 Unless otherwise agreed in writing, the invoicing of the price and/or prices for the ICT Performance and/or parts thereof will take place as follows:
- a) Implementation and/or development costs: of the total price in this respect, 30% is only due and payable after approval by ENGIE NL on the basis of the relevant ICT Acceptance Conditions, with further written agreements being made between the Parties regarding the remaining 70% in the Agreement;
 - b) the costs of the ICT Rights of Use for Software charged by the Other Party to ENGIE NL will be paid by ENGIE NL in accordance with the terms and conditions of the Agreement, (i) if the Software is Third-Party Software: 100% upon delivery and (ii) if the Software is not Third-Party Software: 30% after approval by ENGIE NL on the basis of the relevant ICT Acceptance Conditions and 70% of the costs upon commissioning by ENGIE NL for its agreed purpose;
 - c) the costs of the ICT Maintenance of the ICT Performance charged by the Other Party to ENGIE NL will be paid by ENGIE NL in accordance with the terms and conditions of the Agreement, (i) in so far as these are one-off fees: only after full approval in this respect by ENGIE NL on the basis of the relevant ICT Acceptance Terms and Conditions and (ii) in so far as these are periodic fees: periodically in advance, for the first time after full approval in this respect by ENGIE NL on the basis of the relevant ICT Acceptance Terms and Conditions;
 - d) the costs charged by the Other Party to ENGIE NL for other Work and/or Services relating to an agreed ICT Performance will not be paid by ENGIE NL in accordance with the terms and conditions of the Agreement until ENGIE NL has given its full approval in that respect on the basis of the relevant ICT Acceptance Terms and Conditions, or at ENGIE NL's discretion, monthly in arrears on the basis of actual hours worked in the event that the Work and/or Services are performed on a subsequent calculation basis.
- 43.2 If and in so far as the Parties have agreed in writing an indexation of the (annual) rates in the Agreement, the following applies, unless another indexation mechanism has been explicitly agreed in the Agreement. Every year as of 1 January, the agreed (annual) rates and ongoing prices regarding ICT Performance(s) and/or parts thereof may be adjusted by the Other Party, provided that ENGIE NL has been notified in writing at least one month prior to the intended commencement of the intended price adjustment. Such changes are limited to a maximum of the change (if any) to the most recently published price index figure for 'Computer programming, consultancy and related services' (CPA: 62) as included in the table published by Statistics Netherlands (CBS) entitled 'Services Prices; Commercial Services Index (2010=100)', or at least its successor and/or replacement.

- 43.3 The Other Party is also entitled to charge on to ENGIE NL the demonstrable price increase of Third-Party Software as of 1 January, provided that this price increase was not yet foreseeable at the time the Agreement was concluded and this is sufficiently demonstrated by the Other Party and this new price is approved in writing by ENGIE NL. If the prices of Third-Party Software fall during the term of the Agreement, the Other Party will always only charge ENGIE NL the current (reduced) price of Third-Party Software after ENGIE NL has given its written approval in that regard.
- 43.4 If and in so far as the price and/or the number of ICT Rights of Use for the use of the ICT Performance is made dependent on a figure related to ENGIE NL that is subject to change (such as the number of inhabitants, area of workplace, etc.), then this price or the number of ICT Rights of Use granted will only be adjusted once a year – specifically on 1 January – with due observance of the terms and conditions of the Agreement.
- 43.5 The provisions of this article regarding Third-Party Software only apply to the extent that the Other Party has complied with the provisions of **Article 49(1) (Third-Party Software)**.

ARTICLE 44.- ADDITIONAL GUARANTEES ON ICT PERFORMANCE

- 44.1 In addition to the provisions of **Article 5 (Quality and guarantees regarding the other party)**, the Other Party guarantees that:
- a) the ICT Performance will contain the agreed characteristics and complies with the ICT Agreed Use;
 - b) it will only deploy personnel and/or third parties who have the skills and qualifications agreed or required to perform the ICT Performance, taking into account the nature of the ICT Performance to be delivered and the manner in which the Other Party has presented itself as an expert. It also guarantees that the personnel and/or third party it deploys meet the requirements that may be imposed on a comparable service provider and/or supplier as an expert and competent professional and acting as such;
 - c) unless otherwise agreed in writing, it can perform adequate ICT Maintenance on the ICT Performance at least up to five (5) years after the date of approval by ENGIE NL on the basis of the ICT Acceptance Conditions regarding the ICT Performance in its entirety;
 - d) the ICT Performance will be suitable for use by ENGIE NL in connection with the ICT Application Landscape;
 - e) the ICT Performance meets and (in the case of ICT Maintenance) will continue to meet the relevant laws and regulations and the ICT quality standards of ENGIE NL.
- 44.2 If, during the term of the Agreement, ENGIE NL discovers at any time that the ICT Performance or parts thereof do

not comply with the guarantees forming part of the Agreement, ENGIE NL will inform the Other Party of this in writing or by email and, in urgent cases, by telephone. If the Other Party is of the opinion that ENGIE NL cannot invoke the guarantee provisions because an ICT Defect is not part of the guaranteed properties and/or cannot be traced back to causes that cannot be attributed to the Other Party and/or cannot be traced back to (Customised) (Standard) Software, Work and/or Services supplied and/or recommended by the Other Party, the Other Party bears the burden of proving this.

ARTICLE 45.- SUPPLEMENTARY DOCUMENTATION ON ICT PERFORMANCE

- 45.1 The Other Party will provide ENGIE NL with sufficient and comprehensible documentation regarding the features, technical fit-out and possibilities for use of the ICT Performance. The documentation for end users was drawn up in comprehensible language and in Dutch. Other documentation may also be in English, unless agreed otherwise in the Agreement. In addition, the documentation will be and remain such:
- that it provides a correct, complete and detailed description of the ICT Performance to be delivered by the Other Party, as well as its functions;
 - that it provides a correct and complete description of the settings/parameters made by the Other Party in the context of the ICT Implementation or ICT Maintenance;
 - that users, end users and managers can make use of all the possibilities of the ICT Performance and can properly understand their operation;
 - that it is suitable for testing the ICT Performance on this basis in the context of an ICT Acceptance Procedure;
 - that it is suitable for adequately managing the ICT Performance on this basis and fitting it into the ICT Application Landscape in accordance with the documentation requirements on fit-out from the ICT quality standards of ENGIE-NL.
- 45.2 The relevant documentation will always be made available by the Other Party to ENGIE NL in good time for the relevant ICT Acceptance Procedure regarding (parts of) the ICT Performance and/or if ENGIE NL so requests, unless agreed otherwise in the Agreement. When delivering ICT Updates, ICT Upgrades and/or additional (Customised) (Standard) Software, the Other Party shall always provide the relevant documentation in good time and correctly with said delivery to ENGIE NL.
- 45.3 With the exception of the parts of the ICT Performance that ENGIE NL indicates it is managing itself, the Other Party will ensure that the documentation for the ICT Performance is always kept up to date. As soon as it becomes apparent that said documentation is not or is no longer correct or complete, the Other Party will update said documentation as soon as possible and at its own expense.

ARTICLE 46.- ICT PERFORMANCE PRODUCT MANAGEMENT

- 46.1 Without prejudice to any agreed ICT Maintenance, the Other Party shall inform ENGIE NL periodically and in good time about the scheduling and intended functionalities for ICT Upgrades and/or ICT Updates.
- 46.2 In so far as the Other Party facilitates a (physical or virtual) body and/or platform for the benefit of all or some of its customers for sharing knowledge and experience about the ICT Performance and/or discussing the current or expected developments of the ICT Performance, the Other Party will grant ENGIE NL access to this free of charge and without restrictions.
- 46.3 If the Other Party – either for the benefit of ENGIE NL or for the benefit of third parties – has developed a supplement to existing (Standard) (Customised) Software to which **Article 47(2) (Additional provisions concerning intellectual property for ICT Performance)**, or at least a similar provision, applies, then:
- the Other Party will inform ENGIE NL and other users of the (Standard) (Customised) Software of this supplement in writing, including whether this supplement will be included in the ICT Updates and/or ICT Upgrades to be published (at a later date) and what consequences will be associated with the commissioning of the addition; and
 - the Other Party shall – without prejudice to any agreed ICT Maintenance – make this supplement available to ENGIE NL and other users of the (Standard) (Custom) Software free of charge; and
 - the use of the relevant supplement by ENGIE NL is at the Other Party's risk.

ARTICLE 47.- ADDITIONAL PROVISIONS CONCERNING INTELLECTUAL PROPERTY FOR ICT PERFORMANCE

- 47.1 Unless agreed otherwise in the Agreement, the Other Party will grant ENGIE NL an ICT Right of Use on the ICT Performance. If a fee is periodically owed for the ICT Right of Use, the term of the Right of Use will be equal to the term of the Agreement. In other cases, the ICT Right of Use is perpetual and irrevocable, with the fee for the ICT Right of Use then being included in the fee for the ICT Performance, the provision of Services and/or the performance of Work in that context. This perpetual right shall continue after the end of the Agreement. In any event, the ICT Right of Use includes the right to use the ICT Performance(s) and all information and/or knowledge contained therein for the ICT Agreed Use, as well as for testing purposes, including all reasonably necessary reproductions and disclosures, temporary or otherwise. If the Agreement (also) pertains to the development by the Other Party of a supplement to existing (Standard) (Customised) Software, the provisions of this paragraph also apply to that supplement.

47.2 Without prejudice to the provisions of **Article 39 (Escrow Agreement)**, the Other Party undertakes to immediately make available to ENGIE NL the Source Code and all files, source files and technical information and documentation for the Customised Software that ENGIE NL reasonably needs for the regular use, independent error recovery, function enhancing, maintenance and management of the Customised Software as soon as there is a release, ICT Update or ICT Upgrade of the Software. The one-off costs for the transfer as referred to in this paragraph and as referred to in **Article 7 (Intellectual Property)** are deemed to have been determined by the prices for the ICT Performance as agreed in the Agreement. The transfer and delivery of the rights and the aforementioned Source Code, including the other relevant information, will take place without ENGIE NL having already paid the entire agreed price for the ICT Performance. Notwithstanding the foregoing, ENGIE NL may reasonably determine that, in order to obtain the aforementioned Source Code, including other relevant information, it will pay the Other Party what, in ENGIE NL's reasonable opinion, is appropriate remuneration.

47.3 If use by ENGIE NL of the ICT Performance and/or parts thereof is denied, restricted and/or hindered by a third party, the Other Party shall immediately, at its own expense and at its discretion, either:

- ensure that ENGIE NL still acquires the right to continue using the ICT Performance;
- replace the infringing part with another part with equivalent possibilities for use, which does not infringe such third-party rights;
- modify the infringing part in such a way that the infringement is eliminated.

In the event of replacement or change as referred to under b and/or c, the functionality of the replacement parts will be at least equivalent to the replaced parts and the guarantees regarding the ICT Performance will remain fully intact.

47.4 In order to guarantee the continuity of the ICT Agreed Use by ENGIE NL of the ICT Performance(s), the Other Party – by signing the Agreement – will establish a right of usufruct in accordance with Article 3:202 DCC, subject to the suspensive condition that a Ground for Surrender, as referred to in **Article 39(4) (Escrow Agreement)**, occurs. This right of usufruct is created on the copyrights vested in, contained in, or ensuing from the (future) Software, which are necessary for the ICT Agreed Use. The usufruct gives ENGIE NL the authority to use the Software for regular use, independent error recovery, function enhancing, maintenance and management of the Software. Software and goods that are the subject of the usufruct are (also) described in this Agreement and its annexes, which also serve as an inventory, as referred to in Article 3:205(1) DCC. This must be carefully stored by both Parties. The Parties acknowledge that neither Party wishes to submit an annual statement as referred to in Article 3:205(4) DCC.

The right of usufruct is created without any obligation to pay ("*free of charge*"). This does not affect the fees that ENGIE NL owes the Other Party in accordance with the Agreement. The Parties exclude dissolution of the usufruct by the Other Party. The usufruct will end by operation of law after 10 years have passed, after the condition precedent referred to in this paragraph has been met, unless the Parties expressly agree otherwise in writing at any time. The usufruct will end by operation of law if ENGIE NL decides to terminate the Agreement in its entirety.

ARTICLE 48.- ACCESS TO ICT PERFORMANCE, DATA AND AUTHORISATIONS

48.1 During the term of the Agreement, the Other Party will enable ENGIE NL to gain access at all times to the ICT Performance and the data processed with the ICT Performance for the benefit of ENGIE NL, as well as the (settings with regard to) authorisations set up in that respect.

48.2 The Other Party may comply with the obligation described in paragraph 1 of this article, inter alia, by:

- making Links available to ENGIE NL with the accompanying documentation, in order to enable ENGIE NL to request the data and/or authorisations by means of the ICT Links;
- providing ENGIE NL with a correct, complete and detailed description of the data models underlying the ICT Performance, in order to enable ENGIE NL to access the data itself.

48.3 If and in so far as, by granting access to the ICT Performance and/or the stored data, certain security (including authorisations) is circumvented, the Other Party will inform ENGIE NL of this in writing and expressly warn ENGIE NL in writing.

48.4 ENGIE NL itself is liable for the use of the data obtained on the basis of this article. In that respect, ENGIE NL indemnifies the Other Party against any third-party claims ensuing from this use by ENGIE NL.

48.5 Unless expressly agreed otherwise in writing in the Agreement, the Other Party will have no access whatsoever to ENGIE NL's business data. In so far as the Other Party should nevertheless unexpectedly and/or unintentionally and/or in any other way prove to have such access, the Other Party must immediately notify ENGIE NL of this in writing and must also immediately take mitigating measures at its expense in order to prevent and/or reduce any damage and/or other disadvantage for ENGIE NL as a result.

48.6 Should the Other Party, based on its operational responsibility, require access to ENGIE NL's business information and/or pursuant to the ICT Performance and/or any part thereof and/or due to an assignment issued by

ENGIE NL, ENGIE NL will grant the Other Party access to such information in writing for a certain period of time to the extent that it deems this necessary, whereby the Other Party will ensure that all actions can be tracked and/or traced by means of tracking, tracing and/or auditing, unless expressly agreed otherwise in writing.

- 48.7 Where the Other Party provides a Cloud Service, it will ensure that ENGIE NL's (business) data are stored in encrypted form and that only ENGIE NL has access to the encryption keys. If it is impossible to make the encryption keys available specifically for ENGIE NL within the Cloud Service offered, it is up to the Other Party to come up with an appropriate alternative proposal. Unless agreed otherwise in writing, the associated costs will be borne by the Other Party.

ARTICLE 49.- THIRD-PARTY SOFTWARE

- 49.1 If the Software and ICT Links to be delivered by the Other Party (also) consists of Third-Party Software, the Other Party will expressly specify this in the offer and/or the Purchase Order. In that case, the Other Party will make any applicable licence conditions available to ENGIE NL, to enable ENGIE NL to use the Third-Party Software in accordance with the ICT Agreed Use.
- 49.2 In the case referred to in paragraph 1 of this article, the Other Party will also specify to what extent it is possible to purchase the relevant Third-Party Software elsewhere and to what extent the choice to do so will have consequences for the Other Party's offer and/or quotation.
- 49.3 If and in so far as the ICT Performance depends on and/or must reasonably be assumed to depend on Third-Party Software, the Other Party will expressly specify this in its offer and/or quotation. The Other Party will clearly state where that dependence is and what effects that dependence has on the ICT Performance or Services and/or Work to be provided and/or performed by the Other Party, and on the quality thereof. The Other Party will further explain how it will remove and/or mitigate the risks associated with this dependence so that they do not impede, hinder and/or endanger the correct execution of the ICT Performance, the provision of the Services and/or the performance of Work.
- 49.4 In the context of ICT Maintenance, the Other Party will issue ICT Updates and/or ICT Upgrades in good time in order to continue to guarantee compatibility with the Third-Party Software on which the ICT Performance depends, in accordance with the terms and conditions of the Agreement.
- 49.5 If and in so far as the Other Party provides accessible and substantiated proof that an ICT Defect in the ICT Performance is caused by an error in the Third-Party Software, the relevant ICT Defect will not be considered an ICT Defect, unless the Other Party should have been

aware of the relevant error in the Third-Party Software and the effect of the relevant error in its own ICT Performance could reasonably have been avoided. This article applies to the ICT Implementation, the approval based on the ICT Acceptance Conditions, and also the ICT Maintenance. The Other Party may only invoke the provisions of this paragraph if the Other Party has complied with the obligations referred to in paragraphs 1 and 3 of this article.

- 49.6 The provisions of paragraph 5 of this article do not diminish the fact that, where appropriate, the Other Party will use all reasonable efforts within the framework of the ICT Maintenance to still resolve the ICT Defect as soon as possible, for example by circumventing the error in the Third-Party Software in its own ICT Performance and/or by providing ENGIE NL with ICT Updates and/or ICT Upgrades to the ICT Performance and/or the Third-Party Software as soon as possible that remove and/or otherwise resolve the ICT Defect.
- 49.7 The licence terms and conditions provided in the context of paragraph 1 of this article prevail over the provisions of the Agreement, but only in so far as and to the extent that the Third-Party Software is involved.

ARTICLE 50.- RIGHT TO AUDIT AND COOPERATION WITH AUDITS REGARDING THE ICT PERFORMANCE AT ENGIE NL

- 50.1 ENGIE NL is entitled to have compliance by the Other Party with the obligations pursuant to the Agreement and the related agreements (SLA, processor's agreement, etc.), as well as the accuracy of the invoices sent, checked by an independent expert third party.
- 50.2 The audit will take place no more than two (2) times a year and only if ENGIE NL has reasonable doubts about the performance of the obligations by the Other Party and/or a third party engaged by the Other Party, and/or if ENGIE NL otherwise has a legitimate interest in the audit, such as for the performance of a statutory obligation and/or an instruction from a supervisory authority, or the correct performance of an agreement with a third party. If material defects are discovered during an audit, the maximum referred to in this paragraph does not apply in so far as, in the reasonable opinion of ENGIE NL, it is necessary to establish with an additional audit that those defects have been remedied.
- 50.3 The Other Party will lend all reasonably expected cooperation to such an audit, and will ensure that the third parties it engages will also do so, as if these third parties were the Other Party. In that context, the Other Party will at least grant access to all relevant data and background information that may be relevant in the context of the aforementioned audit. The Other Party will also grant access to the location where the services are provided.

- 50.4 The Other Party warrants that third parties engaged by it will comply with the regulations applied by ENGIE NL within the framework of the Agreement, as well as the third-party expert engaged by ENGIE NL as referred to in paragraph 1 of this article, within the framework of this article. If the audit cannot be performed (or cannot be performed in full) due to the aforementioned rules, the risk will be borne by the Other Party.
- 50.5 The costs of the audit as referred to in this article will be borne by ENGIE NL (both its own costs and the costs of the Other Party), unless the third-party expert engaged by ENGIE NL, as referred to in paragraph 1 of this article, discovers one or more shortcomings of a non-minor nature of the Other Party that are to the detriment of ENGIE NL.
- 50.6 In so far as ENGIE NL is dependent on the Other Party, including any third party engaged by the Other Party, for the performance of and/or compliance with (legally required) audits, the Other Party will provide all necessary cooperation in the performance of these audits, as well as following instructions in this regard from ENGIE NL. The costs of this cooperation will be borne by ENGIE NL, unless otherwise agreed in writing.

ARTICLE 51.- ICT EXIT PLAN REGARDING THE ICT PERFORMANCE

- 51.1 At ENGIE NL's first request, the Parties will draw up an ICT Exit Plan setting out what must be done in preparation for the work described in this article. In terms of structure and level of detail, the ICT Exit Plan will be comparable to the ICT Implementation Plan, and the relevant requirements as laid down in **Article 40 (Implementation of the ICT Performance)** apply mutatis mutandis to the drawing up of the Exit Plan.
- 51.2 The work referred to in this article will be performed in accordance with the ICT Exit Plan and the other provisions of the specific module of the Purchase Conditions, at the agreed price, on the understanding that if the Parties have not agreed a price for this, the work of the Other Party in the context of the implementation of the ICT Exit Plan will be performed at the Other Party's then standard rates for that, with the Other Party sufficiently demonstrating the latter in the reasonable opinion of ENGIE NL.
- 51.3 When terminating the Agreement(s) on any ground whatsoever, the Other Party will, at ENGIE NL's first request, do everything reasonably necessary to ensure that a new supplier and/or any relevant third party, or ENGIE NL itself, can perform a similar ICT Performance (for the benefit of ENGIE NL) without impediments.
- 51.4 The reasonable measures referred to in paragraph 3 of this article in the context of the switch to another supplier and/or system, or performance by ENGIE NL itself, are in any event, at ENGIE NL's discretion, understood to mean:
- a) the provision of the data stored in the ICT Performance in accordance with the data portability standard that is part of ENGIE NL's ICT quality standards;
 - b) supplying ENGIE NL with the specific settings/set-up of the ICT Performance, including company rules, macros, etc.;
 - c) the destruction of the data for which ENGIE NL is responsible, on submission of proof of destruction;
 - d) the technical unbundling and/or dismantling of all or part of the ICT Performance.
- 51.5 The Other Party will perform the work referred to in paragraph 4 of this article at the rates and conditions laid down in the Agreement or, in the absence thereof, at the rates and conditions generally applied by the Other Party and to be agreed upon. Contrary to the previous sentence, the aforementioned services will be provided free of charge in the event of an attributable failure by the Other Party. The work referred to in paragraph 4(c) of this article will in any event be performed by the Other Party free of charge at ENGIE NL's request.
- 51.6 The Other Party declares, now for then, that it is prepared in the event of termination of the Agreement(s) – on any ground whatsoever – at ENGIE NL's first request:
- a) to provide ICT Rights of Use to the Software or similar software that (continue to) enable ENGIE NL to continue to consult the data stored with the Software and to use them adequately for its business operations; and
 - b) to (continue to) provide a limited form of ICT Maintenance on this Software (i.e. within the framework of the limited functionality referred to in the previous paragraph of this article).
- 51.7 The duration and costs of the ICT Rights of Use referred to in paragraph 6 of this article and the related ICT Maintenance will be determined in mutual consultation between the Parties, on the understanding that:
- a) the ICT Rights of Use and the related ICT Maintenance can be at least such duration and scope as to enable ENGIE NL to comply with the statutory administrative obligations;
 - b) the costs for the limited ICT Rights of Use and the limited ICT Maintenance are reasonably proportionate to the original costs for the entire ICT Performance, with the ratio of the reduced functionality of the ICT Performance being an important factor for determining what must be considered reasonable costs in this respect.
- 51.8 ENGIE NL is entitled to transfer all or part of the ICT Performance, including all related ICT Rights of Use and all claims in the context of ICT Maintenance, under unchanged conditions after written consent in this respect from the Other Party, which consent the Other Party will not withhold on unreasonable grounds. The Other Party will lend all necessary cooperation to the aforementioned transfer. The Other Party is not entitled to charge costs for the transfer as such, unless ENGIE NL reasonably

believes that the Other Party must perform additional Work and/or Services in that respect in order to have the transfer take place correctly and in good time.

- 51.9 The Other Party also declares that it is prepared, if so desired, to allow ENGIE NL to extend the use of the ICT Performance for a reasonable period after the termination date if the work in accordance with the Exit Plan has not been completed in good time. To this end, the Other Party may charge ENGIE NL a fee in proportion to the prices of the Work performed and/or Services provided within the framework of the ICT Exit Plan and the extended term, unless the late and/or incorrect completion of exit work and/or the ICT Exit Plan is attributable to the Other Party in the reasonable opinion of ENGIE NL. In such a case, the extension of the ICT Performance and the extension of the implementation of the ICT Exit Plan will be free of charge for ENGIE NL, on the understanding that the present Agreement will remain in full force and effect during the aforementioned extension.

ARTICLE 52.- ICT PERFORMANCE AND CLOUD SERVICES

- 52.1 The Other Party will provide ENGIE NL, free of charge, with all necessary data, including all changes and supplements, such as URLs and login data, that are necessary to actually make use of the ICT Performance, including Cloud Services in particular.
- 52.2 The Other Party is not entitled to suspend, limit and/or attach conditions to the continuation of the Cloud Services other than those agreed in the Agreement, except in so far as unchanged continuation of the Cloud Services cannot be required because it can be demonstrated with substantiation that (unchanged) continuation will jeopardise the Application Landscape and/or the ICT Performance and/or cause damage to ENGIE NL. The mere fact of non-payment by ENGIE NL under the Agreement cannot justify the aforementioned suspension, limitation and/or amendment of conditions in the context of a continuation.

ARTICLE 53.- STORED DATA ON CLOUD SERVICES

- 53.1 ENGIE NL itself is at all times fully responsible for the use it makes of the Cloud Services and for the data that it stores, retrieves, distributes and/or otherwise uses using the Cloud Services, unless it must be reasonably assumed and/or it appears that the Other Party is not correctly executing/performing and/or has not correctly executed/performed any ICT Performance, any Work and/or Services in connection therewith and/or part of the ICT Performance and/or any Work and/or Services in connection therewith.
- 53.2 If and in so far as there are indications or suspicions that the data processed by means of the Cloud Services are

unlawful vis-à-vis third parties and/or otherwise infringe any statutory provision, the Other Party will inform ENGIE NL of this in writing as soon as possible and the Parties will consult as soon as possible regarding the control and termination of such a situation as referred to above.

- 53.3 The Other Party will not remove the relevant data as referred to in paragraph 2 of this article and/or modify the Cloud Services in that respect without prior consultation with and written permission from ENGIE NL, unless the data are so evidently unlawful and the urgency of the case means that prior consultation with ENGIE NL regarding the removal and/or modification of the Cloud Services cannot wait. In that case, it is up to the Other Party to sufficiently substantiate and demonstrate that the foregoing was the case.
- 53.4 The Other Party will not use the relevant data to which the Cloud Services relate without prior consultation with and consent from ENGIE NL, for example:
- a) to help the Other Party better understand how its customers use the Cloud Services;
 - b) to provide the Other Party's customers with more information regarding the use and possible benefits of the Cloud Services;
 - c) to improve business productivity, including by creating useful business insights from aggregate data that allow ENGIE NL to compare its business performance against such aggregate data;
 - d) to improve the Cloud Services.

ARTICLE 54.- MAINTENANCE AND AVAILABILITY OF CLOUD SERVICES

- 54.1 From the moment of approval by ENGIE NL on the basis of the ICT Acceptance Conditions with regard to the ICT Performance, the specific arrangements regarding the ICT Maintenance will (also) apply to the Cloud Services.
- 54.2 If and in so far as no Service Levels have been agreed in the Agreement with regard to the Availability ICT of the Cloud Services, a Service Level of at least 98% Availability ICT applies twenty-four (24) hours a day, unless otherwise agreed in writing in the Agreement.
- 54.3 Contrary to the provisions of **Article 42(9) (Maintenance and support regarding the ICT Performance)**, the Other Party will install ICT Updates and/or ICT Upgrades for Cloud Services without remuneration, unless agreed otherwise in writing in the Agreement.
- 54.4 The right to refuse the commissioning of ICT Updates and/or ICT Upgrades as referred to in **Article 42(10) (Maintenance and support regarding the ICT Performance)** does not apply to Cloud Services offered by the Other Party to several of its customers, unless provided otherwise in the Agreement.

ARTICLE 55.- GUARANTEE OF CONTINUITY OF CLOUD SERVICES

- 55.1 In view of ENGIE NL's great dependence on the Other Party, as well as the continuity risk in the event of incidents and disasters (such as bankruptcy) that exist for Cloud Services, the Other Party declares by signing the Agreement that it is prepared to make additional arrangements with ENGIE NL in so far as these have not already been agreed in the Agreement, in order to reduce the aforementioned risks and/or to be able to mitigate their consequences.
- 55.2 The additional arrangements referred to in paragraph 1 of this article may include:
- a) making arrangements regarding the periodic return or delivery to a third party of the data processed by the Other Party ("data-escrow"); and/or
 - b) entering into an agreement with a third party, the purport of which is for the relevant third party to jointly and severally commit to or guarantee the performance of the Agreement and/or the ICT Performance with regard to Cloud Services; and/or
 - c) the conclusion of a (tripartite) agreement with a third party, the purport of which is that the relevant third party – instead of the Other Party – will (continuously) have all the necessary data at its disposal to be able to perform all or part of the ICT Performance from the Agreement, whether or not on the basis of a new agreement.

ANNEX 1 (PURCHASE CONDITIONS – DEFINITIONS)

ICT Application Landscape:

all internal and external systems, software, databases, links, equipment, ICT infrastructure and auxiliary materials that constitute the automated provision of information for ENGIE NL within which the ICT Performance is integrated and/or in respect of which the ICT Performance is performed by or on behalf of the Other Party;

ICT Acceptance procedure:

The test procedure by which it can be demonstrated that the ICT Performance does not contain an ICT Defect or Defects.

ICT Availability:

the extent to which the ICT Performance is actually available to ENGIE NL and can be used in accordance with the terms of the Agreement;

Source code:

the set of program instructions in their original programming language, including the accompanying documentation, intended for execution by a computer, in such a form that a programmer who has knowledge and experience of the programming method and technique used can use it to modify the software and/or edit it in another manner;

Cloud Services:

the provision of an ICT Performance by the Other Party to ENGIE NL by means of remote communication techniques;

ICT Conversion:

Converting and migrating data files from ENGIE NL from the old system to the new ICT Performance, without affecting the completeness, integrity and metadata of the data;

ICT Corrective Maintenance:

the detection and repair by and/or on behalf of the Other Party of ICT Defects that ENGIE NL has reported to it or that the Other Party and/or any third party has otherwise become aware of;

Third-Party Software:

Software of which (a) the intellectual property rights are not vested in the Other Party and/or a party affiliated with the Other Party at all and (b) the Other Party is unable to enforce certain developments and/or changes in that Software;

Services:

activities performed by, on behalf of and/or at the expense and/or risk of the Other Party for the benefit of ENGIE NL on the basis of an Agreement, Purchase Order and/or in connection with the execution thereof, whereby these activities are mainly of a non-material nature;

ENGIE NL:

ENGIE Energie Nederland N.V. (including, inter alia, "(Global) business units" ("G)BU")) and/or all companies belonging to its group (Article 2:24b DCC) or otherwise affiliated with it;

ICT Exit Plan:

the explanation in the form of a plan or roadmap created in accordance with the provisions of Article 50 (ICT Exit Plan regarding the ICT Performance);

ICT Job Recovery Time:

the period between the time at which an ICT Defect is reported to the Other Party and the time at which this has been remedied;

ICT Defect:

A failure, non-compliance and/or incomplete compliance of the ICT Performance with the Agreed Use in accordance with the terms and conditions of the Agreement;

ICT User Support:

All supporting activities/Services that are necessary for the use of the ICT Performance with due observance of the intended purpose of the Agreement, to the exclusion of ICT Corrective Maintenance, ICT Preventive Maintenance and ICT Innovative Maintenance;

ICT Right of Use:

the right on the basis of which ENGIE NL is authorised to use the ICT Performance;

ICT quality standards:

the collection of requirements as included in the ICT Standards of ENGIE NL that form part of the Agreement;

ICT Performance:

all Work and/or Services to be provided by, on behalf of and/or for the Other Party pursuant to the Agreement and/or the Purchase Order as referred to in this specific Module – ICT matters, including ICT Rights of Use and whereby the existing Application Landscape functions as the new Application Landscape and/or continues to function properly as a result of an ICT Performance, Update and/or Upgrade, as reasonably assessed by ENGIE NL;

ICT Implementation:

The whole of the acts and activities required to be able to use all parts of the ICT Performance, individually and/or in conjunction, in the organisation of ENGIE NL, such that all users of ENGIE NL can work with it in accordance with the ICT Agreed Use and other terms and conditions of the Agreement. The Implementation also includes the ICT Conversion, the realisation of the ICT Links necessary for the ICT Agreed Use and/or the execution of the ICT acceptance procedure;

ICT Implementation Plan:

The action plan for the Implementation, which includes a specific elaboration of the activities to be performed by the parties involved in this context, the ICT Performance to be implemented and/or developed, the responsibilities of the Other Party and ENGIE NL and the time schedule;

Purchase Order:

the official confirmation from ENGIE NL of an order with the Other Party containing the conditions in that respect;

Purchase Conditions:

the general terms and conditions under which ENGIE NL purchases Goods from an Other Party, a third party affiliated with it, a party engaged by this third party and/or the Other Party and/or party actually acting on behalf of and/or for this third party and/or the Other Party that purchases Goods and/or Services from and/or for and/or has Services performed for ENGIE NL, purchases Work or has Work performed and/or has other activities delivered or performed for and/or on behalf of ENGIE NL.

ICT Innovative Maintenance:

the Other Party making ICT Updates and/or ICT Upgrades of the ICT Performance available to ENGIE NL;

ICT Interoperability Requirements:

the requirements set out in the Agreement for the ICT Performance to be able to exchange data with and/or otherwise cooperate with other parts of the ICT Application Landscape;

ICT Link:

the system for exchanging data between the ICT Performance on the one hand and (parts of) the ICT Application Landscape on the other;

Customised Software:

Software developed or to be developed specifically for the benefit of ENGIE NL or modifications to Standard Software specifically for the benefit of ENGIE NL;

Object Code:

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

ICT Maintenance:

the whole of ICT Corrective Maintenance, ICT Preventive Maintenance, ICT Innovative Maintenance and/or ICT User Support, all as further detailed in the Agreement;

ICT Agreed Use:

the use intended by ENGIE NL of the ICT Performance as was known to the Other Party at the time of the conclusion of the Agreement (whether or not based on the request for quotation, the Purchase Order and/or other documents prior to the Agreement) or should have been known to the Other Party based on the request for quotation, the Purchase Order and/or the Agreement, including the use with due observance of the Purpose of the Escrow, all this in so far as such use is not expressly excluded or limited in the Agreement;

Agreement:

any written and/or verbal agreement between ENGIE NL and the Other Party on the basis of which ENGIE NL purchases Goods, Services (including ICT Services) and/or Work (or has these performed);

Party/Parties:

ENGIE NL and/or Other Party;

ICT Preventive Maintenance:

the taking of measures by the Other Party to prevent ICT Defects and other technical problems and other related forms of service provision;

Process Automation Systems:

Process Automation Systems (PAS) are control systems that are used to measure and/or control industrial production processes. This includes Supervisory Control and Data Acquisition (SCADA) systems, Distributed Control Systems (DCS) and other smaller control systems and components. PAS also includes all supporting infrastructure, such as (computer) networks and network components.

Software:

software packages and/or instructions drawn up in a language that is comprehensible to ICT equipment and/or which are recorded on material that is legible to ICT equipment and the accompanying documentation, including any (development and/or future) versions to be provided, including Object Code and Source Code. Software may include Standard and/or Customised Software;

ICT Response Time:

the time within which the Other Party must adequately respond to a report by ENGIE NL of an ICT Defect and/or other requests from ENGIE NL for services;

ICT Service Levels:

with regard to Maintenance and/or other agreed forms of services included in the Agreement, requirements and/or performance standards, such as ICT Response Time and ICT Function Recovery Times;

Standard Software:

Software that is parameterised and that the Other Party offers and/or delivers to customers in a general sense in unaltered form without further specific adjustments in response to specific customer wishes;

ICT Update(s):

a subsequent version of the ICT Performance in which ICT Defects have been remedied and/or the operation of the ICT Performance has otherwise been improved;

ICT Upgrade(s):

a subsequent version of the ICT Performance with predominantly new, improved and/or changed functionalities, whether or not issued under a different name;

Other Party:

the other party with whom ENGIE NL attempts to conclude or has concluded an Agreement;

Work Plan:

a detailed time plan drawn up by the Other Party for the delivery by and/or on behalf of the Other Party of the agreed Services and/or the Work to be performed at and/or for ENGIE NL

**Work:**

activities performed and/or to be performed by, on behalf of and/or at the expense and/or risk of the Other Party consisting of the delivery of Goods and/or the performance and/or delivery of Services and/or other activities, including those of a material nature, for the benefit of ENGIE NL on the basis of an Agreement and/or in connection with the execution thereof;

Goods:

all products, whether or not of a material nature, that are (or must be) delivered to and/or purchased by ENGIE NL subject to the applicability of these Purchase Conditions, including Software and/or products that arise as a result of the delivery and/or performance of Services or Works;