



Business optimizer

# Terms and Conditions

October 2018

AchieV Holding B.V. (Chamber of Commerce no. 71604979) and  
AchieV B.V. (Chamber of Commerce no. 71608338)

## GENERAL PROVISIONS

### 1. **Applicability of these terms and conditions:**

- 1.1 These general terms and conditions apply to all requests, offers, quotations, accepted orders, assignments, arrangements and/or other agreements, as well as to all negotiations entered into by AchieV, whether or not through the intermediary of an authorized representative, with the Contractor and in the framework of all activities where AchieV provides services and/or goods of whatever nature to the Contractor. Deviations from and additions to these terms and conditions can only be agreed in writing.
- 1.2 The applicability of other terms and conditions is explicitly rejected by AchieV. References by the Contractor to the applicability of its own (general) conditions are therefore not accepted by AchieV, unless AchieV has explicitly confirmed that such conditions will (also) apply. The applicability of such other conditions will only concern the agreement for which applicability is confirmed by AchieV.
- 1.3 If the Contractor has accepted an offer from AchieV, in which reference is made to the applicability of these general terms and conditions, this will be deemed to be (tacitly) consent to the applicability of these general terms and conditions by the Contractor.
- 1.4 The Contractor who has already contracted on the (present) general terms and conditions of AchieV is deemed to have tacitly agreed with the applicability of these general terms and conditions in case of orders placed with AchieV or orders received from AchieV thereafter.
- 1.5 In case of conflicting provisions in contracts, core clauses will take precedence over these conditions.
- 1.6 If any provision of these conditions is void or is nullified, the other provisions of these terms and conditions will remain in full force. In that case, the parties will consult with each other in order to reasonably agree on a new provision to replace the void or nullified provision, taking into account as much as possible the content and scope of this provision.
- 1.7 In these general terms and conditions, the Contractor is understood to be any legal or natural person who has entered into an agreement with AchieV or has received an offer from AchieV for the purpose of paragraph 1, including his representative (s), authorized representative(s) and assignee(s) under general or special title. The Contractor who is a natural person and who does not act in the exercise of a profession or business is regarded as a consumer.
- 1.8 AchieV is entitled to unilaterally change the content of these general terms and conditions. Such changes will be announced at least two (2) months prior to their entry. In the absence of a written and explicit objection against announced change(s) within the set term, the Contractor shall be deemed to have agreed with the changes.

## **2 Offers:**

- 2.1 All offers, however issued and named, by or on behalf of AchieV, with all details included, are at all times entirely free of obligation, unless explicitly stated otherwise by AchieV in writing.
- 2.2 Offers are based on the information provided by the Contractor with the application and on the performance of the activities by AchieV under normal circumstances.
- 2.3 If a quotation contains an offer without obligation that is accepted by the Contractor, AchieV has the right to revoke the offer or quotation within three working days after the receipt of the acceptance of the Contractor.
- 2.4 The Contractor guarantees the correctness and completeness of the requirements and specifications of the performance and other data on which AchieV bases its offer.

## **3 Establishment of agreement:**

- 3.1 All agreements are only established after AchieV has accepted or confirmed the order in writing or by a start of actual performance by AchieV. Orders placed by the Contractor with AchieV by telephone or e-mail will only be effected after written confirmation by AchieV. In any case, the agreement is also deemed to have been concluded if AchieV takes care of the execution of the assignment in connection with the urgency of the assignment. In that case, the invoice to be sent by AchieV to the Contractor will be regarded as the order confirmation. The Contractor then has no possibility to protest against this order confirmation.
- 3.2 AchieV is free not to accept orders without stating reasons.
- 3.3 Agreements established by means of representatives of AchieV shall only be binding after these agreements have been confirmed by AchieV in writing or after AchieV has proceeded to execute them.
- 3.4 The order confirmation of AchieV is deemed to correctly and completely reflect the agreement, unless the Contractor expressly states otherwise in writing to AchieV within two days of receipt of the order confirmation.
- 3.5 Changes in the agreement will only be valid if they have been agreed in writing or confirmed in writing by AchieV. After the start of the assignment, changes, written and in clear terms and / or descriptions specified by the Contractor, will only be implemented by AchieV if they have been confirmed in writing by AchieV. Alteration in an assignment already accepted by AchieV on the part of the Contractor may lead to a change in the originally agreed delivery term.
- 3.6 If AchieV decides not to implement the specified changes, the Contractor will never be entitled to dissolve the agreement in whole or in part and the Contractor remains fully liable for payment of the costs already incurred by AchieV, as well as for the amount due to loss of profit by AchieV.

- 3.7 AchieV is entitled to charge additional costs to the Contractor as a result of altered or additional activities carried out on request or on the instructions of the Contractor or if this was strictly necessary in the opinion of AchieV.
- 3.8 The Contractor gives AchieV permission to execute the agreement in parts and to invoice the Contractor separately for each partial delivery. Each sub-delivery counts as a separate delivery within the meaning of these conditions.
- 3.9 AchieV is authorized to leave the formation as well as the execution of the agreement in full or in part to authorized representatives who may establish agreements with Contractants on behalf of AchieV.
- 3.10 All expenses incurred by AchieV at the request of the Contractor in the context of the execution of its activities shall be for the Contractor, unless the parties agree otherwise.
- 3.11 If AchieV decides that specific requirements of the Contractor will not be executed, AchieV will inform the Contractor accordingly. The Contractor cannot hold AchieV liable for this purpose.

#### **4 Cancellation:**

In case of cancellation of the agreement due to circumstances caused by the Contractor, the Contractor is obliged to compensate all costs incurred by AchieV, as well as to compensation of all financial consequences for AchieV due to the non-execution of the agreement. The compensation amounts to at least 25% of the agreed price, without prejudice to the right of AchieV to demand full compensation from the Contractor.

#### **5 Prices:**

- 5.1 All prices quoted by AchieV in offers, quotations and/or agreements are in Euros and are exclusive of sales tax (VAT) and other levies imposed by the government, unless agreed otherwise or otherwise indicated by AchieV.
- 5.2 All levies – including VAT – imposed by the government or permitted in connection with the conclusion of the agreement, the execution and the financial settlement thereof, are for the expense of the Contractor.

#### **6 Payment:**

- 6.1 Invoices will be paid by the Contractor by transfer to the bank account of AchieV in accordance with the payment conditions as stated on the invoice. In the absence of a specific provision, the standard payment term shall be thirty days after the invoice date. Payment is always without any discount or settlement unless expressly agreed otherwise in writing.

- 6.2 In the event that the Contractor fails to pay within the stipulated time-frame, the Contractor is legally in default, without any notification, warning or notice of default on the part of AchieV. In that case, the Contractor owes AchieV the statutory commercial interest.
- 6.3 Payments made by the Contractor always first settle all costs and interest owed, and secondly claimable invoices that have been outstanding the longest, even if the Contractor states that the payment relates to a later invoice.
- 6.4 AchieV is entitled to compensation of all costs associated with collection of its claim(s) against the Contractor. AchieV is entitled to immediately transfer its claim for an unpaid invoice to a third party for collection. All (extra) judicial costs to collect the claim are explicitly fully owed by the Contractor, which extrajudicial costs are set at a minimum of 15% of the amount due, increased by the default interest and increased by the sales tax, such with a minimum of € 250 plus the sales tax. The Contractor also owes the costs incurred by AchieV in connection with (failed) mediation.
- 6.5 AchieV is entitled to refuse orders from the Contractor and to suspend deliveries under concluded agreements until the moment that the Contractor has arranged for the repayment of all the amounts due to AchieV.
- 6.6 Failure to pay an invoice amount on the due date will result in the fact that all claims of AchieV are immediately due and payable, explicitly including the claims that would not yet be due at that moment, without any notice of default on the part of AchieV being required.
- 6.7 AchieV is entitled to require the Contractor to either pay agreed counterparts in advance or to provide a security of payment deemed acceptable in the banking system, such as an irrevocable bank guarantee for the fulfillment of all claims AchieV has on the Contractor under the terms of the agreement.
- 6.8 If the Contractor does not meet the requested advance payment or provide the required security, AchieV has the right to suspend the execution of the agreement or to dissolve, in whole or in part, the agreement without judicial intervention and, if required, to claim damages.

## **7 Confidentiality and staff:**

- 7.1 The Contractor shall keep confidential the existence, the nature and the content of any agreement concluded with AchieV as well as all other business information that the Contractor knows or may have to know that it is of a confidential nature. The Contractor who receives confidential information from AchieV will only use this data for the purpose for which this information was provided to it. Information will in any case be regarded as confidential if it has been designated as such by AchieV.

- 7.2 Unless with the prior written consent of AchieV, the Contractor is prohibited, during the term of the agreement as well as for one year after the termination thereof, to hire employees of AchieV who are or have been involved in the performance of any contract concluded with AchieV or to otherwise directly or indirectly approach them for this purpose.
- 7.3 In the event of violation of the provisions of this article, AchieV will impose an immediately due and payable fine on the Contractor of € 7,000 for every violation or every day that the violation continues. The amount of the fine will be paid immediately by the Contractor after the aforementioned determination and notification thereof to the Contractor.
- 7.4 The Contractor indemnifies AchieV against claims from third parties whose personal data are registered or processed in the context of a personal registration performed by the Contractor and for which the Contractor is obliged by law.

## **8 Reservation of ownership:**

- 8.1 All goods delivered by AchieV to the Contractor remain the property of AchieV until the Contractor has fulfilled all its obligations towards AchieV.
- 8.2 Goods under the reservation of ownership by AchieV may never be pledged or otherwise transferred to third parties as security, nor may they be sold or alienated in any way whatsoever.
- 8.3 If the Contractor fails to fully pay the delivered goods by AchieV, AchieV is entitled to take back all goods delivered without any notice of default. An appeal to the reservation of ownership is without prejudice to the right of AchieV to claim compensation.
- 8.4 In the event of a petition for bankruptcy or suspension of payments or in the case of impoundment measures, the Contractor is obliged to directly inform AchieV, in order to enable that AchieV can enforce its property right. The same applies in case third parties enforce rights with respect to items that are subject to property rights under this article.

## **9 Intellectual property rights:**

- 9.1 All intellectual property rights relating to materials, items, computer programs, designs and the like developed or used by AchieV are and will remain exclusively the property of AchieV, its licensors or its suppliers, all this irrespective of the share in the formation by the Contractor or third parties engaged by the Contractor. The exercise of these rights is exclusively reserved to AchieV both during and after the execution of the agreement. The Contractor only obtains the rights of use that are granted under these conditions and the law. Any other or more extensive right of the Contractor is therefore excluded. A right of the Contractor is non-exclusive and non-transferable to third parties.

9.2 The Contractor is not permitted to remove or change any designation concerning the confidential nature or concerning copyrights, brands, trade names or other intellectual or industrial property rights from the software, websites, databases, equipment or materials.

## **10 Cooperation Contractor; telecommunications:**

10.1 The Contractor will always provide AchieV in a timely manner with all data and information that is useful and necessary for the proper execution of the agreement and provide full cooperation, including providing access to its buildings. The Contractor is and remains at all times responsible for the (accuracy of) data or information provided by it.

10.2 AchieV is entitled to make use - free of charge - of the equipment belonging to the Contractor as this is necessary for the execution of its activities. Costs for the equipment, energy and electricity made available are for the Contractor.

10.3 If telecommunication facilities, including the Internet, are used in the performance of the agreement, the Contractor is responsible for the correct choice and the timely and adequate availability, except for those facilities which are under direct use and management of AchieV. AchieV is never liable for damage or costs due to transmission errors, malfunctions or non-availability of these facilities, unless the Contractor proves that this damage or costs are the result of intent or gross negligence on the part of AchieV or its managers.

## **11 Delivery periods:**

11.1 Delivery times specified by AchieV within which services are to be performed, are entirely without obligation and can never be regarded as legally binding deadlines, however AchieV will do everything possible to realize delivery within the agreed term.

11.2 AchieV is not bound by (delivery) terms that can no longer be met due to circumstances beyond its control that occur after entering into the agreement. AchieV is also not bound by a delivery deadline, if at all, if the parties have agreed on a change in the content or scope of the agreement (additional work, changes to specifications, etc.).

11.3 If the delivery term is exceeded, the Contractor must sent AchieV a written notice of default, whereby AchieV must be given a reasonable period of at least 21 calendar days in which AchieV can still fulfill the agreed obligations. Simply, therefore, AchieV is not in default by merely exceeding a specified or agreed (delivery) period.

11.4 Exceeding of the agreed delivery term shall never entitle the Contractor to any compensation, unless there is intent or gross negligence on the part of AchieV, expressly not including errors of its non-managerial staff.

11.5 If the order confirmation does not explicitly mention a delivery term, AchieV will deliver with due observance of a reasonable term customary in the sector.

11.6 Postponement of a delivery period at the request of the Contractor can only take place with written consent of AchieV, on the condition that the costs and losses associated with the postponement remain entirely at the expense and risk of the Contractor. In that case, the cost specification to be provided by AchieV to the Contractor is binding on the Contractor.

## **12 Complaints:**

12.1 Complaints regarding the services provided by AchieV must be communicated to AchieV by registered letter at least within 10 working days after discovery thereof, in which must be mentioned the nature of the defect and AchieV is given the opportunity to verify its validity.

12.2 If the complaint proves to be correct, AchieV has the choice to replace the relevant products or services at its expense, or to carry out repair work, or to return the amount paid to the Contractor without AchieV being bound to any more.

12.3 Non-compliance by the Contractor with the provisions of this article result in that the Contractor is deemed to have accepted the products or services provided by AchieV in an orderly manner.

12.4 Even if the Contractor makes a (timely) complaint, the Contractor will remain obliged to pay the agreed payment obligation. AchieV is not obliged to handle an advertisement as long as the Contractor leaves any invoice for products delivered or services unpaid.

12.5 The Contractor must give AchieV the opportunity to verify the merits of the complaint by an expert appointed by AchieV, failing of which shall lapse any right of complaint. The costs of the expertise will be for the Contractor if the complaint made by the Contractor turns out to be entirely or partly unfounded.

12.6 Complaints about invoices can only be processed if they are submitted to AchieV in writing within 10 days of the invoice date. If this period is not met, the Contractor is bound by the invoice amount. If the complaints prove to be well-founded, AchieV will be able to adjust the invoice amount. AchieV is not obliged to process a complaint as long as the Contractor leaves any invoice for products delivered or services unpaid. Moreover, the complaint does not release the Contractor from the agreed payment obligation(s).

## **13 Control:**

13.1 AchieV may carry out an inspection (or have it carried out) in order to check whether the Contractor complies with the agreement concluded with AchieV or these general terms and conditions, provided that this inspection is carried out in such a way that the Contractor's business activities are not unreasonably hindered by this.



- 13.2 The inspection referred to in paragraph 1 shall be carried out by an expert selected and engaged by AchieV. This expert will submit a summary note showing his findings with regard to the inspection of the reports issued by the Contractor and compliance by the Contractor with the terms and conditions of the agreement and with the general terms and conditions, but does not provide AchieV with any information other than who becomes aware of it during the inspection.
- 13.3 The costs of the inspection referred to in paragraph 1 shall be for AchieV, unless the inspection shows that the Contractor does not comply with the terms and conditions of the agreement or the general terms and conditions, in which case the costs shall be for the account of the Contractor.

#### **14 Warranty:**

- 14.1 With regard to products or services supplied by AchieV, only the guarantee that is provided by its licensor or supplier is applicable.
- 14.2 The Contractor cannot claim a right to guarantee in case of a breach of the fulfillment of any obligation towards AchieV. The guarantee lapses if defects are caused by errors and/or omissions of the Contractor or third parties engaged by the Contractor without these having been appointed or used by AchieV for the execution of the agreement.
- 14.3 The guarantee does not extend to defects resulting from improper use, lack of care or defects that are the result of changes made by the Contractor or third parties.
- 14.4 In order to be able to invoke the guarantee, the Contractor must immediately notify AchieV in writing of the identified defects and provide all assistance to enable AchieV to remove the defects within a reasonable period of time.
- 14.5 In the event of a guarantee obligation, AchieV will repair the defects free of charge. If the repair of the defects is not possible, or if it is not deemed possible and the defects significantly reduce the usability of the delivered products as such for the Contractor, then the Contractor has the right to demand full or partial termination of the agreement, without prejudice to the right to compensation.
- 14.6 If during the warranty period AchieV has replaced a delivered product or service, the original commencement date of the guarantee will be retained and this replacement will not lead to an extension of the guarantee.

#### **15 Exclusion:**

Except if explicitly agreed with the Contractor in writing, AchieV does not provide any other or further guarantees, commitments or conditions with regard to the software, documentation, materials or services supplied to the Contractor and hereby rejects all other warranties, commitments or conditions.

## **16 Suspension of agreement:**

- 16.1 At all times, AchieV has the right to suspend its services in respect of the Contractor by means of a letter or e-mail in advance if the Contractor (including its employees) has supplied the products made available to it by AchieV in any whatsoever manner:
- a. misused, used for purposes for which it is not intended, or makes changes thereto;
  - b. alienates or encroaches;
  - c. used in a manner that leads or could lead to an infringement of the intellectual and industrial property rights of AchieV, its licensor or its subcontractor;
  - d. copy or attempt to copy;
  - e. to third parties in use;
  - f. used as a result of which (in) direct damage to AchieV, its licensor, its supplier or third parties occurs or can occur.
- 16.2 In case AchieV reasonably suspects that one of the situations mentioned in this article occurs, it is allowed to conduct an investigation into the manner (s) of the Contractor. In that case, the Contractor will provide AchieV with all necessary cooperation in this respect.
- 16.3 In the case of suspension on the part of AchieV, the Contractor will remain obliged to fulfill its (payment) obligations towards AchieV.

## **17. Termination of agreement:**

- 17.1 At all times, AchieV has the right to immediately terminate an agreement concluded with the Contractor (and consequently the services provided by it to the Contractor) in case of:
- a. the Contractor is in suspension of payment or is in a state of bankruptcy, has been dissolved, has been temporarily suspended or liquidated, or this circumstance appears to be short-term according to objective criteria;
  - b. the Contractor, after having been given notice of default in writing, fails to fulfill its obligations under the agreement or any other concluded agreement within the set period;
  - c. from AchieV to standards of reasonableness and fairness cannot (longer) be required to continue to execute the content of the agreement.
- 17.2 AchieV is never liable for any refund of already received funds or compensation for damages due to this termination. In the event of termination of the agreement, the Contractor will at all times remain obliged to comply with any remaining payment obligations pursuant to the agreement. In the event of bankruptcy of the Contractor, the right to use software made available to the Contractor shall lapse by operation of law.

- 17.3 The authority to terminate the agreement shall furthermore only apply to each of the parties if the other party, always in all cases after a valid and as detailed as possible written notice of default whereby a reasonable period is set for the purification of the shortcoming, imputably short comes in the fulfillment of essential obligations from the agreement.
- 17.4 If an agreement, which by its nature and content does not end by completion, has been entered into for an indefinite period of time, it can be terminated by either party after proper consultation and stating reasons by means of written cancellation. If no explicit notice period has been agreed between the parties, a reasonable period of notice must be observed in the termination. The parties will never be obliged to pay any compensation for termination.
- 17.5 If the Contractor has already received services to execute the agreement at the time of the dissolution, these performances and the associated payment obligation will not be subject to cancellation unless the Contractor proves that AchieV is in default with regard to these performances. Amounts invoiced by AchieV prior to the dissolution in connection with what it has already properly performed or delivered in order to execute the agreement shall remain payable in full, with due observance of the previous sentence, and shall become immediately due and payable at the time of the dissolution.

## **18 Liability of AchieV; indemnity:**

- 18.1 Except for intent or deliberate recklessness on the side of AchieV or those who are engaged by AchieV, any liability for direct or indirect damage to the Contractor or third parties arises on or by the execution of an agreement or by defects of services provided by AchieV.
- 18.2 Indirect damage is expressly but not exclusively understood as trading loss, lost profits, non-material damage, loss of time, consequential damage (including third parties) and other forms of financial loss, including all possible claims of third parties, in the broadest sense of the word.
- 18.3 Direct damage is exclusively understood to mean:
- a. reasonable costs that the Contractor would have to incur to have the performance of AchieV comply with the agreement; however, this replacement damage will not be compensated if the agreement is dissolved by or on the demand of the Contractor.
  - b. reasonable costs incurred by the Contractor for the longer-term maintenance of its old system or systems and associated facilities as a result of AchieV not delivering on a binding delivery date, reduced by any savings resulting from the delayed delivery;
  - c. reasonable costs incurred to determine the cause and extent of the damage, insofar as the determination relates to direct damage within the meaning of these conditions;
  - d. reasonable costs incurred to prevent or limit damage, in so far as the Contractor demonstrates that these costs have led to the limitation of direct damage within the meaning of these conditions.

- 18.4 AchieV is not liable for compensation of any damage if the Contractor is in default at the time the damage occurred with the fulfillment of any obligation towards AchieV.
- 18.5 In the event of liability on the part of AchieV, compensation will only be eligible for compensation against which AchieV is insured. The compensation to which AchieV is obliged by virtue of liability shall not exceed an amount equal to the invoice amount for the services provided by AchieV pursuant to the agreement which causes the legal and/or causal liability.
- 18.6 If the agreement is mainly a continuing performance contract with a term of more than one year, the price stipulated for the agreement is set at the total of the fees (excluding VAT) stipulated for one year. In no case will the total compensation for direct damage exceed € 500,000 (five hundred thousand euros)).
- 18.7 AchieV's liability for damage as a result of death or physical injury or due to material damage to objects shall in no case exceed € 1,250,000 (one million two hundred fifty thousand euros).
- 18.8 The liability of AchieV due to imputable shortcoming in the fulfillment of an agreement shall in all cases only arise if the Contractor has promptly and properly declared AchieV in default, whereby a reasonable period for the purification of the shortcoming is made, and AchieV also after that period comes short in the fulfillment of her obligations. The notice of default must contain as complete and detailed a description of the shortcoming as possible, so that AchieV is able to respond adequately.
- 18.9 The condition for the existence of any right to compensation is always that the Contractor reports the damage to AchieV in writing as soon as possible after the occurrence thereof.
- 18.10 The possibility to institute any legal claim or to bring any dispute by the Contractor in connection with or in connection with any agreement between the parties will lapse after one year after the Contractor was informed or could have been aware of the reason for this.
- 18.11 The Contractor indemnifies AchieV against all third-party claims due to product liability as a result of a defect in a product or system supplied by the Contractor to a third party and which also consisted of equipment, software or other materials supplied by AchieV, except if and in so far as the Contractor proves that the damage was caused by that equipment, software or other materials.
- 18.12 The provisions of this article also apply to the benefit of all (legal) persons of which AchieV serves to execute the agreement.

## **19. Force Majeur:**

- 19.1 Force majeure is understood to be: illness among the personnel of AchieV and third parties engaged by it, (technical) operational disorders, defects in the software, disruptions in the telecommunications infrastructure, government measures, changes in Regulations, material errors, failure to deliver (on time) to AchieV by third parties the services to be provided to the Contractor and more, never results in any liability in any form whatsoever on the part of AchieV for direct or indirect damage to the side of the Contractor and / or third parties.
- 19.2 AchieV then has the right to either exceed the terms relating to the services to be provided by it to the Contractor or to dissolve the agreement in whole or in part, without being obliged to pay any compensation to the Contractor in this respect, and without the need for judicial intervention.
- 19.3 Should the force majeure situation last longer than three months, then both parties are entitled to dissolve the agreement by a statement to that effect, in which case AchieV will not owe any compensation.

## **20 Legal disputes:**

- 20.1 All agreements about these terms and conditions and agreements are governed exclusively by Dutch law. This also applies in full to all negotiations, offers, quotations, accepted orders, assignments, regulations and the like.
- 20.2 The provisions of the Vienna Sales Convention do not apply and are explicitly excluded.
- 20.3 All disputes between AchieV and the Contractor will exclusively be settled by the competent Dutch Court in the Oost-Brabant jurisdiction, or by the competent court on the basis of the establishment of AchieV.
- 20.4 AchieV shall remain entitled to summon the Contractor before the court that is competent according to the law or the applicable international treaty.

## **COMPUTER SERVICE**

The provisions in this section 'Computer Service' are applicable in addition to the General Provisions from these general terms and conditions if AchieV provides services to the Contractor in the field of computer services. The term Computer service as referred to in these terms and conditions means the automatic processing of data via software and equipment managed by AchieV.

## **21 Duration:**

In the event that the agreement concluded between AchieV and the Contractor relates to the periodic or systematic provision of computer services to the Contractor, the agreement shall be entered into for the duration as stipulated by the parties in the agreement in question, failing which the agreement will last for one year. The agreement shall be tacitly renewed each time for the same duration, unless the Contractor or AchieV terminates the agreement in writing with due observance of a notice period of three months before the end of the relevant period.

## **22. Execution of activities:**

22.1 AchieV performs the computer service solely on the instructions of the Contractor. AchieV will provide the computer service with care, in accordance with the procedures and agreements recorded in writing with the Contractor.

22.2 All information to be processed by AchieV on behalf of the Contractor will be delivered to AchieV ready for use in accordance with the conditions and conditions to be set by AchieV. The Contractor will collect the data to be processed by AchieV and retrieve the results of this processing from the place where AchieV performs the computer service. Every transport or transmission, in any way whatsoever, is at all times at the expense and risk of the Contractor, even if it is performed or cared for by AchieV.

22.3 The Contractor warrants that all materials, data, software, procedures and instructions provided by it to AchieV for the execution of the computer service are always correct and complete and that all information carriers provided to AchieV meet the specifications set by AchieV.

22.4 All possible intellectual and industrial property rights in the broadest sense of the word regarding equipment, software and other items used by AchieV in the computer service shall at all times remain with AchieV. The foregoing also applies if the Contractor pays AchieV a fee for the development or purchase of such equipment or software by AchieV. AchieV is at all times entitled to retain all products and data received from the Contractor, including the results generated from the processing, until the Contractor has fulfilled all its payment obligations towards AchieV.

22.5 AchieV is entitled to make changes to the content or scope of the computer service. If such changes should lead to a change in the procedures applicable to the Contractor, AchieV will inform the Contractor as soon as possible. In such a case, the costs of such change are entirely for the account of the Contractor. The Contractor then has the option to terminate the agreement concluded with AchieV in writing by the time the relevant amendment takes effect. The foregoing does not apply if the change is related to changes or developments in applicable legislation or in other regulations issued by competent authorities, or in case AchieV is responsible for the costs of this change.

22.6 AchieV will ensure that the software used by it in the performance of the computer service meets and continues to comply with the applicable Dutch legislation and regulations.

22.7 At the request of the Contractor, AchieV will provide the Contractor with advice on the consequences of the adjustments for the Contractor at its usual rates.

**23. Security, privacy and storage periods:**

23.1 AchieV complies with all possible legal obligations imposed by Dutch laws and regulations regarding the processing of personal data. AchieV will ensure appropriate technical and organizational measures to protect the (personal) data of the Contractor against loss or against any form of unlawful processing.

23.2 The Contractor is responsible for and ensures that all legal regulations concerning the processing of personal data, including the regulations provided by or pursuant to the General Data Protection Regulation, are strictly observed and that all required registrations have been made and all required permissions to process personal data have been obtained. The Contractor will immediately provide AchieV with all relevant information in writing on first request.

23.3 The Contractor indemnifies AchieV against all possible third-party claims against AchieV pursuant to the General Data Protection Regulation and/or other legislation concerning the processing of personal data.

23.4 The Contractor indemnifies AchieV against all possible claims from third parties, including government institutions, that could be instituted against AchieV by these third parties on the basis of violation of legislation regarding the statutory retention periods.

**24. Warranty:**

24.1 AchieV shall never be liable to the Contractor or third parties for the verification of the correctness and completeness of the results of the computer service. After receipt of the processed results, the Contractor will personally check these results.

- 24.2 AchieV never offers any guarantee that the computer service provided by it will be provided to the Contractor without any interruption or without interruptions. If any defects in the results of the computer service are a direct result of products, software, information carriers, procedures or operating acts for which AchieV is unmistakably responsible under the agreement, AchieV will repeat the computer service provided by it free of charge in order to best ability to repair these imperfections. The foregoing only applies, however, and only in the event that the Contractor has notified the alleged defects to AchieV in writing and in detail as soon as possible but no later than within 10 days after receipt of the processed results. In case any defects are not attributable to AchieV and / or the defects are the result of errors or inadequacies due to the Contractor, such as the supply of incorrect or incomplete information, AchieV will cover the costs of any repetition of the computer service according to its usual rates to the Contractor.
- 24.3 If repair of defects demonstrably attributable to AchieV is technically or reasonably not possible, AchieV shall credit the amounts owed by the Contractor for the relevant computer service, without being liable or otherwise liable to the Contractor. The Contractor will not in any way acquire any other rights due to defects in the computer service than the rights stated in this guarantee scheme.

## SERVICE

The provisions in this section "Services" are applicable in addition to the General Provisions of these general terms and conditions if AchieV provides services to the Contractor that can be designated as carrying out consultancy activities, providing consultancy, providing training, courses, training courses, support, secondment and hosting, or the design, development, implementation or management of software, websites or information systems and the provision of services related to networks. These provisions apply without prejudice to the provisions included in these general terms and conditions regarding specific services, such as computer services, the development of software and maintenance.

### 25. Execution:

- 25.1 All services provided by AchieV to the Contractor shall at all times only constitute an obligation of best effort and therefore never an obligation of result. The foregoing is only different if AchieV has explicitly promised a result to the Contractor in the (written) agreement and the result in question has moreover been defined with sufficient clarity in the agreement. Any agreements to be made between AchieV and the Contractor regarding a specific service level are always agreed only in writing and explicitly.
- 25.2 If it has been agreed between AchieV and the Contractor that the services to be provided by AchieV will take place in several phases, AchieV will always be entitled to postpone the commencement of the services that belong to a specific phase until the Contractor has the results of the preceding phase.



- 25.3 Only if AchieV and the Contractor have explicitly agreed this in writing, will AchieV be obliged to include timely and responsible instructions from the Contractor in its services in the performance of the service to be provided by it. AchieV is never obliged to follow instructions from the Contractor if they change or supplement the content or scope of the agreed service; if such instructions are followed by AchieV, the relevant activities will be reimbursed in accordance with the provisions of article 26.
- 25.4 If AchieV and the Contractor have entered into a service agreement with a view to their implementation by a specific person, AchieV is always entitled to replace this person after consultation with the Contractor by one or more other persons with the same qualifications.
- 25.5 In the absence of an invoicing schedule explicitly agreed between AchieV and the Contractor, the Contractor must pay all amounts relating to the services provided by AchieV once a calendar month to AchieV.

**26. Changes and additional work:**

- 26.1 If AchieV on the request or with the prior agreement of the Contractor activities or has performed other services beyond the content or extent of the agreed services, these activities or services will be reimbursed by the Contractor in accordance with the usual rates of AchieV. Supplementary work by AchieV also applies if a system analysis, a design or specifications are extended or modified. AchieV is never obliged to comply with such a request from the Contractor, whereby it also applies that AchieV can stipulate that a separate written agreement is concluded for this purpose.
- 26.2 The Contractor acknowledges and accepts that as a result of activities or performances as referred to in the previous paragraph, the agreed or expected time of completion of the service may be influenced. The same applies with regard to the mutual responsibilities of the Contractor and AchieV. The fact that during the execution of the agreement circumstances necessitate that AchieV perform more activities must never give rise to grounds for the Contractor to dissolve or terminate the concluded agreement.
- 26.3 Insofar as a fixed pricing agreement has been agreed between AchieV and the Contractor with respect to the services provided by AchieV, AchieV will inform the Contractor in advance in writing about the financial consequences of the extra activities or performances to be performed.

**27. Courses and training:**

- 27.1 Insofar as the services provided by AchieV consist of providing a course or training for the benefit of the Contractor, AchieV may always demand the payment of the Contractor due in advance for the commencement thereof. The consequences of a cancellation of participation in a course or training are always governed by the rules that are customary with AchieV.
- 27.2 If, in the opinion of AchieV, the number of applications gives reason to do so, AchieV is at all times entitled to combine the relevant study program, course or training with one or more other study programs, courses or training, or this at a later date or later time to take place. AchieV can in no way be held liable by the Contractor in this respect.

**28. Secondment:**

- 28.1 Posting within the meaning of these conditions applies if AchieV makes an employee (hereinafter: the posted employee) available to the Contractor in order to have this employee carry out activities under the supervision and management or direction of the Contractor.
- 28.2 AchieV will, insofar as possible, ensure that the posted employee remains available for the duration of the agreement, without prejudice to the provisions in Article 25.5 concerning replacement.
- 28.3 The Contractor is entitled to request replacement of the seconded employee in case:
- (i) the posted employee demonstrably does not comply with explicitly agreed quality requirements and the Contractor has made this known to AchieV in writing within three working days after the start of the activities, or
  - (ii) of long-term illness or termination of the seconded employee.

AchieV will immediately pay attention to the Contractor's request. AchieV never offers the guarantee that replacement of the seconded employee is always possible. If replacement of the seconded employee is not possible or not immediately possible, the Contractor's claims for further performance of the agreement will lapse by AchieV, as will all claims of the Contractor due to non-compliance with the agreement. Payment obligations of the Contractor regarding the activities performed by AchieV remain in place at all times.

- 28.4 AchieV will ensure the timely and full payment of wage tax and social security premiums paid in respect of the posted employee in connection with the agreement. AchieV indemnifies the Contractor against all legal claims of the tax authorities or social insurance authorities with respect to taxes and social insurance premiums which are directly related to the provision by AchieV of the seconded employee (the so-called hirer's liability), but only in case the Contractor does the settlement of the regarding claims entirely left to AchieV, hereby grants her all necessary cooperation and provides all necessary information and, if desired by AchieV, process proxies.

28.5 AchieV accepts no liability whatsoever for the selection of the employee or for the results of activities that have come about under the supervision and management or direction of the Contractor.

## SOFTWARE DEVELOPMENT

The provisions in this section 'Software development' are applicable in addition to the General Provisions of these general terms and conditions and the special provisions in the section "Services" in case AchieV develops software on behalf of the Contractor and possibly installs this on behalf of the Contractor. The provisions in the "Use and maintenance of software" section also apply to this software, except to the extent that from this part is deviated from in this section. The rights and obligations referred to in this section relate exclusively to computer software in a form which is readable by a data-processing machine and which is recorded on material readable for such a machine, as well as on the associated documentation. In case in this section is being referred to software, this also implies websites.

### 29. Software development:

- 29.1 In case specifications or a design of the software to be developed have not already been handed over to AchieV when entering into the agreement concluded between AchieV and the Contractor, the parties shall specify in writing the software that AchieV shall develop on behalf of the Contractor and the manner in which this shall take place. AchieV shall always carry out the development of the software with due care and such on the basis of the information provided by the Contractor. The Contractor guarantees at all times the correctness, completeness and consistency of the provided information. In case the parties have agreed on the use of a development method that is characterized by the design and/or development of parts of the software being subject to a further prioritization to be determined during the execution of the agreement, such priority shall always be determined by mutual agreement between parties.
- 29.2 AchieV is entitled at all times, but is not obliged to do so, to examine the accuracy, completeness or consistency of the data, specifications or designs made available to her by the Contractor and to suspend the agreed activities on behalf of the Contractor in the event of any established defects, until the Contractor has removed the relevant defects.
- 29.3 Without prejudice to the provisions of article 10, the Contractor shall only acquire the right to use the software in and on behalf of its own company or organization. Only if and insofar as such has been expressly agreed upon in writing between AchieV and the Contractor, the source code of the relevant software and the technical documentation created during the development of this software can be made available to the Contractor. In the latter case the Contractor shall be entitled to make changes in this software.

### **30. Delivery, installation and acceptance:**

- 30.1 AchieV shall deliver and install the software to be developed for the Contractor to respectively with the Contractor as much as possible in accordance with the specifications laid down in writing, the latter only in the event that an installation to be performed by AchieV has been agreed in writing. In the absence of explicit agreement on this subject, the Contractor shall install, set up, parameterise and tune the software himself and, if necessary, adapt the equipment and user environment used for this purpose. Unless expressly agreed otherwise, AchieV is not obliged to perform data conversion.
- 30.2 In case an acceptance test has been agreed upon between AchieV and the Contractor, the test period will be fourteen days after delivery of the software. In case an installation to be performed by AchieV has been agreed upon in writing, the test period will be fourteen days after completion of the installation. During the test period, the Contractor is under no circumstances permitted to use the software for productive or operational purposes. AchieV may at all times require the Contractor, therefore also if such has not been explicitly agreed upon, that it performs with sufficiently qualified personnel a proper test of sufficient scope and depth of the (intermediate) results of the developed work and that the test results are clearly and understandably reported to AchieV in writing.
- 30.3 The software developed by AchieV on behalf of the Contractor shall in any case apply between parties as being accepted by the Contractor:
- a. if an acceptance test has not been agreed upon between the parties: at the delivery of the equipment or, if an installation to be performed by AchieV has been agreed upon in writing, at the completion of this installation, or
  - b. if an acceptance test has been agreed upon between the parties: on the first day after the test period, or
  - c. if AchieV receives a test report as referred to in Article 30.5 before the end of the test period: at the moment that the errors stated in that test report have been corrected, without prejudice to the presence of imperfections that do not impede acceptance in accordance with Article 30.6. In deviation therefrom, the software shall be deemed to have been fully accepted from the commencement of that use, if the Contractor makes any use of the software for productive or operational purposes before the moment of explicit acceptance.
- 30.4 If during the execution of the agreed acceptance test it appears that the software developed by AchieV contains errors that impede the progress of the acceptance test, the Contractor shall inform AchieV detailed in writing in this regard, in which case the test period shall be interrupted until the software has been modified in such a way that the error has been removed.

- 30.5 If during the execution of the agreed acceptance test it appears that the software contains errors, the Contractor shall inform AchieV by no later than the last day of the test period by means of a written and detailed test report on the concerned errors. AchieV shall do its utmost to rectify the concerned errors within a reasonable period of time, whereby AchieV is at all times entitled to install temporary solutions, program bypasses or problem-avoiding restrictions in the software.
- 30.6 The acceptance of the software developed by AchieV may not be withheld on grounds other than those relating to the specifications explicitly agreed upon between the parties and furthermore not due to the existence of minor errors, i.e. errors that impede operational or productive use of the software, such without prejudice to the obligation of AchieV to rectify these minor errors under the guarantee scheme of Article 33, if applicable. Moreover, the acceptance may not be withheld in respect of aspects of the software that can only be assessed subjectively, such as the design of user interfaces.
- 30.7 If the software is tested and delivered by AchieV to the Contractor in phases and/or in parts, the non-acceptance by the Contractor of a particular phase and/or part shall leave any acceptance of an earlier phase and/or other part unaffected.
- 30.8 The acceptance of the software in one of the ways referred to in Article 30.3 results in AchieV being fully discharged for the fulfillment of its obligations regarding the development and making available of the software and, if applicable, also the installation by AchieV is agreed upon, its obligations regarding the installation of the software. Acceptance of the software by the Contractor does not affect the rights of the Contractor under Article 30.6 concerning minor errors and under Article 33 regarding warranty.
- 30.9.1 In the absence of an invoicing schedule expressly agreed upon between AchieV and the Contractor, all amounts relating to the development of the software shall be owed at the time of delivery of the software by AchieV or, if applicable, also the installation by AchieV is agreed upon in writing, upon completion of the installation.

## 31 USE OF SOFTWARE

- 31.9 The provisions in this section 'Use of software' are in addition to the General Provisions of these general terms and conditions applicable to all software made available by AchieV. The rights and obligations referred to in this section relate exclusively to computer software in a form which is readable for a data-processing machine and which is recorded on material readable for such a machine, as well as to the accompanying documentation, such including possible new versions provided by AchieV. In case in this section is being referred to software, this also implies websites.

**31. License:**

- 31.1 AchieV grants the Contractor the non-exclusive and non-transferable right to use the software. The Contractor shall at all times strictly observe the user restrictions agreed upon between the parties. Without prejudice to the provisions in these general terms and conditions, the right of use of the Contractor only includes the right to load and execute the software.
- 31.2 The software may only be used by the Contractor in or on behalf of its own company or organization, such on the relevant processing unit and for a specific number, type of users or connections for which the right of use has been provided by AchieV. Unless otherwise agreed, the processing unit of the Contractor on which the software was first used and the number of connections connected to that processing unit at the time of first use shall be deemed as processing unit and number of connections for which the user right was granted. In the event of a malfunction of the intended processing unit, the software can be used on another processing unit for the duration of the malfunction. The right of use may relate to several processing units, but only to the extent that this is explicitly apparent from the agreement concluded between AchieV and the Contractor.
- 31.3 The right of use is not transferable. Furthermore, under no circumstances is the Contractor permitted to sell, lease, sublicense, alienate or grant limited rights to the software and media on which it is recorded or make it available to third parties in any way or for any purpose whatsoever, to allow a third party to access it remotely or give the software or the software to a third party for hosting, even if the third party uses the software exclusively for the benefit of the Contractor. The Contractor shall not change the software other than in the context of repairing errors and such in consultation with AchieV. The source code of the software and the technical documentation generated during the development of the software will never be made available by AchieV to the Contractor, even if the Contractor is prepared to pay AchieV a financial compensation for such availability. The Contractor acknowledges that the source code has a confidential character and that it contains business secrets of AchieV.
- 31.4 Immediately after the end of the right of use of the software, the Contractor shall return all copies of the software in its possession to AchieV and such in the same condition as the Contractor has received it from AchieV. If the parties have agreed that the Contractor will destroy the relevant copies at the end of the right of use, the Contractor will immediately notify AchieV in writing of such destruction.

## **32. Delivery, installation and acceptance:**

- 32.1 AchieV shall deliver the software to the Contractor on the agreed type and format of information carriers and, if an installation to be performed by AchieV has been agreed upon in writing, install the software with the Contractor. In the absence of explicit agreement on this subject, the Contractor shall install, set up, parameterise and tune the software himself and, if necessary, adapt the equipment and user environment used. Unless expressly agreed otherwise, AchieV is not obliged to perform data conversion.
- 32.2 If an acceptance test has been agreed upon between the parties in writing, the provisions of articles 30.2 up to and including 30.7 shall apply mutatis mutandis. If the parties have not agreed an acceptance test, the Contractor accepts the software in the state in which it is at the time of delivery, therefore with all visible and invisible errors and other defects, without prejudice to the obligations of AchieV pursuant to the warranty of article 33. In all cases the provisions of article 30.8 remain in full force.
- 32.3 In the absence of an invoicing schedule explicitly agreed upon between AchieV and the Contractor, the Contractor owes all amounts relating to the provision of software by AchieV and the right to use the software upon delivery of the software by AchieV or, if an installation to be carried out by AchieV has also been agreed upon in writing, when the installation is completed.

## **33. Warranty:**

- 33.1 AchieV shall, insofar as possible, ensure that any errors in the software are repaired within a reasonable period in the event that these errors occur within a period of three months after delivery of the software or, if an acceptance test has been agreed upon between the parties, within three months of the acceptance thereof has been reported in detailed writing to AchieV by the Contractor. AchieV never guarantees that the software will work without interruption, errors or other defects or that all errors and other defects are improved. Recovery will be performed free of charge by AchieV, unless the software has been developed by order of the Contractor other than for a fixed price, in which case AchieV shall charge the costs of repair to the Contractor according to its usual rates. AchieV can, according to its usual rates, charge the costs of recovery to the Contractor if there exists misuse or improper use on the part of the Contractor or in case of other causes not attributable to AchieV, or if the errors could have been established during the execution of the agreed acceptance test. Recovery of corrupted or lost data is expressly not covered by the warranty. The guarantee obligation on the part of AchieV will lapse if the Contractor makes or has changes made to the software without written permission from AchieV, which permission will not be withheld on unreasonable grounds.

33.2 Repair of errors will only take place at a location to be determined by AchieV. AchieV is at all times entitled to install temporary solutions or program bypasses or problem-avoiding restrictions in the software.

33.3 AchieV has no obligation to rectify any errors reported after the end of the warranty period referred to in Article 33.1, unless a maintenance agreement has been concluded between the parties which includes such a duty to repair.

#### **34. Maintenance:**

34.1 If, in view of the software made available by AchieV, a maintenance agreement has been concluded between AchieV and the Contractor or if the user's fee for the software includes maintenance, the Contractor shall, in accordance with the usual procedures of AchieV, report in detailed writing any detected errors in the software. After receipt of the report, AchieV will make every effort to correct errors and/or make improvements in later new versions of the software. Depending on the urgency, the results will be made available to the Contractor in the manner and period to be determined by AchieV. AchieV is at all times entitled to install temporary solutions or program bypasses or problem-avoiding restrictions in the software. In the absence of explicit agreement on this subject, the Contractor himself shall install, set up, parameterise, tune and adjust the corrected software or the new version that has been made available and, if necessary, adapt the equipment and user environment used. Unless expressly agreed otherwise, AchieV is not obliged to perform data conversion.

34.2 AchieV does not guarantee that the software will operate without interruption, errors or other defects or that all errors or other defects will be corrected.

34.3 AchieV may charge the costs of repair to the Contractor in accordance with its usual rates if there exists misuse or improper use on the part of the Contractor, in case of other causes not attributable to AchieV or in case the software has been modified by anyone other than AchieV. Recovery of corrupted or lost data is not covered by maintenance.

34.4 If a maintenance agreement has been concluded between AchieV and the Contractor, AchieV shall, upon the availability of improved versions of the software, provide the Contractor with such versions within a reasonable period. After expiry of a period of three months after the provision of an improved version to the Contractor, AchieV is no longer obliged to correct any faults in the old(er) version and provide support with regard to the old(er) version. To provide a version with new possibilities and functions, AchieV may require the Contractor to enter into a new agreement with AchieV and require that a new fee will be paid to AchieV for the provision.

34.5 If the Contractor has not entered into a maintenance agreement with AchieV at the same time as entering into the agreement for the provision of the software, AchieV can not be held to enter into a maintenance agreement with the Contractor at a later date.



34.6 In the absence of an invoicing schedule explicitly agreed upon between AchieV and the Contractor, the Contractor owes all amounts relating to the maintenance of software to AchieV before the start of the maintenance period.

**35 Software supplier:**

If AchieV makes third-party software available to the Contractor, provided that this has been communicated to the Contractor in writing by AchieV, software the conditions of those third parties apply, with the application of the deviating provisions in these conditions. The Contractor already accepts the terms and conditions of these third parties. These conditions are available for inspection by the Contractor at AchieV. AchieV will send these terms and conditions to the Contractor at the Contractor's request free of charge. If and insofar as the aforementioned conditions of third parties in the relationship between the Contractor and AchieV for whatever reason are deemed not to apply or are declared inapplicable, the provisions of these general terms and conditions apply in full.

## **MAINTENANCE EQUIPMENT**

The provisions in this section "Maintenance of equipment" are applicable in addition to the General Provisions of these general terms and conditions if AchieV and the Contractor have an agreement for maintenance of equipment.

**36 Duration maintenance:**

36.1 The agreement for the maintenance of equipment is entered into between AchieV and the Contractor for the duration between the parties in the relevant agreement. If no duration period is agreed, the duration will be one year.

36.2 The agreement shall be tacitly extended for the same duration, unless the Contractor or AchieV terminates the agreement in writing with due observance of a notice period of three months before the end of the relevant period.

### **37 Maintenance:**

- 37.1. The content and scope of the maintenance services to be provided by AchieV and any associated service levels will be laid down in a written agreement between the parties. In the absence thereof, AchieV is obliged to make every effort to remedy any malfunctions reported to AchieV by the Contractor within a reasonable period of time. In this section, "failure" means not complying with the specifications of the equipment expressly made known by AchieV in writing or not without interruption. A fault only applies if the Contractor can demonstrate this and this malfunction can be reproduced.
- 37.2. Maintenance is performed by AchieV during the working days and working hours of AchieV.
- 37.3. AchieV reserves the right to suspend its maintenance obligations towards the Contractor for the time that, at the site of the installation of the equipment, circumstances arise which pose risks to the safety or health of employees of AchieV.
- 37.4. AchieV is responsible for keeping its expertise about the equipment up to date. AchieV will record all relevant data concerning the activities performed on the equipment and record these in its administration. AchieV will provide the Contractor with access to the data recorded in this way at the first request.
- 37.5. Replacement of parts shall take place if AchieV deems it is necessary to repair or prevent faults. The replaced parts are or remain the property of AchieV at all times.

### **38 Maintenance and usage:**

- 38.1. The Contractor will directly inform AchieV in case of the occurrence of a failure by means of by an expert employee of Contractor drawn up detailed description of the malfunction. The Contractor is obliged to provide the personnel of AchieV or third parties designated by AchieV with access to the location of the equipment, to provide all other necessary cooperation and to make the equipment available to AchieV for the maintenance activities.
- 38.2. At the request of AchieV, a competent employee of the Contractor will be present for consultation during the maintenance activities. The Contractor has the right to be present at all maintenance activities.
- 38.3. The Contractor is authorized to connect equipment and systems not supplied by AchieV to the Contractor and to install any software not delivered by AchieV. The costs of investigating and remedying faults arising from the connection of equipment not supplied by AchieV or from the installation of software not provided by AchieV are and remain at all times for the account of the Contractor.

- 38.4 If AchieV finds it necessary for the maintenance of the equipment that the connections of the equipment are tested with other systems or equipment, the Contractor shall make these other systems or equipment and the relevant test procedures and information carriers available to AchieV.
- 38.5 Any test material required for maintenance activities that is not part of the normal equipment of AchieV must be provided by the Contractor without any costs.
- 38.6 The Contractor is responsible to provide the technical, spatial and telecommunications facilities necessary for the equipment to function. The maintenance does not extend over the aforementioned facilities and connections.
- 38.7 The Contractor bears the risk of loss, theft or damage to the equipment during the period that AchieV has the equipment for the maintenance activities. The Contractor itself is committed to ensure adequate insurance against such risks. Before providing the equipment to AchieV for maintenance, the Contractor shall ensure that a proper and complete back-up copy has been made of all software and data recorded in the equipment.
- 38.8 AchieV does not accept any maintenance obligations for equipment that is located in the Netherlands, unless explicitly agreed otherwise in writing between AchieV and the Contractor.
- 38.9 In the absence of an invoicing schedule agreed between AchieV and the Contractor, the Contractor owes AchieV all amounts relating to the maintenance of equipment at the start of the maintenance period.

### **39 Exclusions:**

- 39.1 Activities due to the investigation or reparation of malfunctions resulting from improper use of the equipment or external causes, such as defects in communication lines or in power supply, or connections with equipment, software or materials that are not covered by the agreement between parties, are not part of the obligations of AchieV on the basis of the agreement, and will be charged separately by AchieV to the Contractor at the usual rates.
- 39.2 The maintenance price does not include:
- a. the replacement of consumables such as magnetic storage media;
  - b. the replacement costs of parts as well as maintenance services for the repair of malfunctions that are wholly or partly caused by attempts to repair by others than AchieV;
  - c. activities for the partial or complete overhaul of equipment;
  - d. modifications to equipment;
  - e. relocation, reinstallation of equipment or activities as a result.