

ENEXIS ADDITIONAL CONDITIONS FOR ICT

2021

ARTICLE 1.	Definitions	1		Agreement, which Enexis uses to decide whether or not to accept the performance.
ARTICLE 2.	Obligation to investigate and performance of the Agreement	2	1.3	Specifications: the documents made available to the Other Party (including further explanations and changes) and describing and explaining the Enexis organisation, the Performance, use of the Performance as envisaged by Enexis, and the tendering procedure.
ARTICLE 3.	Agreement variations	2		
ARTICLE 4.	Intellectual property rights	2		
ARTICLE 5.	Acceptance	3		
ARTICLE 6.	Warranties	3		
ARTICLE 7.	Replacement of Personnel of the Other Party	3	1.4	Source Code: all of the program instructions in their original programming language, including the accompanying Documentation, intended to be executed by a computer, in such form that a programmer who has knowledge and experience of the programming method and technique is able to use this to alter the software.
ARTICLE 8.	Subagreeing and collaboration with third parties	3		
ARTICLE 9.	Liability	3		
ARTICLE 10.	Function-related defects in conjunction with other software or equipment	4		
ARTICLE 11.	Termination and notice of termination	4		
ARTICLE 12.	Exit clause	4	1.5	Documentation: any description of the Performance and the properties thereof, whether or not specifically intended for the installation, implementation, use, management and/or maintenance thereof.
ARTICLE 13.	Retransition Plan	4		
ARTICLE 14.	Regular agreement evaluation, audit and benchmark	4		
ARTICLE 15.	Security	5		
ARTICLE 16.	Additional definitions Rights of Use	5	1.6	Final Deadline: a deadline explicitly agreed upon as such by the parties. If not met, the party in respect of which the deadline has been set will be in default immediately, i.e. without any notice of default.
ARTICLE 17.	Nature and content of the Right of Use	5		
ARTICLE 18.	Additional Warranties	5		
ARTICLE 19.	Escrow	6		
ARTICLE 20.	Delivery of Customised Software	6	1.7	Defect: any failure and/or other fault as a result of which the Software and/or Performance is not fit for the Agreed Use.
ARTICLE 21.	Acceptance procedure for Customised Software	6		
ARTICLE 22.	Maintaining Customised Software	6	1.8	Right of Use: the right on the basis of which Enexis is authorised to install and/or use Standard Software and/or Customised Software in accordance with the Agreed Use, including all reproductions and disclosures reasonably necessary, whether or not on a temporary basis.
ARTICLE 23.	Additional definitions Maintenance	6		
ARTICLE 24.	Maintenance of Performances already rendered previously	7		
ARTICLE 25.	Commencement date for Maintenance	7		
ARTICLE 26.	Place and times of Maintenance	7	1.9	Customised Software: software to be developed, or that has been developed, specifically for Enexis, or changes made to Standard Software specifically for Enexis.
ARTICLE 27.	Progress report and progress meeting	7		
ARTICLE 28.	Corrective Maintenance and temporary solutions	7		
ARTICLE 29.	Preventive Maintenance	7	1.10	Additional work: work not included in the Assignment that results in costs over and above the agreed payment.
ARTICLE 30.	Reporting, signing off and prioritising Failures	7		
ARTICLE 31.	Service Level achievement	7	1.11	New Version: a successive version of the Software that features functionalities that are predominantly new or updated, whether or not released under a different name.
ARTICLE 32.	Improved and New Versions	7		
ARTICLE 33.	Additional definitions Saas, Paas, Iaas	8	1.12	Maintenance: work to be carried out by the Other Party, geared towards remedying and/or improving the Performance.
ARTICLE 34.	Service provision	8		
ARTICLE 35.	Availability	8	1.13	Assignment: work to be carried out by the Other Party for Enexis other than by virtue of an employment agreement.
ARTICLE 36.	Incident resolution	8		
ARTICLE 37.	Back-up and data recovery	8		
ARTICLE 38.	Exit procedure	9	1.14	Agreed Use: use of the Performance as envisaged by Enexis and known to the Other Party, or as ought to be reasonably known to the Other Party, at the time at which the Agreement is concluded, by virtue of the Specifications and/or on the basis of the information referred to in Article 2, provided the said use has not been explicitly precluded from or restricted in the Agreement.

ARTICLE 1. DEFINITIONS

In these Enexis Additional Conditions for ICT, the following capitalised terms will have the meaning given to them in the Enexis General Purchase Conditions. If any of the following capitalised terms are not defined in the Enexis General Purchase Conditions, they will be defined as follows:

- 1.1 Acceptance: approval of the Performance or parts thereof by Enexis.
- 1.2 Acceptance Procedure: the procedure laid down in the

- 1.15 Patch: a correction to Standard Software that is intended to be of a temporary nature.
- 1.16 Performance: the Goods and/or Services to be provided by the Other Party, the Assignment to be carried out by it, the Right of Use to be provided by it, or a combination of the aforementioned,

- including materials and Documentation.
- 1.17 Software: the set of program rules to be delivered or made available (remotely) by the Other Party, in a format that a computer can use to directly or indirectly achieve a certain, specified result. Software can be differentiated into Standard Software or Customised Software.
 - 1.18 Retransition Plan: the plan referred to in Article 13.1 that describes the transfer of service provision by the Other party to Enexis or a successive Other party.
 - 1.19 Standard Software: Software developed for general use and not made available to Enexis exclusively.
 - 1.20 Improved Version: a successive version of the Standard and/or Customised Software in which Defects have been remedied and/or the running of the Software has otherwise been improved.
 - 1.21 Conditions: these Enexis Additional Conditions for ICT, consisting of general provisions and/or special provisions as stipulated in the articles 16 - 38 .

General provisions

ARTICLE 2. OBLIGATION TO INVESTIGATE AND PERFORMANCE OF THE AGREEMENT

- 2.1 For the purpose of determining the Performance use envisaged by Enexis, the Other Party has acquainted itself sufficiently with:
 - a. the objectives that have caused Enexis to enter into the Agreement;
 - b. the Enexis organisation, insofar as important for the Agreement.
- 2.2 When fulfilling the obligation to investigate as set out in Article 2.1, the Other Party also formed an opinion on the feasibility of the Performance in the frameworks specified by Enexis in this respect. With regards to the provisions of Article 2.1, Enexis has provided the Other Party with adequate information. The Other Party is aware of and recognises that the continuity of ICT-related Services is of great importance for Enexis.
- 2.3 All Performances by the Other Party will be rendered on the basis of a result obligation, except where the Agreement explicitly stipulates that the Performance will be rendered on the basis of a best efforts obligation.

ARTICLE 3. AGREEMENT VARIATIONS

- 3.1 Enexis will be notified promptly of all additional work. All such agreement extras will be invoiced separately and will only be eligible for payment after Enexis' written permission.
- 3.2 If the Performances to be rendered by the Other Party are demonstrably lessened or reduced as a result of changed insights on the part of Enexis or a change to the statutory provisions that are relevant to the Performances to be rendered, agreement reductions will be the case and will be eligible for setoff. If a Party believes that agreement reductions are the case, it will notify the

other party of this in writing as soon as possible. If a fixed price has been agreed on, the Parties will determine the amount of the agreement reductions in joint consultation, which agreement reductions will be set off against the price to be paid.

ARTICLE 4. INTELLECTUAL PROPERTY RIGHTS

- 4.1 All intellectual property rights that could or do arise, wherever and whenever, and that may or will be exercised in relation to the Performance will be vested in:
 - a. Enexis, where the Performance has been or will be designed or produced specifically for Enexis and/or under the direction or supervision of Enexis, or has been or will be realised on the basis of its instructions or designs. Where necessary, the Other Party will transfer these rights to Enexis under the Agreement, which transfer Enexis herewith states it would accept should this situation arise;
 - b. the Other Party or a third party in all other cases. In this situation, the Other Party will grant Enexis a non-exclusive right - to be specified in the Agreement - to use the Performance that is sufficient to enable fulfilment of the provisions of the Agreement(s) in any event.
- 4.2 By signing the Agreement, the rights referred to in Article 4.1(a) will be assigned to Enexis. If a further deed of transfer is needed for the assignment of these rights, the Other Party hereby irrevocably authorises Enexis, where appropriate, to draw up such a deed of transfer and sign it, also on behalf of an other party, all notwithstanding the obligation that the Other Party has to cooperate in the assignment of these rights immediately when requested to do so by Enexis, without being able to attach conditions to that cooperation. Insofar as necessary, the Other Party also hereby irrevocably authorises Enexis to enter or copy the assignment of these intellectual property rights into the relevant registers.
- 4.3 The Other Party will indemnify Enexis against claims from third parties in relation to an (alleged) infringement of intellectual property rights belonging to the said third parties, including the personality rights referred to in Section 25(1) of the Dutch Copyright Act (*Auteurswet*). The Other Party must enter a defence, immediately when requested to do so by Enexis, in any proceedings relating to the Performance that may be brought against Enexis based on an infringement of the intellectual property rights of a third party. Enexis must notify the Other Party of such proceedings immediately and provide the necessary powers of attorney and assistance to the Other Party. The Other Party will also indemnify Enexis against all damage, losses and costs that it may be ordered to pay in such proceedings, as well as against the costs of those proceedings, including but not limited to the costs of obtaining legal advice in this regard.
- 4.4 In the event of an alleged infringement of the intellectual property right belonging to a third party, the Other Party will, at its own expense, put all measures in place that could help avoid

- any interruption to business operations of Enexis and limit the costs and/or losses to be incurred by Enexis as a result.
- 4.5 Notwithstanding the provisions of Articles 4.3 and 4.4, Enexis may, if sued by third parties for an infringement of intellectual property rights, dissolve all or part of the Agreement extrajudicially, without prejudice to its further rights against the Other Party, including but not limited to any right to compensation.
- 4.6 Enexis is and will continue to be the owner of personal data and all other data.

ARTICLE 5. ACCEPTANCE

- 5.1 Enexis will not be obliged to make any payment to the Other Party before Acceptance has taken place. Payments that are made prior to Acceptance will always be effected subject to the suspensive condition of Acceptance, except where the Parties have made other, prior arrangements in this respect.
- 5.2 Enexis will notify the Other Party of whether or not it will accept the Performance and will do so within 30 days of Delivery. It will be able to do this by means of a notification intended explicitly for this purpose or by sending the test report referred to in Article 20.3, if the Customised Software is approved in the said report.
- 5.3 If Enexis is unable to notify the Other Party of whether or not it will accept the Performance in the period of time referred to in Article 5.2, it will inform the Other Party of this situation before the said period of time expires, providing reasons and also stating the period of time in which it will notify the Other Party of its acceptance or rejection of the Performance.
- 5.4 If Enexis accepts the Performance despite the observed presence of one or more Defects, it will notify the Other Party of this in its notification or in the test report referred to in Article 5.2. The Other Party will remedy the said Defects with due observance of the provisions of article 6.3.

ARTICLE 6. WARRANTIES

- 6.1 The Other Party warrants that it will only assign Personnel who have the skills and qualifications agreed on or required for the Performance, with due regard for the nature of the Performance to be rendered.
- 6.2 The Other Party warrants that it will remedy Defects at its own expense for a period of 12 months after Acceptance, except where the Parties have made other, prior agreements in this respect. If Enexis wishes to make a claim under this warranty, it will notify the Other Party of this fact in writing. In emergency situations, it will also notify the Other Party of its wish to make a claim by telephone. The Other Party will remedy Defects immediately, taking into account the seriousness and nature thereof. Where necessary, a remedy will be determined in consultation with Enexis.
- 6.3 If the Other Party demonstrates that there is a Defect that Enexis

- should reasonably have been able to observe when performing the Acceptance Procedure, it may charge Enexis for the extra costs involved when remedying the Defect as a result.
- 6.4 In addition to the provisions of article 6.2, the Other Party warrants that it will remedy Defects that Enexis has identified during the Acceptance Period, but that do not constitute a reason for it not to proceed with Acceptance. It will do so as soon after Acceptance as possible and at its own expense.
- 6.5 The warranty referred to in Article 6.2 will not apply insofar as the Other Party demonstrates that a Defect has arisen because of an alteration made to the Performance, without its permission, by Enexis or a third party hired by Enexis. The warranty will also not apply if a Defect is demonstrably the result of incorrect, careless or incompetent use of the Performance by Enexis.
- 6.6 The Other Party warrants that it is able to maintain the Performance up to five years after the date of Acceptance.

ARTICLE 7. REPLACEMENT OF PERSONNEL OF THE OTHER PARTY

- 7.1 The Other Party will only replace Personnel with the prior permission of Enexis. Enexis will not refuse to give its permission on unreasonable grounds and may attach conditions to its permission.
- 7.2 Enexis has the right to demand the replacement of Personnel if it no longer considers the deployment thereof desirable for reasons pertaining to the individual in question.
- 7.3 When replacing Personnel, the Other Party will not charge Enexis for any costs incurred in this respect.
- 7.4 When replacing Personnel, the Other Party will make Personnel available at the same rate. The replacement Personnel must be at least equivalent to the Personnel deployed originally, in terms of expertise, education and experience, or will comply with what the Parties have agreed on in this respect.

ARTICLE 8. SUBAGREEMENTING AND COLLABORATION WITH THIRD PARTIES

- 8.1 When performing the Agreement, the Other Party may only utilise the services of third parties with the prior permission of Enexis. This permission, to which Enexis may attach further conditions, will not be refused on unreasonable grounds.
- 8.2 If Enexis grants the Other Party permission to use the services of third parties, this will not affect the responsibility and liability that the Other Party has to fulfil the obligations ensuing for it from the Agreement and the obligations that it has as an employer, under legislation pertaining to tax, health insurance and social security.
- 8.3 When asked to do so by Enexis, the Other Party will be obliged to work with third parties engaged by Enexis.

ARTICLE 9. LIABILITY

- 9.1 If the Other Party is obliged to compensate any losses sustained,

the amount of the said compensation will be limited to a maximum of four times the value of the Agreement.

- 9.2 The Other Party will not be liable for indirect loss, which consists solely of lost savings, reduced goodwill and missed opportunities.
- 9.3 The Other Party will be required to fulfil all obligations, including those ensuing from tax, health insurance and social security legislation, to be met in relation to Personnel employed by the Other Party. The Other Party will indemnify Enexis against any liability for the aforementioned.

ARTICLE 10. FUNCTION-RELATED DEFECTS IN CONJUNCTION WITH OTHER SOFTWARE OR EQUIPMENT

- 10.1 When asked to do so by Enexis, the Other Party will participate in consultations with other parties (or other Other Parties) and/or suppliers designated by Enexis if it is found, at any time, that the Performance is not functioning well in conjunction with other software and/or products in use or to be put into use at Enexis.
- 10.2 The consultations referred to in Article 10.1 will focus on ascertaining the reason for the inadequate functioning in conjunction with other software and/or products and also on finding a solution for the situation, if possible. Enexis will bear all reasonable costs ensuing from consultations and the development of a solution, except where the inadequate functioning in conjunction with other software and/or products is found to be attributable to the Other Party.

ARTICLE 11. TERMINATION AND NOTICE OF TERMINATION

If Enexis has entered into two or more related Agreements with the Other Party and Enexis is entitled to terminate one of these Agreements on any grounds whatsoever, Enexis will also be able to terminate the other Agreement(s) in the manner specified and will be able to do so without prejudice to that which has been set out on termination options in the Enexis General Purchase Conditions.

ARTICLE 12. EXIT CLAUSE

- 12.1 If the Agreement ends (early) for whatever reason, the Other Party will, when requested to do so by Enexis, do whatever is reasonably necessary to ensure that a new Other Party or Enexis itself is able to take over performance of the Agreement and/or is able to provide a similar Performance for Enexis. The Other Party will also immediately return all documents, books, records and other goods given to it by Enexis (including data carriers) or destroys them.
- 12.2 The Parties herewith agree that delivery of the Performance and/or service provision by the Other Party will not be terminated unilaterally, except where the Performance and/or service provision cannot reasonably be required of the Other Party.

ARTICLE 13. RETRANSITION PLAN

- 13.1 If this Agreement is fully or partly terminated for whatever reason, the Parties will, if asked to do so by Enexis, prepare or implement a Retransition Plan with the goal of ensuring that:
- a. the Parties ensure settlement of the Agreement, the Performance or Service Level Agreement (SLA) respectively, together and by agreement as soon as reasonably possible.
 - b. The Other Party ensures and guarantees that the service provision and/or the Performances will be continued without interruption, in accordance with the conditions of the Agreement, insofar as service provision and/or the Performances have not been transferred to a successive Other Party or Enexis yet, so that continuity of the Performance(s) and/or service provision is safeguarded for Enexis.
 - c. where Performance(s) is or are (still) rendered after this Agreement is terminated, Enexis will pay for the said Performance(s) in line with the payments applicable immediately prior to the termination of this Agreement.
 - d. if this Agreement is terminated, the Other Party will transfer service provision to Enexis or to a successive Other Party in accordance with the Retransition Plan.
- 13.2 If no payments for implementation of the Retransition Plan have been set out in the Agreement, Enexis will pay all reasonable costs to be incurred by the Other Party in relation to implementation of the Retransition Plan in accordance with the rates agreed upon.
- 13.3 Any parts of the Agreement, Performance or SLA that have not been terminated will be delivered by the Other Party in full and for the same price.

ARTICLE 14. REGULAR AGREEMENT EVALUATION, AUDIT AND BENCHMARK

- 14.1 The Parties will evaluate their collaboration under the Agreement on an annual basis, starting half a year after the date on which the Agreement commences. Should a party require an interim evaluation, it will notify the Other Party of this in writing. Cooperation in the extra evaluation required will not be withheld on unreasonable grounds.
- 14.2 Enexis will have the right to carry out an audit to ascertain correct compliance with the Agreement by the Other Party at a maximum of once a year. The Other Party will undertake to cooperate in audits of this nature. Enexis will be entitled to recover audit costs from the Other Party if any irregularities come to light. In this situation, Enexis will also have the right to have an audit carried out three times a year for two years, commencing from the date of the audit in which the irregularities were observed.
- 14.3 The time at which an audit takes place will be determined in joint consultation.
- 14.4 To be able to have the audit referred to in this article take place, the Other Party must create and keep proper records.
- 14.5 In the first 12 months following the date on which the Agreement

enters into force, Enexis will be able to have all, or one or more parts, of the Services provided by the Other Party and the payments relating to the said Services benchmarked. The benchmark will be carried out by a qualified, independent third party to be agreed on by the Parties. The Other Party will be obliged to cooperate in the benchmark. This cooperation will include making available all information, reports and/or data necessary for performance of the benchmark. If the aforementioned information, reports and/or data provided to the benchmarker are of a confidential nature, Enexis will ensure that the benchmarker enters into a satisfactory non-disclosure agreement.

ARTICLE 15. SECURITY

- 15.1 The Other Party will ensure that proper security measures and procedures are included ,
- 15.2 The Other Party will act in accordance with all relevant security measures and procedures in place at Enexis and will ensure that its Personnel do so too.
- 15.3 Employees of the Parties will only have access to Software-related systems when they have been granted the relevant authorisation by the job holders entitled to grant the access in question. The authorisation procedure in place for the Parties must indicate the following for each individual who is authorised in accordance with this procedure: the nature of his/her activities, the duration of his/her authorisation and also the systems and data to which he/she will have access.
- 15.4 The Other Party will be responsible for operational management of the authorisation in relation to the access security and tools in use by the Other Party.
The Other Party will be responsible for identifying (attempts to gain) unauthorised access to the Software. If it identifies (attempts to gain) unauthorised access, the Other Party will put the necessary measures in place to keep any damage to a minimum and to endeavour to avoid the same situation happening again. Unauthorised access (and attempts to gain unauthorised access) and all measures put in place in this respect will be reported to Enexis immediately.

Special Provisions on Rights of Use

The provisions of this special part of the Enexis Supplementary Conditions for ICT will always apply in conjunction with the General Provisions of the Enexis Additional Conditions for ICT and any other Special Provisions applicable if Enexis acquires Rights of Use.

ARTICLE 16. ADDITIONAL DEFINITIONS RIGHTS OF USE

In this special part of the Enexis Additional Conditions for ICT, the following capitalised terms will be used in addition to those set out in Article 1:

- 16.1 Escrow: filing (a copy of) the Source Code with an independent third party, so that Enexis is able, when one or more of the

conditions set out in the Escrow agreement is or are fulfilled, to use (or have a third party use) the code to remedy defects and otherwise maintain and manage the Standard Software and/or Customised Software, all of the aforementioned on its own authority.

- 16.2 Owner: the party in which/whom the intellectual property right to the Standard Software is vested.

ARTICLE 17. NATURE AND CONTENT OF THE RIGHT OF USE

- 17.1 With due observance of these Conditions, the Other Party will grant Enexis a perpetual, transferable and irrevocable Right of Use to the Standard Software and also to New Versions if Enexis is entitled to receive New Versions. The Right of Use does not include the transfer of patent rights, copyrights or trademark rights relating to the Standard Software in question for Enexis, except where the Parties have made other, prior arrangements in this respect.
- 17.2 The Right of Use will include the following at the very least, without Enexis having to pay any additional fee for this purpose:
 - a. the right to use all functionalities of the purchased Standard Software that are accessible to Enexis, even if these are not stated in the Documentation;
 - b. the right to produce, save, regularly test and keep copies of the Standard Software on 'hot standby' in the event of a calamity;
 - c. the right to use the Standard Software for testing and development purposes;
 - d. the right to use the Standard Software without any restriction or limitation in terms of place, equipment, duration or otherwise, including the use thereof by third parties on behalf of Enexis, except where the Parties have made other, prior agreements in this respect.
- 17.3 Until the Acceptance of the Standard Software, the Other Party will grant Enexis a non-exclusive right to use the Standard Software for installation and testing purposes.
- 17.4 If the Other Party only remedies Defects in the Standard Software by bringing out Patches or Improved Versions, Enexis will be entitled to the free receipt and use thereof during the warranty period set out in article 6.2, even if it has not agreed that the Other Party will provide Maintenance.

ARTICLE 18. ADDITIONAL WARRANTIES

In addition to Article 6, the Other Party warrants that:

- 18.1 the Standard Software does not contain any technical provisions, functions or other unusual elements that could preclude the Agreed Use at any time, temporarily or otherwise, unless the Parties have made other, prior agreements in this respect;
- 18.2 if it is not the Owner of the Standard Software, the Owner has authorised it to grant Rights of Use to third parties on its behalf. The Other Party will provide Enexis with a copy of this authorisation when requested to do so.

ARTICLE 19. ESCROW

- 19.1 Escrow includes all information not in the public domain that Enexis reasonably needs for the purpose of Defects, maintenance and management of the Standard Software, so that it is able to continue its Agreed Use thereof. Escrow must comply with the customary provisions applicable in the Dutch market at the time at which it is concluded.
- 19.2 If Escrow forms part of the Agreement, the Other Party must provide Enexis with proof to show that the Escrow complies with the relevant provisions of the Agreement or promptly make such an arrangement.
- 19.3 If Escrow does not form part of the Agreement, Enexis will still have the right to require that an arrangement of this nature is entered into or it will be able to become a party to an Escrow agreement as referred to in article 18.2 at any time. All reasonable costs associated with the aforementioned will be payable by Enexis.

ARTICLE 20. DELIVERY OF CUSTOMISED SOFTWARE

The Assignment to develop Customised Software will also include its Delivery.

ARTICLE 21. ACCEPTANCE PROCEDURE FOR CUSTOMISED SOFTWARE

- 21.1 Without prejudice to the provisions of Article 5, the Acceptance of Customised Software will take place as follows.
- 21.2 The Other Party will be required to give Enexis due notice of the Delivery of Customised Software.
- 21.3 If Enexis carries out an acceptance test (or has an acceptance test carried out), it will produce a test report as soon as possible, a copy of which it will send to the Other Party. Any Defects observed and the approval or rejection of the Customised Software by Enexis will be set out in the test report.
- 21.4 If Enexis approves the Customised Software, the date on which the test report is signed will be deemed to be the date of Acceptance.
- 21.5 If Enexis does not approve the Customised Software following the first acceptance test, it will repeat all or part of this test within a reasonable period of time to be set by it. Enexis will then produce an additional test report in which it sets out whether the Defects observed in the first test have been remedied and whether it is now approving the Customised Software.
- 21.6 If Enexis rejects the Customised Software, the Other Party will remedy the Defects observed at its own expense and will do so within a reasonable period of time to be granted to it by Enexis. This period of time will commence on the date on which the test report is signed. If the Other Party fails to comply with the aforementioned, Enexis may, after issuing a prior notification of its intentions to the Other Party, remedy the Defects itself, or

have them remedied by a third party at the expense of the Other Party. In this situation, the Other Party will be required to cooperate fully in this regard, free of charge. This cooperation will include providing Enexis with the information needed for this purpose, which it will do immediately when requested to do so by Enexis. If Enexis remedies a Defect itself or has a Defect of this nature remedied by a third party for one of the reasons referred to above, this will not affect any of the obligations that the Other Party has agreed to in relation to the Customised Software.

- 21.7 If Enexis rejects the Customised Software again following completion of the second acceptance test, the Other Party will be in default as a result. In this situation, Enexis will be able to dissolve the Agreement extrajudicially with immediate effect, without any demand or notice of default being required in this respect.

ARTICLE 22. MAINTAINING CUSTOMISED SOFTWARE

- 22.1 If Enexis maintains the Customised Software itself, or arranges for a third party to attend to Maintenance, the Other Party will be required to provide its support in this respect for a competitive price. To this end, the Other Party will provide Enexis, or a third party hired by Enexis for this purpose, with the (additional) information required, when requested to do so. The above will also apply to management activities relating to the Customised Software that Enexis performs itself or arranges for a third party to perform.
- 22.2 If Enexis has also agreed on the provision of Maintenance with the Other Party, the provisions of this Agreement will apply.

Special Provisions on Maintenance

The provisions of this special part of the Enexis Supplementary Conditions for ICT will always apply in conjunction with the General Provisions of these conditions and any other Special Provisions applicable if Enexis agrees that the Other Party will be responsible for Maintenance.

ARTICLE 23. ADDITIONAL DEFINITIONS MAINTENANCE

In this special part of the Enexis Supplementary Conditions for ICT, the following terms, written with initial capitals, will be used in addition to those set out in Article 1:

- 23.1 Corrective Maintenance: the identification and remedying of Failures by the Other Party, which Failures Enexis has reported to it or that have come to the knowledge of the Other Party by other means.
- 23.2 Function Recovery Time: the period of time, expressed in Service Hours, that expires between the time at which a Failure is reported to the Other Party and the time at which it has been resolved.
- 23.3 Preventive Maintenance: the adoption of measures by the Other Party to prevent Failures.

- 23.4 Response Time: the time within which (Personnel of) the Other Party is to adequately respond to a Failure report from Enexis and other requests for service provision from Enexis.
- 23.5 Service Levels: requirements included in the Agreement that relate to Maintenance and other agreed forms of service provision. For example, Response and Function Recovery Times.
- 23.6 Service Hours: hours that fall within the service period agreed on.
- 23.7 Failure: a technical problem that arises when using the Performance.

ARTICLE 24. MAINTENANCE OF PERFORMANCES ALREADY RENDERED PREVIOUSLY

Even if Enexis later agrees with the Other Party that the latter will be responsible for Maintenance of a Performance rendered previously for Enexis by the Other Party, these Special Provisions will apply.

ARTICLE 25. COMMENCEMENT DATE FOR MAINTENANCE

The Other Party will provide Maintenance as of the effective date of the Agreement or following Delivery or Acceptance.

ARTICLE 26. PLACE AND TIMES OF MAINTENANCE

- 26.1 The Other Party will carry out Maintenance in or from its own premises. The Other Party will only carry out Maintenance at the premises of Enexis, or at the premises of third parties engaged by Enexis, if reasonably necessary.
- 26.2 In principle, Maintenance that could disrupt the work process at Enexis will take place outside the working hours customary at Enexis.
- 26.3 If a disruption of the work process as referred to in article 25.2 is unavoidable, given the importance of remedying the Failure in question immediately, the Other Party will promptly notify Enexis of this fact before starting Maintenance.

ARTICLE 27. PROGRESS REPORT AND PROGRESS MEETING

- 27.1 The Other Party will report to Enexis about the progress of its work in the manner set out in the Agreement. When doing so, it will provide an insight into the progress and status of its work, the number of hours spent on the work in question and other aspects relevant for the performance of its work.
- 27.2 The Parties will organise meetings to discuss the progress of work as often as considered necessary by one of them.
- 27.3 The Other Party will ensure that the causes of Failures and the results of Maintenance are recorded and archived properly and also that Documentation is updated, if necessary.

ARTICLE 28. CORRECTIVE MAINTENANCE AND TEMPORARY SOLUTIONS

- 28.1 Maintenance will include Corrective Maintenance at the very least.

- 28.2 The Warranty set out in Article 6.6, being that the Other Party is able to maintain the Performance in accordance with these provisions for a period of at least five years after Acceptance, will apply in full to Corrective Maintenance, even if Enexis does not wish to proceed to buy New Versions or the latest models of a product.
- 28.3 The Other Party will only apply a Patch with the permission of Enexis. Except where the Parties make different agreements about the aforementioned in a specific case, the Other Party will replace a Patch with an Improved Version as soon as possible.

ARTICLE 29. PREVENTIVE MAINTENANCE

As part of Preventive Maintenance, the Other Party will inspect the Performance to ensure that it is working as it should do. It will do this on a regular basis, being once a year at the very least.

ARTICLE 30. REPORTING, SIGNING OFF AND PRIORITISING FAILURES

- 30.1 Enexis will report and sign-off Failures in the manner set out in the Agreement.
- 30.2 When reporting a Failure, Enexis will establish the priority level to be given to it in accordance with the provisions of the Maintenance Agreement.
- 30.3 The response of the Other Party to a report as referred to in article 29.1 .1 will always be geared towards resolving the Failure as soon as possible, whether or not in the form of a temporary solution. The provisions of Article 28.3 will apply to the aforementioned.

ARTICLE 31. SERVICE LEVEL ACHIEVEMENT

- 31.1 The Other Party will do its utmost to achieve Service Levels. The consequences of not doing so will be set out in the Agreement. The provisions of Article 11 will apply to the aforementioned. It will in any case be possible to dissolve the Agreement in the event of the repeated failure to achieve Service Levels.
- 31.2 In derogation from the provisions of Article 30.1, Function Recovery Times and Response Times will be deemed to be Final Deadlines, except where the Parties have made other, prior agreements in this respect.

ARTICLE 32. IMPROVED AND NEW VERSIONS

- 32.1 The Other Party will ensure that version policy is consistent. The point of departure in this respect is that Improved and New Versions will be made available promptly. With the above in mind, the Other Party will regularly assess the need to release Improved and New Versions and notify Enexis about the outcomes of its assessment as soon as possible.
- 32.2 Interim changes to Software as a result of Corrective Maintenance will form part of Improved and New Versions wherever possible.

- 32.3 When asked to do so, the Other Party will make a copy of the New Version or the Improved Version available to Enexis for test and evaluation purposes. Enexis will not be required to use New Versions.
- 32.4 If it has been agreed that the Other Party will install Software, this obligation will also extend to any New Versions or Improved Versions that Enexis wants to use.

Special Provisions about Software-as-a-Service (SaaS), Platform-as-a-Service (Paas) and Infrastructure-as-a-Service (IaaS)

The provisions of this special part of the Enexis Additional Conditions for ICT will always apply in conjunction with the General Provisions (article 1-14) of the Enexis Additional Conditions for ICT and any other Special Provisions applicable if the Other Party provides Services in the field of Software-as-a-Service ("SaaS"), Platform-as-a-Service (Paas) and Infrastructure-as-a-Service (IaaS).

ARTICLE 33. ADDITIONAL DEFINITIONS SAAS, PAAS, IAAS

In this special part of the Enexis Supplementary Conditions for ICT, the following capitalised terms will be used in addition to those set out in article 1:

- 33.1 Availability: the period of time for which the Software is available to Enexis in a calendar month (a c), expressed as a percentage.
- 33.2 Planned Non-Availability: the periods during Office Hours when the Software may not be available, with the permission of Enexis.
- 33.3 IaaS Service Provision: service provision on the basis of which the Other Party makes available and maintains the Availability of hardware services, such as server and storage capacity, processing power and infrastructure and technical management of the aforementioned, with effect from the start date.
- 33.4 Office Hours: Monday to Friday inclusive, between 08.30 hours and 17.30 hours, with the exception of national public holidays, except where the Parties have agreed otherwise.
- 33.5 Network Configuration: hardware, interlinking telecommunications connections and related operating systems.
- 33.6 PaaS Service Provision: service provision on the basis of which the Other Party makes and keeps a platform available on which Enexis will be able to develop, run and manage applications with effect from the start date.
- 33.7 SaaS Service Provision: service provision on the basis of which the Other Party makes and keeps the Software available via a telecommunications connection with effect from the start date for use of the Software by Enexis.
- 33.8 Specifications: a description of the functionality and running of the Software in conjunction with the Network Configuration.

ARTICLE 34. SERVICE PROVISION

If applicable, the Other Party will grant Enexis a Right of Use to the Software, with due observance of the Conditions. The Other Party will guarantee that the Software functions in conjunction with the Network

Configuration, in accordance with the Specifications. The Other Party will make and keep the Software available for use on the Enexis Network Configuration via a telecommunications connection.

ARTICLE 35. AVAILABILITY

- 35.1 The Other Party will guarantee the Availability of the Software as set out in the Agreement.
- 35.2 Work to be done as part of Planned Non-Availability will not be carried out in Office Hours. The Other Party will ask Enexis for permission for Planned Non-Availability as soon as possible, but always at least 72 hours prior to the Planned Non-Availability.
- 35.3 The Parties herewith agree that, should a conflict arise between the parties, execution of the Agreement will not be discontinued, except where the nature of the dispute is such that this cannot reasonably be required of Enexis or the Other Party.

ARTICLE 36. INCIDENT RESOLUTION

- 36.1 The Other Party will provide a helpdesk that functions as an integral contact point for all Incidents relating to use of the Software. A coordinator will report Incidents to the helpdesk of the Other Party on behalf of Enexis, except where the Parties have made other, prior agreements in this respect.
- 36.2 If the coordinator and the helpdesk have a difference of opinion on the nature and severity of the Incident, the highest priority-category for both opinions will be taken as the starting point for resolution of the Incident, until either the Incident has been resolved or the parties agree, at an earlier date, that a lower priority applies to the Incident in question.
- 36.3 In the Enexis organisation, the coordinator will be the contact person to be approached with any questions and reports about Incidents. The Other Party will also contact the coordinator to give Enexis feedback about the action taken further to the reports received. The coordinator may report Incidents to the helpdesk in place with the Other Party by telephone or e-mail.
- 36.4 The Other Party will remedy incidents resulting from a Defect free of charge, except where the Incident in question is attributable to Enexis.

ARTICLE 37. BACK-UP AND DATA RECOVERY

- 37.1 The Other Party will ensure that regular back-ups are made.
- 37.2 The Other Party will be required to have a backup centre.
- 37.3 Two copies of back-ups will be created. Each day, one of these copies will be retained at the backup centre, or measures will otherwise be put in place to safeguard the proper continuation of service provision.
- 37.4 The Other Party will ensure adequate physical protection of the backups, preventing unauthorized physical access to the backup media and preventing unauthorized logical access to the software and data on the backup media.

- 37.5 If circumstances arise in which the Software and data are no longer available, the Other Party will ensure that service provision continues unchanged.

ARTICLE 38. EXIT PROCEDURE

- 38.1 Where the continuity of business operations at Enexis is concerned, the Parties agree that if the Agreement expires or is terminated, the Parties will enter into consultation with each other about the continuation of service provision by another party/other parties once it becomes known that the Agreement will expire or be terminated.
- 38.2 The Other Party will follow the instructions issued by Enexis for the orderly transfer of Services to Enexis or a new or other (Other) Party. Should this transfer require more time than the notice period agreed on as a result of unforeseen circumstances, the Other Party will continue to provide the Services for a period of time to be agreed on (after the expiry of the notice period for the Agreement) at the prices charged by the Other Party at that time, should this be necessary for an orderly transition in the opinion of Enexis.