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Committee	CEN/TC 351 Construction products: Assessment of release of dangerous substances

## Request for tender regarding the drafting of an EN on dose assessment of emitted gamma radiation (CEN TC 351 WG 3)

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- For information
  - For reply, if any, before: **2019-03-01**
  - For approval before: (no reply will be considered as an abstention)
  - For consideration during the next meeting
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### Remarks

For the drafting of an European standard on the dose assessment of gamma radiation emitted from construction products, the CEN/TC 351/WG 3 Evaluation Committee has prepared this request for tender. This item is covered by the specific agreement for phase IV of the CEN/TC 351 work (CEN/2017-12, item 2017-12.09; see N 0735).

### Replies

Replies to this tender may be provided by one organization or one organization using subcontracts.

Offers are welcomed by the CEN/TC 351 secretariat by **1 March 2019**.

### Annexes to this document

Annex A to this document is a description of the work, including objective and content and the expected results and deliverables.

Annex B to this document describes the procedure of assessment of the offers.

Annex C contains the title and scope, as well as the table of content, of the already published CEN/TR 17113:2017 *Construction products: Assessment of release of dangerous substances – Radiation from construction products – Dose assessment of emitted gamma radiation*.

Annex D contains the General Purchase Conditions for Services to NEN.

### Circulation

This request is circulated in both the plenary CEN/TC 351 and its WG 3, and published on the websites of CEN and NEN.

## **Annex A: Drafting of an EN on dose assessment of emitted gamma radiation**

### **1. Introduction**

CEN/TC 351 'Construction products: Assessment of release of dangerous substances' was established in 2005 to execute the Mandate 366<sup>1</sup>.

Directive 2013/59/Euratom addresses the issue of natural radioactivity of building materials. It defines a reference level of 1 mSv/year (in addition to the natural background) which applies to indoor external exposure to gamma radiation emitted by building materials. Emission of dangerous radiation is also one of the factors cited in Annex I of the Construction Products Regulations (CPR; EU/305/2011) impacting the basic requirements for construction works regarding hygiene, health and the environment.

Directive 2013/59/Euratom had to be transposed in the European national legislations before February 2018. EU countries should thus have defined requirements regarding the external exposure from building materials. Consequently, there is a need to harmonize the methods used to assess the dose in order to compare it with the reference level.

The European Commission has given a mandate to CEN/TC 351 (working group 3 "Radiation") to develop an EN on dose modelling of emitted gamma radiation.

Previously, Task Group 32 of CEN/TC 351/WG 3 has developed a technical report on dose assessment of emitted gamma radiation from construction products. This technical report has been approved by CEN on 28 May 2017 and was published as CEN/TR 17113 in October 2017.

### **2. Objective and content of the work**

The objective of the call is to prepare a draft European standard (EN) on the basis of the published CEN/TR 17113:2017.

The EN shall

- describe the method to assess the external dose from a building material taking into account its intended use;
- in its final version be user-friendly;
- state clearly what are the needed input parameters for the assessment;
- focus on the assessment method and avoid any regulatory remarks;
- meet all formal requirements of CEN.

The successful applicant will need to

- address all left over technical/non-editorial comments which had been submitted during the approval procedure of the technical report;

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1 Mandate 366: Horizontal complement to the mandates to CEN/CENELEC concerning the execution of standardisation work for the development of horizontal standardised assessment methods for harmonised approaches relating to dangerous substances under the construction products directive (CPD) – Emission to indoor air, soil, surface water and ground water. Available from [www.centc351.org](http://www.centc351.org).

- clarify, check and validate the basic assumptions of the technical report;
- interact with TG 32 and incorporate comments and suggestions of TG 32 in the proposed EN;
- interact with the HERCA working group on natural radiation sources;
- address comments submitted during the CEN enquiry procedure on the draft EN;
- provide a finalized version of the EN.

### 3. Expected results and deliverables

The work includes the following tasks (including a time schedule):

0. Assignment of the selected applicant as Rapporteur	1 April 2019
1. To get familiar with the content of the technical report CEN/TR 17113:2017. <i>To help the Rapporteur with this, a meeting of the CEN/TC 351/TG 32 may be organised to discuss possible questions and remarks of the rapporteur;</i>	June 2019 (date and venue to be decided)
2. A first draft of the EN shall be sent after 6 months to TG 32 for comments;	1 October 2019
3. The comments will be discussed at a TG 32 meeting in presence of the Rapporteur;	November 2019 (date and venue to be decided)
4. Prepare an updated draft, taking into account the comments from the TG 32 members; This draft will be sent to CEN for submission to the CEN enquiry procedure (12 weeks)	1 January 2020 (Enquiry envisaged for April – July 2020)
5. Address all comments received during the CEN Enquiry procedure and discuss all proposals for elaboration during a meeting with the experts of CEN/TC 351/TG 32;	September 2020 (date and venue to be decided)
6. Implement the agreed proposals in the draft EN within 1 month after discussion;	31 October 2020
7. Check the edited version before it is published for formal vote;	early 2021
8. Check the final text before publication.	mid 2021

## Annex B: Assessment procedure

### 1. Selection Criteria for the tendering process

The tender shall show the experience and activities of the applicant in the field of radiation of building material and standardization. The criteria used to assess the experience of the applicants are the following:

#### 1) Documented experience

(maximum 45 points):

- i. Is the applicant a proven expert in radiation protection? Does the applicant have publications on the subject of radiation protection regulations in peer reviewed journals and conference proceedings?
- ii. Is the applicant acquainted with the CPR and other standards or regulations related to construction products; is he/she familiar with the field of CEN/TC 351?
- iii. Is the applicant acquainted with the Euratom-BSS for radiation protection?
- iv. Has the applicant a proven experience with the development of technical standards for national or international standardization organizations, especially related to radiation protection?
- v. Has the applicant experience in drafting official documents in English?

#### 2) Organisation – demonstration of ability and understanding of the project

(maximum 35 points):

- proof of stable and sufficient sources of finance to ensure the continuity of the organisation throughout the project;
- description of organisation structure to ensure the continuity of the experience throughout the project;
- submission of curriculum vitae of every person to be performing work in connection with this project;
- delineation of organisation of this project;
- proof of an established quality system.

#### 3) Quotation price

Only offers that pass the selection criteria of scoring minimum 30 points under 1) and 20 points under 2) will be further evaluated.

(2) The criteria shall be assessed on the basis of the documents supplied by the tender providers. The selection committee reserves the right to approach bidders' previous customers for reference. The sum of points acquired under 1) and 2) is divided by the number of points scored for the quotation price for the lot under 3). The offer with the highest ratio will be selected. However, in case the ratio of  $\{1) + 2)\}/3)$  of the two best offers differs less than 10 %, the evaluation committee may decide to choose the offer with the best value (i.e. the highest sum of 1) + 2)).

(3) The selected offer is sent to the EC and to CEN/TC 351/WG 3 for confirmation. After confirmation, the work is assigned.

## 2 Replies to tender

(1) **Tenders** can be sent (by mail or e-mail) to the secretary of CEN/TC 351 as soon as possible, at **the latest by 1 March 2019**. Late delivery will lead to exclusion of the applicant from the award procedure. The tender shall contain a specified breakdown of tasks, costs and travel expenses and a planning for the execution of the tasks.

(2) If necessary, additional information (including CEN/TR 17113:2017) can be obtained from the secretary of CEN/TC 351, Ms Annemieke Venemans (Tel.: +31 15 269 02 80, e-mail [annemieke.venemans@nen.nl](mailto:annemieke.venemans@nen.nl)).

(3) NEN as holder of the secretariat of CEN/TC 351 is responsible for execution of the order vouchers for mandate M/366. In order to control the process, project management is held by NEN. The secretariat of CEN/TC 351/WG 3 “Radiation form construction products” will be responsible for monitoring the technical progress.

(4) This means that contract and financial matters as well as monitoring of the general progress of the project and the communication with CCMC and CEN/TC 351 are under responsibility of NEN. The technical work is conducted by a consortium or individual subcontracted parties appointed by the tender procedure specified in the present document.

(5) The General Purchase Conditions for Services to NEN as given in Annex D apply.

## Annex C: CEN/TR 17113:2017

**Title** Construction products – Assessment of release of dangerous substances – Radiation from construction products – Dose assessment of emitted gamma radiation

**Scope** The aim of this Technical Report is to propose a methodology to determine indoor gamma dose from building materials and to help classify such a product as required in the Construction Products Regulation [7]. This first technical approach could be a precursor for the development of a harmonized European Standard based on this methodology.

**NOTE 1** In this Technical Report, doses from radon and thoron exhalation are excluded. However, in 3.3, information is given on how radon exhalation is dealt with in (EU)2013/59/Euratom, the Basic Safety Standards Directive (2013/59/EURATOM) [1].

**NOTE 2** Compliance with national exemption levels for NORM nuclides remains.

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## General Purchase Terms and Conditions for Services

### Definitions

- 1.1** Services: all work, activities and/or actions to be executed by the Contractor on the basis of the Agreement for the benefit of the Netherlands Standardisation Institute (Nederlands Normalisatie-instituut, NEN);
- 1.2** Auxiliary materials: all items that are made available by the Netherlands Standardisation Institute to the Contractor for the purpose of the provision of the Services, including – but not limited to – designs, plates, films, drawings, photos, stamps and other image and sound and information carriers;
- 1.3** IP rights: all intellectual property rights including – but not limited to – copyrights, trademark rights and database rights;
- 1.4** Purchase Order: the assignment from the Netherlands Standardisation Institute to the Contractor for the provision of Services;
- 1.5** Purchase Terms and Conditions: these general terms and conditions of the Netherlands Standardisation Institute, which apply to and form part of the Agreement;
- 1.6** Purchase Price: the payment owed by the Netherlands Standardisation Institute to the Contractor for the Services on the basis of the Agreement;
- 1.7** The Netherlands Standardisation Institute: The Foundation Stichting Nederlands Normalisatie-Instituut (NEN) and the Foundation Stichting Koninklijk Nederlands Elektrotechnisch Comité (NEC), with its registered office and principal place of business in (2623 AX) Delft, at Vlinderweg no. 6;
- 1.8** Contractor: the (potential) other party of the Netherlands Standardisation Institute;
- 1.9** Agreement: every agreement concerning the provisions of Services between the Netherlands Standardisation Institute and the Contractor including any amendment thereof and addendum thereto. The Agreement consists in any event of these Purchase Terms and Conditions;
- 1.10** Party: The Netherlands Standardisation Institute or the Contractor, depending on the context;
- 1.11** Personnel: the staff members or auxiliary persons to be engaged by the Contractor for the performance of the Agreement.

### Applicability

- 2.1** These Purchase Terms and Conditions; apply to and form an integral part of all Agreements, all offers and tenders issued by the Contractor and apply to all order confirmations from Parties;
- 2.2** The applicability of the (general) terms and conditions of sale or other terms and conditions applied by the Contractor is expressly excluded unless expressly agreed otherwise.

### Coming into effect of the Agreement

- 3.1** An Agreement will only come into effect by acceptance in writing by the Netherlands Standardisation Institute of an offer or tender from the Contractor or by the signing of an Agreement by both Parties;
- 3.2** The Contractor cannot derive any right whatsoever from an Agreement to acquire a subsequent assignment;
- 3.3** In the event of differences between the Purchase Order and the offer or tender, the contents of the Purchase Order will apply as the contents of the Agreement;

- 3.4** In the event of conflict between the Dutch text of the Purchase Terms and Conditions and the translations thereof the Dutch text will prevail.

### Amendment of the Agreement

- 4.1** Amendments of or addendums to the Agreement will only be binding insofar as these are expressly agreed in writing between Parties by persons who are authorised for this purpose;
- 4.2** The Contractor will be obliged to render its cooperation in any amendments to the Contract, including amendments to the extent or nature of the Services. NEN will observe the requirements of reasonableness and fairness when exercising this right;
- 4.3** The Contractor will promptly inform the Netherlands Standardisation Institute in writing with statement of reasons of the consequences of the intended amendment with regard to the price, quality, usability, additional costs, delivery periods and guarantees for the Services to be provided by the Contractor;
- 4.4** If the amendment results in an increase of the Purchase Price, the Netherlands Standardisation Institute must provide approval in writing for this, in the absence of which the Contractor cannot charge the increase of the Purchase Price;
- 4.5** If the consequences of the amendment intended by the Contractor are unreasonable in the opinion of the Netherlands Standardisation Institute, the Netherlands Standardisation Institute will be entitled to terminate the Agreement.

### Guarantees from the Contractor

- 5.1** The Contractor guarantees that the Services will fulfil the requirements recorded in the Agreement and the norms and standards that are accepted in the trade, industry or provision of service concerned;
- 5.2** The Contractor guarantees that the Services will be provided by skilful Personnel in a competent manner with due regard to all applicable requirements that are set out by law and/or other authorities with regard to the regulations provided and will at least meet the quality that can be expected of an expert colleague acting properly and carefully, under similar circumstances, during the usual manner of exercising one's occupation;
- 5.3** The Contractor guarantees that the Services will be suitable for the objective made apparent to the Contractor and that the results of the Services will meet the reasonable expectations of the Netherlands Standardisation Institute with regard to the characteristics, quality and reliability;
- 5.4** For the fulfilment of the Contractor's guarantee obligations the Contractor will be obliged during the first year after the delivery to remedy shortcomings as a result of defective Services free of charge within a reasonable period after the flagging up thereof. The remedying will not affect any other rights or claims that the Netherlands Standardisation Institute has on the basis of the Agreement and the law.

### Location, period and time of the Services

- 6** The Services will be provided at and in the time(s) and location(s) specified in the Agreement, in the absence of which the Contractor will be in default without the requirement of notice of default.



## General Purchase Terms and Conditions for Services

### Personnel and third parties

**7.1** The Contractor will not be entitled to replace persons who are charged with the provision of the Services without prior permission in writing from the Netherlands Standardisation Institute. The Netherlands Standardisation Institute will not withhold this permission on unreasonable grounds. The Netherlands Standardisation Institute can attach further conditions to this permission;

**7.2** If the Netherlands Standardisation Institute requires replacement of persons who are charged with the provision of the Services, because the Netherlands Standardisation Institute believes that this is in the interest of the performance of the Agreement, the Contractor will accede to this, without any change of the Purchase Price, unless this is in conflict with reasonableness and fairness;

**7.3** In the event of replacement of persons who are charged with the provision of the Services, the Contractor will make persons available who will be at least equivalent with regard to training, experience and expertise to the person to be replaced. The rates that were applicable to the original persons will not be increased after the replacement;

**7.4** During the performance of the Agreement, the Contractor can, at the Contractor's personal expense and risk, outsource the obligations under the Agreement, wholly or in part, to third parties if and after the Contractor has acquired permission in writing for this purpose from the Netherlands Standardisation Institute. The Netherlands Standardisation Institute can attach further conditions to this permission;

**7.5** The permission provided pursuant to this article will not affect the personal responsibility and liability on the part of the Contractor for the fulfilment of the obligations under the Agreement and his other statutory obligations, including the obligations on the basis of tax legislation and social security legislation.

### Auxiliary materials, goods, data

**8.1** The Netherlands Standardisation Institute can make Auxiliary Materials available to the Contractor on loan for use. The Auxiliary Materials and the goods made or purchased by the Contractor for and/or on the instructions of and/or at the expense of the Netherlands Standardisation Institute remain or will remain the property of the Netherlands Standardisation Institute;

**8.2** The Contractor will maintain the Auxiliary Materials and the goods in a good state of repair and will insure these, as relevant, against fire and theft, for as long as these are under the control of the Contractor;

**8.3** The Contractor is not permitted to use the Auxiliary Materials and/or the goods and/or the data made available by the Netherlands Standardisation Institute for a purpose other than for which these were provided. The Contractor is also not permitted to make the Auxiliary Materials and the goods and the data made available by the Netherlands Standardisation Institute available to third parties without permission in writing from the Netherlands Standardisation Institute;

**8.4** The use of the Auxiliary Materials and/or the goods and/or the data made available by the Netherlands Standardisation Institute will be entirely at the Contractor's expense and risk;

**8.5** The Contractor will make any Auxiliary Materials, goods and all data (computer files etc.) that the Contractor

has the possession of in the context of the performance of the Agreement available to the Netherlands Standardisation Institute, within 10 (in words: ten) working days after the completion of the assignment or as much earlier as will be reasonable, without damage, subject to an immediately due and payable financial penalty of 500 (in words: five hundred) Euro (€) in the event of exceeding of the period or damage to the Auxiliary Materials, without prejudice to the right to claim in addition to the financial penalty the actual damage suffered including the loss due to delay to be suffered by the Netherlands Standardisation Institute. The Netherlands Standardisation Institute will be entitled to deduct this financial penalty from the Purchase Price.

### Purchase Price, contract extras and contract reductions

**9.1** The Netherlands Standardisation Institute will pay to the Contractor the costs and hours incurred and spent by the Contractor unless otherwise agreed in the Agreement. Insofar as no fixed price has been agreed, the Contractor cannot charge more than 110 (in words: one hundred and ten) % of the costs budgeted or estimated by the Contractor for or during the Agreement, unless there are contract extras that are eligible for payment on the basis of the Agreement;

**9.2** If due to changes the Services become demonstrably more onerous or are extended, there will be contract extras that will be eligible for payment. The additional work or changed insights that the Contractor ought to have foreseen at the concluding of the Agreement will not be regarded as contract extras. If a Party believes that there are contract extras, this Party must inform the other Party of this as soon as possible;

**9.3** The provisions of the Agreement, including the rates and any discounts apply with regard to the contract extras;

**9.4** If due to a change the Services become demonstrably reduced, there will be contract reductions with due regard to which the Contractor will in all reasonableness adjust the Purchase Price, regardless of whether or not there is a fixed Purchase Price. If a Party believes that there are contract reductions, this Party must inform the other Party of this as soon as possible in writing.

### Invoicing and payment

**10.1** The Contractor will invoice the Netherlands Standardisation Institute for the provided Services at the agreed Purchase Price. The Contractor will send the invoices to the Netherlands Standardisation Institute with statement of the Purchase Order Number (PO number) of the Netherlands Standardisation Institute and, if applicable, together with a copy of the acceptance and other data required by the Netherlands Standardisation Institute, including – but not limited to – time recording and other evidence of the costs incurred;

**10.2** Invoicing and payment will take place in Euro (€);

**10.3** The Netherlands Standardisation Institute will pay the Purchase Price for the result of the provided Services within 30 (in words: thirty) days after receipt of the invoice. The payment of the invoice by the Netherlands Standardisation Institute does not entail any acknowledgement of the result of the provided Services meeting the guarantees given in accordance with article 5;

## General Purchase Terms and Conditions for Services

**10.4** Any exceeding of a payment term by the Netherlands Standardisation Institute or non-payment of an invoice on the basis of suspected substantive inaccuracy thereof, or in the event of faultiness of the invoiced Services, will not give the Contractor the right to suspend or terminate the Delivery and/or work;

**10.5** The Netherlands Standardisation Institute will be entitled to offset the owed invoice amounts against amounts that are owed by the Contractor to the Netherlands Standardisation Institute.

### Failure in the performance

**11.1** If the provided Services do not meet the guarantee referred to in article 5, the Netherlands Standardisation Institute can require that the Contractor provides the Services with due regard to the provisions of the article referred to. In that event the costs will be at the Contractor's expense;

**11.2** If, after the Contractor has received a demand in writing from the Netherlands Standardisation Institute for this purpose, the Contractor does not comply with a demand as referred to in the previous subclause within the period set out therein, or if a final deadline has expired, the Netherlands Standardisation Institute will be entitled, without prior judicial intervention, to have the Services provided by a third party at the Contractor's expense and account, and will be entitled to terminate the Agreement in accordance with the provisions of article 14 and as a result thereof to credit (the part of) the Purchase Price that has already been paid for the Services concerned;

**11.3** The provisions of subclause 1 and subclause 2 of this article will not affect the other rights and claims that the Netherlands Standardisation Institute can derive from a failure.

### Liability

**12.1** The Contractor will be liable towards the Netherlands Standardisation Institute for all damage suffered by the Netherlands Standardisation Institute ensuing from a failure in the execution of the assignment by the Contractor and/or the Contractor's Personnel and/or the third parties engaged by the Contractor, as well as for all damage that must be at the Contractor's expense on the basis of the Contractor's fault, statutory provisions, or generally prevailing opinion. This liability on the part of the Contractor also extends towards natural persons who work for or at the Netherlands Standardisation Institute and towards legal entities that are attached to the Netherlands Standardisation Institute.

**12.2** The liability on the part of the Contractor per assignment that is executed under these General Purchasing Terms and Conditions is limited to an amount of:

- a) €150,000 for assignments the value of which is less than or equal to € 50,000;
- b) €300,000 for assignments the value of which is more than € 50,000, but less than or equal to €100,000;
- c) €600,000 for assignments the value of which is more than €100,000, but less than or equal to €300,000;
- d) €1,000,000 for assignments the value of which is more than €300,000, but less than or equal to €1,000,000;

e) the tender amount if this tender amount is more than €1,000,000.

**12.3** The Contractor indemnifies the Netherlands Standardisation Institute against claims by third parties – including Personnel of the Contractor and/or personnel hired by the Contractor and/or third parties engaged by the Contractor – against the Netherlands Standardisation Institute, related to damage ensuing from a failure in the execution of the assignment by the Contractor and/or the Contractor's Personnel and/or third parties engaged by the Contractor, as well as all damage that must be at the Contractor's expense on the basis of fault on the part of the Contractor, statutory provisions, or generally prevailing opinion.

**12.4** Strike action or industrial action by the Contractor's Personnel or by third parties engaged by the Contractor, or the Personnel of these third parties, will not result in force majeure but will apply as an attributable failure in the execution of the assignment by the Contractor.

### Force majeure

**13.1** In the event of temporary force majeure the Contractor will inform the Netherlands Standardisation Institute of this in writing, with statement of the cause of the force majeure, immediately after the circumstance that resulted in force majeure has occurred. In that case the Netherlands Standardisation Institute will be entitled to choose between:

- a) providing postponement to the Contractor for the fulfilment of the Contractor's obligations on the basis of the Agreement during a reasonable period with a maximum of four weeks. If, after the end of this period, the Contractor is unable to still fulfil the obligations under the Agreement, the Netherlands Standardisation Institute will be entitled to terminate the Agreement with immediate effect and without the intervention of the courts, without being obliged to pay compensation of damage and any costs to the Contractor; or
- b) termination of the Agreement with immediate effect, without the intervention of the courts, without being obliged to pay compensation of damage and any costs to the Contractor;

**13.2** In the event of permanent force majeure on the part of the Contractor, the Contractor will immediately inform the Netherlands Standardisation Institute of this, and the Netherlands Standardisation Institute will be entitled to terminate the Agreement with immediate effect and without the intervention of the courts, without being obliged to pay compensation of damage and any costs to the Contractor;

**13.3** Force majeure in any event does not include: lack of Personnel, strike actions, sickness or unsuitability of Personnel, personnel conflict, shortage of raw materials, transport difficulties, delayed delivery, or unsuitability of the required goods, the impossibility of acquiring a permit, or the delayed acquiring of a permit, liquidity problems or solvency position on the part of the Contractor, or failure on the part of the third parties engaged by the Contractor.

### Termination

**14.1** Without prejudice to the other provisions of the Agreement, the Netherlands Standardisation Institute can, without any demand or notice of default, and without being obliged to pay any compensation to the Contractor,

## General Purchase Terms and Conditions for Services

terminate the Agreement, wholly or in part, by means of a registered letter, without the intervention of the courts, or suspend its obligations under the Agreement or any other Agreement with the Contractor, if the Contractor is in default, or as the case may be performance is permanently or temporarily impossible. If the Netherlands Standardisation Institute suspends its obligations on the basis of the provisions of the previous sentence, this will not result for the Contractor in any ground for instituting any claim against the Netherlands Standardisation Institute;

**14.2** In the event of force majeure the Netherlands Standardisation Institute will be entitled to terminate the Agreement in accordance with the provisions of article 13;

**14.3** The Netherlands Standardisation Institute can, without any demand or notice of default, terminate the Agreement, wholly or in part, with immediate effect and without the intervention of the courts, by means of a registered letter, without being obliged to pay any compensation to the Contractor, if a court decision forbids the Netherlands Standardisation Institute to perform the Agreement, the Contractor applies for (provisional) moratorium, the Contractor applies for bankruptcy, or is declared bankrupt, the Contractor's enterprise goes into liquidation, the Contractor ceases the enterprise, attachment is levied on a considerable part of the Contractor's assets, or as the case may be the Contractor must otherwise be deemed to be no longer capable of fulfilling the obligations under the Agreement, in the event of bribery or conflict of interest, or in the event that the Contractor enters into a merger or splitoff;

**14.4** If the Agreement is terminated, the Contractor will refund the Netherlands Standardisation Institute for the undue payments already made by the Netherlands Standardisation Institute to the Contractor, plus the statutory interest over the paid amount from the day on which this was paid. If the Agreement is partially terminated, the repayment obligation will only exist insofar as the payments relate to the terminated part, unless the provided Services are no longer effective. In that case the Contractor will repay the Purchase Price reduced by the amount for which the Netherlands Standardisation Institute benefited from the provided Services.

### Pending delay

**15.1** If there is pending delay in the progress of the Services to be provided, the Contractor will immediately inform the Netherlands Standardisation Institute of this in writing and by telephone with statement of the cause and the consequences thereof. The Contractor will also take measures for the prevention of further delay;

**15.2** Within a reasonable period after receipt of the notification referred to pursuant to subclause 1, the Netherlands Standardisation Institute will notify the Contractor whether or not it agrees to the proposed measures and the consequences referred to. Concurrence will not entail that the Netherlands Standardisation Institute acknowledges the cause of the pending delay and will not affect the other rights or claims of the Netherlands Standardisation Institute on the basis of the Agreement and the law.

### Insurance

**16.1** The Contractor has taken out insurance in the usual manner and that is suitable according to generally accepted standards and will maintain this insurance as such for the risks (risks ensuing from professional errors), corporate liability (including liability for injury caused to persons or damage to property that is owned by the Netherlands Standardisation Institute) and loss of and damage to the machinery and equipment (including due to fire and theft), including the property that is owned by the Netherlands Standardisation Institute;

**16.2** Upon the request from the Netherlands Standardisation Institute, the Contractor will promptly submit (a certified copy of) the policy documents and the evidence of the premium payment concerning the insurances referred to in the first subclause, or as the case may be a statement from the insurer concerning the existence of these insurances and the payment of the premium. The Contractor will not terminate the insurance contracts, or as the case may be the terms and conditions under which these have been entered into, without prior permission in writing from the Netherlands Standardisation Institute. The insurance premiums owed by the Contractor are deemed to have been included in the agreed prices and rates.

### IP rights

**17.1** The IP rights that can be exercised – wherever and whenever – with regard to the results of the Services are vested in the Netherlands Standardisation Institute. These IP rights are transferred to the Netherlands Standardisation Institute by the Contractor on the basis of the Agreement at the time of the arising thereof, which transfer is hereby already accepted by the Netherlands Standardisation Institute;

**17.2** Insofar as the provided Services (also) come into effect by making use of IP rights that are already in existence, but that do not accrue to the Netherlands Standardisation Institute, the Contractor provides the Netherlands Standardisation Institute with a non-exclusive and non-terminable right of use with an indefinite duration. In that event the Contractor guarantees to be entitled to providing the aforesaid right of use;

**17.3** Insofar as at any time a further deed could be required for the transfer of the rights referred to in article 17 subclause 1 and article 17 subclause 2, the Contractor hereby already irrevocably authorises the Netherlands Standardisation Institute to draw up such a deed and also to sign this on behalf of the Contractor, without prejudice to the obligation of the Contractor to provide upon the first request from the Netherlands Standardisation Institute cooperation to the transfer of rights, without being able to set out conditions thereby;

**17.4** If there is a difference of opinion between Parties regarding the intellectual property rights referred to in article 17 subclause 1 and article 17 subclause 2, related to the Services, one will assume that these rights are vested in the Netherlands Standardisation Institute, with the exception of proof to the contrary from the Contractor. In all events the Netherlands Standardisation Institute will be permitted to continue to make use of the outcome of the results intended in the Agreement;

**17.5** The Contractor hereby waives towards the Netherlands Standardisation Institute all 'personality rights' accruing to the Contractor, as referred to in the Copyright

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Act, to the extent that such a waiver is permitted by the applicable regulations. The Contractor waives as authorised for this purpose, also on behalf of the Personnel and any third parties involved on the part of the Contractor, all personality rights accruing to these staff members and third parties, to the extent that such a waiver is permitted by the applicable regulations;

**17.6** The Contractor indemnifies the Netherlands Standardisation Institute against claims by third parties related to (alleged) infringement of the IP rights of these third parties, including the Personnel, comparable claims with regard to knowledge, including unauthorised notifications and suchlike. The Contractor undertakes to take all measures at the Contractor's expense, which measures can contribute to the prevention of business interruption and to the limitation of extra costs to be incurred and/or the damage to be suffered as a result of the infringements referred to;

**17.7** Without prejudice to the provisions regarding this matter, the Netherlands Standardisation Institute can, if third parties hold the Netherlands Standardisation Institute liable related to infringement of IP rights, terminate the Agreement wholly or in part in writing, without the intervention of the courts, without prejudice to its further rights towards the Contractor, including – but not limited to – any right to compensation. The Netherlands Standardisation Institute will only exercise its right to termination after consultation with the Contractor;

**17.8** If, with regard to the results of the delivered Services, other IP rights arise, these can never be invoked against the Netherlands Standardisation Institute and the Contractor provides related thereto the Netherlands Standardisation Institute, without financial consideration, with a non-exclusive and non-terminable right of use for an indefinite duration for the purpose of the objectives intended in the Agreement.

### Confidentiality

**18.1** Each Party to the Agreement will keep all information concerning inter alia the business operations of the other Party/Parties, which reasonably must be regarded as confidential, as well as the contents of the Agreement, secret. Parties will only use the information for the performance of the Agreement and will limit access to this information to the persons who must have knowledge thereof for this purpose. Parties guarantee that these persons will be obliged to maintain the confidentiality of the confidential information by means of an employment contract and/or non-disclosure agreement;

**18.2** Confidential information does not include information that was already public at the time that it came to the knowledge of the receiving Party, or that became public afterwards, or that the receiving Party has acquired from a third party without a duty of confidentiality being imposed thereby, or if this third party was obliged for this purpose.

### Processing personal data

**19.1** If the Contractor processes Personal Data during the performance of the Agreement, the Contractor will process the Personal Data in a proper and careful manner and will comply with the statutory regulations ensuing from the Personal Data Protection Act and from the General Data Protection Regulation.

**19.2** The Contractor will inform the Client within four working days regarding every request and/or every complaint made by the Supervisory Authority or the Data Subject with regard to the Personal Data that is processed during the performance of the Agreement.

**19.3** The Contractor will provide cooperation to the Client if the Data Subject submits a request for exercising his or her rights such as, but not limited to, the right of access, improvement, removal, the right to object to the processing of the Personal Data, and a request for the portability of the Personal Data.

**19.4** The Contractor will inform the Client within four working days regarding every court order, summons, statutory obligation or another obligation of sharing Personal Data with third parties.

**19.5** The Contractor will inform the Client regarding the discovery of a potential data leak within 24 hours after the discovery thereof. Thereupon the Contractor will keep the Client informed of new developments related to the data leak.

**19.6** The Contractor will provide the following information in the event of a data leak:

- a) a detailed description of the data leak;
- b) the type/kind of Personal Data involved in the data leak;
- c) the number of persons whose Personal Data is involved in the data leak;
- d) the identity of the persons involved in the data leak;
- e) the measures taken for the limitation of the negative consequences for the Data Subjects and for remedying the data leak;
- f) the cause of the data leak;
- g) the duration of the data leak and the time of the occurrence thereof.

**19.7** Any costs that must be incurred for solving the data leak, will be at the expense of the party that incurs the costs, unless the data leak has occurred due to the non-compliance by the Contractor with the Agreement, in which case the costs will be at the Contractor's expense. In addition, the Client retains the option to use other remedies at law.

**19.8** Communication regarding the data leak will always take place in consultation.

**19.9** If the Agreement between the Contractor and the Client terminates, the Contractor will return the Personal Data that the Contractor has processed during the performance of the Agreement to the Client and/or will destroy it.

### Publications or advertisements

**20** The Contractor will not implicitly or expressly mention the (providing of) the assignment in publications (including press releases) or advertisements and will not use the name of the Netherlands Standardisation Institute other than after permission in writing from the Netherlands Standardisation Institute.

### Employees

**21** During the term of each Agreement and during one year thereafter, Parties will not employ any employees of the other Party, which employees are involved in the performance of this Agreement, without prior permission in writing from the other Party.



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### Transfer of rights and obligations under the Agreement

**22** Parties are not permitted to transfer the rights and obligations ensuing from the Agreement to a third party without permission in writing.

### Null and void and voided provisions

**23** If one or more provisions of the Purchase Terms and Conditions or the Agreement appear to be null and void or are voided by the court, the other provisions of the Purchase Terms and Conditions and the Agreement will continue to have legal effect. Parties will conduct consultation regarding the null and void or voided provisions in order to reach a replacement arrangement. The replacement arrangement will not affect the purpose and the meaning and effect of the Purchase Terms and Conditions or the Agreement.

### Continuous provisions

**24** The provisions that are by their nature intended to continue also after the end of the Agreement will retain their effect after the end thereof. The guarantee (article 5), liability (article 12), IP rights (article 17), confidentiality (article 18), employees (article 21), applicable law and court with competent jurisdiction (article 25) are inter alia included in these provisions.

### Applicable law and court with competent jurisdiction

**25.1** The law of the Netherlands applies to this Agreement;

**25.2** Every dispute between Parties related to the Agreement will be exclusively submitted to the court with competent jurisdiction for this purpose in the district of The Hague.