



GÉANT Terms and Conditions for IT Contracts

As modified for IaaS+ Services | OCRE2024

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Article 1. Definitions

Where written with initial capitals, the following terms are defined as follows in these general terms and conditions:

Additional Work	Work that is not included in the Contract and results in costs that exceed the Fee.
Contract	The agreements between the Customer and the Counterparty of which the Terms and Conditions form part.
Counterparty	The supplier with whom the Contract is concluded.
Customer	The party for whose benefit a Contract is concluded.
Defect	Every fault or other failure as a consequence of which the Deliverable is not meeting the use as agreed between Customer and Counterparty.
Deliverable	A service to be performed or a licence to be granted by the Counterparty or a combination thereof, including Materials and Documentation.
Documentation	Every description of the Deliverable and its properties, whether or not specifically intended for the installation, Implementation, use, management and/or maintenance thereof.
Enhanced Version	A subsequent version of the Standard Software in which Defects have been repaired and/or its operation has otherwise been improved.
Fee	The total price agreed for the Deliverable.
Framework Agreement	The agreement concluded between Counterparty and GÉANT on the basis of which the Contract is concluded.
GÉANT Group	GÉANT Vereniging - Association In relation to a party, the party, its subsidiaries, its holding companies and any subsidiaries of such holding companies.
Licence	A right entitling the Customer to install and use Standard Software in accordance with the use as agreed with the Counterparty, including all reproductions and disclosures thereof, whether temporary or otherwise, which may reasonably be deemed necessary for this purpose.
OIP	Original Infrastructure Provider. This is the party that owns the infrastructure needed to provide the Deliverable. This may be the Counterparty or a different party, when the Counterparty is a reseller.
Service Terms	Counterparty's terms and conditions governing the Deliverable.
Software	The set of program rules to be provided by the Counterparty and capable of being used, either directly or indirectly, by a computer to achieve a particular, defined result. Software can be classified as Standard Software or Custom Software.
Specifications	The documents made available to the Counterparty (including explanatory notes and amendments) that describe and explain the organisation of the Customer, the Deliverable and the Contract award procedure.
Staff	The members of staff and/or auxiliary personnel used by parties in performing the Contract.
Standard Software	Software developed for general use that is made available to the Customer on a non-exclusive basis.
Terms and Conditions	These GÉANT Terms and Conditions for IT Contracts 2024, as modified for IaaS+ services OCRE2024.
Working Day	Any day other than a Saturday, Sunday or public holidays in the jurisdiction of the Customer's seat.

Article 2. Contracts and escalation

- 2.1. Each party will designate a contact to be responsible for keeping in touch with the other party in matters relating to the performance of the Contract. The parties will notify each other of the person they have designated as their contact.
- 2.2. The contacts may represent and bind the parties in so far as the performance of the Contract is concerned. They are not competent to alter the Contract.
- 2.3. Without prejudice to the provisions of article 29, the parties must have an internal escalation procedure or arrange for such a procedure to be drawn up.

Article 3. Status of notifications

- 3.1 Notifications by one party to the other (including undertakings, agreements or further agreements) that are of importance to the performance of the Contract will be binding on the parties only if they are made or confirmed in writing by a person competent for this purpose.

Article 4. Duty of inquiry and disclosure

- 4.1. This article only applies in case of professional services as referred to in amongst others Volume 2 of the ITT documents.
- 4.2. Customer accepts that most of the services being provided as a Deliverable may be of a standard nature. However, to determine the use which the Customer intends to make of the Deliverable the Counterparty must sufficiently acquaint itself with:
 - a) the objectives of the Customer in concluding the Contract;
 - b) the organisation of the Customer in so far as relevant to the Contract.
- 4.3. In discharging the duty of inquiry and disclosure referred to in article 4.2, the Counterparty must also form an opinion on the feasibility of the Deliverable within the parameters specified by the Customer for this purpose.
- 4.4. For the purposes of article 4.2, the Customer will provide the Counterparty with sufficient information. The Customer will supply the Counterparty, on request, with additional information in so far as this is not of a confidential nature and can reasonably be deemed relevant to the performance of the Contract. If anything is unclear, the Counterparty will make inquiries of the Customer in good time.
- 4.5. The Parties will keep each other informed of developments and changes that are or may be of importance to the performance of the Contract.

Article 5. Quality assurance

- 5.1 This article only applies in case of professional services as referred to in amongst others Volume 2 of the ITT documents.
- 5.2 Quality assurance is part of the Contract.
- 5.3 Quality assurance means that, in the performance of the Contract, measures will be taken to ensure that the Customer can make use of the Deliverable as agreed with Counterparty.
- 5.4 The Counterparty will take these measures on its own initiative. In addition, the Customer is entitled to propose reasonable measures at any time. The Counterparty must cooperate with such measures where reasonable and implement their results in such a manner as may

reasonably be expected of it.

Article 6. Intellectual property rights

- 6.1. The Counterparty will indemnify the Customer against all claims brought by third parties in respect of any breach of their intellectual property rights, including personality rights as referred to in section 25, subsection 1 of the Dutch Copyright Act¹, if such claims are related to the use of the Services and only if Customer is not already indemnified by an OIP not being the Counterparty. The Counterparty is obliged, as soon as the Customer so requests, to assume responsibility for defending any proceedings brought against the Customer in connection with the Deliverable for breach of the intellectual property rights of a third party. For this purpose the Customer will immediately inform the Counterparty of any such proceedings and provide the Counterparty with the necessary powers of attorney and assistance. The Counterparty will also indemnify the Customer against all damages and costs that it may be ordered to pay in such proceedings and against the costs of the proceedings themselves, including, but not limited to, the costs of obtaining legal advice in this connection.
- 6.2. In the event of an alleged breach of the intellectual property rights of a third party, the Counterparty will, at its expense, take all reasonable measures that may help to prevent disruption of the operational activities of the Customer and to mitigate the costs incurred and/or loss or damage suffered as a result of such breach.
- 6.3. Without prejudice to the provisions of articles 6.1 and 6.2, the Customer may, if a third party holds it liable for a breach of its intellectual property rights, terminate all or part of the Contract in writing without recourse to the courts and without prejudice to its other rights against the Counterparty, including, but not limited to, any right to compensation.

Article 7. Documentation

- 7.1. Documentation must be drawn up in such a way as to ensure that the Deliverable can be properly used, managed and maintained by the Customer and third parties.
- 7.2. The Customer may reproduce Documentation and publish it, whole or in part, for use within its organisation without owing a further fee, provided that any copyright acknowledgements etc. it contains are left intact.

Article 8. Authorisations

- 8.1. The Counterparty will be responsible for obtaining and maintaining any authorisation that may be required under any national or international regulation for its performance of the Contract.
- 8.2. The Counterparty will as soon as reasonably possible, inform the Customer of everything that, in its view, constitutes an infringement of the authorisation.

Article 9. Staff

- 9.1. This article only applies with respect to professional services as meant in in amongst others Volume 2 of the ITT documents.

¹ Even after assigning his copyright, the author of a work has the following rights: a. the right to oppose disclosure to the public of the work without reference to his name or other indication as author, unless such opposition would be unreasonable; b. the right to oppose disclosure to the public of the work under a name other than his own, as well as any alteration to the title of the work or the indication of the author, insofar as these appear on or in the work or have been disclosed to the public in connection with the work; c. the right to oppose any other alteration to the work, unless the nature of the alteration is such that opposition would be unreasonable; d. the right to oppose any distortion, mutilation or other impairment of the work that could be prejudicial to the honor or reputation of the author or to his dignity as an author.

- 9.2. The Counterparty will only use Staff who have the skills and qualifications that have been agreed or are necessary for the performance of the Contract, taking account of the nature of the Deliverable and the expertise claimed by the Counterparty. It also guarantees that the Staff used by it will meet the requirements that may be made of an equivalent service provider that is reasonably competent and acts in a reasonable manner.
- 9.3. The Counterparty will not supply Staff to or allow them to work for the Customer if they also work for third parties and could as a result have a conflict of interest.

Article 10. Invoicing, discounts and Additional Work

- 10.1. The Counterparty will invoice for the work in the manner prescribed in the Contract.
- 10.2. The Counterparty will send the invoice electronically so that it can be received and processed electronically, in accordance with the specifications given by the Customer.
- 10.3. If the Customer is entitled to an agreed discount on the Fee, this shall be without prejudice to the other rights or claims, including, but not limited to:
 - a. its claim to performance of the agreed obligation to perform the contractual obligations in relation to the Deliverable;
 - b. its right to compensation; and/or
 - c. its right to terminate.Likewise, if Customer is entitled to a penalty from the Counterparty, this shall be without prejudice to the other rights or claims, including those listed above, unless it is agreed in writing that a penalty covers as such rights or claims.
- 10.4. Additional Work must be notified in good time to the Customer, must always be invoiced separately and does not qualify for reimbursement other than with the prior consent of the Customer.

Article 11. Advances and bank guarantees

In the event that advance payments are made and mandatory applicable law requires a bank guarantee to be issued, Customer may require the Counterparty to have a bank issue such bank guarantee as required under applicable law. In as far as applicable law does not prescribe the terms and costs thereof, Customer and Counterparty shall agree both on reasonable additional terms and costs.

Article 12. Duty of secrecy

- 12.1. The following information is regarded as confidential: all information clearly identified as confidential at the time of disclosure.
- 12.2. Parties shall keep this information confidential at least three years after for the date of the termination or expiry of the Contract, except in so far as:
 - a. they are obliged to divulge such information under a statutory regulation or court ruling. Where the parties have agreed a different form of dispute resolution, a ruling of a body competent under article [29.1](#) to resolve a dispute will be equated with a court ruling for this purpose;
 - b. required by any law applicable to the disclosing party, to the extent the disclosure is required to comply with such requirement;
 - c. this is reasonably required by persons engaged by a party in the performance of that party's obligations under the Contract;
 - d. the information is already generally available and in the public domain otherwise than as a result of a breach of this article;

- e. the information is already lawfully in the possession of the receiving party, without confidentiality obligations, prior to its disclosure by the disclosing party;
 - f. the information is disclosed by Customer to any department, office or agency of the government that needs to know the information, provided that Customer informs the recipient of any duty of confidence owed in respect of the information;
 - g. the information is disclosed by either party relating to the Contract, to the extent the other party has given its prior written consent to the disclosure;
 - h. the information is disclosed by the Counterparty to its Staff, Group companies and professional advisors who need to know the relevant information and who have a legal obligation to keep it confidential;
 - i. the information is independently developed by the receiving party, is shared with the receiving party by a third party without confidentiality obligations, or is or becomes public through no fault of the receiving party.
- 12.3. The parties will impose on their Staff the same duty of secrecy as is provided for in article 12.2.
- 12.4. The Counterparty will cooperate, at the request of the Customer, in enabling the Customer, or a third party acting on its behalf, to supervise the safekeeping and use of confidential information by the Counterparty.
- 12.5. After the termination or expiry of the Contract, all Customer Data will be deleted.

Article 13. Processing of personal data

- 13.1 The Counterparty will process personal data within the execution of this Contract or the Framework Agreement in accordance with the General Data Protection Regulation (GDPR). The Counterparty will only use the personal data for the purposes for which they were made available and guarantees that the personal data will not be used for any other purposes. The Counterparty limits the processing of personal data received from the Customer and GÉANT during or as a result of the execution of the Call-off contract and/or Framework Agreement, and which does not take place on behalf of GÉANT nor the Customer (and for which the Counterparty must therefore be regarded as the Controller), to those processing operations that are necessary in the context of the correct implementation of the Framework Agreement and/or the Contract.
- 13.2 With regard to the processing of personal data within the provision of the services for the Customer, the Counterparty is regarded as a processor within the meaning of Article 4 GDPR, hence an adequate data processing agreement between the Counterparty and the Customer for which the services are provided on the basis of the Framework Agreement and/or Contract, shall be signed.
- 13.3 The Counterparty indemnifies GÉANT and the Customer against all claims, fines and/or measures from third parties, including those involved and supervisory authorities, that are instituted or imposed against GÉANT and/or the Customer in connection with the processing of personal data as referred to in this article.

Article 14. Publicity

- 14.1 The Counterparty may not refer, implicitly or explicitly, to the Deliverable in publications (including press releases) or advertisements and may use the Customer's name as a reference only with the Customer's prior consent.

Article 15. Replacement of Counterparty's Staff

- 15.1 Without releasing it from any of its obligations or duties hereunder, the Counterparty will be entitled to replace Staff at any time. Staff in the delivery of professional services can be replaced

with Staff holding similar competencies.

Article 16. Subcontracting

- 16.1 Subcontracting by the Counterparty to other parties requires prior written notification to GÉANT.
- 16.2 The Counterparty shall be liable for the acts and omissions of any of its subcontractors (and, if any, their subsequent subcontractors) as well as the OIP, if the OIP is not a subcontractor but contracted directly by Customer and such contract is required by Counterparty for the delivery of the Performance.
- 16.3 The Counterparty shall ensure that its subcontractors shall not engage in sales activities of any kind related to products or services which have not been subcontracted.

Article 17. Assignment of rights and obligations

- 17.1 Subject to this article neither party shall be entitled to assign, novate or otherwise dispose of any or all of its rights and obligations under a Contract without the prior written consent of the other party.
- 17.2 The Counterparty shall be entitled to assign the Contract where:
 - a. the specific change in supplier was provided for in the relevant procurement documents for the award of the Contract; or
 - b. the assignment is to a Group company where: (i) the assignee has agreed in writing to be bound by the terms of the Contract; (ii) the assigning party remains liable for obligations under the Contract if the assignee defaults on them; and (iii) the assigning party has notified the other party of the assignment.
- 17.3 The Counterparty shall ensure that the assignee shall not engage in sales activities of any kind related to products or services which are not within the scope of the Contract that has been assigned.

Article 18. Impending delay

- 18.1. This article applies if no written arrangement between Customer and Counterparty, or between Customer and OIP, has been made on impending delay.
- 18.2. In the event of an impending delay in the performance of the contractual obligations in relation to the Deliverable, the Counterparty will immediately notify the Customer, explaining the reasons for and consequences of any delay. The Counterparty will also propose to the Customer measures to avoid delay or further delay.
- 18.3. As quickly as possible after receiving the notification referred to article [18.1](#), the Customer will notify the Counterparty whether or not it agrees to the proposed measures. Agreement does not imply any acceptance by the Customer of the cause of the impending delay, and is without prejudice to its rights against the Counterparty.

Article 19. Liability

- 19.1 Any limitations of liability set out in the Service Terms will, notwithstanding anything to the contrary in the Service Terms, be incorporated into this Contract and govern the total respective liability of Counterparty under both this Contract and the Service Terms combined.
- 19.2 Customer's total aggregate liability to Counterparty, whether in contract, tort (including negligence), breach of statutory duty or howsoever arising, shall be limited to € 20,000 (twenty thousand euros).

19.3 Customer shall not, in connection with the Contract, be liable for:

- a. loss of goodwill or injury to reputation; and/or
- b. loss of business opportunity; and/or
- c. indirect, consequential or special loss or damages,

regardless of the form of action, whether in contract, strict liability or tort (including negligence), and regardless of whether Customer knew or had reason to know of the possibility of the loss, injury, or damage in question.

19.4 The limitations of liability set out in articles 19.2 and 19.3 do not apply if there has been intent or gross negligence on the part of the other party or its Staff.

Article 20. Force majeure

20.1. A failure to perform the Contract that is not attributable to the fault of a party and for which it is also not accountable by law or juristic act or according to generally accepted standards constitutes force majeure.

20.2. The term force majeure in relation to the Counterparty is in any event deemed not to include a shortcoming of a subcontractor or OIP, staff shortages, strikes, staff illness, late delivery or unsuitability of items required for the performance of the contractual obligations in relation to the Deliverable and liquidity or solvency problems.

20.3. If the Counterparty can claim some benefit in respect of a failure as referred to in article [20.1](#) that it would not have had in the event of proper performance, it will compensate the Customer for any loss or damage suffered by the Customer as a consequence of that failure, up to a maximum of the value of the benefit concerned.

Article 21. Insurance

21.1. The Counterparty has taken out and will maintain liability insurance that is appropriate and customary by prevailing standards.

21.2. The liability insurance policy must provide cover for at least €1,250,000 per claim and for a minimum annual payment of 200% of this amount.

21.3. On request, the Counterparty will immediately present proof to the Customer that such policy is in place.

Article 22. Termination and notice of termination

22.1. Without prejudice to the other provisions of the Contract, either party may terminate the Contract in full or in part by registered letter, without recourse to the courts, if the other party is in default or performance is permanently or temporarily impossible.

22.2. In the event of force majeure, the parties may not terminate the Contract until a period of 15 Working Days has elapsed since the start of the force majeure.

22.3. The Customer may terminate the Contract forthwith by registered letter, without recourse to the courts and without being required to send any prior demand or notice of default:

- a. if the Counterparty applies for a provisional or final suspension of payments or files for bankruptcy or is declared bankrupt,
- b. if its business is wound up, if it ceases business activities, if control of its business operations undergoes a major change, if a substantial proportion of its assets are seized,
- c. if it is deemed on any other grounds to be no longer capable of discharging its obligations under the Contract,

- d. if during the term of the Contract other grounds for exclusion as referred to in article 57 of Directive EU2014/24 and implemented in section 2.86 of the Public Procurement Act 2012 arise,
 - e. if the Counterparty breaches agreed data privacy obligations or security requirements, unless such breach is regarded of no significance, or
 - f. if the European Commission, or a governmental body in the country in which the Customer has its seat, advises that:
 - i. the Performance may impose a security risk on the Customer, or on national security, or
 - ii. the Counterparty or an entity that directly or indirectly controls more than 50% of the Counterparty, may impose such risk. An entity in the previous sentence includes any legal entity, including a nation state.
- 22.4. The Customer may also terminate the Contract in the manner specified in article [22.3](#) if it has good grounds for assuming that a court of law would set aside the Contract under part 4.3.1 of the Public Procurement Act 2012 if an application to this effect were made. The Counterparty is entitled to reimbursement of costs reasonably incurred in performing the Contract and the costs of reasonable future obligations already entered into in connection with the Contract. If, however, the Customer shows that the unlawfulness is wholly or partly attributable to the Counterparty, the Counterparty is not entitled to compensation.
- 22.5. If the Customer has concluded two or more interrelated Contracts with the Counterparty, the Customer may terminate in the specified manner the other Contract(s) in the cases referred to in articles [22.1](#) and [22.3](#). Evidence of an interrelationship as referred to above must be apparent from the (related) Contracts. In case the Framework Agreement is terminated by GÉANT, Customer shall be entitled to terminate the Contract in the manner specified in article 22.3.
- 22.6. Without prejudice to the provisions laid down in the Contract or in the Terms and Conditions, the Customer may give notice terminating a Contract by registered letter providing reason and initially with a notice period of at least six (6) months, unless considered to be unreasonably onerous for Customer with immediate effect instead. In such an event, the account between the Customer and the Counterparty will be settled on the basis of articles 22.7 to 22.8. This method of settling accounts will never result in the Customer owing the Counterparty more than the Fee or the as yet unpaid part thereof due to its termination of the Contract. The Customer is not obliged to indemnify the Counterparty in any way other than that specified in articles 22.7 to 22.8 for the consequences of terminating the Contract.
- 22.7 In the event of the early termination of one-off or fixed-term Contracts where the obligation to pay the Fee depends on the performance of the Contract or the expiry of its term, the Counterparty is entitled to a reasonable portion of the Fee if the Contract is terminated by the Customer on the basis of article 22.6. In determining the amount, account will be taken, *inter alia*, of the work already performed by the Counterparty, the benefit derived by the Customer from that work and the grounds on which the Contract was terminated. The Counterparty is entitled to the (full) Fee only if the termination of the Contract is attributable to the Customer and payment of the full Fee is reasonable, having regard to all the circumstances of the case. The savings accruing to the Counterparty from early termination will be deducted from the amount of the Fee.
- 22.8 In the event of early termination of other Contracts on the basis of article 22.6, the account between the Customer and the Counterparty will be settled on the basis of (a) the part of the Fee that relates to the part of the Deliverable that the Counterparty has already delivered in the course of performing the Contract at the time the notice of termination is given, (b) other obligations that the Counterparty has already entered into in performing the Contract in so far as they cannot be limited and (c) loss of profit in so far as that loss is not included in the costs referred in points a and b.

Article 23. Retention of right to demand performance

23.1 If either party fails to demand performance of any provision of the Contract within a time limit set by the Contract, this is without prejudice to its right to demand performance at a later date, unless the party in question has expressly agreed to the non-performance in writing.

Article 24. Exit clause

24.1. If the Contract ends for any reason whatsoever, the Counterparty will, as soon as the Customer so requests, take whatever action is necessary to ensure that a new counterparty or Customer can, without impediment, assume responsibility for performing the Contract and/or that a new counterparty can work on a similar Deliverable for the benefit of the Customer. Article 12.5 applies, also to Customer's content that is not confidential.

24.2. Other than in a case where the Contract is terminated pursuant to the provisions of article 22.1 or 22.3, the Counterparty will perform the services at the rates and on the terms specified in the Contract or, in the absence thereof, at the rates generally applied by the Counterparty and on such terms as may be agreed. The services will be provided free of charge if the Counterparty imputably fails to discharge an obligation, such to include the situation referred to in the last sentence of article 22.4.

24.3. Counterparty shall be fully compliant with all obligations resulting from EU Regulation 2023/2854 on harmonized rules on fair access to use of data. More specifically on cloud services, enabling a multi-vendor cloud environment adding generally applicable obligations on cloud switching.

Article 25. Bribery and conflicts of interest

25.1. The parties may not offer to each other or to third parties – or solicit, accept or obtain from each other or third parties – whether for themselves or for any other party, any gift, reward, compensation or benefit of any form whatsoever if this could be construed as an illicit practice. Such a practice may constitute grounds for terminating the Contract either in full or in part.

25.2. If it is found that a member of the Customer's Staff is also in the Counterparty's employment or was also in the Counterparty's employment at the time when negotiations took place on the formation of the Contract, regardless of whether or not this is or was paid employment, and that the Customer was not informed of this prior to the conclusion of the Contract, the Customer may terminate the Contract with immediate effect, without being required to give notice of default or to pay any compensation and without prejudice to any right of the Customer to compensation.

Article 26. Continuing obligations

26.1 Termination of the Contract will not discharge the parties from obligations which, by their nature, are intended to continue in force thereafter. These obligations include in any event the provisions on indemnification for breaches of intellectual property rights and on guarantees, liability, the duty of secrecy, disputes and the applicable law.

Article 27. Follow-up order

27.1 The Counterparty cannot derive any right from the Contract to obtain a follow-up order.

Article 28. Void and set-aside provisions

28.1 If one or more provisions of the Contract are found to be void or are set aside by a court of law, the remaining provisions of the Contract will retain their legal force as far as possible. The parties will consult on the void and set-aside provisions in order to agree on an alternative arrangement. This may not affect the object and tenor of the Contract.

Article 29. Disputes and applicable law

- 29.1. Any dispute between the parties in relation to the Contract will be submitted only to the court having competence in the country in which the Customer has its seat, unless the parties agree on an alternative means of dispute resolution at that time.
- 29.2. The Contract is governed by the law of the country where the Customer has its seat, to the express exclusion of the rules of private international law, including the UN Convention on Contracts for the International Sales of Goods (CISG).