

Terms & Conditions for the procurement of Maintenance

of the Institute of Translational Vaccinology (Intravacc), established and having its office in Bilthoven. The Institute of Translational Vaccinology is part of the Ministry of Health, Welfare and Sport.

Article 1 Definitions

The following terms with a capital letter in these terms and conditions have the following meaning:

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| <p>1.1 Acceptance: determination by Intravacc that there are no remaining issues and that the performances provided comply with the standards required.</p> <p>1.2 Additional Work: work assigned via Further Assignments, being one-off as well as structural, resulting from unforeseen interim extensions of the requirements, specifications and designs – beyond what was agreed originally – which was not or could not (or no longer) be laid down in the Agreement (including the Specifications). Not included in Additional Work are activities which the Contractor could or should have foreseen in order to be able to provide the agreed performances in accordance with the agreed requirements and specifications.</p> <p>1.3 Agreement: the agreements (including Further Agreements) between Intravacc and the Contractor, which includes the purchase order(s) sent out by Intravacc of which these terms and conditions form part.</p> <p>1.4 Contract variations for less work: activities which, as agreed and laid down in Further Assignments, are cancelled as a result of the unforeseen premature lapsing of requirements, specifications and designs – deducted from what was originally agreed - which were or could not (or no longer) be laid down in the Agreement (including the Specifications).</p> <p>1.5 Contractor: the natural person or legal entity who/which has been entrusted with the performance of the Maintenance Services and who by signing this Agreement has undertaken to fulfil the performances set out in the Agreement.</p> <p>1.6 Contractor's Personnel: the members of staff to be engaged by the Contractor for the performance of the Agreement. The term Contractor's Personnel means also third parties involved by the Contractor in the performance of the Agreement.</p> <p>1.7 Corrective Maintenance: a maintenance service by means of a separate assignment in accordance with clause 7 paragraph 3 involving the remedy of Defects and Faults which have occurred or threaten to occur which were discovered during the performance of the Preventive Maintenance or after Intravacc notified a fault, all this within the scope of the Specifications and with due observance of the agreed Response, Reaction and Repair Periods. The activities required to this end not only involve the carrying out of repairs and replacements, but can also relate to shutting down or taking out of operation (parts of) the respective installation.</p> <p>1.8 Defect: the installation or parts thereof not or not fully complying with the standards which ought to be required of a properly functioning installation, the specifications laid down in the Specifications, the technical, functional and/or operational specifications in the associated and/or manufacturer's provided product or parts specifications and/or the standards and values stated in the applicable (statutory) rules. A Defect may also be connected with harmful effects for humans and the environment.</p> <p>1.9 Fault(s): Maintenance Services not or not fully complying with the statutory requirements and/or requirements and conditions as agreed and laid down in this Agreement.</p> <p>1.10 Further Assignments: written assignments of Intravacc (including purchase orders) to the Contractor agreed in proper consultations between Intravacc and the Contractor to perform Additional Work and implement Contract variations for less work or carrying out Corrective Maintenance.</p> <p>1.11 Installations: Intravacc's installations as described and specified in the Specifications.</p> <p>1.12 Intravacc: Institute for Translational Vaccinology.</p> | <p>1.13 Maintenance Services: all services described and specified in the Agreement (including the Specifications), aimed at rendering into and maintaining the Installations in optimum operational, functional and safe condition with due observance of the relevant (inter-)national rules. The following are included, but not limited to, the Maintenance Services:</p> <ol style="list-style-type: none"> 1. Preventative maintenance; 2. Corrective Maintenance; 3. Modifications; 4. Contract variations; 5. Keeping available sufficient Parts and Miscellaneous Materials at Prices in line with the market; 6. Removal of defective Parts, consumed Miscellaneous Materials and waste; 7. Each year formulating the Year and Detail Plan; 8. Supplying reports 9. Improvement advice; 10. Participation in consultations; 11. Presence of revision documentation; 12. Management of Specifications or parts of the Specifications. <p>1.14 Miscellaneous Materials: working and consumable materials of low value such as lubricants, cleaning agents, bolts, nuts, gaskets, LEDs, fuses, etc.</p> <p>1.15 Modification(s): performing activities to and/or fitting Parts into Installations in connection with an implemented or still to be implemented change of the technical, functional or operational specifications of the respective Installation laid down in the Specifications.</p> <p>1.16 Parts: parts of the Installations (including fresh air filters), components and spare parts.
Preventative Maintenance: a Maintenance Service including the execution of the activities prescribed in the Specifications on the basis of plans to be agreed each year according to the frequencies stated in the Specifications.</p> <p>1.17 Prices: the agreed contract price, rates and fees which the Contractor will charge Intravacc for the performances provided by the Contractor pursuant to the Agreement and any discounts applicable to them.</p> <p>1.18 Primary Responsible Contact: the employee(s) entrusted with the management of the project appointed by Intravacc or the Contractor, who is/are the sole person(s) with the power to give Further Assignments, to determine the plans and to implement changes to the Specifications and/or to amend them. The Primary Responsible Contacts, in connection with the arrangements laid down in the Agreement, are entitled to bind each other with regard to the execution of the Maintenance Services. Their substitutes will only act in the event of their illness or holidays.</p> <p>1.19 Professional faults: failures, such as mistakes, carelessness, negligence, omissions, wrong advice, which a skilled and prudent provider of services ought to have avoided in the given circumstances, observing normal attention within the scope of normal professional knowledge and normal professional practice and with application/use of normal means.</p> <p>1.20 Reaction Period: the maximum period allowed between the notification of a Fault and/or Defect by Intravacc to the Contractor and the confirmation by the Contractor to Intravacc of the receipt of the notification of the Fault and/or Defect.</p> <p>1.21 Repair Period: the maximum period allowed between the notification of a Fault and/or Defect by Intravacc to the Contractor, the successive instruction by Intravacc to the Contractor to perform Maintenance Services and the delivery of the respective Installation in working order.</p> <p>1.22 Response Period: the maximum period allowed between the notification of a Fault and/or Defect by Intravacc to the Contractor, the successive instruction by Intravacc to the Contractor to perform Maintenance Services and the start of the activities by the Contractor.</p> |
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- 1.23 Specifications: the Specifications for maintenance of process-specific installations Intravacc.
- 1.24 Subcontracting: the Contractor having certain parts of the activities carried out by other natural persons or legal entities under his responsibility.
- 1.25 Working Days: calendar days on which the agreed activities will be carried out within the Working Hours, except for weekends, public holidays and collective days leave indicated by the parties (such as construction industry holiday).
- 1.26 Working Hours: the Working Hours start at 08.00 and finish at 17:00.
- 1.27 Work Sites: the sites specified in the Specifications where the Installations connected to the primary technical provisions have to be maintained by the Contractor with due observance of the provisions set out in the Agreement.
- 1.28 Year: a consecutive period of 12 calendar months.
- Article 2 Purpose of the agreement**
- 2.1 Laying down between the parties the contractual terms with the aim of performing the maintenance of the Installations during the term of the Agreement such that by doing so maximum safeguards are created for the quality and continuity of the process-specific technical infrastructure required for the research and production of humane vaccines. Pursuant to the Agreement and any Further Assignments the Contractor and Intravacc undertake to supply or buy the Maintenance Services required to this end.
- 2.2 The Contractor states that he is sufficiently aware of the relevant objectives of Intravacc and Intravacc with regard to the Agreement, the relevant part of the organisation and business operations of Intravacc and the processes which depend on an optimum, safe and efficient operation of the Installations.
- 2.3 The parties will notify each other immediately, preferably in writing, about any fact, circumstance, action or omission which might be relevant to the performance of the Agreement.
- Article 3 Applicable conditions**
- 3.2 The Contractor will refrain from performing Additional Work or implementing Contract variations for less work without a Further Assignment from Intravacc .
- 3.3 The current, relevant national and international (statutory) rules with regard to for instance safety and the environment are applicable. The Contractor is deemed to be aware of these rules, and guarantees to act in accordance with them. The Contractor will also stipulate from any subcontractors to be engaged by him that they are aware of these rules and will comply with them. The costs and consequences resulting from compliance with these rules will be at the expense of the Contractor.
- Article 4 Primary responsible contacts and consultations**
- 4.1 The parties will each appoint a Primary Responsible Contact as meant in clause 1, paragraph 8, and their substitutes. The Primary Responsible Contacts appointed by each party and their substitutes are or will be specified in the Specifications.
- 4.2 Apart from the Primary Responsible Contacts the parties will each appoint one or more contacts and the parties will arrange one or more periodic consultations, organise the representatives of each party taking part in this, the frequency and the duties of the chairman and the secretary. The appointed contacts and periodic consultations will be designated, described and determined in the Specifications.
- Article 5 Consequences of termination**
- 5.2 On termination of the Agreement Intravacc's rights with regard to the Contractor's obligations which continue as to their nature after the termination of the Agreement as further detailed in section 24, will remain in full force and effect.
- Article 6 Intravacc's obligations**
- 6.1 The Specifications, forming in a material sense the basis of the Preventative Maintenance to be performed, will be maintained and managed by Intravacc in a manner such that the objectives of the Preventative Maintenance are optimally supported.
- 6.2 The responsibility for the primary technical provisions to which the Installations are connected rests with Intravacc. Changes to this will be notified by Intravacc to the Contractor.
- 6.3 Intravacc will set up and maintain a central service desk, the so-called Intravacc Coordination Point, which will be permanently accessible during Working Hours for the notification of Faults and Defects as well as for inquiries, consultations, assistance and advice. In the event of urgent breakdowns, defects and calamities Intravacc will be available outside Working Days and Working Hours via Intravacc's security system as stated in the breakdown notification procedure.
- 6.4 Intravacc will ensure the availability of a breakdown notification procedure, to be adhered to with regard to Corrective Maintenance and a Preventive Maintenance procedure.
- 6.5 Intravacc is also obliged, where appropriate, to provide access for the Contractor's Personnel to Intravacc's premises and the Work Sites outside Working Hours, without prejudice to the provisions with regard to Intravacc's general and applicable access guidelines.
- 6.6 Intravacc is obliged to provide the Contractor with all facilities reasonably to be provided by Intravacc, without prejudice to the provisions in the Agreement with regard to secrecy and security. These services to be provided will in principle be supplied free of charge.
- Article 7 The Contractor's obligations**
- 7.1 The Contractor undertakes to provide and deliver promptly the Maintenance Services specified in the Agreement as well as the availability of the Parts and Miscellaneous Materials required to this end.
- 7.2 The Contractor will perform the Maintenance Services with due care and in accordance with the generally accepted industrial standards in such a manner that they contribute to the realisation of the objectives intended by means of these services with regard to guaranteeing the operational security and safety of the Installations in an economically effective manner.
- 7.3 The Contractor is not allowed to carry out Corrective Maintenance without a work order sheet issued by the Intravacc Co-ordination Point. In urgent cases, which will only be regarded as such at the Intravacc Co-ordination Point's indication, a work order sheet will be issued to the Contractor afterwards in the manner described in the Specifications under 2.1.2.3.
- 7.4 The Preventative Maintenance will be performed in such a manner that, running up to the next Preventative Maintenance session, any necessary Corrective Maintenance outside the Preventative Maintenance period cannot be due to no or insufficient Preventative Maintenance.
- 7.5 With regard to initiating and performing Corrective Maintenance the Contractor will observe the current breakdown notification procedure.
- 7.6 The Contractor will ensure that the maintenance organisation required for the performance of the Agreement, including the necessary aids/equipment and the Contractor's Personnel required for the performance of the Agreement complies, qualitatively as well as quantitatively, and continues to comply with the standards required of it.
- 7.7 During the term of the Agreement the Contractor will ensure an adequate management, coordination and guidance of the activities in connection with the performance of the Maintenance Services and the Contractor's Personnel involved in it.
- 7.8 The Contractor will identify, on request or voluntarily, new relevant technical developments and will make proposals in this respect for improvement by means of improvement advice.
- 7.9 Also, in performing the management duties for Intravacc with regard to the Specifications as referred to in clause 6.1, the Contractor will notify to Intravacc any differences identified during the fulfilment of the Agreement between the actual situation and the technical documents as specified in the Specifications, by means of a copy of the updated "Object List and Inventory" ("Object- en Inventarisatielijst").

- 7.10 The Contractor will set up and maintain a central service desk, which will be permanently accessible during as well as outside Working Hours for noting Faults and Defects as well as for inquiries, consultations, assistance and advice.
- 7.11 Amongst other things with a view to the Contractor's obligations resulting from the provisions in clause 9 with regard to agreed dates, times and periods, the Contractor will ensure the availability in sufficient numbers and at reasonable prices of Parts and Miscellaneous Materials. Where necessary the Contractor will safeguard this availability, at his discretion, by means of contracts with suppliers and subcontractors.

Deviations from these periods can only be further agreed per individual case and laid down between Intravacc and the Contractor.

- 9.3 The delivery periods for Additional Work and Modifications are detailed in the Further Assignments relating to them.
- 9.4 The delivery periods for the reports to be submitted by the Contractor mentioned in the Specifications are laid down in the Specifications.
- 9.5 If the Contractor is aware or ought to be aware or it can be or ought to be expected that the performance of (parts of) the maintenance cannot take place within the periods, dates and times (further) agreed, the Contractor will notify Intravacc of this immediately stating the cause of the delay and the measures proposed by the Contractor to avoid or undo the threatened delay.

Article 8 Assignment and subcontracting

- 8.1 The parties will not assign to third parties in full or in part the obligations resulting from the Agreement without the written consent of the other party, except that Intravacc may assign this Agreement, without any consent, to an entity that acquires all or substantially all of its business or assets to which this Agreement pertains, whether by merger, reorganization, acquisition, sale, or otherwise.
- 8.2 A prior written consent for subcontracting given by Intravacc does not discharge the Contractor from any obligation or liability under the Agreement. The Contractor is fully liable for the actions of subcontractors as if they themselves were performing the respective Maintenance Services.
- 8.3 Before the Contractor enters into any subcontracting agreement, Intravacc must have been given sufficient opportunity to verify the nature of the subcontracting and to provide comments on it, as well as the intended subcontractor, the part of the Maintenance Services contracted out to the subcontractor and other details requested by Intravacc.
- 8.4 The Contractor will include all relevant provisions of the Agreement in any subcontracting agreement and any subcontracting agreement should include provisions enabling the assignment of the subcontracting agreement to Intravacc.
- 8.5 No subcontracting agreement whatsoever will create a contractual relationship between Intravacc and the subcontractor. This is exclusively possible if an assignment of the subcontracting agreement between the contract-awarding company and the subcontractor is executed as referred to in the previous paragraph.
- 8.6 If the Contractor has any part of the Maintenance Services carried out by a subcontractor without having obtained the prior written consent of Intravacc to this end or if the Contractor has any part of the Maintenance Services carried out beyond the limits set to this end in Intravacc's consent, Intravacc will be entitled to:
- a) demand the termination of that subcontracting agreement and themselves carry out or have the work assigned to the subcontractor carried out, namely at the expense and risk of the Contractor, and/or
 - b) terminate the Agreement fully or partially with immediate effect on the grounds of breach of this Agreement by the Contractor.

Article 10 Working hours

- 10.1 The activities to be carried out on the Work Sites by the Contractor under the Agreement and any Further Agreements will in principle be carried out on Working Days within Working Hours.
- 10.2 If the Contractor and/or Intravacc deem it necessary to continue - on other grounds than those as a result of attributable failure of the Contractor - activities already started outside the days and times mentioned in paragraph 1 of this clause, the associated extra costs can only be charged if the activities are carried out after agreement and at the explicit request of Intravacc.

Article 11 Personnel

- 11.1 For the performance of the Agreement the Contractor will make and keep available sufficient and - exclusively - qualified Personnel. The extent and level of knowledge and experience of the Contractor's Personnel to be deployed by Contractor for the performance of the Agreement should be in accordance with the requirements set by Intravacc and failing this, with the general requirements of skill and expertise.
- 11.2 If at Intravacc's discretion there are insufficiently qualified personnel, Intravacc will be entitled to order the removal of these personnel and the Contractor will be obliged to replace them immediately with due observance of the provisions in paragraph 1 of this clause.
- 11.3 The Contractor will as much as possible deploy the same personnel. On each replacement, for instance in the event of illness or leave, the Contractor will guarantee replacement Personnel with a comparable level of knowledge and experience.
- 11.4 The Contractor will keep up to date in a data file specifically relating to Intravacc the relevant qualifications and other data of all the members of staff deployed or to be deployed at Intravacc. After any change to this file, the Contractor will provide Intravacc immediately with a new and full summary.
- 11.5 During the term of the Agreement and for one year afterwards the parties will not employ (an) employee(s) of the other party or have these employees work for them in any other way without the prior written consent of the other party. The Contractor guarantees that the provisions set out in this paragraph will also be complied with by third parties affiliated to or engaged by the Contractor.
- 11.6 Neither of the parties is entitled to induce members of staff of the other party to performances, undertakings and the like for any form of reward or gift to that member of staff, without which such reward or gift the performance or undertaking would not have been formed or would have been formed under other conditions.
- 11.7 Without prejudice to the provisions in the previous paragraphs the Contractor will exclusively deploy personnel for the performance of the Agreement who:
- a. are aware of the applicable Work Procedures and Work Permits of Intravacc;
 - b. have complied promptly with the vaccination obligations as laid down in the Work Procedures taking into account the time, normally not more than 6 months, which is required to build up sufficient immunity after vaccination;
 - c. are in possession of a valid proof of identity;
 - d. will observe the company rules applicable at

Article 9 Delivery periods, Plans, Reaction Periods, Response and Repair Periods

- 9.1 The Preventative Maintenance will be carried out with due observance of the time schedule agreed for the respective maintenance period and laid down in the detailed plan. This detailed plan and the preceding year plan, as well as the formation and implementation of any changes to it, are further described and laid down in the Specifications.
- 9.2 The Corrective Maintenance will be carried out with due observance of the agreed Reaction, Response and Repair Periods. These periods have been determined by the parties as follows:

Repair	Reaction Period	Response Period	Repair Period
Urgent repair	30 minutes	2 hours	the actual Response Period + 4 hours, Unless otherwise agreed
Non-urgent repair	12 hours	24 hours	the actual Response Period + 4 hours, Unless otherwise agreed

Intravacc.
11.8 The parties will ensure that their personnel are aware of the specific rules and regulations applicable to specific Work Sites and that they will act according to these rules. A delay in the performance of the Maintenance Services as a result of the refusal of access meant in clause 12, removal of the Contractor's Personnel and/or the withdrawal of proofs of identity will not form grounds for a granting of a deferment of the completion or for compensation or additional payments to the Contractor, unless it appears that the refusal of access or removal of persons is not based on objections to the person involved.

Article 12 Access and security

12.1 The Contractor's employed personnel have at all times to sign in and sign out at the Intravacc Co-ordination Point on each visit after having entered Intravacc's premises, whilst submitting a valid proof of identity before starting activities on the Work Sites and immediately after having finished. The Contractor will ensure that the Contractor's Personnel can furnish proof of identity on entering the buildings and/or the premises of Intravacc as being an employee of the Contractor (his subcontractors and/or suppliers).

12.2 The Contractor's personnel (including subcontracted or hired personnel) involved in the performance of the activities on Intravacc's premises should observe all the access and safety procedures. If the respective member of staff has not fulfilled his obligations resulting from this, for instance the one with regard to the vaccination obligation and the possession of a valid proof of identity, the respective member of staff will be refused access. The costs and consequences resulting from this will be at the expense and risk of the Contractor. The vaccination obligation relates in principle to DTaP-IPV (diphtheria, tetanus, acellular pertussis, poliomyelitis), MMR (mumps, measles, rubella) and an annual check-up for TBC. With regard to activities in specific building sections the vaccination programme/schedule may be adjusted. If required by the applicable vaccination policy or rules, vaccination can take place on Intravacc's premises in which case vaccines will be provided by Intravacc at no cost. Vaccination elsewhere will be on the account of Contractor. If the Contractor (including its personnel) does not observe the vaccination policy and/or programme/schedule, the Contractor's personnel may be refused access and Intravacc will be compensated by the Contractor for the losses resulting from this. In addition, the Contractor will indemnify Intravacc for losses resulting from Contractor's (including personnel) lack of compliance with the vaccination policy and/or programme/schedule.

12.3 If during the performance of the work objects or substances are encountered, the presence of which is not stated in the Specifications and of which it can be reasonably deemed that they could inflict damage to persons, goods or the environment, the Contractor will notify Intravacc of this immediately, in this case the Intravacc Co-ordination Point. He will take immediately, if necessary in consultation with Intravacc, the safety measures required by the circumstances.

12.4 The Contractor will ensure that his Personnel deployed at Intravacc are and remain familiar with the access and safety provisions, including the "Intravacc Work Procedures" and "Work Permits" and will take suitable measures to this end. The Contractor will ensure that these access and safety provisions are also actually observed.

12.5 Pursuant to the provisions set out in clause 2.37 of the Working Conditions Decree (Arbeidsomstandighedenbesluit) (Bulletin of Acts, Orders and Decrees 1997, 60) the Contractor will appoint one or more coordinators ('V&G Coordinators') (Health & Safety Co-ordinators) for the implementation phase. These coordinators will implement the coordination tasks mentioned in clause 2.34 of the Working Conditions Decree.

12.6 Intravacc is at all times entitled to subject the Contractor's Personnel performing work at Intravacc to a safety examination. The Contractor will cooperate fully with this examination. Intravacc is entitled by reason of the outcomes of such an examination to refuse the deployment of the respective member of staff under the Agreement in the execution of Intravacc's activities. In

that case the Contractor will be obliged to replace that person (have that person replaced) by another who is equal as to education, experience and expertise and to observe the secrecy with regard to this new person as meant in clause 19. The secrecy clause remains effective for the person who has been replaced.

12.7 Immediately after a (near) accident has occurred, the Contractor will notify Intravacc of this providing all information in this respect.

Article 13 Ownership of replaced Parts

13.1 The ownership of faulty Parts released when the Maintenance Services are carried out, will on replacement transfer to the Contractor unless this is explicitly deviated from in the event of Additional Work or Modifications in a Further Assignment. The Contractor will at his expense and risk take care of the removal of these superfluous materials.

13.2 If (either) party deems it necessary, the parties will in mutual consultation formulate and keep an up to date parts list of the Parts to be kept available.

Article 14 Acceptance and notice of default

14.1 Acceptance by Intravacc of the Contractor's performance will take place on the basis of the check-lists, measuring reports and measuring records to be submitted by the Contractor to Intravacc which relate to the performances rendered.

14.2 Should Intravacc conclude from the reports meant in paragraph 1 or otherwise that the performances rendered by the Contractor show Faults, Intravacc will report these Faults in writing to the Contractor. The Contractor will remedy the Faults reported by Intravacc at the Contractor's expense and risk within the periods mentioned in clause 9.

14.3 Faults which could not reasonably be detected during the Acceptance of the Contractor's performances will be reported in writing to the Contractor by Intravacc as soon as possible after being detected, but not later than within three (3) working days. The Contractor will remedy the Faults reported by Intravacc at the Contractor's expense and risk within the periods mentioned in clause 9.

14.4 The said Faults will be specified in a so-called 'punch list' (list of remaining points).

14.5 Minor Faults which by their nature and/or number do not reduce the operability of the Installations, will not form reasons to prevent the (re-)commissioning of the installations.

14.6 If the Contractor, even after been given a notice of default as meant in clause 14.2 does not, not promptly or no longer fulfil his obligations to remedy the Faults, Intravacc will - notwithstanding their further rights, including those with regard to penalties and termination - be entitled either to remedy this default themselves or have them remedied by third parties at the expense of the Contractor. The Contractor will be obliged to give his cooperation and - if required at Intravacc's first request - to supply the necessary information.

Article 15 Prices

15.1 The Prices of the Maintenance Services payable by Intravacc to the Contractor are determined in euros and further specified and laid down in the Agreement. In the event of implemented interim changes in the Specifications by means of Further Assignments, the Price per order will be determined in accordance with the provisions with regard to pricing in the Agreement.

15.2 The Prices meant in the Agreement are set:
- excluding VAT;
- including all costs directly or indirectly connected with the execution of the Maintenance Services such as for instance design and/or revision drawings, availability of Parts, costs of proofs of identity, travel times, breaks, consultations, removal of superfluous Parts, consumed Miscellaneous Materials, formulation of detailed plans, reports, management of Specifications, insurance, travel and accommodation costs of the Contractor's Personnel;
- with regard to the hourly rates: exclusively payable for the hours actually spent. The travel times are deemed to have been included in the hourly rates;
which are applicable up to and on the expiry of the warranty periods.

- 15.3 Changes in the Prices meant in the first paragraph, either up or down, with regard to the wage component are only allowed if and insofar as the development of the CBS (Statistics Netherlands) cost-of-living index figure gives rise to this. Price increases exceeding the rise in the cost-of-living index figure require the consent of Intravacc. When requested, the Contractor has to submit a proper justification for this. With regard to the Parts, price rises are only allowed if and insofar as the price developments of Parts on the regular market justify this. Price changes as mentioned above can only be implemented once a Year in connection with the final date of each Year and the date on which the index figures are published.
- 15.4 The Contractor undertakes to do his utmost to obtain for the benefit of Intravacc all discounts, credits and refunds which are allowed by law from the suppliers and subcontractors, for those materials and/or services that are deployed in connection with the Agreement.

Article 16 Invoicing and payment

- 16.1 The contract price for the Preventive Maintenance due each Year will be specified and charged by the Contractor in arrears in 4 equal instalments every calendar quarter within thirty (30) calendar days after an instalment has become due, with the measuring and checking records attached. The last, 4th, instalment relating to the current maintenance period, will only fall due at the moment of Acceptance.
- 16.2 The costs payable for Contract Variations will – exclusively when they are assigned in writing by means of Further Assignments - be charged on the basis of actual costs stating the number of hours worked or not worked, the hourly rate agreed and the Prices of the Parts used or not used by the Contractor either in the form of a credit or a debit invoice.
- 16.3 In order to obtain payment, the invoices have to be submitted by the Contractor in duplicate in the name of Intravacc, 'Afd. Crediteurenadministratie, Postbus 457, NL-3720 AL BILTHOVEN', quoting the number and the date of the Agreement and, if applicable, the order number (Corrective Maintenance) or the number and the date of the Further Assignment (Contract Variations, Modifications). The invoices will be pooled as far as possible until a total invoice value of approx./a maximum of €10,000.00 (excluding VAT) has been reached. The invoices thus collected will be charged on a collective invoice specified per building. A summary has to be attached to the collective invoice on which the following details are specified/to which the following documents have to be attached:
- the work order/order number (the so-called 31- or PO number);
 - the work permit (if necessary) signed by all the parties involved;
 - the approved cost specification stating the reference number from the "Object List and Inventory" (see Specifications);
 - the actual Prices payable;
- a work report by the respective Contractor's member of staff who dealt with the fault and resolved it.
- 16.4 Intravacc will make the invoice payable not later than 30 days after Acceptance or - if this is later - within 30 days after having received the invoice.
- 16.5 Where payment is made by Intravacc within 14 days of receipt of the invoice, a deduction of 4% from the invoice amount shall be applied.
- 16.6 If Intravacc disputes any part or any invoice in whole or in part, Intravacc has to send a letter giving the reasons to the Contractor within a period of thirty (30) calendar days after having received the invoice, with the request to the Contractor to credit the amount of the non-accepted part of the invoice or, if applicable, the full amount of the invoice.
- 16.7 If the invoice has been formulated or submitted inaccurately, Intravacc will be entitled to return the invoice within ten (10) Working Days to the Contractor (or have it returned), indicating why the invoice is not satisfactory.
- 16.8 In the event of a dispute as meant in paragraph 5 of this clause, Intravacc will only pay (have paid) the non-disputed part of the invoice and Intravacc can suspend (have suspended) the payment of the disputed part until an arrangement has been made by the parties or until such a dispute has been settled in court.

- 16.9 Submission of a credit note, approval of an invoice or a part thereof can never be interpreted as the Parties waiving their rights.
- 16.10 Payment by or for Intravacc of the invoices of the Contractor or a part of this will take place notwithstanding Intravacc's right still to dispute in writing the accuracy of this afterwards.
- 16.11 Intravacc exceeding a payment period or non-payment by Intravacc of an invoice by reasons of the assumed inaccurate contents of that invoice or of the performances rendered being faulty, will not entitle the Contractor to suspend or terminate his performances.
- 16.12 In case of advance payments Intravacc will, for the security of the performance of the Contractor's agreed obligations, at all times be entitled to have a bank guarantee issued by one of the big Dutch merchant banks. The text of the bank guarantee will have the purport of the text of a model provided by Intravacc. The costs of the bank guarantee are at the expense of the Contractor. The issue of a bank guarantee, the amount of the guarantee, the moment of issue and the criteria for returning it, will in each individual case be further agreed and laid down.

Article 17 Taxes

- 17.1 The parties safeguard each other against all direct and indirect taxes, levies, excise taxes and other costs which they have to pay to any authority and which are imposed on the other Party. The Parties agree to indemnify each other against any compensation, penalty, surcharge including interest or other costs resulting from these which are the consequence of any action contrary to the obligations of the Parties applicable under this clause.
- 17.2 The Contractor accepts full and exclusive liability for the payment of all taxes, levies national insurance contributions and corresponding insurance premiums and/or other costs with regard to the employment of the Contractor's Personnel.
- 17.3 At Intravacc's first request the Contractor must provide all the information with regard to the national insurance contributions and pay-roll taxes of Personnel involved in the execution of the Agreement and which are payable by the Contractor.
- 17.4 In the event of an authority demanding that Intravacc withholds taxes, levies, excise duties, national insurance contributions and similar insurance premiums and/or other costs from payments due to the Contractor in connection with providing the Maintenance Service, Intravacc will be entitled to do so. Intravacc will notify the Contractor immediately of the said demands of the authority so that the Contractor, if required, can lodge objections against such demands. However, such objections should not prevent Intravacc from complying with the demands of the authority. Any amount paid in such a manner by Intravacc and payable by the Contractor, has to be reimbursed immediately and will initially be set-off against amounts still outstanding under the Agreement.
- 17.5 The obligations resulting from this provision will continue to be effective even after the Agreement has expired or been terminated for as long as the authority is allowed to impose taxes, levies, national insurance contributions and/or other costs.

Article 18 Audit

- 18.1 The Contractor and his subcontractors or their sub-subcontractors have to retain according to the applicable rules and regulations the records, invoices, correspondence, files and all documents of any nature whatsoever which relate in any way to performing the Maintenance Service.
- 18.2 Intravacc or its authorised representative should at all reasonable times have unlimited access to all the documents mentioned in paragraph 1 of this clause in order to be able to examine and verify whether:
- a. the costs and/or Prices have been charged in accordance with the Agreement.
 - b. the Maintenance Service is being performed in accordance with the Agreement and in accordance with the applicable laws, regulations and provisions.
- If costs and/or Prices are disputed and the Contractor refuses access, Intravacc will be entitled not to refund

	these costs as if the costs and/or Prices charged are regarded as undue.		
18.3	In the event that Intravacc wishes to subject a subcontractor to an audit, Intravacc has to request the Contractor in writing to start up the audit procedure. Such a request can only be refused on reasonable grounds.	21.2	Corrective Maintenance 10% of the invoice value for each day that the fulfilment period has been exceeded.
18.4	Intravacc will be entitled to copy and retain the documents as indicated in paragraph 1 of this clause for internal use.	21.2	The penalty can be withheld by Intravacc on payment of the invoices submitted by the Contractor.
18.5	Intravacc's right to have an audit carried out, will remain effective for a period of two (2) years after Acceptance or, if sooner, the termination of the Agreement.	21.3	If the penalty mentioned in the previous paragraph cannot be applied to the instalment invoiced, regardless of the reason, the Contractor shall pay the amount of the penalty to Intravacc within 30 days after the date of the demand for payment.
18.6	The Contractor will ensure that the provisions of this clause will be incorporated into each subcontracting agreement including all contracts entered into by the subcontractors or their sub-subcontractors and that the said provisions will be included in any similar document resulting from the Agreement so that the Contractor or the subcontractor is granted the same auditing rights as those granted to Intravacc.	21.3	If the Contractor does not pay the amount of the penalty promptly and the delay is not attributable to Intravacc, Intravacc may claim the statutory interests of the amount, with which payment the Contractor is in default. Intravacc's right to statutory interests will become effective on the date following the ultimate date on which the payment should have been made. It is not possible to claim compounded interest.
	Article 19 Confidentiality	21.4	If Intravacc has not made payable the invoices submitted within the period mentioned in clause 16, paragraph 4, the Contractor can claim statutory interests on the amount of which Intravacc is in default. The Contractor's right to statutory interests will become effective on the date following the ultimate date on which the payment should have been made. It is not possible to claim compounded interest.
19.1	Without prejudice to the rights granted to the parties in this Agreement, the parties will observe strict confidentiality with regard to the information about each other's organisation, the operation of the Installations (including any data files and software). Moreover, the parties undertake to observe secrecy with regard to all matters that have come to their knowledge regarding each others' business operations. Subject to the prior written consent of the other party, neither party will make information and data carriers which he has at his disposal available to third parties, or to his Personnel beyond what has been allowed in the Agreement, and, insofar as this is allowed to be disclosed to third parties under the Agreement, only insofar it is necessary to render the agreed performances. The Parties will ensure that their Personnel are (and remain) familiar with this obligation of secrecy and will oblige their Personnel to observe these provisions and ensure their compliance. In the event of violation of the secrecy provisions in this paragraph, the one party may demand from the other party that the deployment of the respective member of staff in the performance of the Agreement is terminated with immediate effect.		
19.2	Without the written consent of the other party neither party will mention the Agreement, its contents and the execution in publications or advertising statements. Name signs, unless they are name signs on tools and materials, are not allowed in or at the Work Sites or at Intravacc.		Article 22 Liability and insurance
19.3	The obligations under this clause continue to be effective notwithstanding the completion of the Maintenance Service or the termination of the Agreement.	22.1	The Contractor is obliged to Intravacc to compensate for all losses suffered and to be suffered by Intravacc as a result of the performance of the Agreement and which are his fault.
	Article 20 Warranty	22.2	The Contractor and Intravacc respectively have at all times unlimited liability in the event of gross negligence or intention on the part of the Contractor or Intravacc respectively.
20.1	The Contractor declares and warrants that the Maintenance Services, the Parts and Miscellaneous Materials used and the skill deployed to this end will be free from failures, defects and faults and that they will be in accordance with the requirements of the Agreement during a warranty period of 12 (twelve) months after the date of Acceptance.	22.3	The Contractor has unlimited liability for all physical injuries, including death, loss or damage (including consequential loss) to third parties resulting from or attributable to the performance of the Maintenance Services regardless of the question as to whether such a loss or damage is or is not a result or attributable to any action or omission on the part of Intravacc.
20.2	The Contractor warrants that with regard to maintenance actions original, or - however after consultation with Intravacc - equivalent, exchangeable and functionally similar - new - Parts will be applied.	22.4	The Contractor holds Intravacc harmless against all claims from third parties including the Contractor's Personnel by virtue of damage suffered by these third parties which are connected in any way to the performance of the Agreement, notwithstanding the provisions set out in paragraph 1 of this clause.
	Article 21 Penalty on non- or overdue fulfilment	22.5	Intravacc is not liable for damage to or loss of user/consumable materials, resources, tools, machines and equipment of the Contractor unless there is gross negligence or intention on the part of Intravacc.
21.1	If the Contractor does not or not within the periods, dates and times stipulated to this end in the Agreement comply with his obligations with regard to the performance of the Maintenance Services or the remedying of Faults, the Contractor will owe a penalty to Intravacc without any further notice of default being required, without prejudice to any other rights he has by law or under the Agreement. The amount of the penalty is in the event of: Preventative Maintenance 5% of the contract sum per building for each day that the validation of a building lasts longer than agreed;	22.6	Subject to the provisions set out in paragraph 4 of this clause, the amount of the compensation will be limited to € 5,000,000.00 per event, a maximum of € 10,000,000.00 per annum.
		22.7	The term damage in the previous paragraph also means damage as a result of the unlawful use or loss of keys which may have been provided by Intravacc to the Contractor for the performance of the Agreement and/or Further Assignments.
		22.8	In order to cover his liabilities under the Agreement, the Contractor will take out an insurance which is adequate at Intravacc's discretion, or keep adequate insurance cover for his liabilities. This insurance should also cover the liability of the Contractor with regard to the indemnity granted by the Contractor to Intravacc for damage to third parties in connection with the activities to be performed by the Contractor.
		22.9	The Contractor will not suspend or terminate this insurance without Intravacc's prior consent or change to Intravacc's disadvantage the conditions under which this insurance is taken out and the amount of the insured sums. The insurance premiums payable by the Contractor are deemed to have been incorporated in the Prices. When requested, the Contractor will submit to Intravacc for inspection the insurance policy and the modes of payment relating to the policy.
		22.10	The Contractor hereby assigns to Intravacc in advance all claims with regard to the payment of insurance proceeds which are not directly paid to Intravacc by the insurance companies.

- 22.11 The Contractor indemnifies Intravacc against all claims by third parties with regard to any infringement of intellectual (property) rights, patents, copyrights and licenses of third parties. Comparable claims with regard to know-how, trademark, unlawful competition etc. are included in this. Without prejudice to the provisions set out above, Intravacc will be entitled, if third parties hold Intravacc liable with regard to infringements as meant above, to dissolve the Agreement in writing, in whole or in part, without judicial interference, notwithstanding their further rights. Intravacc will only exercise their right to dissolve the Agreement after prior consultation with the Contractor.
- 22.12 Behaviour of subcontractors/auxiliary persons will be regarded as actions taken by the Contractor. The Contractor will at all times be liable for these actions in accordance with the provisions set out in the Agreement.
- Article 23 Non-attributable failure (force majeure)**
- 23.1 When there is a non-attributable failure in the performance of the Agreement by either party, the Agreement will be fully or partially suspended for the duration of such a failure without the parties being obliged to pay any compensation to each other.
- 23.2 A non-attributable failure does not in any event include: third parties (engaged by the Contractor) not fulfilling obligations or not fulfilling them within due time, lack of Personnel, illness of Personnel, delayed deliveries or unsuitability of materials, equipment, software, and/or parts, breach of third parties engaged by the Contractor and/or liquidity or solvency problems on the part of the Contractor.
- 23.3 A case of non-attributable failure will be notified in writing to the other party submitting the necessary documentary evidence.
- 23.4 If during a period of 30 days either party cannot perform his obligations under the Agreement or fails in its performance as a result of a non-attributable failure, the other party will be entitled to terminate the Agreement by means of a registered letter with immediate effect, without judicial interference, without there being any right to compensation.
- Article 24 Termination**
- 24.1 Intravacc can terminate the Agreement with immediate effect by means of a notice of termination, without prejudice to the rights and remedies retained by Intravacc by virtue of the Agreement or the law, if the Contractor is declared bankrupt, applies for a moratorium, applies for a suspension or undertakes a similar legal action and in the event of other factual or legal measures being taken with the result that the Contractor loses the full control or power over a substantial part of his assets or other facilities or threatens to lose this at any time.
- 24.2 If the Contractor remains in default of the performance of any part of the Maintenance Service to be performed, Intravacc can send a notice of default to the Contractor including a specification of the details of this default. If the Contractor does not start to remedy the respective default or does not continue the remedial works within a reasonable period, not to exceed five (5) calendar days after having received such a notice, all this to Intravacc's satisfaction, Intravacc can terminate the Agreement in full or in part without prejudice to the rights and remedies Intravacc has under the Agreement or the law.
- 24.3 In the event that Intravacc sends a notice of (partial) termination of the Agreement to the Contractor, which notice will become effective immediately after its delivery to the Contractor or on any later date stated in the notice, the Contractor should immediately on that date:
- a. discontinue providing the Maintenance Service as indicated in the notice;
 - b. assign to Intravacc or their authorised representative all rights, title and obligations, or the relevant parts of these acquired in connection with the performance of the Maintenance Service, insofar as this is required by Intravacc;
 - c. return all information provided by or on behalf of Intravacc and deliver all information and all other data or documents as drafted by the Contractor or a subcontractor in connection with the performance of the Maintenance Service within a period of thirty (30) calendar days from the actual date of termination.
- 24.4 If Intravacc sends a notice of termination to the Contractor with regard to the Maintenance Service or a part of it, the Contractor will only be entitled to payment for the respective part of the Maintenance Service which has been completed in accordance with the Agreement. All the costs, substantiated by documents, incurred by Intravacc as a direct consequence of the Contractor's default, will be due from the Contractor to Intravacc.
- 24.5 In the event of termination the undue amounts paid by Intravacc to the Contractor increased by the statutory interest since the date of payment, will have to be refunded by the Contractor within one month after the date on which the demand to this end was sent.
- 24.6 Obligations which by their nature are intended to continue effective even after the dissolution of the Agreement, will continue to exist after the dissolution of the Agreement. These obligations include for instance: indemnification against infringement of intellectual (property) rights, secrecy, assignment of insurance proceeds, warranty, disputes, applicable law and choice of an address for service.
- Article 25 General**
- 25.1 The omission by either party to demand fulfilment of any provision within a period mentioned in the Agreement, does not affect the right still to demand fulfilment unless the respective party has agreed to the non-fulfilment explicitly and in writing.
- 25.2 Amendments to the Agreement or supplements to it are possible, but they are only valid insofar they have been agreed in writing between the parties.
- 25.3 If one or more provisions of the Agreement now or in the future appear to be not or not fully legally valid pursuant to (inter)national legal rules and/or legal relationships, the remaining provisions of it will remain in full force and effect. The parties undertake to replace the invalid clauses by legally valid ones, approaching in a legally effective manner as closely as possible to the intention of the parties and the economic result aimed at by them.
- Article 26 Disputes and applicable law**
- 26.1 All disputes arising out of or in connection with the Contract shall, at Contracting Authority's sole discretion, be finally settled by the competent court in The Hague, the Netherlands or under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules. The language of arbitration will be English. The place of arbitration will be The Hague, the Netherlands. The Parties shall accept the arbitral award as final.
- 26.2 The Contract is governed by Dutch law.