

SOFTWARE LICENCE AND MAINTENANCE AGREEMENT of 4PS GROUP B.V. hereinafter referred to as 4PS ®

in conjunction with the

MICROSOFT Volume Licensing conditions for Online Services
MICROSOFT Service Level Agreement for Online Services

Authorised Microsoft Dynamics 365 Business Central partner for Registered 'Add-on Software'
MICROSOFT CLOUD- (D-Configuration)

PART A - LICENSING CONDITIONS

1. The software of 4PS and Microsoft

- 1.1. For this agreement should also the following companies be included as '4PS Group': 4PS Bouw B.V., 4PS Installatie B.V., 4PS GWW B.V., 4PS Beheer B.V., 4PS Development B.V., 4PS International B.V., 4PS Belgium N.V. So wherever this agreement says '4PS Group', should also these companies be read.
- 1.2. The 4PS Software (hereinafter the **Software**) has been built as 'Add-on software' onto Microsoft's software (**Business Central Software**).
- 1.3. They are licensed or, as the case may be, rented out to the Customer and maintained based on the 4PS software licence and maintenance agreement (abbreviated to: **SLMA**).
- 1.4. 4PS has been **authorised** by Microsoft to supply the Business Central Software to the Customer and to use the Business Central Software for Software developed by 4PS itself based on this.
- 1.5. 4PS therefore commits itself to Microsoft's licensing and maintenance and support conditions for the use of its Online Services.
- 1.6. The applicable **Microsoft Product Terms** are online accessible via <https://www.microsoft.com/licensing/terms/productoffering>. You may first receive a page 'Product Terms', on which you have to select the blue words 'Product Offerings'. You are now on the correct web page and select the program '**Microsoft Customer Agreement**' in the blue bar at the top. The following products of the Online Services are applicable:
 - Microsoft Azure
 - Microsoft Power Platform
 - Microsoft 365
 - Microsoft Dynamics 365 Services
- Office 365 Services.
- 1.7. These Microsoft Product Terms can change with the passage of time, and to which the Customer agrees in advance, or otherwise has two months to cancel as from this
- 1.8. The "**Commencement Date**" of this Agreement is as agreed in the Contract between 4PS and Customer.
- 1.9. This Agreement determines the licensing conditions in **Part A**, and the maintenance conditions for the Software and Business Central Software in **Part B**.
- 1.10. The Customer hereby declares to accept the SLMA and the Microsoft Product Terms. Therefore, the Customer undertakes vis-à-vis 4PS to sign the Microsoft Product Terms provided by Microsoft.
- 1.11. In case of a conflicting interest between the SLMA on one hand and the Microsoft Product Terms on the other, the Microsoft Product Terms will prevail, with the exception of the articles in the SLMA regarding the Intellectual Property of the 4PS Software.
- 1.12. Based on an agreement with Microsoft, designated as **Azure-Subscription**, both 4PS and the Customer each have their own Azure software environment (**Azure-environment**) managed by Microsoft.
- 1.13. 4PS's Software and the Business Central Software, which 4PS wishes to supply to the Customer 'remotely', function in its Azure-environment (software-as-a-service / SAAS).
- 1.14. To make the Customer's Azure-environment accessible, the Customer will provide 4PS with its 'Dedicated Administrator Permission', to allow 4PS to connect the Azure-environments and set up the Customer's Azure-

environment. This connected system is called the **MS-Cloud**.

- 1.15. Where 4PS offers the MS-Cloud, this is contractually designated as a **4PS-Subscription**.
- 1.16. An Azure-Subscription is always required together with the 4PS-Subscription for the Customer.
- 1.17. The Customer is also referred to as '**Tenant**' in the MS-Cloud.
- 1.18. For the functioning of the **MS-Cloud** the Customer will follow the 'online' availability of Microsoft.
- 1.19. The MS-Cloud is subject to the standard 4PS-Cloud Service Level Agreement (**MS-Cloud-SLA**), and the Customer will automatically migrate to new versions and updates.
- 1.20. Based on the SLMA and Microsoft Product Terms, 4PS can also make (parts of) the Software and (parts of) the Business Central Software accessible to the Customer via an app ("**4PS App**") or a portal ("**4PS Portal**").
- 1.21. 4PS' licenses can be differentiated as follows:
 - A-configuration:** On-Premise
 - B-configuration:** On-Premise with an external host
 - C-configuration:** 4PS Cloud
 - D-configuration:** Microsoft Cloud (this agreement)

2. Definitions – functionally categorised:

- 2.1. "**the Parties**": the Parties are 4PS and the Customer.
- 2.2. "**Multi tenant**": multiple Customers use the same tenant
- 2.3. "**Named User**": a pre-identified user who is licensed to use the Software;
- 2.4. "**Tenant**": the customer in a C1 or C2 or D-configuration.
- 2.5. "**Software**": the computer software as developed by 4PS (the so-called Add-on), as hereby licensed to the Customer and described in the Investment Overview, which forms part of the agreement between the Customer, Microsoft and 4PS.
- 2.6. "**Business Central Software**": as developed by Microsoft; Microsoft has authorised 4PS to supply Business Central Software to the Customer and to allow the Customer to use this Software for the Software developed by 4PS based on this, which Business Central Software 4PS hereby licenses to the Customer on behalf of Microsoft.
 - 2.6.1. 4PS will thus supply Software based on Business Central Software to the Customer, either on a yearly basis on the grounds of a licence right, or on a Subscription basis (rental); if no choice is made, Subscription will apply.

2.6.2. Where necessary, this Agreement expresses the interwovenness between the Software and the Business Central Software.

- 2.7. "**Software Components of Third Parties**": the Investment Proposal may include software of third parties, which is not the Software. This is subject to the conditions of the relevant suppliers; these do not form part of the agreement between the Customer and 4PS.
 - 2.7.1. The Software Components of Third Parties will function in the 4PS Cloud after an extension to be activated by 4PS or the Customer (e.g. Exsion or 2-Control).
 - 2.7.2. The Software Components of Third Parties can function after a test to be approved by 4PS, as to be further agreed on by 4PS and Customer.
- 2.8. "**Custom Components of Third Parties**": software of third parties can be included in the Investment Proposal, which is not the Software. This is subject to the conditions of the relevant suppliers; these do not form part of the agreement between the Customer and 4PS.
 - 2.8.1. The Custom Components of Third Parties function in the MS Cloud after a test to be approved by 4PS, as to be further agreed on by 4PS and Customer.
- 2.9. "**Azure-Subscription**": the supply of Azure software by Microsoft.
- 2.10. "**Azure-environment**": having Azure software at one's disposal.
- 2.11. "**4PS-Subscription**": the supply by 4PS of its Software.
- 2.12. "**C1-configuration**": the partition of the Azure-environment acquired by the Customer from 4PS ('shared server').
- 2.13. "**C2-configuration**": the Customer who opens up its own Azure-environment for 4PS ('dedicated server').
- 2.14. "**MS-Cloud**": the online remote supply of the Software and Business Central Software to the Customer (as Tenant), functioning from 4PS's Azure-environment.
- 2.15. "**4PS App**" ("App"): the online (remote) supply of parts of the Software and parts of the Business Central Software to the Customer, functioning from a mobile telephone or tablet, and functionally restricted or, as the case may be, further set up based on a format determined by 4PS.
- 2.16. "**4PS Portal**" ("Portal"): the online remote supply of parts of the Software and parts of the Business Central Software to the Customer, functioning from a 'portal' made accessible by 4PS, and functionally restricted or,

as the case may be, further set up based on a format determined by 4PS.

- 2.17. **“Use”**: the loading, use, storage or visualisation of the Software and Business Central Software for the number of users mentioned who have been admitted for the benefit of data processing and computer requirements; insofar as the Business Central Software is concerned, this use extends to Internal Users (namely, personnel of the Customer) or External Users (namely, others than personnel of the Customer and other persons authorised thereto), without prejudicing Article 4 of the SLMA, exclusively with a view to accessing and changing data in the Business Central Software licensed to the Customer.
- 2.18. **“Delivery Date / Delivery”**: the day on which the Software, together with the Business Central Software, is remotely activated for the Customer ‘online’ with Microsoft (‘delivery’: see Plan of Approach, forming part of this agreement).
- 2.19. **“Error”**: the non-functioning of the Software and Business Central Software in accordance with the Documentation, and/or the non-functioning of the Custom Components of Third Parties in accordance with their functional design (provided that documentation of the Custom Components of Third Parties is available to 4PS).
- 2.20. **“Third-party error”**: the non-functioning of the Software Components of Third Parties and/or Custom Components of Third Parties in accordance with their respective functional designs will be assessed by the relevant supplier, and only after a well-reasoned analysis shared with 4PS will this supplier or the Customer contact 4PS to provide maintenance and support where the analysis or solution lies, among other things, in the Azure environment of the Software and/or Business Central Software (4PS Cloud).
- 2.21. **“SLMA”**: the 4PS software licence and maintenance agreement.
- 2.22. **“Appendices”**: the documents belonging to the SLMA (possibly only supplied electronically, among other things including the 4PS Cloud-SLA, the Investment Proposal, Documentation, and if applicable the Customer-Specific Service Level Agreement (C-SLA).
- 2.23. **“Documentation”**: all (possibly online) auxiliary files and written manuals concerning the Use of the Software and Business Central Software.
- 2.24. **“Microsoft Product Terms”**: the online accessible Microsoft Terms applicable to this agreement.
- 2.25. **“App and Portal conditions”**: the conditions applicable for the use of the App and/or a Portal.

3. Licensing or, as the case may be, rent (MS-Subscription)

- 3.1. 4PS grants the Customer a non-exclusive and non-transferrable licence:
 - 3.1.1. for the Use of the Software and Business Central Software;
 - 3.1.2. for the reproduction of the Software for back-up and archiving purposes; this will take place via a ‘download’, to be carried out by the Customer itself, of the Software, Business Central Software and the data in its database.
 - 3.1.3. for the use of the Documentation for the purpose of Use of the Software and Business Central Software;
 - 3.1.4. to change the Software in accordance with the permissible use of Software supplied by 4PS, provided that all copyright notices, symbols, captions, trademarks and other propriety notices are reproduced and does not include the transfer of intellectual property rights to the Customer;
 - 3.1.5. the App and the Portal according to the conditions published in the App, together with the Portal or via the 4PS-website for each of these; and these conditions may functionally vary from the Software or the Business Central Software or the Azure-environment.
- 3.2. 4PS will perform Maintenance Services for the Customer in accordance with the Maintenance Policy applicable with 4PS, as set out in Part B, Maintenance Conditions in the MS Cloud.
- 3.3. The Customer is permitted to print out the Documentation for its internal use.

4. Licensing or rent restrictions

- 4.1. The Customer declares vis-à-vis 4PS that the Software and Business Central Software will only be used for own use. The Customer is entitled to use the Software and Business Central Software at subsidiaries, provided that they have a majority interest in these companies or decisive control in another manner. The Customer is also entitled to use the Software and Business Central Software in connection with building consortiums, the main contractor status of which has been placed with the Customer. The Use of the Software and Business Central Software for other businesses, branches, etc. is ruled out.
- 4.2. The Customer is also prohibited from:
 - 4.2.1. ‘reverse engineering’ or decompiling the Software and Business Central Software, or any part thereof, notwithstanding that permitted on the grounds of

mandatory legal provisions, e.g. in the event of writing interfaces for the Customer's own use of other software with the Software or Business Central Software;)

4.2.2. licensing, sublicensing, subleasing, leasing, selling, encumbering or otherwise trading the Software and the Business Central Software or the Documentation, or any part thereof, whereby such trading includes supplying services to third parties concerning data processing, commercial 'time sharing', or actual other participation arrangements (on a 'service-agency basis');

4.2.3. making the Software and Business Central Software or its use available to others than the Customer's employees without prior written permission from 4PS, although the Customer is permitted to allow its dealers, distributors and own customers to use the Software, but exclusively to do business with the Customer and within the limits of their dealer's, customer's or distributor's relationship with the Customer or for the implementation of the Software with an implement specialist in accordance with this Agreement;

4.3. The MS Cloud is set up in accordance with the number of Named users of the Software mentioned in the Investment Proposal. The Customer can choose between three subscription types:

4.3.1. Monthly subscription: the number of users can be increased during the month, but not scaled down.

4.3.2. Annual subscription: the number of users can be increased during the year, but not scaled down.

4.3.3. Three-year subscription: the number of users can be increased during the three years, but not scaled down.

5. Payment

5.1. The Customer undertakes to pay 4PS the agreed amount for the use of the Software and Business Central Software on the Commencement Date (from the date on which this agreement is signed). The compensation for the three subscription types is as follows:

5.1.1. Monthly subscription: each month the price per user is determined again, depending on the price that Microsoft sets for this. If there is an increase during the month, the price per user within that month applies.

5.1.2. Annual subscription: the price per user is fixed for one year. If there is an increase, the same price per user applies for the entire year.

5.1.3. Three-year subscription: the price per user is fixed for three years. If there is an increase, the same price per user applies for three years.

5.2. 4PS may make changes pursuant to Article 5 in Part B. The fees, prices and costs mentioned in this Agreement are exclusive of Dutch VAT [BTW].

6. Indemnity against breach

6.1. 4PS will bring a defence or reach a settlement with regard to third parties who are of the opinion that the Software is committing a breach, unless the apparent breach concerns the Business Central Software with regard to which Microsoft brings or will bring its own defence, e.g. regarding the copyrights of third parties. This will apply provided that the Customer immediately notifies 4PS in writing of such a (legal) claim. The Customer hereby authorises 4PS in advance to act as indicated above. In such a case, 4PS will have the exclusive right to bring a defence at its own discretion against the relevant claim or to reach a settlement in this regard, whereby the Customer will not be permitted to agree to any settlement in this regard, except with the prior written permission of 4PS. If a claim from a third party has been or is at risk of being instituted because of the breach referred to (e.g. concerning copyright), 4PS will, at its own discretion and for its own account:

6.1.1. adapt or change the Software or the breaching part thereof or replace it by other computer software, containing substantially the same or better functional possibilities; or

6.1.2. ensure that the Customer acquires the right to continue to Use the Software or the breaching part thereof in such a way that intellectual property rights of the relevant third party/parties are no longer breached;

6.1.3. if none of the aforementioned possibilities are commercially feasible, terminate this Agreement insofar as is possible and insofar that the breaching part of the Software is concerned; 4PS will refund to the Customer the part of the licensing fee paid by the Customer for the breaching part of the Software. This will discharge 4PS vis-à-vis the Customer from further obligations in connection with the breaching part of the Software.

6.2. 4PS will not indemnify the Customer if the breach of the rights of third parties regarding the Software, as mentioned above, is the result of standard Software Components of Third Parties or Custom Components of Third Parties made at the request of the Customer by third parties. The articles included in this Agreement cover the entire liability of 4PS regarding the breach of any intellectual property rights concerning the Software.

7. Confidential information

7.1. "Confidential Information" is not information which:

- 7.1.1. is known to the public, or
- 7.1.2. was received by one of the Parties from third parties without restrictions to its disclosure, or
- 7.1.3. which must be disclosed pursuant to a legal judgment or government decree.

7.2. The following is regarded as Confidential Information:

- 7.2.1. this Agreement, Documentation,
- 7.2.2. attached Appendices,
- 7.2.3. Software description and specifications,
- 7.2.4. source codes (commands of the Software readable for programmers)
- 7.2.5. object codes (for computer-readable commands of the Software), regardless of whether this was known when the Agreement was entered into or subsequently, and regardless of whether this has been or will be provided to the Customer by 4PS or to 4PS by the Customer, provided that this is designated as "confidential information" or words of similar import.

7.3. Without prejudice to the foregoing, the Customer agrees that if so desired, 4PS or Microsoft will use the name of the Customer in press releases and product booklets, without mentioning financial data, such with a view to publicising the fact that the Customer is a buyer of 4PS.

7.4. The Parties each undertake to observe the secrecy of all Confidential Information.

7.5. 4PS will collect data in the Business Central Software within the MS Cloud where data are present, with a view to measuring the correct functioning (the 'performance') of the Software, and if necessary optimising it. This is done by means of fully anonymised data.

7.6. The handling and the protection of personal data are subject to the separate Data Processing Agreement between 4PS and the Customer. Such a Data Processing Agreement will also apply between 4PS and the third-party suppliers involved in this.

8. Guarantee and restriction of liability

8.1. 4PS guarantees the Customer that the Software will essentially function in accordance with the Documentation for a period of three (3) months as from the Delivery Date.

8.2. If the Software does not function as such during this period, 4PS will repair the Software at no charge or, if repairing it is not reasonably possible, replace it at no charge. If neither repairing nor replacing the Software appear to be commercially viable, 4PS will terminate the Agreement, insofar as it pertains to the non-functioning

part of the Software, and 4PS will refund the cost of the licensing fee for that part of the Software, up to a maximum amount of 75% of a monthly licensing fee, excl. Dutch VAT. Based on the number of Named users in the previous month.

8.3. This guarantee will only apply for the Customer and will only be enforceable against 4PS if:

8.3.1. all modifications of or additions to the Software, if any, have been made using Software activated for the Customer by 4PS; and

8.3.2. no unauthorised modifications or additions have been made by or at the request of the Customer in consultation with 4PS, as a result of which the Software varies from the Documentation;

8.3.3. the Software will remain parametrised in the agreed manner and has always been used in accordance with the instructions for use.

8.4. 4PS guarantees that the Software has been written efficiently and coherently with regard to the Business Central Software.

8.5. 4PS guarantees that the Software does not contain any other security measures or functions, or elements that are foreign to the Software than those mentioned in the Documentation, without prejudice to the fact that such functions may have been built in by Microsoft for the security or functioning of Business Central Software.

8.6. Without prejudicing the foregoing, 4PS will not provide any explicit or implicit guarantees related to the Software, Documentation or services provided, including Maintenance. 4PS does not guarantee that the Software is Error-free or will function without any interruptions; this also applies for the conditions under which the Business Central Software functions. Insofar as permitted by law, 4PS expressly excludes any implicit guarantees regarding the suitability or marketability of the Software or Documentation for a specific purpose (even if 4PS has been informed hereof).

8.7. In no case are the Parties liable for damage and/or loss suffered by the other Party following from a breakdown of Software, loss of profit, loss of data, interruptions to business continuity, fallback or replacement costs or for any other indirect, special, additional or consequential loss and/or damage related to or following from the supply or the use of the Software or following from services provided, or for a delay in the supply of the Software or the provision of services, unless such loss or damage is attributable to the gross negligence or intent of 4PS, without prejudice to the liability of Microsoft, insofar as not excluded.

8.8. The total liability of the Parties for damage and/or loss, whether this follows from a breach in the fulfilment of the Agreement or an unlawful act or any other ground, and whether or not this is attributable to intent or gross negligence, is limited to 75% of the amount paid as a licence or Subscription fee in the previous 12 months and as specified in the Investment Proposal for the relevant Software and/or Business Central Software that has caused the damage and/or the loss.

8.9. None of the employees, intermediaries or representatives of 4PS or enterprises affiliated with 4PS are authorised to bind 4PS to any oral declarations or guarantees regarding the Software. A written declaration not included in this Agreement or not applicable under this Agreement will not have any legal effect.

8.10. In the event of damage and/or loss, claims for compensation by the Customer must be made known to 4PS, clearly specifying the underlying reasons, without which the claims will not be valid and will cease to apply up to three months previously.

9. **Force majeure**

9.1. Neither Party will be liable vis-à-vis the other Party for damage and/or loss that may have arisen from failure to fulfil this Agreement or a part thereof, or failure to fulfil it or a part thereof on time, if the delay or failure to fulfil was entirely or partially caused by instances or circumstances of force majeure (non-attributable breach), including but not limited to natural disasters, strikes, lockouts, epidemics, riots, acts of war, earthquakes, fire and explosions. This expressly excludes, however, the inability of a Party to meet its financial obligations.

10. **Duration and termination**

10.1. The Agreement will enter into effect on the Commencement Date and apply for an indefinite period, unless it is terminated in accordance with this Article 10.

10.2. This Agreement can be terminated by the Customer by means of a written notice sent to 4PS, with due observance of a term of notice of thirty (30) days, counting from the last day of the month in which the Agreement is cancelled, on the understanding that this termination will never give the Customer the right to repayment of any part of the fees paid to 4PS, including fees for Business Central Software.

10.2.1. Monthly subscription: can be canceled per month, provided that a notice period of 5 working days before the end of the month is observed. If

the subscription is not canceled (in time), it will be tacitly renewed.

10.2.2. Annual subscription: can be canceled per year, provided a notice period of 30 days before the end of the year is observed. If the subscription is not canceled (in time), it will be tacitly renewed.

10.2.3. Three-year subscription: kan per drie jaar opgezegd worden, mits een opzegtermijn van 30 dagen voor het eind van het jaar in acht wordt genomen. Indien het abonnement niet (tijdig) wordt opgezegd, wordt het stilzwijgend verlengd.

10.3. This Agreement can be terminated by 4PS by means of a written notice sent to the Customer in the cases described hereinafter, on the understanding that such termination will never give the Customer the right to repayment of any part of the fees paid to 4PS:

10.3.1. if the Customer goes bankrupt or discontinues its business activities in another manner or declares in writing that it is unable to fulfil its payment obligations, realises an assignment of claims for the benefit of creditors, or is placed under guardianship, or is granted a moratorium;

10.3.2. if the Customer fails to fulfil its obligations following from this Agreement, has been put into default in this regard, and within in thirty (30) days of being notified hereof by 4PS has failed to contest the notice of default, and has still failed to fulfil its obligations.

10.4. If one of the cases set out above occurs, this Agreement will end on the date mentioned in the written notice or alternatively, the date mentioned in the online environment, provided that this is expressly confirmed by 4PS. Provisions that will continue to apply after the termination of this Agreement are those regarding payment obligations for amounts owed to 4PS, the liability of 4PS (regarding action taken before the aforementioned 'termination'), the mutual handling of Confidential Information by the Customer or 4PS, applicable law and legal forum.

11. **Transfer restriction / Migration**

11.1. Without prior permission in writing from 4PS or alternatively online (by email) and then expressly confirmed by email by 4PS, this Agreement and all rights and obligations following therefrom are not permitted to be transferred by the Customer, whether in their entirety or in part and whether voluntarily or by operation of law, including by way of sale of assets or in connection with a merger.

11.2. 4PS will not withhold its permission on unreasonable grounds (e.g. after payment of invoices), even if the Customer or 4PS have already effected such a transfer.

11.3. Without prejudice to the foregoing, this Agreement is binding for the Parties, as well as for their legal successors and successors in title.

11.4. The Customer can migrate its current D-configuration to a so-called C1 or C2-configuration, all SaaS-configurations. This will be with the most updated Release applicable in that C-configuration. This must take place exclusively in consultation with 4PS. At the request of the Customer 4PS will send an Investment Proposal, together with the contract form for the 4PS Cloud applicable at the time. Upon the migration, the Customer will agree to the 'Subscription model' of 4PS and Microsoft thereby applicable.

11.5. The Customer can migrate its current D-configuration to a so-called A or B-configuration (the Server Location will then be changed to the address of the Customer in the A-configuration and to the address of the designated external Hosting Party in the B-configuration respectively). This will then be in the Release applicable at the time or the most updated Release in the A or the B-configuration. This must take place exclusively in consultation with 4PS. At the request of the Customer, 4PS will send an Investment Proposal for the transitional costs, together with the SLMA for the A or B configuration.

12. Notifications and announcements

12.1. Notifications and announcements that must or can be given or made pursuant to the law or this Agreement must be made in writing by registered letter with acknowledgment of receipt, in registered email modus (secured by a Trusted Third party), in all cases sent to the address mentioned in this Agreement, attn. the respective boards of management.

12.2. Each Party can change the address given for notifications and announcements by notifying the other Party hereof in writing. A notice or announcement will be deemed to have been effected either three (3) working days after being posted, or one (1) day after being sent in registered e-mail modus.

13. Other provisions

13.1. General conditions of the Customer that are directly or indirectly apparent or are printed on stationary and in orders, confirmations or other documents of the Customer will not apply vis-à-vis 4PS and therefore, will not have any effect on this Agreement.

13.2. By signing this Agreement, the Customer is deemed to have waived such own or sectoral conditions, regardless

of whether or not 4PS fails to object to such conditions of the Customer.

13.3. In case of inconsistencies between the SLMA and the Microsoft Product Terms regarding the Business Central Software, the Microsoft Product Terms will prevail.

13.4. In case of inconsistencies between the SLMA and the Microsoft Product Terms regarding maintenance and support, the Microsoft Product Terms will prevail.

14. Split-off

14.1. In the event that a provision included in this Agreement appears to be unlawful, invalid or unenforceable in another manner, the Parties will do their best to come to an agreement in good faith regarding amendments which, insofar as is possible, continue to represent the intentions set out in this Agreement.

15. Waiver of rights

15.1. Waiving the provisions included in this Agreement, or the rights or powers accruing to a Party pursuant to this Agreement, will only be legally valid if effected in writing.

15.2. The fact that a Party fails to require the (timely) fulfilment of the provisions of this Agreement or fails to exercise its rights or powers (in a timely manner) will not be regarded as this Party having waived, or be deemed to be a waiver of, its rights following from this Agreement and will not in any way affect the validity of this Agreement or any part thereof, or detract from the right of that Party to take measures in the future.

16. Applicable law and choice of forum

16.1. This Agreement is exclusively governed by Dutch law.

16.2. All disputes will be brought before the Dutch Foundation for the Settlement of Automation Disputes [Stichting Geschillenoplossing Automatisering], with its registered office in Heemstede (www.Sgoa.eu), in accordance with the arbitration procedure employed at the time by the aforementioned foundation.

16.3. Proceedings will be conducted in the Dutch or English language. If the Customer then so requires and if the aforementioned Foundation or other third party offers that possibility, the Customer and 4PS can each choose an arbitrator, the two of which will choose a single arbitrator as chair; these 3 arbitrators will then decide by majority vote.

SOFTWARE MAINTENANCE AGREEMENT

1. Maintenance Conditions

- 1.1. The 4PS Software is built as 'Add-on software' on Business Central Software of Microsoft and functions in the MS Cloud.
- 1.2. The Software is licensed and maintained based on the **SLMA**, namely the Part B, whereby continuous maintenance is provided and is part of the Subscription, and the fee owed is a price per time unit (monthly, quarterly, yearly; if no choice is made, per month).
- 1.3. 4PS has been authorised by Microsoft to supply the Business Central Software to the Customer and to use the Business Central Software for Software developed by 4PS itself based on this.
- 1.4. 4PS therefore commits itself to Microsoft's licensing and maintenance and support conditions for the use of its Online Services. The conditions of the maintenance and support agreement have been attached as an Appendix and concern the Microsoft Product Terms which – like the SLMA - can change with the passage of time, and will then apply, unless the Customer cancels within 2 months of their prior notification. A change of any sort at all can thus take place in 4PS's SLMA, without prejudice to the law of the agreement.

2. Definitions

- 2.1. The articles below concern the Software (the functionalities) and not the other components that form part of the SLMA and the Microsoft Product Terms.
- 2.2. **"Release"**: this is a Minor Release or Major Release.
- 2.3. **"Minor Release"**: a set of Software and/or an Upgrade (according to the SLT) of Business Central Software in which, in addition to any corrections to any defects discovered, (minor) functional extensions have been included; Minor Releases fall under the Maintenance Fee of the Release installed with the Customer.
- 2.4. **"Major Release"**: a set of Software of a new generation of Software which incorporates substantially new functionality/technology or other changes compared with the last Major Release. Minor Releases can be installed within a Major Release.
- 2.5. **"Release Date"**: notionally, the last day of the month of the actual introduction of a new Release.
- 2.6. **"Release Period"**: 3 successive months after the Release Date.

2.7. **"Maintenance" is:**

- 2.7.1. the provision, where available, during Service Hours, of Software and corresponding online Documentation;
- 2.7.2. assistance by telephone or on the Internet or otherwise regarding the Software and Business Central Software for a technical problem or, as the case may be, reproducible Errors of or defects in the recent Software;
- 2.7.3. assistance - after the so-called business model of the Software or, as the case may be, Business Central Software is ready at the Customer's - in the form of an explanation of the functions and features of the Software after relevant users at the Customer's have followed the agreed training for the Software or Business Central Software;
- 2.7.4. the analysis, verification and correction of Errors by telephone and/or on the Internet.

2.8. **"Response time"**: the time passing between the receipt of a Notification and the time at which 4PS commences the Maintenance of the Software and/or Business Central Software and confirms this to the Customer orally / in writing.

2.9. **"Website"**: 4PS's website can be found at <http://www.4PS.nl> and is available for continuous support (i.e. for 90% per year), 24 hours per day.

2.10. **"Service Hours"**: 4PS's usual office hours from 8.30 hours to 17.00 hours, from Monday to Friday, unless the Maintenance Agreement states otherwise. Investment Proposal;

2.11. **"Notification"**: a Priority Urgent, High, Medium or Low Notification, either separately or simultaneously. Customer can submit notifications via the 4PS Support system.

2.11.1. **"Notification Priority Urgent"**: the Customer's system has completely broken down and is no longer able to process data via the Software as a result of a catastrophic event in the system database or the Software and/or Business Central Software, or as a result of a serious application error in an essential processing period.

2.11.2. **"Notification Priority High"**: the Software and/or Business Central Software has a serious breakdown of an essential business function, that cannot be (temporarily) solved by programme rerouting.



2.11.3. **“Notification Priority Medium”**: a non-essential problem in the Software and/or Business Central Software whereby the Customer can continue to use the system and/or the application, or a workaround is available;

2.11.4. **“Notification Priority Low”**: a problem in the Software and/or Business Central Software that cannot be regarded as Priority Urgent, High or Medium

2.12. 4PS provides maintenance for the **“Software”**, while **Microsoft** provides maintenance for the **Business Central Software**: this is the most up-to-date Release of Software, or, as the case may be, Business Central Software in the market that is licensed to the Customer from the Delivery Date.

3. Permanent full maintenance Release Policy

3.1. The Customer and 4PS agree that if 4PS or Microsoft introduce a new Release (including Upgrades of the Business Central Software according to the Microsoft Product Terms) into the market, the Release will be automatically supplied to the Customer.

3.2. On the instigation of Microsoft, 4PS will notify the Customer in a timely manner that a new (major) release of the Software has been installed. As far as possible, this will take place in the evening after 17.30 hours or in the weekend, but without further consultations with the Customer.

3.3. If 4PS introduces a new release, Customer will, after having accepted this Release, have it installed by 4PS according to 4PS's and Microsoft's guidelines.

4. Maintenance Fee (Software, Business Central Software)

4.1. The fee for the Helpdesk and Newer Versions of the Software (where equivalent functionalities are concerned) is included in the fee per Named user.

5. Change to Monthly Fee per Named user.

5.1. The Customer has opted for the MS-Cloud solution and therefore, the Microsoft Product Terms forming part thereof will apply. 4PS is thus entitled to charge any changes implemented by Microsoft in its license and/or maintenance policy and the related Maintenance Fee on to the Customer. If applicable, 4PS will provide the Customer with an official letter announcing the change.

5.2. 4PS is entitled to increase the Fee per Named User for each subsequent Contract Period, partly as a result of price increases by Microsoft. 4PS will notify the

Customer of any changes forty-five (45) days before the end of the then current Maintenance Period at the latest.

6. Response Times

6.1. Support for the Software and Business Central Software is available during Service Hours, whereby the following response times will apply: (i) Notification Priority Urgent: one (1) hour; (ii) Notification Priority Average: four (4) hours; (iii) Notification Priority Medium and Low: eight (8) hours.

7. Responsibilities of the Customer

7.1. 4PS will provide Maintenance on the following conditions:

7.2. The Customer will provide 4PS with the necessary access to the Customer's personnel, equipment and Azure-environment. 4PS is bound at all times by the Confidentiality Provisions of the Agreement and will only make information available within 4PS to those persons who should have such information at their disposal in order to help solve a problem of the Customer.

7.3. The Customer will ensure the supervision and management of the Use of the MS Cloud.

7.4. The Customer will immediately notify 4PS of all Errors and breakdowns established in the MS Cloud, providing documentation. The Customer will take all necessary steps to execute measures to remedy Errors or breakdowns within a reasonable term after having been notified of such measures by 4PS. The Customer will moreover refrain from destroying 'log files' so that 4PS can no longer see what changes the Customer's recent system management has experienced: maintenance and support will be additionally charged on to the Customer.

7.5. The Customer will train its personnel properly (or have them trained by or via 4PS) in the Use and the application of the MS Cloud at the level indicated in the Plan of Approach.

8. Contact persons

8.1. The Customer will appoint four (4) persons at the maximum at each location of the Customer who are well-versed in the functioning and the operation of the MS Cloud, to act as the main contact persons between the Customer and 4PS regarding the registration and transmission of Notifications. All the Customer's Maintenance requests will be made through these contact persons.



8.2. This will not prevent other persons within the Customer's organisation from requesting direct Maintenance from 4PS via 4PS's Website. The Customer is entitled to appoint more persons who can act as main contact persons after the receipt by 4PS of the fee charged for this at that time.

9. Subcontracting

9.1. 4PS is permitted to engage the services of third parties for the fulfilment of Maintenance Obligations. Unless agreed otherwise in writing, such a business will not discharge 4PS, however, from its responsibility towards the Customer for proper fulfilment.

10. Personnel recruitment

10.1. The Parties acknowledge that the employees and advisors of the other Party that are involved with the supply of services as mentioned here are of great value for the respective Parties and cannot be easily replaced. Therefore, the Parties agree that during the period of this Agreement and a period of six (6) months thereafter, they will not offer any employee or advisor of the other Party any work as an employee, independent contractor or advisor.
