



## SOFTWARE LICENCE AND MAINTENANCE AGREEMENT

of 4PS GROUP B.V. hereinafter referred to as 4PS ®

in conjunction with the

MICROSOFT Software License Terms for On-Premise services

Authorised Microsoft Dynamics 365 Business Central partner for Registered 'Add-on Software'  
ON PREMISE functioning at an external Hosting Party – (B-Configuration)

### PART A - LICENSING CONDITIONS

#### 1. Licences 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 to the Customer and maintained based on this 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 to Microsoft's **Software Licence Terms** (hereinafter **SLT**) or in other words, Microsoft's licensing, maintenance and support conditions.
- 1.6. The "**Commencement Date**" of this Agreement is as agreed in the Contract between 4PS and Customer.
- 1.7. This Agreement determines the licensing conditions in **Part A**, and the maintenance conditions for the Software and Business Central Software in **Part B**.
- 1.8. The licence right and the right to maintenance for the 'Business Central Software' are subject to the **Software licence Terms** (hereinafter **SLT**) of **Microsoft** as these – like the SLMA, App and Portal conditions - change with the passage of time; the

Customer will accept this or can cancel the agreement 2 months after having been notified hereof, notwithstanding that offered in the form of maintenance by 4PS in this Agreement.

- 1.9. Based on the SLMA and SLT, 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**").
- 1.10. 4PS' licenses can be differentiated as follows:  
**A-configuration**: On-Premise  
**B-configuration**: On-Premise with an external host (this agreement)  
**C-configuration**: 4PS Cloud  
**D-configuration**: Microsoft Cloud

#### 2. Licensing Conditions: Definitions

- 2.1. "**The Parties**": the parties are 4PS and the Customer.
- 2.2. "**Named user**": a pre-identified user who are licensed to use the Software.
- 2.3. "**Hosting Party**": the third party who - where Customer is mentioned in this agreement - can also concern the Hosting Party (e.g. access to the server).
- 2.4. "**Software**": the computer software as developed by 4PS (the so-called Add-on), hereby licensed to the Customer and described in the investment overview, which forms part of the agreement between the Customer and 4PS.
- 2.5. "**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.
- 2.5.1 4PS thus supplies its Software, based on Business Central Software, to the Customer, for the agreed period of one year at the minimum, based on a licence right.
- 2.5.2 Where necessary, this Agreement expresses the interwovenness between the Software and the Business Central Software.
- 2.6. 4PS will supply Software based on the Business Central Software to the Customer.
- 2.6.1. Therefore, the Customer undertakes vis-à-vis 4PS to sign a SLT provided by Microsoft.
- 2.7. **“Software 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.
- 2.7.1. 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 can function after a test to be approved by 4PS, as to be further agreed on by 4PS and Customer.
- 2.9. **“External Server”**: the server at the location at the Hosting Party contracted by the Customer itself, which supplies this to the Customer exclusively (‘dedicated server’), on which server the Software functions together with the Business Central Software.
- 2.10. **“Server Location”**: the physical address of the External Server.
- 2.11. **“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.
- 2.12. **“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.
- 2.13. **“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 the personnel of the Customer and other persons authorised thereto), without prejudicing Article 4 of this Agreement, exclusively with a view to accessing and changing data in the Business Central Software licensed to the Customer.
- 2.14. **“Delivery Date / Delivery”**: the day that the Software and Business Central Software is actually delivered to the Customer and can be installed (‘delivery’: see Plan of Approach, forming part of this agreement).
- 2.15. **“Error”**: the non-functioning of the Software with the 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 software is available to 4PS).
- 2.16. **“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 will this supplier or the Customer contact 4PS to provide maintenance and support where the analysis or solution lies, among other things, in the domain of the Software and/or Business Central Software.
- 2.17. **“SLMA”**: Software licence and maintenance agreement of 4PS.
- 2.18. **“SLT”**: Software Licence Terms, namely Microsoft’s licensing, maintenance and support conditions. The SLT is accessible via <https://www.microsoft.com/en-us/download/details.aspx?id=57274>. You have to

scroll down a bit and click on the red 'download' button.

- 2.19. **"Appendices"**: the documents belonging to the SLMA (possibly only supplied electronically, among other things including the SLT, the Investment Proposal, Documentation, Plan of Approach).
- 2.20. **"Documentation"**: all (possibly online) auxiliary files and written manuals concerning the Use of the Software and Business Central Software.
- 2.21. **"App and Portal Conditions"**: the conditions applicable for the use of the App and/or a Portal.

### 3. Licensing

- 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 takes place through a 'download' (copy), to be carried out by the Customer itself, of the 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 proprietary notices are reproduced. Therefore, this licence does not include the transfer of intellectual property rights to the Customer.
  - 3.1.5. for 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 may functionally vary from the Software, the Business Central Software and 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.
- 3.3. As soon as possible after signing the contract, 4PS will supply one (1) machine-readable copy of the Software

to the Server Location, as well as one (1) machine-readable copy of the Documentation. The Customer is permitted to print out the Documentation for its internal use.

- 3.4. Prior to entering into an agreement with the required external Hosting Party of the External Server, the Customer will be obliged to stipulate in the agreement that:
  - (i) the hosting agreement is non-transferrable, unless permission has been obtained from 4PS, and
  - (ii) the hosting agreement is subject to Dutch law, and
  - (iii) the legal forum is the Dutch Foundation for the Settlement of Automation Disputes [Stichting Geschillenoplossing Automatisering] as also agreed here. In case of the non-fulfilment of this provision, the guarantees and maintenance obligations as agreed here will not apply.

### 4. Licensing restrictions

- 4.1. The Customer declares to 4PS that the Software and Business Central Software, as recorded in this agreement, will only be used for own use. The Customer is entitled to use the Software at subsidiaries, provided that the Customer has a majority interest in these subsidiaries. The Customer is also entitled to use the Software in connection with building consortiums, the secretaryship of which has been placed with the Customer. The Use of the 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 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 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 available to or allowing it to be used by 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 implementation specialist in accordance with this Agreement;

- 4.2.4. exceeding the number of 'Named' users or 'named sessions' of the Software mentioned in the Investment Proposal;
- 4.2.5. using the Software for another purpose than that agreed: the number of simultaneous users (Named users or named session), the Upgrade (according to the SLT) of the Business Central Software, the operating or system software and any other parts of the Business Central Software for which a licence has been obtained;
- 4.2.6. starting up or having more than one production environment (database) active for the Business Central Software, although starting up a second databank parallel to this, for development, testing, acceptance or training purposes, is permitted, provided that the External server is exclusively available for the Customer (a 'dedicated server', provided that this is not available to third parties) and is used in one and the same network.

## 5. **Licensing fee**

- 5.1. The Customer undertakes to pay 4PS 100% of the licensing fee for the Software and Business Central Software on the Commencement Date (on the date when this agreement is signed).
- 5.2. 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 for its own account with regard to third parties who are of the opinion that the Software breaches copyrights of third parties, for instance, unless the apparent breach concerns the Business Central Software with regard to which Microsoft brings or will bring its own defence, as stated in the SLT. This will apply provided that the

Customer immediately notifies 4PS in writing of such a right or (legal) claim and the Customer authorises 4PS 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 with the same substantial 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 Custom Components of Third Parties made at the request of the Customer by third parties which are not third parties as referred to in Article 12 of part B (the subcontractors engaged by 4PS for maintenance to the Software). 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 that:
  - 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, attached Appendices, e.g. with:
  - 7.2.2. Software description and specifications,
  - 7.2.3. source codes (commands of the Software readable for programmers),
  - 7.2.4. 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 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 on the External Server in which the On Premise data are present, with a view to measuring the correct functioning (the 'performance') of the Software, and if necessary optimising it. This will take place 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 involved third-party suppliers or between the Customer and the External Hosting Party.

## **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 to the Customer, up to a maximum amount of 75% of the (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 supplied to 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.
- 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 event 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 any other indirect, special, additional or consequential loss and/or damage related to or following from the supply to - or acts of the Hosting Party on - the External Server 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 this is not excluded.

8.8. 4PS can instruct the Customer that the External Server's Hosting Party must first prove that all care and precautionary measures have been taken that can be expected of the Host. At the beginning of this SLMA the Customer will provide 4PS with a copy of the signed agreement and the Customer will notify the Hosting Party hereof.

8.9. The total liability of the Parties for damage or loss, whether this follows from a breach of 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 licensing fee excluding VAT in the previous 12 months as specified in the Investment Proposal for the relevant Software and/or Business Central Software that has caused the damage or the loss.

8.10. 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 or pursuant to this Agreement will not have any legal effect.

8.11. In the event of damage and/or loss, claims for compensation by the Customer must be made known to 4PS, giving reasons, without which the claims 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 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, riots, acts of war, earthquakes, fire and explosions, or events that take place at the Hosting Party's of the External Server. 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 ninety (90) 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 licensing and/or maintenance fees paid to 4PS, including fees for the Business Central Software.

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.

10.5. Within 45 days of this Agreement ending for any reason, the Customer will no longer be permitted to use the Software, derivative works and all copies thereof, all related Documentation and all copies thereof and must return these, or at least hereby grants 4PS authorisation (power of attorney) to to remove these from the Hosting party this end, given that the Software and Business Central Software are situated on the External Server; the Customer will, however, be permitted to keep one 'user' in a separate medium in its own possession (not with the Hosting Party) with a view to complying with statutory accounting retention obligations (for archiving purposes). If returning these is factually impossible, the Customer will destroy the Software, derivative works and all copies thereof, and all related Documentation and copies thereof within 45 days of the termination of this Agreement, and submit proof of this destruction to the Hosting Party on the External Server. Furthermore, within 45 days of the termination of this Agreement, both parties will return all Confidential Information of the other party that they have in their possession to the other party.

## **11. Transfer restrictions / 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 upon the transfer of the agreement between the Customer and the Hosting Party with the External Server 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 B-configuration to an A-configuration (the Server Location will then be changed to the Customer's address). This will be in the

most updated Release in the A-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 B-configuration.

11.5. The Customer can migrate its current B-configuration to a so-called C1 or C2-configuration (4PS-Cloud) or D-configuration (MS-Cloud), all SaaS-configurations. This will be with the most up-to-date Release applicable in that C or D-configuration. At the request of the Customer 4PS will send an Investment Proposal to this end, together with the contract form for the 4PS Cloud or MS Cloud applicable at the time. Upon the migration, the Customer will agree to the 'Subscription model' of 4PS and Microsoft thereby applicable.

## **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 which are directly or indirectly apparent or are printed on stationary and in orders, confirmations, website(s), email messages 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 this Agreement and the SLT (see Article 1) regarding the Business Central Software, the SLT will prevail.

13.4. In case of inconsistencies between this Agreement and the SLT regarding the Software, this Agreement 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, regardless of whether or not the Customer and the Hosting Party of the External Server have agreed on foreign law and/or a foreign legal forum.

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.

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## PART B - MAINTENANCE CONDITIONS

### 1. Maintenance Conditions

- 1.1. The definitions in Part A Licensing Conditions apply here. The 4PS Software has been built as 'Add-on software' on the Business Central Software of Microsoft and functions in the 4PS Cloud.
- 1.2. The Software is licensed and maintained based on the **SLMA**, namely Part B.
- 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. 4PS therefore commits to Microsoft's licensing, maintenance and support conditions (SLT). The conditions of the maintenance and support agreement have been attached as an Appendix, which may change with the passage of time, and will then apply, unless the Customer cancels within 2 months of the prior announcement thereof.
- 1.4. 4PS will provide conversion software for migrations at no charge, with the exception of possible services for, among other things, data conversion and training.
- 1.5. For maintenance for Third-party Software, the conditions of those third parties apply. 4PS does not vouch for the maintenance offered by Microsoft for Business Central Software. 4PS undertakes vis-à-vis the Customer to do its utmost to integrate, as far as possible, maintenance work that Microsoft generates for Business Central Software in the maintenance that 4PS provides to the Customer for the 4PS Software developed on the basis of the Business Central Software. The Customer is aware that responsibilities that typically belong to the Hosting Party or the supplier of the Internet connections are not, in principle, the responsibility of 4PS or Microsoft.
- 1.6. The Customer is not permitted to carry out the migration or updates of the Software and Business Central Software unless the relevant training has been followed with 4PS and the person concerned has

obtained the required Certificate (in his/her own name).

- 1.7. If the migration or updates are carried out by the Customer itself or by a third party, this must be mentioned to 4PS in advance at all times, showing the relevant certificate.

### 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 SLT.
- 2.2. The Customer has the possibility of concluding an additional Customer-Specific Service Level Agreement (**C-SLA**) with 4PS. The content and conditions of this 4PS will apply in addition to the Maintenance Conditions included below.
- 2.3. "**Release**": this is a Minor Release or Major Release.
- 2.4. "**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.
- 2.5. "**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, and as soon as Microsoft charges 4PS a licensing fee, it will be partially or fully charged on to the Customer via an additionally offered and accepted Investment Proposal. The Customer will be notified hereof in advance and relinquish this, following from which the Software or the Business Central Software will reach the phase of Outdated Software or Outdated Business Central Software and the applicable rules;
- 2.6. "**Release Date**": notionally, the last day of the month of the actual introduction of a new Release.
- 2.7. "**Release Period**": 3 successive months after the Release Date.

- 2.8. **“Maintenance Period”**: the period from the Delivery Date until the last calendar date of that year, or each successive calendar year or part of a calendar year.
- 2.9. **“Certificate”**: proof provided by 4PS of the ability to carry out migrations or updates of the Software and Business Central Software; this is in one’s personal name and valid for a maximum period of 1 year, unless stated otherwise.
- 2.10. **“Maintenance”**:
- 2.10.1. the provision, where available, during Service Hours, of Minor Releases (no Major Releases) and corresponding online Documentation;
- 2.10.2. assistance by telephone or on the Internet (see Article 7.2 hereinafter) 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 most recently issued Major Release (or the previous Major Release);
- 2.10.3. 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, as the case may be, the Business Central Software;
- 2.10.4. the analysis, verification and correction of Errors by telephone and/or on the Internet.
- 2.11. **“Response Time”**: the time passing between the receipt of a Notification and the time within which 4PS commences the Maintenance of the Software and/or Business Central Software and confirms this to the Customer orally / in writing.
- 2.12. **“Website”**: 4PS’s worldwide website can be found at <http://www.4PS.nl> for continuous support (i.e. for 90 % per year), available 24 hours per day.
- 2.13. **“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.
- 2.14 **“Notification”**: a Priority Urgent, High, Medium or Low Notification, either separately or simultaneously. Customer can submit notifications via the 4PS Support system.
- 2.14.1 **“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.
- 2.14.2 **“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.
- 2.14.3 **“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;
- 2.14.4 **“Notification Priority Low”**: a problem in the Software and/or Business Central Software that cannot be regarded as Priority Urgent, High or Medium.
- 2.15 Maintenance will be provided for: **“The Software / Business Central Software”**: this is the most up-to-date Software Release or, as the case may be, Business Central Software Release in the market that is licensed to the Customer as from the Delivery Date.
- 2.16 Maintenance is furthermore provided for **“Outdated Software or Outdated Business Central Software”**: this is the Software or Business Central Software installed with the Customer that has not been adapted or succeeded within the **Release Period** by the most recent Release introduced in the market.
3. **Release policy – no migration duty / limited maintenance**
- 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 SLT) into the market, after the Release Period, the Release supplied to the Customer will automatically lose its ‘Software’ or ‘Business Central Software’ qualification contractually relevant for maintenance and will instead be regarded as ‘Outdated Software or, as the case may be, Outdated Business Central Software’ (for a duration to be indicated in the future, but no longer than 12 months), unless the Customer proceeds to have 4PS implement the new Release within the Release Period.

- 1.1. 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.
- 3.2. The Customer agrees that regarding the nature of the Minor Release, its installation method or the time of its issue, 4PS can focus on a majority view of Customers who are members of and are represented by the Dutch users' association for the 'Software' and/or 'Business Central Software' which 4PS licenses in the Netherlands.
- 3.3. In case of a new Release there are two possibilities:
  - 3.3.1. Either the Customer will purchase the new Release within the **Release Period**.
    - 3.3.1.1. The Maintenance Fee for the Release already installed will continue to apply after the installation of the new Minor Release, as if there had been no new Minor Release within the Maintenance Period then running.
  - 3.3.2. Alternatively, the Customer will not purchase the new Release within the **Release Period**.
    - 3.3.2.1. The Maintenance Fee for the Release already installed will not continue to apply without the installation of the new Release. Where the remaining calendar months of the Maintenance Period after the **Release Period** are concerned, the Maintenance Fee will be 150% of the Maintenance Fee expressed in Euros in the year of the new Release.
    - 3.3.2.2. However, in deviation from that the provisions above, the subsequent **Maintenance Period** (in the new calendar year) will run up to 1 year at the latest after the Release Date of the new (but not purchased) Release.
    - 3.3.2.3. The Maintenance of the Outdated Software, or, as the case may be, the Outdated Business Central Software, will continue to apply technically until 1 year after the Release Date. The above-mentioned 150% Maintenance Fee will then also be calculated in proportion to the number of months in the **Maintenance Period** in the new calendar year, unless the Customer does not require any more Maintenance in that new calendar year.

#### 4. **Maintenance Fee**

- 4.1. The Maintenance Fee for the first Maintenance Period is specified in the Investment Proposal and must be paid in advance in full by the Delivery Date.
  - 4.2. For each successive Maintenance Period, the Maintenance Fee is due thirty (30) days before the following Maintenance Period commences.
  - 4.3. Amounts owing that have not been paid within thirty (30) days are subject to interest of one percent (1%) per month, which interest will be due immediately. 4PS will not have to provide the Customer with maintenance on the External Server until this payment has been received; the Customer cannot invoke any setoff based on claims for damages, for instance.
5. **Change of Maintenance Fee**
- 5.1. 4PS is entitled to charge any changes implemented by Microsoft in its 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. Besides any changes to the Maintenance Period as laid down in the Article concerning the Release Policy, 4PS will be entitled to adjust the Maintenance Fee for each subsequent Maintenance Period.
  - 5.3. However, during a period of four (4) years as from the Delivery Date, a rise of the Maintenance Fee for the Software and/or Business Central Software for each successive Maintenance Term will not amount to any more than the Dutch Price Index increase based on 'collective bargaining agreement wages, contract-based wage costs and working hours', excluding special pay. In the event of a change to the Maintenance Fee, the Customer will be entitled to terminate the Maintenance. 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. **Outdated Software / Business Central Software Maintenance**
- 6.1. 4PS will provide Support for Outdated Software and Outdated Business Central Software in the following manner. For Outdated Software and Outdated Business Central Software, the Customer will receive an analysis, verification and correction of defects by



telephone and/or on the Internet for Red and Orange Category Notifications exclusively.

6.2. 4PS will provide these services if the Customer uses the Software and Outdated Business Central Software on a software/hardware/database platform that was supported by 4PS when the Customer obtained the licence for the Software and Business Central Software, or that was approved by 4PS in writing in another manner. The Maintenance for Outdated Software and Outdated Business Central Software does not include services in respect of incidents that are caused by changes to system configurations, or upgrades of hardware or system software, or “backporting” of functionality in standard or changed Software codes, which services the Customer can purchase from 4PS on the grounds of a separate agreement.

6.3. No Releases or Upgrades (according to the SLT) will be supplied for Outdated Software and Outdated Business Central Software.

#### **7. Duration and termination of the Maintenance Services**

7.1. As long as the Customer pays the applicable Maintenance Fees, the Customer will be entitled to Maintenance on the conditions laid down in this article.

7.2. The provision of Maintenance to the Customer by 4PS will commence on the Delivery Date and continue throughout the initial Maintenance Period. At the end of each Maintenance Period a new Maintenance Period will automatically apply, unless the Customer notifies 4PS in writing that it does not wish to continue the Maintenance. The Customer must pass on such notification with due observance of a term of notice of ninety (90) days at the minimum before the end of the Maintenance Period then running. If the Customer thus terminates the Support, this will not affect the licence for the Software and Business Central Software.

#### **8. Response Times**

8.1. Maintenance for 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.

#### **9. On-site maintenance**

9.1. At the discretion of 4PS but with the prior permission of the Customer, 4PS can decide to provide Support at the Customer’s location. The Customer will pay 4PS for this based on time spent and material used, and will also reimburse 4PS for all related travel and accommodation costs.

9.2. **Dial-in modalities/Website:** The Customer is obliged to purchase the prescribed dial-in modalities on its own server and the location of the External Server and to use them as indicated in Part A. If operational, a Customer can and must first visit 4PS’s Website for the most recent information about 4PS’s Maintenance (e.g. for ‘downloadable bug fixes’) before requesting 4PS’s maintenance services.

#### **10. Causes not attributable to 4PS**

10.1. The Maintenance Fee does not apply to services requested as a result of or in respect of causes not attributable to 4PS. Such services will be charged for at 4PS’s applicable rates at the time. Causes not attributable to 4PS include, without being exhaustive:

10.1.1. incidental events; abnormal electric,electromagnetic or physical stress, wrong use; neglect; fluctuations or breakdown of moisture regulation, electricity, air cooling; fire and smoke damage, overheating; epidemics, pandemics; breakdown of rotation media not supplied by 4PS; use of the Software and Business Central Software jointly with other media and hardware, software or telecommunication interfaces that do not comply with - or are not maintained according to - the instructions of the relevant supplier; incorrect act omissions by the Hosting Party of the External Server or the relevant supplier of the internet connections;

10.1.2. the incorrect installation by the Customer or use of the Software and Business Central Software that deviates from the operating procedures as prescribed by 4PS in the relevant Documentation, and incorrect acts or omissions by the Hosting Party of the External Server or the relevant supplier of the internet connections;

10.1.3. computer software produced by the Customer or by a third party, not being a third party as referred to in Article 12 of Part B;

10.1.4. customisation, modifications, change to or extension of the Software and Outdated Business Central Software, or an attempt to that end, made by others than 4PS or third parties called in by 4PS;

10.1.5. maintenance deficits in the Business Central Software caused by Business Central A/S (see SLT).

## 11. Responsibilities of the Customer

11.1. 4PS will provide Maintenance on the following conditions:

11.2. The Customer will provide 4PS with the necessary access to the Customer's personnel and equipment. Access is understood to mean, among other things, the possibility of a telephone connection with the equipment on which the Software and Business Central Software function on the External Server and, if necessary, also the possibility of gaining the same level of access to the equipment as the Customer's employees, with the highest possible degree of authority or the greatest possible access level. 4PS will indicate the requirements that the modem equipment and related software must comply with. 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. 4PS will provide information via its Website (if operational) about the requirements that the modem equipment and related Software and Business Central Software must comply with, while the Customer will be responsible for the costs and the use of said equipment.

11.3. The Customer will ensure the supervision and management of the Use of the Software and Business Central Software or, as the case may be, the conduct of the Hosting Party of the External Server and the relevant supplier of the Internet connections. Furthermore, the Customer will take measures to protect data and ensure back-up possibilities in case Errors or breakdowns occur in the Software and/or Business Central Software.

11.4. The Customer will immediately notify 4PS of all Errors and breakdowns established in the Software and/or Business Central Software or the functioning of the External Server with the Hosting Party, providing documentation. The Customer will take all necessary

steps to execute measures to remedy Errors or breakdowns within a reasonable period after 4PS has notified it of such measures; the Customer will moreover refrain from destroying 'log files' or having these destroyed via the Hosting Party on the External Server, 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.

11.5. The Customer will provide a recent back-up copy of all Software and/or Business Central Software files at all times;

11.6. The Customer will train its personnel properly (or have them trained by or via 4PS) in the Use and the application of the Software and Business Central Software at the level indicated in the Plan of Approach; and

11.7. The Customer will gain access to the worldwide web for its own account so that it can consult 4PS' Website.

## 12. Contacts

12.1. 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 Software and Business Central Software, 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. 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.

## 13. Changes to the Maintenance Policy

13.1. This Maintenance Agreement reflects 4PS's policy regarding the provision of Maintenance. The Customer is aware that these provisions can be amended, among other things due to the SLT, and 4PS will notify the Customer of all such amendments. All amendments will be published on 4PS's Website and will enter into force at the end of the Maintenance Period then running. The Customer is aware that changes to the policy (of Microsoft or 4PS) can also have consequences for the maintenance fee (Article 5).

#### **14. Subcontracting**

14.1. 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.

#### **15. Personnel recruitment**

15.1. 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.

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