

General Terms of Delivery UNIT4

These terms and conditions have been filed with the registrar of the District Court of Dordrecht on 25 May 2010 under number AL 10/2010



This is a translation of the Dutch General Terms of Delivery. In the event of a contradiction between the Dutch text and the English text of the General Terms of Delivery, the Dutch text shall guide.

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Chapter 1 General provisions

1. Definitions

- 1.1 **U4:** "UNIT4 N.V." and/or one of its affiliated companies insofar as such company has declared these General Terms of Delivery applicable to an offer and/or an Agreement.
- 1.2 **Client:** the party that has accepted the applicability of these General Terms of Delivery by signing a written document or in another way.
- 1.3 **Party:** the Client or U4.
- 1.4 **Parties:** the Client and U4.
- 1.5 **General Terms of Delivery:** the present terms.
- 1.6 **Agreement:** an agreement relating to the delivery or provision of goods and/or services of any nature and under any name by U4 to the Client.
- 1.7 **Good(s):** tangible object(s) such as but not limited to data carriers, supplies and consumer goods.
- 1.8 **Equipment:** computer, telecommunications and office equipment and/or other equipment and/or other Goods.
- 1.9 **Documentation:** the user information made available to the Client by U4, in paper or digital form, in the language and content to be decided by U4.
- 1.10 **Software:** the Custom software, websites and/or computer software, including third party software programs made available to the Client by U4, specifically restricted to the executable version (the so-called "object code").
- 1.11 **Custom software:** Software which, by order of the Client, has been developed or adjusted on the basis of existing Software to the Client's specific wishes.
- 1.12 **Error(s) (in the Software):** the substantial failure to meet the functional or technical Software specifications declared in writing by U4 and, in the event of Custom software, the functional and/or technical specifications specifically agreed in writing. There is only question of an Error if the Client can demonstrate this and if this can be reproduced. There is question of a Minor Error if the Error does not reasonably obstruct the operational or productive introduction of the Software.
- 1.13 **Service Level Agreement:** a written agreement or further elaboration thereof under conditions to be stated by U4, further specifying the service.
- 1.14 **Stand-by services:** the permanent availability, specifically agreed in writing, of one or more employees for the Client on the days and at the times mentioned in the Agreement.
- 1.15 **Intellectual Property:** copyrights (including moral rights), neighbouring rights, data-bank rights, patent rights (patents), designs and model rights, trade name rights, trademark rights, rights concerning topographies of semi-conductor products, user models rights in the broadest sense of the word and all other intellectual property rights and associated rights.

2. Applicability of General Terms of Delivery on offers/Agreements

- 2.1 These General Terms of Delivery apply to all offers and Agreements whereby U4 delivers goods and/or services of any nature and under any name to the Client.
- 2.2 Verbal announcements, assurances or agreements specifically have no legal force unless these have been confirmed in writing by the other Party. Amendments and additions to the Agreement are only valid if and insofar these have been agreed in writing between

Parties. This does not apply to amendments in the General Terms of Delivery that U4 can adjust by virtue of article 2.8

- 2.3 The provisions of these General Terms of Delivery should at all times be considered together. In the event of conflict the specific provisions prevail over the more general provisions.
- 2.4 The applicability of the conditions employed by the Client is specifically rejected.
- 2.5 Should any provision of these General Terms of Delivery be void or be cancelled then the remaining provisions of the General Terms of Delivery shall remain in force without prejudice. In that event U4 and the Client shall enter into consultations for the purpose of agreeing new provisions to replace the void or cancelled provision whilst observing the purpose and the meaning of the void or cancelled provisions as much as possible.
- 2.6 All offers and other expressions by U4 are without obligation, unless indicated otherwise by U4 in writing.
- 2.7 The Client vouches for the accuracy and completeness of the information supplied to U4, or supplied on its behalf, which will be the basis of U4's offer. The Client shall at all times exercise the utmost care to ensure that the stated specifications are correct and complete. Sizes and details mentioned in drawings, images, catalogues, websites, quotes, advertising materials and standardisation materials and such like are not binding for U4 unless specifically stated otherwise by U4.
- 2.8 During an Agreement U4 is entitled to proceed to amending the General Terms of Delivery that apply to an Agreement. U4 shall inform the Client in writing of this.

3. Price and payment

- 3.1 All prices are exclusive of VAT and other levies imposed or to be imposed by the authorities. Unless otherwise agreed, all prices are in euros and the Client should make all payments in euros.
- 3.2 All preliminary calculations and budgets issued by U4 are of an indicative nature only, unless U4 declares otherwise in writing. The Client can never derive any rights or expectations from the preliminary calculation or budget issued by U4. An available budget declared by the Client to U4 shall never be a(n) (agreed) fixed price between Parties for the performances to be delivered by U4. U4 is bound to inform the Client of a possible overrun of a preliminary calculation or budget issued by U4 only if this has been agreed between Parties in writing.
- 3.3 If the Client consists of several natural persons and/or legal persons, each of these natural persons and/or legal persons is jointly and severally liable to pay the sums due under the Agreement.
- 3.4 The relevant documents and information from the administration or system of U4 provide full evidence with regard to performances delivered by U4 and the monies owed as a result by the Client, without prejudice to the right of the Client to supply evidence to the contrary.
- 3.5 After three months of concluding the Agreement, U4 shall have the right to adjust the prices and rates by means of a written notice to the Client.
- 3.6 U4 is authorised to pass on interim price increases from its suppliers to the Client. Any possible costs of suppliers' (run time) licences shall also be passed on to the Client.

- 3.7 Parties shall record the date or dates for invoicing of the agreed performances by U4 to the Client in the Agreement. The sums owed shall be paid by the Client in accordance with the payment conditions that have been agreed or mentioned on the invoice. In the absence of a specific arrangement the Client shall pay within a term of 30 days of the invoice date. Payment shall be made into a bank account or giro account to be specified by U4. The Client is neither entitled to suspend any payment nor to offset a payment against monies owed.
- 3.8 If the Client fails to pay the payable amounts or fails to pay within the agreed term, the Client shall, without any notice of default being required, be liable to pay interest of 1.5% or the legal commercial interest, should this be higher, per month on the outstanding amount. If, following a reminder or notice of default, the Client continues to fail to make full payment of the claim, U4 may pass on the claim for collection, in which event the Client shall also be bound to pay compensation (with a minimum of € 125) of all judicial and extra-judicial costs, including all costs charged by external experts, apart from the total sum then owed.
- 3.9 By entering into the Agreement, the Client automatically grants U4 irrevocable and unconditional permission to collect all the sums due by direct debit. The Client shall ensure that sufficient funds are available at all times and shall furthermore grant the necessary cooperation with the direct debit payments.
- 3.10 If the Client fails to fulfil its obligations, fails to fulfil these on time or in an adequate manner, or if the operational installation is delayed due to the Client's fault, or if the Client does not cooperate as required for the execution of the Agreement, or does not cooperate in a timely or proper manner, U4 shall be authorised to suspend its activities and to charge any additional costs that have arisen at such time to the Client's account, in accordance with its usual rates, and U4 shall not be liable for any damages arising from the suspension, such without prejudice to all other rights to which U4 is entitled. The Client shall never be entitled to suspend its obligations.

4. Confidentiality and take-over of personnel

- 4.1 The Client and U4 guarantee that all the information received from the other Party, the confidentiality of which it is or ought to be aware of shall remain secret. The Party which receives such confidential information shall only use it for the purpose for which it has been provided. Information shall, at any rate, be considered confidential if either Party has marked it as such. The Client acknowledges that the Software is of a confidential nature and that this Software contains trade secrets of U4, its suppliers and/or the manufacturer of the Software.
- 4.2 During the term of the Agreement as well as for one year after the termination thereof, neither Party shall employ employees of the other party who are or have been involved in the execution of such Agreement or otherwise engage them, directly or indirectly, unless the other Party has given prior written permission. Conditions may be imposed to said permission.

5. Privacy, data processing and protection

- 5.1 If requested, the Client shall inform U4 in writing forthwith regarding the manner in which the Client executes its obligations within the framework of legislation in the field

of personal data protection, should U4 judge this to be of importance for the execution of the Agreement.

- 5.2 The Client indemnifies U4 against claims by persons whose personal data have been registered or processed as part of a registration of persons performed by the Client or for which the Client is otherwise responsible by virtue of the law, unless the Client proves that the facts on which the claim is based should exclusively be ascribed to U4.
- 5.3 The responsibility for the data that are being processed using a service provided by U4 lies exclusively with the Client. The Client provides a guarantee towards U4 that the content, the use and/or processing of the data are not unlawful and do not infringe on any rights of a third party. The Client indemnifies U4 against any legal action from a third party, of whatever nature, with regard to this data or the execution of the Agreement.
- 5.4 If U4 is bound to provide a form of data protection under the Agreement, that protection shall meet the specifications regarding protection as agreed in writing between the Parties. U4 shall never guarantee that the data protection is effective under all circumstances. If a specifically described form of protection is absent from the Agreement, protection shall be of a level that is not unreasonable taken into account the state of the technology, the sensitivity of the data and the costs involved in making the security arrangements.
- 5.5 U4 is entitled to allocate access or identification codes to the Client if computer, data or telecommunication facilities are being used in the execution of the Agreement or otherwise. U4 is entitled to change the access or identification codes. The Client shall treat the access and identification codes confidential and with care and shall reveal these to authorised personnel only. U4 shall never be liable for damages or costs resulting from the use or abuse of the access or identification codes unless the abuse arose as a direct result of an action or omission by U4.

6. Retention of title and rights, conversion and suspension

- 6.1 All the Goods delivered to the Client remain the property of U4 until all the amounts the Client owes pursuant to the Agreement have been fully paid to U4. If the Client acts as a reseller, it will be allowed to sell all Goods subject to the retention of title of U4 and to deliver them insofar as this is usual in the ordinary course of its business. If the Client (also) creates a new Good with the Goods delivered by U4, the Client shall only create and hold such Good for U4 until the Client has paid all the amounts payable pursuant to the Agreement. In that event, U4 shall have be the owner of the newly created Good until the Client has paid in full.
- 6.2 The consequences of the retention of title with regard to a Good destined for export are governed by the law of the State of destination if that law contains more favourable provisions for U4 than Dutch law.
- 6.3 Rights, including rights of use, are granted to the Client on the condition that the Client has fully paid all the fees owed from the Agreement concluded between the Parties. If the Parties have agreed a payment obligation by standing order of the Client prior to the right of use being granted, the Client shall be entitled to the right of use as long as the standing order payment obligation is observed.
- 6.4 U4 may retain the Goods, products, property rights, data, documents, Software, data-files and (interim) results of the services of U4 which are received or generated as part

of the Agreement, despite an existing obligation to surrender or transfer, until the Client has paid all the sums owed to U4.

7. Risk and claims

- 7.1 The risk of loss, theft, embezzlement or damage of Goods, products, data, documents, Documentation, Equipment, Software, datafiles or information (codes, passwords etc.) that are used or produced as part of the execution of the Agreement is transferred to Client at the time when these have been put into actual power of disposition of the Client or an auxiliary person of the Client. Insofar as U4 or auxiliary persons of U4 have actual power of disposition over these objects, U4 shall bear the risk of loss, theft, embezzlement or damage.
- 7.2 If U4 takes out insurance for one or more Agreements at the Client's request and for the Client's account, the Client can never derive more rights from this insurance than it would have had if it had taken out the insurance itself.
- 7.3 Claims shall be submitted in writing no later than within 8 days after the delivery, stating the grounds on which the claim is based in detail. In default thereof the Client shall be deemed to have approved the execution of the Agreement. The fact that a claim is being processed does not mean that U4 considers it timely or justified. Minor deviations as regards colour, dimension, finish, quantity and quality which are common in the trade or which cannot be technically avoided shall never constitute a reason for a claim.
- 7.4 The Client is always responsible for making and having at its disposal readable copies of all the files, data and data carriers. It is recommended that the Client takes out the necessary insurances, such as reconstruction insurance. The Client is responsible for the correct application in its organisation of the Goods, Equipment, the Software, the Documentation, other documents and services provided by U4 or its licensors and suppliers, as well as for the administration and calculation methods to be applied and for the protection of the data.
- 7.5 The Client bears the risk of the selection, use, application, installation, assembly, the introduction, the adjustments and the management in its organisation of the Equipment, Software, datafiles and other products and materials.

8. Intellectual Property

- 8.1 All Intellectual Property rights on the Software, datafiles, Equipment, services or other materials such as analyses, designs, Documentation, reports, quotes, including preparatory materials thereof developed under the Agreement or made available to the Client solely lie with U4, its licensors or suppliers. The Client shall obtain only those rights of use that have been specifically granted in the Agreement and these General Terms of Delivery. A Client's right of use is non-exclusive, non-transferable to third parties and cannot be sub-licensed.
- 8.2 If U4 is prepared to undertake to transfer an Intellectual Property right, such an undertaking can only be expressly agreed in writing. If Parties agree in writing that an Intellectual Property right regarding Software, datafiles, Equipment or other materials that have specifically been developed for the Client shall transfer to the Client, this shall not affect U4's right or option to use and/or exploit the parts, general principles, ideas,

designs, algorithms, Documentation, documents, works, programming languages, protocols, standards and such like that are at the basis of that development without any restriction for other purposes, either for itself or for third parties. Nor shall the transfer of an Intellectual Property right affect U4's right to produce development for its own benefit or that of a third party that are similar or derived from those produced for the benefit of the Client.

- 8.3 The Client is not permitted to remove or amend any notice regarding the confidential nature or regarding any Intellectual Property right relating to the Software, Documentation, datafiles, Equipment or materials.
- 8.4 U4 is authorised to apply technical provisions for protection of the Software, Equipment, datafiles and such like relating to an agreed restriction in the contents or the duration of the right of use of these objects, even if a specific provision thereto is not provided in the Agreement. The Client is never permitted to (order to) remove or to (order to) circumvent such a technical provision.
- 8.5 U4 indemnifies the Client against any legal action from a third party based on the allegation that Software, datafiles, Equipment or other materials developed by U4 infringe on an Intellectual Property right of that third party, provided that the Client informs U4 in writing forthwith about the existence and the contents of the legal action and leaves the disposal of the case, including agreeing possible settlements, entirely to U4. Thereto the Client shall grant U4 the necessary authorisations, information and cooperation to defend itself, if necessary in the name of the Client, against these legal actions. This duty of indemnification shall be cancelled if the infringement concerned is related to (i) materials made available to U4 by the Client to use, edit, process or incorporate, and/or (ii) modifications which the Client has made in the Software, website, data files, Equipment or other materials or has ordered third parties to make without written permission from U4. If it has been irrevocably established by law that Software, websites, data files, Equipment or other materials developed by U4 itself infringe on any Intellectual Property Right belonging to a third party or if, in U4's opinion, there is a serious chance that such infringement will occur, U4 shall, if possible, ensure that the Client can continue to use the delivered, or functionally equivalent other Software, websites, data files, Equipment or other materials concerned undisturbed. Any other or further-reaching obligation by U4 to indemnify is excluded.
- 8.6 The Client guarantees that the rights of third parties are not incompatible with the provision to U4 of Equipment, software, materials for websites (images, text, music, domain names, logos, hyperlinks etc.), datafiles or other materials, including design materials, designed for use, adaptation, installation or incorporation (into a website, for example). The Client indemnifies U4 against any claim by a third party based on the allegation that such provision, use, adaptation, installation or incorporation infringes on any right of that third party.

9. Cooperation duties

- 9.1 Parties acknowledge that the success of work in the field of information and communication technology generally depends on correct and timely mutual cooperation. To enable U4 to execute the Agreement adequately, the Client shall at all times supply U4 with the data and information which U4 deems useful, necessary and desirable and to

grant its full cooperation. If the Client employs its own personnel of auxiliary persons as part of granting cooperation in the execution of the Agreement, these persons and auxiliary persons shall dispose over the required knowledge, expertise and experience.

- 9.2 If the Client fails to make data, documents, Equipment, software, materials or personnel deemed useful, necessary or desirable by U4 available, available on time or contrary to the agreements or if the Client fails to meet its obligations otherwise, U4 is entitled to suspend the execution of the Agreement partly or completely and U4 is also entitled to charge the costs that have arisen as a result based on its usual rates, without prejudice to the right of U4 to execute any other statutory and/or agreed right.
- 9.3 The Client shall provide reasonably requested facilities such as an office with computer, data and telecommunications facilities free of charge in the event that U4 personnel carries out work on the Client's premises. The office and facilities shall meet all legal and other current demands regarding working conditions. The Client indemnifies U4 against claims from third parties, including U4 employees, who incur damages during the execution of the Agreement resulting from the Client's actions or omissions or from unsafe situations in its organisation. The Client shall inform the employees deployed by U4 of the house and safety regulations that apply within its organisation prior to the start of the work.
- 9.4 If computer, data or telecommunications facilities, including internet, are used in the execution of the Agreement, the Client shall be responsible for the correct choice of the means required for that and for the timely and full availability thereof, with the exception of those facilities under direct use and management of U4. U4 shall never be liable for damages or costs due to transmission errors, failure or non-availability of these facilities, unless the Client proves that these damages or costs result from intent or gross negligence by the U4 management.

10. Delivery terms

- 10.1 All (delivery) terms and (completion) data mentioned or agreed by U4 have been set to the best of its knowledge on the basis of information that was known at the time that the Agreement was concluded. (Delivery) terms and (completion) data mentioned by U4 or agreed between Parties are target dates, are not binding for U4 and always have an indicative nature only. In the event that Parties have agreed a deadline for delivery or completion, U4 is not bound by this if this can no longer be met due to circumstances beyond its control which occurred after the Agreement had been concluded. Neither is U4 bound to a (completion) date or (delivery) term, whether there is a deadline or not, if Parties have agreed an amendment of the content or extent of the Agreement (additional work, amendment of specifications, etc.) or to a change in the execution approach to the Agreement. If there is a risk that a term will be exceeded, U4 and the Client shall consult to discuss the consequences of exceeding for further planning. U4 shall never be liable for damages as a result of exceeding a term.
- 10.2 The single exceeding of a (delivery) term or (completion) date mentioned or agreed between Parties, whether there is a deadline or not, does not constitute a default on the part of U4. In all cases – therefore also in the event that Parties have expressly agreed a deadline for delivery or completion in writing – U4 shall only default due to exceeding of time upon written notification of default by the Client, whereby a reasonable term for remedy of the failure is stated and U4 continues to fail in the performance of its

obligations after that term also. The notice of default should contain a full and as much as possible detailed description of the failure in as much as possible so that U4 is offered the opportunity to respond adequately.

11. Dissolution and termination of the Agreement

- 11.1 Either Party is authorised to dissolve the Agreement due to an attributable failure to observe the Agreement if the other Party fails attributable in meeting essential obligations arising from the Agreement. Dissolution is only possible after a notice of default containing as many details as possible whereby a reasonable term for remedy of the failure is stated. Payment obligations and all other obligations to cooperate by the Client or a third party engaged by the Client shall always qualify as essential obligations under the Agreement.
- 11.2 If, at the time of the dissolution as referred to in article 11.1, the Client has already received performances as part of the execution of the Agreement, these performances and the associated payment obligation shall not be the subject of cancellation, unless the Client proves that U4 is in default with regard to the material part of these performances. Sums invoiced by U4 prior to the dissolution concerning the proper performance or delivery in execution of the Agreement shall remain due in full whilst observing the provision in the previous sentence and shall be due and payable forthwith at the time of dissolution.
- 11.3 If an Agreement which on the basis of its nature and content does not terminate by its completion and has been entered into for an indefinite period of time, it can, after proper consultations have been conducted, be terminated by either Party by means of a written notice of termination stating the reasons. If a notice period has not been agreed between the Parties, a reasonable notice period shall be observed. Parties shall never be liable to pay damages due to termination.
- 11.4 The Client is never entitled to terminate an Agreement which has been entered into for a definite period of time in the interim, such as, but not exclusively, a service agreement or commission contract.
- 11.5 Either Party can terminate an agreement in writing, wholly or in part, with immediate effect and without any notice of default being required if the other Party is granted suspension of payments, whether or not temporary, if bankruptcy is filed for with regard to the other Party or if the business of the other Party is liquidated or terminated other than as part of a reorganisation or merger. U4 shall never be under an obligation to refund any payments that have already been received or payment of any damages. In the event of the Client's bankruptcy the right to use the Software and such like provided to the Client shall be cancelled by operation of law.
- 11.6 In the event that the Agreement is nullified due to an infringement of the provisions of the Dutch Act legal tender implementation guidelines, the Client shall owe U4 compensation in connection with the nullification of the Agreement for the sum of the stipulated price for that Agreement, except where U4 would benefit unfairly as a result.

12. Liability

- 12.1 U4's total liability for an attributable failure in the performance of the Agreement or any other reason, specifically including any failure to observe a warranty obligation agreed

with the Client, shall be limited to a reimbursement of the direct damage up to a maximum of the amount of the price agreed for such Agreement (excl. BTW [Dutch VAT]). This limited liability shall be applicable mutatis mutandis to U4's obligation to indemnify as referred to in article 8.5 of these General Terms of Delivery. If the Agreement is mainly a continuing performance Agreement with a term of over one year, the agreed price shall be determined at the total of the reimbursement (excl. BTW [Dutch VAT]) agreed for one year, namely the year in which the damage has arisen. The total reimbursement for the direct damage shall, however, under no circumstances exceed the amount of € 500.000.

The term direct damage shall be taken to mean:

- a. The reasonable costs the Client would have to incur to ensure that U4's performance conforms to the Agreement. However, this damage will not be reimbursed if the Agreement has been dissolved by or by order of the Client;
 - b. The reasonable costs incurred by the Client for keeping its old system or systems and the related facilities operational out of necessity, because U4 has failed to deliver on a binding final date of delivery, less any possible savings caused by the delayed delivery;
 - c. The reasonable costs incurred to determine the cause and the amount of the damage, insofar as this assessment relates to direct damage in the sense of these General Terms of Delivery;
 - d. The reasonable costs incurred to prevent or limit the damage, insofar as the Client proves that these costs have led to prevention or a limitation of the direct damage in the sense of these General Terms of Delivery.
- 12.2 U4's total liability for damage due to death or bodily injury or for property damage shall under no circumstances exceed the amount of € 1.250.000 per event, whereby a series of related events shall be considered as one event.
- 12.3 The liability of U4 for indirect damage, including consequential damage, loss of profit, lost savings, reduced goodwill, damage caused by stagnation, damage caused by claims from the Client's customers, damage connected with the Client's use of Goods prescribed by U4, materials, software by third parties and damage relating to the suppliers that the Client has instructed U4 to use is excluded, even if that damage was reasonably foreseeable by U4. U4 is not liable for any costs or damage as a consequence of the mutilation, destruction or loss of files, documents and other data carriers of the Client either.
- 12.4 The exclusions and restrictions of U4's liability, as described in the previous paragraphs of this article 12 are without prejudice to the other exclusions and restrictions of liability of U4 under these General Terms of Delivery.
- 12.5 Unless compliance by U4 is permanently impossible, U4's liability arises due to attributable failure in observing of an Agreement only if the Client issues a notice of default to U4 immediately, whereby a reasonable term for remedy of the failure is stated and U4 continues to fail attributably in observing its obligations even after that term. The notice of default should contain the fullest and most detailed description possible of the failure so that U4 is offered the opportunity to respond adequately.
- 12.6 A condition for any right to damages shall always be that the Client reports the damage to U4 in writing as soon as possible after occurrence of the damage. Any claim for

damages against U4 shall be cancelled once 24 months have lapsed since the claim arose.

- 12.7 The Client shall indemnify U4 against any claims of third parties due to product liability as a consequence of a defect in a product or system delivered by the Client to a third party, which also consisted of Equipment, Software or other materials delivered by U4, except if and insofar as the Client proves that the damage was caused by such Equipment, Software or other materials.
- 12.8 The provisions of this article 12 as well as all other restrictions and exclusions of liability stated in these General Terms of Delivery shall also apply to all the legal entities or persons used by U4 to carry out the Agreement.

13. Force majeure

- 13.1 Neither Party is obliged to fulfil any obligation, including any warranty obligation agreed between the Parties, if fulfilment is hampered as a consequence of force majeure. The term force majeure shall be taken to include: (i) force majeure of U4's suppliers, (ii) the failure to properly fulfil obligations by suppliers which the Client has instructed U4 to use, (iii) any defectiveness of Goods, Equipment, Software or materials of third parties which the Client has instructed U4 to use, (iv) government measures, (v) electricity failure, (vi) internet failure, computer network failure or telecommunications failure, (vii) war, (viii) work occupation, (ix) strike, (x) general transport problems, (xi) terrorism and (xii) unavailability of one or more employees.
- 13.2 If a situation of force majeure exceeds ninety days, each Party shall have the right to terminate the Agreement by dissolving it in writing. Performances already delivered under the Agreement will, in that case, be settled proportionately, without Parties owing each other in all other respects.

14. Amendments and additional work

- 14.1 If U4 has carried out performances at the request or upon prior agreement of the Client that are outside the content or the scope of the agreed work and/or performances, this work or these performances shall be paid for in accordance with the agreed rates and in the absence of these, in accordance with U4's usual rates. U4 is never obliged to accede to such a request and may require that a separate Agreement is concluded for this.
- 14.2 The Client accepts that the agreed or expected completion date of the services and the mutual responsibilities of the Client and U4 could be influenced as a result of work or performances as referred to in this article 14. The fact that additional work is requested during the execution of the Agreement, shall never be a ground for termination or dissolution of the Agreement by the Client.
- 14.3 Insofar as a fixed price has been agreed for the services, U4 shall inform the Client in writing, as requested, of the financial consequences of the additional work or performances as referred to in this article 14.

15. Service Level Agreement

- 15.1 A Service Level Agreement shall at all times only be agreed in writing. The Client shall inform U4 at all times of all the circumstances that may influence the services and the availability thereof. If such agreements are made, the availability shall be measured

against disregarding prior announced closed downing due to maintenance and circumstances outside the sphere of influence of U4 and whilst observing the services as a whole for the duration of the Agreement. Except for evidence to the contrary the availability measured by U4 shall qualify as complete evidence.

16. Transfer of rights and obligations

16.1 U4 shall always be authorised, upon prior notification and without permission of the Client being required, to transfer all the rights and obligations arising from the Agreements it has concluded to third parties. Insofar as that permission or cooperation would be required, this shall be granted by the Client in advance and the Client undertakes to grant all other necessary cooperation. The Client can transfer the rights and obligations arising from the Agreements that it has concluded only after prior written permission of U4, which permission shall not be withheld on unreasonable grounds.

17. Duration of the Agreement

17.1 The Agreement shall have a minimum term from the start of the Agreement until 31 December of the 3rd year after the start of the Agreement, unless otherwise agreed in writing between Parties. The duration of the Agreement shall always be extended implicitly by 1 year, unless the Client or U4 terminates the Agreement in writing by recorded letter whilst observing a term of notice of 3 months prior to the end of the term concerned.

18. Applicable law and disputes

- 18.1 The Agreements between U4 and the Client are governed by Dutch law. The Vienna Sales Convention of 1980 does not apply.
- 18.2 Any disputes between Parties shall be brought before the competent court at Dordrecht. Parties may jointly opt to approach the "Stichting Geschillenoplossing Automatisering", having its registered office at The Hague (see www.sgoa.org) for settlement of a dispute by means of arbitration.
- 18.3 In order to attempt an amicable settlement of an existing or any future dispute, either Party may always initiate an ICT-mediation in accordance with the ICT-mediation regulations of the "Stichting Geschillenoplossing Automatisering" at The Hague. ICT-mediation in accordance with these regulations is aimed at mediation by one or more mediators. This procedure does not result in a binding judgment for the Parties. Participation in this procedure is on a voluntary basis.
- 18.4 Parties acknowledge that participating actively and constructively in an ICT-mediation is a reasonable and fitting measure to prevent or limit imminent damage, in particular if the Client states that this imminent damage is connected with the failing, or untimely or improper fulfilment of any contractual obligation by U4. Therefore the Client undertakes to participate in an ICT-mediation in accordance with the ICT-mediation regulations of the "Stichting Geschillenoplossing Automatisering" at the first written request by U4.

Chapter 2 Right of use of Software

19. Definitions

- 19.1 **Object code:** Software in an "executable" version for use.
 19.2 **Pin code:** A unique code issued by U4 for access to and use of the Software.

20. Right of use

- 20.1 U4 shall make Software and Documentation available as referred to in the Agreement.
 20.2 U4's obligation to make the right of use available to the Client is restricted only to the Software Object code, unless otherwise agreed in writing. The Client's right of use does not include the use of the Software source code. Neither the Software source code nor the technical documents produced during the development of the Software shall ever be made available to the Client, not even if the Client is prepared to pay for this provision.
 20.3 U4 is not obliged to make anything other than the agreed Software, program or data libraries available, not even if these are required for the use and/or maintenance of the Software, unless otherwise agreed in writing. If, in deviation of the above, U4 also makes Software and/or program or data libraries available other than has been agreed, U4 may ask that the Client enters into a separate written Agreement for that.
 20.4 U4's performance obligations do not include Software maintenance and/or providing support to the Software user, unless otherwise agreed in writing. These actions and services shall be invoiced separately against the usual U4 rates when the occasion arises.
 20.5 Without prejudice to the provisions in the General provisions (Chapter 1) the right of use of the Software is at all times non-exclusive, non-transferable and cannot be sub-licensed.

21. Restrictions on use

- 21.1 The Client shall strictly observe the agreed restrictions with regard to the Software right of use at all times. The Client is aware that infringement of an agreed restriction on use constitutes not only a failure to observe the Agreement with U4 but also an infringement of the Intellectual Property rights of the Software. The agreed restrictions on use may relate to, amongst others:
- the type of Equipment for which the Software is intended;
 - the maximum number of processing units for which the Software is intended;
 - certain persons within the organisation of the Client who are permitted to use the Software, whether or not indicated by name or position;
 - the maximum number of users within the organisation of the Client who are permitted to use whether or not simultaneously;
 - the location where the Software can be used;
 - certain types and purposes of use (such as business purposes or private purposes);
 - any other quantitative or qualitative restriction.

The right of use shall only be granted to the Client for a limited number of processing units and for a limited number of users or connections for which the right of use has been granted. In the absence of agreements about this between Parties, the number of processing units for which the Client has used the Software for the first time, and the

number of users or connections that were connected at the time of first use to these processing units count as the processing units and the number of users for which the right of use has been granted. In the event of a possible breakdown the Software may be used on other processing units for the duration of the breakdown.

- 21.2 If the Parties have agreed that the Software should only be used in combination with certain Equipment or a certain kind or type of Equipment, the Client is entitled, in the event of a possible breakdown of the Equipment concerned, to use the Software on other Equipment of the same kind or type for the duration of the breakdown.
- 21.3 U4 may request that the Client does not start to use the Software until after the Client has applied for and obtained one or more codes (passwords, identity codes etc.) required for the use from U4, its supplier or the Software manufacturer. U4 is at all times entitled to take technical measures to protect the Software from unlawful use in another manner and/or from use or purpose other than agreed between Parties
- 21.4 The Client shall never (order to) remove or (order to) bypass technical provisions intended to protect the Software.
- 21.5 The Client may only use the Software in and for its own company or organisation and solely for its intended purpose. The right of use shall be granted to the Client's own personnel only. Personnel from companies or institutions linked to the Client are not included therein. The Client shall not use the Software to process data for third parties, such as "time-sharing", "application service provision", "software as a service" and "outsourcing", unless otherwise agreed in writing.
- 21.6 The Client is not permitted to sell, let, remove the Software, the carriers on which the Software is recorded and the certificates of authenticity issued by U4 when the Software was made available, or award limited rights in any way whatsoever or for whatever purpose to third parties. The Client shall neither grant a third party – whether or not at distance – access to the Software or to house the Software with a third party for hosting services, not even when the third party concerned uses the Software solely for the benefit of the Client.
- 21.7 If requested, the Client shall immediately grant full cooperation to an investigation by U4 into the Client's observance of the agreed restrictions of use. The Client shall grant U4 access to its buildings and systems at the first request. U4 shall treat all business information obtained as part of such an investigation and which is deemed to be confidential, in a confidential manner, insofar as that information does not concern the use of the Software itself.
- 21.8 If the right of use ends, the Client is obliged to remove all Software from its Equipment and to make all Software and Documentation, including copies, available at the offices of U4, within 30 days of the right of use being terminated.
- 21.9 If the right of use ends, U4 may, but is not obliged to, supply a "viewing licence" at the request of the Client for a limited period of time and on (financial) conditions further to be stated by U4.
- 21.10 The Client's right of use terminates immediately upon infringement of one of the conditions of this article 21, without any further (legal) action being required by U4, and the Client forfeits a penalty of € 100.000, due and payable forthwith to U4, without prejudice to all other rights by U4, including the right to claim compliance and/or damages from the Client.

22. Delivery and installation

- 22.1 U4 shall deliver the Software on the agreed format of data carriers or, in the absence of clear agreements as to that, on a format of data carriers to be decided by U4, or with the use of telecommunications facilities (on-line) to the Client. U4 shall determine the time and manner of delivery.
- 22.2 U4 shall implement the Software with the Client only if this has been agreed between the Parties in writing. In the absence of clear agreement as to that, the Client shall implement, organise, parameterise and tune the Software itself, and if necessary, adapt the Equipment used and operating environment and carry out data conversion.

23. Acceptance test and acceptance

- 23.1 In the event that Parties did not agree on an acceptance test, the Client shall accept the Software "as is" at the time of delivery, that is, with all visible and invisible flaws and defects.
- 23.2 The provisions of articles 23.3 up and including to 23.10 apply in the event that an acceptance test has been agreed in writing between the Parties.
- 23.3 The Client is obliged to report any Errors in the Software to U4 forthwith.
- 23.4 In the event that an acceptance test has been agreed, the test period will be 14 days after delivery or, if installation by U4 has been agreed in writing, upon completion of the installation. The Client is not entitled to use the Software for productive or operational purposes during the test period. The Client shall carry out the agreed acceptance test on Software with sufficiently qualified personnel and sufficient scope and depth and report to U4 on the test results in writing, in an orderly and intelligible manner.
- 23.5 In the event that an acceptance test has been agreed, the Client is obliged to take full and sole responsibility for tests to ascertain that the supplied Software meets with the functional and/or technical specifications stated in writing by U4 and, in the event of Custom software, that it meets with the functional or technical specifications agreed in writing between Parties. The support given by U4 in executing the acceptance test shall be at the risk and expense of the Client, unless otherwise agreed in writing. U4 may impose (financial) conditions, yet to be decided, to the aforementioned support.
- 23.6 The Parties shall consider the Software as accepted if:
- Parties have not agreed an acceptance test: at the time of delivery, or if installation by U4 has been agreed in writing, at the completion of the installation, or;
 - Parties have agreed an acceptance test: on the first day following the test period, or;
 - U4 receives a test report as referred to in article 23.7 before the end of the test period: as soon as the Errors mentioned in that test report have been repaired, without prejudice to the presence of flaws that do not hamper the acceptance under article 23.8. In deviation thereof, the Software, if used by the Client for any productive or operational purposes prior to the moment of specific acceptance, shall be considered as fully accepted from the start of that use.
- 23.7 Any Errors that have become apparent during the agreed acceptance test shall be reported to U4 by the Client by means of a detailed written test report, no later than on the last day of the test period. U4 shall endeavour to repair the stated Errors within a reasonable period of time to the best of its ability, whereby U4 is entitled to introduce temporary solutions, program diversions or restrictions aimed at avoiding problems.

- 23.8 Acceptance of the Software may not be withheld on grounds that are unrelated to the expressly agreed specifications between Parties and neither due to the existence of Minor Errors. Acceptance may furthermore not be withheld due to Software aspects that can only be judged subjectively, such as aesthetic aspects and aspects concerning the design of the user interfaces.
- 23.9 In the event that the Software is delivered and tested in stages and/or parts, non-acceptance of a particular stage and/or part shall not affect a possible acceptance of a previous stage and/or another part.
- 23.10 Acceptance of the Software in one of the manners as referred to in article 23 results in U4 being discharged from the fulfilment of its obligations concerning the disposal and the delivery of the Software and, if in the present case installation by U4 has also been agreed, from its obligations concerning the installation of the Software.

24. Compensation

- 24.1 A right of use is obtained against payment of an initial sum for the right of use.
- 24.2 Furthermore, the Client is due to pay a fee for right of use periodically.
- 24.3 U4 shall make the Software with an accompanying PIN code and Documentation available to the Client only after payment of the initial fee of the right of use and the fee for right of use periodically owed. If the Client fails to observe any obligation arising from the Agreement, U4 is entitled to withhold or block the PIN code at any time.
- 24.4 Unless otherwise agreed in writing, the initial price and fee for the right of use agreed between the Parties is due at the times agreed between Parties or, in the absence of an agreed time:
 - a. if the Parties have not agreed that U4 is in charge of the Software installation: at the time of delivery of the Software or, in the event of fees for right of use being periodically owed, at the time of delivery of the Software and subsequently at the start of each new period of right of use;
 - b. if Parties have agreed that U4 is in charge of the Software installation: at the time of completion of the Software installation or, in the event that fees for right of use are owed periodically, at the time of completion of the Software installation and subsequently at the start of each new period of right of use.
- 24.5 U4 is not obliged to install and adjust the Software, unless otherwise agreed in writing. If, in deviation of the aforementioned, installation activities or activities regarding Software adjustment are carried out by U4, U4 may request that the Client enters into a separate written Agreement for that. In that case the performances shall be charged separately at the usual U4 rates.

25. Modification of the Software

- 25.1 The Client is not entitled to modify the Software either completely or partly without prior written permission by U4, unless otherwise agreed in writing. U4 is at all times entitled to refuse permission or to impose conditions to its permission, such as conditions concerning the manner and the quality of the execution of the modifications requested by the Client.
- 25.2 All modifications made by the Client or on behalf of the Client by third parties – irrespective of U4's permission – are at the full risk of the Client.

26. Warranty

- 26.1 U4 does not guarantee that the Software made available to the Client is suitable for the actual and/or intended use by the Client. Neither does U4 guarantee that the Software shall function without interruptions, Errors or defects nor that all Errors and defects shall be remedied.
- 26.2 U4 shall endeavour to repair the Software Errors to the best of its ability within a reasonable period of time in accordance with the made arrangements between the Parties. U4 may charge its usual prices and rates for the costs for repair.
- 26.3 The repair of Errors takes place at a location to be determined by U4. U4 is at all times entitled to introduce temporary solutions or program diversions or restrictions aimed at avoiding problems.
- 26.4 U4 shall never be obliged to repair mutilated or lost data.

27. Termination of the Agreement

- 27.1 The Client shall return any Software copies it possesses to U4 immediately after the expiry of the right of use of the Software. In the event that the Parties have agreed that the Client shall destroy the copies concerned, the Client shall report the destruction of this to U4 in writing forthwith. U4 is not obliged to offer the Client support at or after the expiry of the right of use in view of any data conversion requested by the Client.

28. Software from suppliers

- 28.1 If and insofar as U4 makes Software from third parties available, the (licence) conditions of those third parties shall apply to that Software, provided that this has been announced to the Client in writing by U4, replacing the varying conditions in these General Terms of Delivery. The Client accepts the conditions from the third parties referred to, which shall be available for viewing at U4 and which shall be sent by U4 to the Client free of charge, upon request. If and insofar as the conditions from third parties referred to are deemed not to apply to the relation between the Client and U4 for whatever reason, or are declared inapplicable, the provisions in these General Terms of Delivery apply unimpaired.

Chapter 3 Software Maintenance

29. Maintenance agreement

- 29.1 The maintenance that is part of the Agreement concluded with the Client shall be provided for in this chapter.
- 29.2 The Client should appoint qualified personnel with regard to the intended use of the Software. U4 may charge the Client for costs resulting from insufficient expertise from the Client's personnel against its usual rates.

30. Maintenance

- 30.1 U4 shall carry out the maintenance of the Software stipulated in the Agreement. The maintenance duty covers the repair of Software Errors in accordance with article 31 and making new versions of the Software available in accordance with article 32, only if and

insofar this has been agreed in writing and these new versions are available. U4 reserves the right to let the repair of Errors coincide with the release of a new Software version.

- 30.2 U4 is not obliged to carry out data conversion, unless agreed otherwise in writing.
- 30.3 If the maintenance also covers support to users under the terms of the Agreement, U4 shall advise on the use and functioning of the Software mentioned in the Agreement by telephone or by e-mail. U4 may lay down conditions with regard to the qualifications and the number of contact persons that qualify for support. U4 shall consider well-founded requests for support within a reasonable term according to its usual procedures. U4 shall not vouch for the correct, complete and timely responses or proposed support. Support shall only be given on working days during the usual opening hours of U4, unless otherwise agreed in writing.
- 30.4 If the maintenance by U4 under the terms of the Agreement also covers the provision of stand-by services, U4 shall keep one or more employees available during the days and times stated in the Agreement. In that event the Client is entitled to call in the support of the available employees in an emergency, in the event of a serious breakdown in the functioning of the Software. In that case U4 cannot guarantee that all failures shall be resolved in time.

31. Execution of maintenance

- 31.1 U4 shall endeavour to execute the maintenance with care and, if so agreed, in accordance with the agreements and procedures recorded in writing with the Client. All maintenance by U4 shall be carried out on the basis of an obligation to perform to the best ability, unless and insofar as U4 has specifically guaranteed a result in the written Agreement and the result concerned has moreover been sufficiently defined.
- 31.2 The Client shall submit a detailed written report with regard to the detected Errors. Upon receipt of this report U4 shall endeavour to repair the Errors to the best of its ability in accordance with its usual procedures and/or implement improvements in subsequent new Software versions. Depending on the urgency the results shall be made available to the Client in a manner and at a term to be decided by U4. U4 is entitled to introduce temporary solutions, program diversions or restrictions aimed at avoiding problems. In the absence of clear agreements to that effect, the Client shall implement, organise, parameterise and tune the Software itself, and if necessary, adapt the Equipment used and the operating environment. U4 shall not guarantee that the Software can be operated without interruption, Errors or defects or that all Errors or defects shall be remedied.
- 31.3 If U4 carries out maintenance on-line, the Client, for its part, shall provide a sound infrastructure and telecommunications facilities on time. U4 is entitled to suspend or restrict the maintenance if the Client's infrastructure and telecommunications facilities do not meet the requirements set by U4.
- 31.4 The Client shall grant all the cooperation required by U4 for the maintenance, including the temporary assignment of the Software use by the Client, should U4 deem this to be necessary. Failure to grant the requested cooperation may result in a suspension or restriction of the maintenance by U4. If U4 carries out maintenance based on information to be supplied by the Client, then this information shall be prepared by the Client in

accordance with the conditions to be set by U4 and supplied at the risk and expense of the Client. The Client guarantees that all the materials, data, software, procedures and instruction placed at U4's disposal by the Client for maintenance purposes are at all times correct and complete and that all data carriers supplied to U4 meet with the specifications of U4.

- 31.5 In the event that Parties have specifically agreed that the maintenance relates to software that has not been supplied to the Client by U4, the Client shall make the source code and the technical (development) documents of the software (including data models, designs, change logs etc.) available, should U4 consider this useful, necessary or desirable for maintenance purposes. The Client guarantees that it is entitled to make the aforementioned information available to U4 and that third party rights do not dictate otherwise. The Client grants U4 the right to use and alter the software, including the source code and technical (development) documents as part of the execution of the agreed maintenance. The Client indemnifies U4 against all claims from third parties regarding the use and provision of the materials that have been made available as part of the maintenance.
- 31.6 Maintenance by U4 does not affect the Client's own responsibility for the Software management, including control over the settings, the use of the Software and the manner in which the results of the Software use is deployed. The Client is also responsible for the instruction to users and the use by users, whether or not these users are in a relationship of authority with the Client. In the absence of clear agreements in that respect, the Client shall implement, organise, parameterise and tune the Software itself, and if necessary, adapt the Equipment used and operating environment and bring about the inter-operability required by the Client.

32. New versions of the Software

- 32.1 The maintenance covers the provision of new Software versions only if and insofar as this has been agreed in writing and provided these are available. If the maintenance includes the provision of new Software versions, this provision takes place at the discretion of U4.
- 32.2 After 3 months following the provision of the latest version, U4 is no longer obliged to provide support and/or maintenance regarding the preceding version.
- 32.3 U4 may ask the Client to enter into a new written Agreement with U4 prior to the provision of a version with new applications and functions and that a new fee shall be paid for this provision. U4 may take over the functionality from a previous Software version unaltered but cannot guarantee that each new version contains the same functionality as the previous version. U4 is not obliged to maintain, alter or add Software characteristics or functionalities that have been defined specifically for the Client.
- 32.4 U4 may require the Client to adapt its system (Equipment, software and such like) if this is necessary for the proper functioning of a new Software version.

33. Support for use

- 33.1 The Client is entitled to support when using the Software if this has been agreed between Parties.
- 33.2 U4's obligation is an obligation to the best of its ability to respond to queries concerning

the use of the Software. U4 shall not guarantee that, for the benefit of the support of use, it can be contacted directly at all times and will be able to answer the queries.

33.3 U4 may charge its usual prices and rates for services which go beyond answering queries concerning the use of the Software.

33.4 U4 reserves the right to abandon or suspend the support for use if it is of the opinion that the Client's knowledge is insufficient to provide this support.

34. Termination of the Agreement

34.1 In the event that the right of use is terminated for whatever reason, the maintenance is terminated also. In the event the maintenance is terminated for whatever reason, this does not automatically imply that the right of use is terminated. In that case the right of use can be continued on (financial) conditions to be stated by U4 later.

34.2 However, the obligation to pay the periodically owed maintenance fee by the Client only ends after the Client has met all its obligations, including the obligation under article 21.8. U4 shall neither refund nor credit the Client for the initial price or prepaid or advance invoiced periodical fees for right of use and maintenance.

35. Payment

35.1 In the absence of a specifically agreed invoicing schedule, all the sums relating to the Software maintenance and the possible other services covered by the Agreement are at all times due and payable in advance per calendar month.

35.2 Sums regarding the Software maintenance and the possible other services covered by the Agreement are due from the start of the Agreement. The fee for maintenance and the possible other services covered by the Agreement is due whether or not the Client is using the Software, or has taken it into use, or is making use of the opportunity for maintenance.

36. Maintenance by suppliers

36.1 If and insofar maintenance will be performed according to the conditions of third parties, the (licence) conditions of those third parties shall apply to that maintenance, provided that this has been announced to the Client in writing by U4, replacing the varying conditions in these General Terms of Delivery. The Client accepts the conditions from the third parties referred to, which shall be available for viewing at U4 and which shall be sent by U4 to the Client free of charge, upon request. If and insofar as the conditions from third parties referred to are deemed not to apply to the relation between the Client and U4 for whatever reason, or are declared inapplicable, the provisions in these General Terms of Delivery apply unimpaired.

Chapter 4 Development of Custom software

37. Specifications of the Custom software

37.1 In the event that specifications or a design for the Custom software have not been handed to U4 by or on behalf of the Client, Parties shall specify in writing, upon sound consideration, which Custom software shall be developed and in which manner the development shall be carried out. Parties on both sides acknowledge that a good coop-

eration and mutual communication are crucial factors for a proper specification, design and development of Custom software. The cooperation and mutual communication shall be done as much as possible whilst observing the organisation of the project, the agreement and/or procedures agreed in writing between the Parties.

- 37.2 The Client shall at all times vouch for the accuracy, the completeness and the consistency of the information, specifications and designs supplied to U4, also if the information, specifications and designs are supplied by a third party. Inaccuracies, incompleteness and inconsistencies are at all times at the risk and expense of the Client.
- 37.3 U4 is entitled, although not obliged, to investigate the accuracy, completeness and consistency of the information, specifications or design put at its disposal and to suspend the agreed activities at the detection of any deficiencies, until the Client has removed the deficiencies concerned. The Client undertakes to report any deficiencies that it is aware of in the specifications or the design of the Custom software as soon and as comprehensively as possible to U4.
- 37.4 In the event that the Parties employ a development method that is characterised by the principle that the design and/or development of sections of the Custom software is subjected to a further prioritising, to be decided during the execution of the Agreement, this prioritising shall at all times be brought about upon sound consideration between the Parties.

38. Development of the Custom software

- 38.1 U4 shall develop Custom software with care, whilst observing the specifications or the design of the Custom software and – where appropriate – whilst observing the project organisation, methods, techniques, agreements and/or procedures agreed in writing with the Client. Prior to commencing the development activities, U4 may request that the Client declares in writing to agree fully and unconditionally with the specifications or the design. U4 is entitled to suspend its actions until such time when the Client declares in writing to agree fully and unconditionally with the specifications or the design.
- 38.2 The development activities of U4 shall always be carried out on the basis of an obligation to perform to the best ability and insofar as the written Agreement has specifically granted U4 a result and the result concerned has moreover been sufficiently defined.
- 38.3 If it has been agreed that the development of the Custom software shall take place in stages or if U4 uses a development method based on an execution in stages, U4 is entitled to suspend the start of services that are part of a stage until the Client has approved the results of the preceding stage in writing.
- 38.4 U4 is not obliged to act on advice from the Client in the execution of the development activities, unless otherwise agreed in writing. U4 is not obliged to act on advice that alters or adds to the content or the scope of U4's performance obligations. If such advice is acted upon, however, then the work concerned shall be compensated in accordance with the usual U4 rates.
- 38.5 In the event that the Agreement to develop Custom software has been concluded with a view to execution by one or more specific persons, U4 is always entitled to replace these persons after consulting with the Client and at a time to be decided by U4 by one or more other persons with the same qualifications.

38.6 If requested, the Client shall provide U4 with the opportunity to carry out the work outside the usual working days and times at the offices or location of the Client.

39. Delivery and installation

39.1 U4 shall deliver the Custom software to the Client on the agreed type and format of data carriers or by using telecommunications facilities (on-line). U4 shall determine the time and manner of delivery.

39.2 U4 shall install the Custom software only in the event that this has been agreed in writing between the Parties. In the absence of specific agreements to that effect the Client shall install, organise, parameterise, tune the Custom software itself and if necessary adapt the Equipment used and the environment of use. U4 is not obliged to execute data conversion, unless otherwise agreed in writing.

40. Acceptance test and acceptance

40.1 In the event that the Parties have not agreed that an acceptance test shall be carried out, the Client shall accept the Custom software in the condition it is in at the time of delivery ("as is"), therefore with all the visible and invisible Errors and defects.

40.2 In the event that an acceptance test has been agreed in writing between the Parties, the provisions of articles 40.3 up to and including 40.10 apply.

40.3 The Client is obliged to report Errors in the Custom software at once to U4.

40.4 In the event that an acceptance test has been agreed, the test period will be 14 days after delivery or, if installation by U4 has been agreed in writing, upon completion of the installation. The Client is not entitled to use the Custom software for productive or operational purposes during the test period. The Client shall carry out the agreed acceptance test on Custom software with sufficiently qualified personnel and sufficient scope and depth and report to U4 on the test results in writing, in an orderly and intelligible manner.

40.5 In the event that an acceptance test has been agreed, the Client is obliged to take full and sole responsibility for tests to ascertain that the supplied Custom software meets with the functional and/or technical specifications stated in writing by U4. The support given by U4 in executing the acceptance test shall be at the risk and expense of the Client, unless otherwise agreed in writing.

40.6 The Parties shall consider the Custom software as accepted if:

- a. Parties have not agreed an acceptance test: at the time of delivery, or if installation by U4 has been agreed in writing, at the completion of the installation, or;
- b. Parties have agreed an acceptance test: on the first day following the test period, or;
- c. U4 receives a test report as referred to in article 40.7 before the end of the test period: as soon as the Errors mentioned in that test report have been repaired, without prejudice to the presence of flaws that do not hamper the acceptance under article 40.8. In deviation thereof the Custom software, if used by the Client for any productive or operational purposes prior to the moment of specific acceptance, shall be considered as fully accepted from the start of that use.

40.7 Any Errors that have become apparent during the agreed acceptance test shall be reported to U4 by the Client by means of a detailed written test report, no later than on

the last day of the test period. U4 shall endeavour to repair the reported Errors within a reasonable period of time to the best of its ability, whereby U4 is entitled to introduce temporary solutions, or program diversion or restrictions aimed at avoiding problems.

- 40.8 Acceptance of the Custom software may not be withheld on grounds that are unrelated to the expressly agreed specifications between Parties, nor due to the existence of Minor Errors. Acceptance may furthermore not be withheld due to Custom software aspects that can only be judged subjectively, such as aesthetic aspects and aspects concerning the design of the user interfaces.
- 40.9 In the event that the Custom software is delivered and tested in stages and/or parts, non-acceptance of a particular stage and/or part shall not affect the acceptance of a previous stage and/or another part.
- 40.10 Acceptance of the Custom software in one of the manners as referred to in article 40 results in U4 being discharged from the fulfilment of its obligations concerning the disposal and the delivery of the Software and, if in the present case installation by U4 has also been agreed, from its obligations concerning the installation of the Software.

41. Right of use

- 41.1 U4 makes the Custom software developed by order of the Client and the accompanying Documentation for use available to the Client.
- 41.2 Only if and insofar as this has been agreed in writing, shall the source code of the Custom software and the technical documents produced in the course of the development of the Custom software be made available to the Client, in which case the Client shall be entitled to make alterations to the Custom software. In the event that U4 is ordered by a court to make the source code and/or technical documents available to the Client, U4 may request reasonable compensation for that.
- 41.3 U4 is not obliged to make auxiliary computer software and software of data libraries required for the use and/or maintenance of the Custom software available, unless otherwise agreed in writing. If, in deviation of the above, U4 also makes auxiliary computer software and/or program or data libraries available, U4 may request that the Client enters into a separate written Agreement for that. In that event the provision shall be invoiced separately against the usual U4 rates.
- 41.4 U4's performance obligations do not include the maintenance of the Custom software and/or provision of support to the user of the Custom software, unless otherwise agreed in writing. These actions and services shall be invoiced separately against the usual U4 rates when the occasion arises.
- 41.5 Without prejudice to the provisions in the General provisions (Chapter 1) the right of use of the Custom software user shall at all times be non-exclusive, non-transferable and cannot be sublicensed.

42. Restrictions on use

- 42.1 In the event that the content of the Agreement specifically shows that all design and development costs shall be borne fully and exclusively by the Client, restrictions on the right of use with regard to the Custom software developed by order of the Client do not apply, without prejudice to the other provisions in the General Terms of Delivery, including the provision in article 42.6.

- 42.2 In the event that restrictions on use have been agreed between the Parties, the Client shall at all times strictly observe the agreed restrictions on the right of use of the Custom software. The Client is aware that an infringement of an agreed restriction on use constitutes both an attributable failure in the execution of the Agreement with U4 and an infringement of the Intellectual Property rights of the Custom software. The agreed restrictions on use may relate to, amongst others:
- the type of Equipment for which the Custom software is intended;
 - the maximum number of processing units for which the Custom software is intended;
 - certain persons within the organisation of the Client who are permitted to use the Custom software, whether or not indicated by name or position;
 - the maximum number of users within the organisation of the Client who are permitted to use the Custom software whether or not simultaneously;
 - the location where the Custom software can be used;
 - certain types and purposes of use (such as business purposes or private purposes);
 - any other quantitative or qualitative restriction.
- 42.3 If the Parties have agreed that the Custom software should only be used in combination with certain Equipment or a certain kind or type of Equipment, the Client is entitled, in the event of a possible breakdown of the Equipment concerned, to use the Custom software on other Equipment of the same kind or type for the duration of the breakdown.
- 42.4 U4 may request that the Client does not start to use the Custom software until after the Client has applied for and obtained one or more codes (passwords, identity codes etc.) from U4, its supplier or the manufacturer of the Custom software.
- 42.5 The Client shall never (order to) bypass technical provisions intended to protect the Custom software from unlawful or unauthorised use.
- 42.6 The Client may only use the Custom software in and for its own company or organisation. The right of use shall be granted to the Client's own personnel only. Personnel from companies or institutions linked to the Client are excluded. The Client shall not use the Custom software to process data for third parties, such as "time-sharing", "application service provision", "software as a service" and "outsourcing", unless otherwise agreed in writing.
- 42.7 The Client is not permitted to sell, let, or remove the Custom software and the carriers on which the Custom software is recorded or award limited rights in any way whatsoever or for whatever purpose to third parties. Neither shall the Client grant a third party access – whether or not at distance – to the Custom software or to place the Custom software with a third party for hosting services, not even when the third party concerned uses the Custom software solely for the benefit of the Client.
- 42.8 If requested, the Client shall grant full cooperation to an investigation by U4 into the Client's observance of the agreed restrictions on use. The Client shall grant U4 access to its buildings and systems at the first request. U4 shall treat all business information obtained from the Client as part of such an investigation as confidential, insofar as that information does not concern the use of the Custom software itself.

43. Termination of the Agreement

- 43.1 The Client shall return any Custom software copies it possesses to U4 immediately after the end of the right of use of the Custom software, when the occasion arises. In the event that the Parties have agreed that the Client shall destroy the copies concerned, the Client shall report the destruction of this in writing forthwith. U4 is not obliged to offer the Client support at or after the termination of the right of use in view of any data conversion requested by the Client.

44. Fees for development work

- 44.1 In the absence of an agreed invoicing schedule all the sums relating to the development of Custom software are at all times due and payable retrospectively per calendar month. U4 may request an advance payment at all times.
- 44.2 The price for development work also includes the right of use of the Custom software, unless otherwise agreed in writing.
- 44.3 The fee for the development of the Custom software does not include compensation for the auxiliary computer software and program and data libraries required by the Client, any installation services and any adaptation and/or maintenance of the Custom software, unless otherwise agreed in writing. Neither shall the fee for the right of use include the provision of support to the users of the Custom software. When the occasion arises, these actions and services shall be invoiced by U4 against its usual rates.

45. Modification of the Custom software

- 45.1 The Client is not entitled to modify the Custom software either fully or partly without prior written permission by U4, unless otherwise agreed in writing. U4 is at all times entitled to refuse permission or to impose conditions to its permission, including conditions concerning the manner and the quality of the execution of the modifications requested by the Client.
- 45.2 All modifications made by the Client or on behalf of the Client by third parties – irrespective of U4's permission – are at the full risk of the Client.

46. Warranty

- 46.1 U4 does not guarantee that the Custom software developed by order of the Client is suitable for the actual and/or intended use by the Client. Neither does U4 guarantee that the Custom software shall operate without interruptions, Errors or defects nor that all Errors and defects shall be remedied.
- 46.2 U4 shall endeavour to repair the Errors in the Custom software to the best of its ability within a reasonable period of time in accordance with the made arrangements between the Parties. U4 may charge its usual prices and rates for the costs of repair.
- 46.3 The repair of Errors takes place at a location to be determined by U4. U4 is at all times entitled to introduce temporary solutions or program diversions or restrictions aimed at avoiding problems.
- 46.4 U4 shall never be obliged to repair mutilated or lost data.

Chapter 5 Application Service Provision/Software as a Service

47. Definitions

47.1 **ASP/SaaS** (Application Service Provision/Software as a Service): the services consisting of placing or keeping the use of Software at the Client's disposal 'at a distance' by U4 via internet or another network, without an actual carrier containing the Software concerned being supplied to the Client.

48. ASP/SaaS

48.1 U4 shall provide the service in the field of ASP/SaaS agreed between the Parties in the Agreement as well as providing other services agreed between the Parties. U4 shall install the Software identified in the Agreement on the infrastructure indicated by U4, if this is also included in the Agreement. U4 is not responsible for the purchase and/or proper operating of the Client's or of third parties' infrastructure.

48.2 The Client is responsible for the management, including verification of the settings, the use of the service and the manner in which the results of the service are being applied, unless otherwise agreed in writing. The Client is also responsible for instructions to and the use by the users, whether or not these users are in a relationship of authority with the Client. Unless the Parties have agreed otherwise in writing, the Client shall implement, organise, parameterise and tune the required (auxiliary) computer software onto its own Equipment, and if necessary, adapt the Equipment used, other (auxiliary) computer software and operating environment and shall achieve the inter-operability required by the Client.

48.3 U4 is not obliged to carry out data conversion, unless otherwise agreed in writing.

48.4 If the services to the Client under the terms of the Agreement also cover support to users, U4 shall advise on the use and functioning of the Software mentioned in the Agreement by telephone or by e-mail. U4 may impose conditions with regard to the qualifications and the number of contact persons that qualify for support. U4 shall consider well-founded requests for support within a reasonable term. U4 shall not vouch for the correct, complete and timely responses or proposed support. Support shall only be given on working days during the usual opening hours of U4, unless otherwise agreed in writing.

48.5 If the services to the Client under the terms of the Agreement also cover making back-ups of the Client's data, U4 shall make a full back-up of the Client's data in its possession with the observance of the periods agreed between the Parties in writing and in the absence thereof once per week. U4 shall store the back-up for a reasonable period of time, agreed between the Parties, and in the absence of agreements in that regard, for the duration of U4's usual period of time. U4 shall treat and store the back-up carefully.

48.6 U4 shall be obliged to have an alternative centre or other alternative facilities at its disposal only in the event that this has been specifically agreed in writing.

49. Execution of ASP/SaaS

49.1 U4 shall endeavour to execute the services with care to the best of its ability and where appropriate, in accordance with the agreements and procedures recorded in writing

with the Client. All services by U4 shall be carried out on the basis of an obligation to perform to the best ability, unless and insofar as U4 has specifically guaranteed a result in the written Agreement and the result concerned has moreover been sufficiently defined.

- 49.2 U4 shall only perform the services on the orders of the Client. If U4 carries out work in accordance with a request or an authorised order granted by a government body or relating to a legal obligation with regard to the Client's data, its employees or users, all the related costs shall be invoiced to the Client.
- 49.3 U4 is allowed to make alterations to the content or the extent of the services. If such alterations result in a change to the procedures that are in force with the Client, U4 shall inform the Client of this as soon as possible and the costs of this alteration shall be met by the Client. In that event the Client may terminate the Agreement in writing from the date that the alteration comes into force, unless this alteration is related to changes in the relevant legislation or other conditions issued by authorised bodies or unless U4 pays for the cost of this alteration.
- 49.4 U4 may continue the execution of the service using a new or amended version of the Software. U4 is not obliged to maintain, change or add certain characteristics or functions of the service or Software for the Client in particular.
- 49.5 U4 may take the service fully or partly out of use temporarily for the purposes of preventative, corrective or adaptive maintenance. U4 shall not prolong this unnecessarily and shall perform this outside working hours as much as possible and, depending on the circumstance, perform this after having informed the Client.
- 49.6 If U4 carries out services based on information to be supplied by the Client, then this information shall be prepared and supplied by the Client in accordance with the conditions to be set by U4. The Client shall take the data to be processed to, and collect the results of the processing from the location where U4 carries out the services. Transport and transmission, in any which way, are at the risk and expense of the Client, also if these are performed or attended to by U4. The Client guarantees that all the materials, data, software, procedures and instructions placed at the disposal of U4 for the purpose of executing the services are at all times correct and complete and that the data carriers supplied to U4 comply with U4's specifications.
- 49.7 All Equipment, Software and Goods used by U4 for the services remain the property or Intellectual Property of U4 or its suppliers, also in the event that the Client pays a fee for the development or purchase thereof by U4.
- 49.8 U4 is never obliged to supply the Client with an actual carrier as part of placing or keeping Software at the Client's disposal for ASP/SaaS purposes.

50. Payment

- 50.1 In the absence of an agreed invoicing schedule, all the sums relating to the services performed by U4 are at all times due and payable in advance per calendar month.

51. Warranty

- 51.1 U4 shall not guarantee that the Software to be made and kept at the Client's disposal as part of the ASP/SaaS shall be without Errors and function without interruptions. U4 shall endeavour to repair the defects in the Software within a reasonable period of time

if and insofar as it concerns Software developed by U4 and the defects concerned have been submitted to U4 in a detailed written report. Defects should be reported to U4 by the Client immediately after detection or after the possibility of detection, however, within 3 months at the latest. If the occasion arises, U4 can postpone the repair until a new version of the Software is taken into operation. U4 cannot guarantee that defects in Software that has not been developed by U4 can be remedied. U4 is entitled to introduce temporary solutions, or program diversions or restrictions that are aimed at avoiding problems. U4 is entitled to charge the Client for the costs of the repair in accordance with its usual rates.

- 51.2 U4 is not responsible for verifying the accuracy and the correctness of the results of the services and the data generated by using the services. The Client shall regularly check the results of the services and the data generated by using the services.
- 51.3 The Client shall make an inventory of the risks for its organisation on the basis of information supplied by U4 with regard to steps for the prevention or limitation of the consequences of breakdowns, defects in the services, mutilation or loss of data or other incidents, and if necessary take additional measures. U4 is prepared to grant reasonable cooperation in taking further precautions at the request of the Client on (financial) conditions to be stated by U4. U4 shall never be responsible for the repair of mutilated or lost data.
- 51.4 U4 does not guarantee that the Software to be made or kept at the Client's disposal as part of the ASP/SaaS shall be adapted in time to changes in the relevant legislation or regulations.

52. Processing personal data

- 52.1 The Client guarantees that all requirements have been met for lawfully processing the personal data entered by the Client into the Software that is to be made or kept available for the Client as part of the ASP/SaaS.
- 52.2 Without prejudice to the stipulations in the General provisions (Chapter 1), the full responsibility for the data processed by the Client while using the service lies with the Client. The Client guarantees U4 that the data are not unlawful and do not infringe on the rights of third parties. The Client indemnifies U4 against any legal claim from third parties, of whatever nature, relating to the processing of these data or the execution of the Agreement.
- 52.3 Under the terms of the legislation concerning the processing of personal data (including the Personal Data Protection Act), the Client has obligations towards third parties, such as the obligation to supply information, to allow inspection and to correct and remove personal data from those concerned. The responsibility for the observance of these obligations lies fully and solely with the Client. With regard to the processing of personal data, the Parties consider U4 to be a "processor" as defined by the Personal Data Protection Act. U4 shall grant its cooperation as much as is technically possible towards the obligations to be met by the Client. The cost of this cooperation has not been included in the agreed prices and fees of U4 and is fully at the expense of the Client.

Chapter 6 Hosting

53. Definition

- 53.1 **Hosting:** The on-line provision by U4 to the Client of disk space on its systems or the subcontracting by U4 to a third party of the on-line provision of disk space on the systems of a third party.

54. Hosting

- 54.1 U4 shall carry out the Hosting and any associated services expressly agreed upon in writing with the Client.
- 54.2 In the event that the Agreement covers the provision of disk space on systems, the Client shall not exceed the agreed disk space unless the Agreement expressly provides for the consequences of this. The Agreement contains the provision of disk space on a server that is exclusively and specifically reserved for the Client only if this has been agreed in writing. All use of disk space, data traffic and other burdens on the systems and infrastructure is restricted to the agreed maximum and subject to the U4 house rules as drawn up for the benefit of and applicable to Clients. It will not be possible for data traffic unused by the Client over a certain period to be transferred to a subsequent period, unless otherwise agreed in writing. U4 shall invoice an extra fee in accordance with the usual rates for that in the event of excess of the agreed maximum.
- 54.3 In the event that the Agreement provides access to the internet, U4 shall endeavour to the best of its ability to bring about connections via U4's system to the internet, including the provision of the website hosted by U4, unless otherwise agreed in writing. U4 is not responsible for the infrastructure of the Client or that of third parties.
- 54.4 The Client is responsible for the management, including verification of the settings, use of the service and the manner in which the results from the service are utilised, unless agreed otherwise in writing. The Client is also responsible for the instruction of and use by the users, whether or not these users are in a relationship of authority with the Client. In the absence of specific agreements in that regard, the Client shall install, organise, parameterise and tune the (auxiliary) computer software and if necessary adapt the Equipment used in the execution of that, adapt other software and the user environment and to bring about the inter-operability required by the Client. U4 shall not be obliged to carry out data conversion, unless otherwise agreed in writing.
- 54.5 If the services by U4 also cover support to users under the terms of the Agreement, U4 shall advise on the use and functioning of the hosted websites by telephone or by e-mail. U4 may impose conditions with regard to the qualifications and the number of contact persons that qualify for support. U4 shall consider well-founded requests for support within a reasonable term according to its usual procedures. U4 cannot vouch for the correct, complete and timely responses or proposed support. Support shall only be provided on working days during the usual opening hours of U4, unless otherwise agreed in writing.
- 54.6 The Agreement covers the supply or the provision of back-up services, alternative or recovery services only if this has been agreed in writing.
- 54.7 In the event that U4 performs services for the Client under the terms of the Agreement with regard to a domain name such as, amongst others, the application, extension, dis-

posal or transfer to a third party, the conditions and operating procedure of the organisation(s) concerned shall apply, replacing the divergent conditions thereof in the General Terms of Delivery. The Client accepts the conditions referred to of the organisation(s) concerned. These conditions are available for inspection at U4 and U4 shall send these to the Client upon request, free of charge. If and insofar as the conditions in question of the organisation(s) concerned are deemed not to apply considering the relationship between the Client and U4 or are declared not to apply, for whatever reason, the provisions of these General Terms of Delivery apply unimpaired. U4 shall not be responsible for the accuracy or timing of the services or for the results that the Client intended to attain.

- 54.8 The Client is obliged to pay all the costs in connection with the application and/or registration in accordance with the agreed rates, or in the absence of agreed rates, the usual rates of U4.
- 54.9 U4 cannot guarantee that the domain name requested by the Client shall be awarded to the Client.
- 54.10 U4 is not responsible for the content and the composition of the domain name and the use that is made of the domain name. The Client guarantees towards U4 that it is entitled to use the domain name and that its use is not unlawful towards one or more third parties. The Client indemnifies U4 against any claim from a third party in relation to the domain name, also in the event that the Client's domain name has not been registered by U4.
- 54.11 The Agreement shall only cover the provision of e-mail addresses to the Client in the event that this has been specifically agreed in writing. The Parties shall agree the number of e-mail addresses to be made available.
- 54.12 U4 is free to subcontract Hosting to a third party. In the event that Hosting is subcontracted to a third party, the Client shall not have more rights towards U4 in respect of warranty and/or liability than have been granted to U4 by the third party.

55. Execution of services

- 55.1 U4 shall endeavour to execute the services with care to the best of its abilities, where appropriate in accordance with the written agreements and procedures set out with the Client. All the services of U4 shall be executed on the basis of an obligation to perform to the best ability, unless and insofar U4 has specifically agreed a result in the written Agreement and the result in question has also been sufficiently defined.
- 55.2 U4 shall only perform the services by order of the Client. If U4 carries out work in accordance with a request or an authorised order granted by a government body or relating to a legal obligation with regard to the Client's data, its employees or users, all the related costs shall be invoiced to the Client.
- 55.3 U4 is allowed to make alterations to the content or the scope of the services. If such alterations result in a change to the procedures that are in force with the Client, U4 shall inform the Client of this as soon as possible and the costs of this alterations shall be met by the Client.
- 55.4 U4 may take the service fully or partly out of use temporarily for maintenance. U4 shall not prolong this unnecessarily and shall perform this outside working hours as much as possible and, depending on the circumstances, perform this after having informed the Client.

55.5 The Client shall protect his systems and infrastructures adequately and shall have up-to-date anti-virus software in operation at all times.

56. Code of conduct

56.1 In the event that U4 observes a code of conduct that generally applies to all its customers, then U4 shall provide these to the Client upon request and the Client shall be obliged to observe this code of conduct strictly and fully. The Client shall at all times and in all cases act lawfully and with care towards third parties. The Client shall honour the intellectual property rights in particular and other rights of third parties at all times, respects the privacy of third parties, shall refrain from unlawful distribution of information, shall refrain from unauthorised access to systems, shall not spread viruses or other damaging software and shall refrain from punishable acts and infringement of any other legal obligation.

56.2 In order to avoid any liability towards third parties or to limit the consequences of this, U4 is at all times entitled to take measures with regard to an action or omission by or at the risk of the Client. The Client is obliged to remove data forthwith at the first written request by U4. Failure to do so entitles U4 to opt to remove the data or to render access thereto impossible. Furthermore, U4 is in case of breach or threat of breach of article 56.1 entitled to, with immediate effect and without any notice of default, refuse the Client access to the systems of U4. The aforementioned specifically leaves any other measures or the execution of other rights of U4 towards the Client intact. In that event U4 is also entitled to terminate the Agreement with immediate effect, without being liable towards the Client in this connection.

56.3 U4 cannot be expected to form a judgment regarding the foundation of the liabilities of third parties or the defence of the Client or to be involved in any way in a dispute between a third party and the Client. The Client shall have to come to an understanding with the third party concerned and inform U4 in writing and with well-founded documents.

57. Transfer of the website

57.1 Only in the event that this has been agreed in writing, shall U4 cooperate in the transfer of the website and the corresponding domain to the Client or to another provider of hosting services, against payment by the Client of a sum to be decided by U4 at that time whilst the Client shall also observe all other conditions to be decided by U4.

58. Payment

58.1 In the absence of an expressly agreed invoicing schedule all the sums relating to the services to be provided by U4 are at all times due and payable in advance per calendar month.

59. Warranty

59.1 U4 cannot guarantee that the services shall be provided without Errors or defects or without interruptions. Due to the nature and the operating procedure of the internet U4 can neither guarantee that the internet shall be available or accessible at all times nor that the website hosted by U4 shall be continuously available, and available for consultation without interruptions.

- 59.2 U4 is not responsible for verifying the accuracy and the correctness of the results of the services. The Client shall regularly check the results of the services.
- 59.3 The Client shall make an inventory of the risks for his organisation on the basis of information supplied by U4 with regard to steps for the prevention or limitation of the consequences of breakdowns, defects in the services, mutilation or loss of data or other incidents, and if necessary take additional measures. U4 is prepared to grant reasonable cooperation in taking further precautions at the request of the Client on (financial) conditions to be stated by U4.
- 59.4 U4 shall never be responsible for the repair of mutilated or lost data.

60. Processing personal data

- 60.1 The Client guarantees that all requirements have been met for lawfully processing the personal data entered or processed on the website or hosted or processed otherwise by U4.
- 60.2 Without prejudice to the provisions in the General stipulations (Chapter 1), the full responsibility for the data hosted or processed while using the service for the Client lies with the Client. The Client guarantees U4 that the data are not unlawful and do not infringe on the rights of third parties. The Client indemnifies U4 against any legal claim from third parties, of whatever nature, relating to these data or the execution of the Agreement.
- 60.3 Under the terms of the legislation concerning the processing of personal data (including the Personal Data Protection Act), the Client has obligations towards third parties, such as the obligation to supply information, to allow inspection and to correct and remove personal data of those concerned. The responsibility for the observance of these obligations lies fully and solely with the Client. With regard to processing personal data, the Parties consider U4 to be a "processor" as defined by the Personal Data Protection Act. U4 shall cooperate as much as is technically possible towards the obligations to be met by the Client. The cost of this cooperation has not been included in the agreed prices and fees of U4 and is fully at the expense of the Client.

Chapter 7 Training and Courses

61. Definitions

- 61.1 **Courses:** educational activities by U4 for the Client such as, but not limited to, (in house) training, independent study and/or distance learning, seminars and/or workshops.
- 61.2 **Participant(s):** person or persons who has/have been enrolled for a Course.

62. Enrolment and cancellation

- 62.1 Enrolment for a Course should always take place in writing and is binding upon written confirmation by U4.
- 62.2 The Client is responsible for the selection and suitability of the Course for the participants. This applies unimpaired in the event that U4 accepts a Participant on a Course for which conditions of admission apply. The lack of required previous knowledge of the Participants shall in no event impair the obligations of the Client under the terms of the

Agreement. The Client is permitted to replace a Participant on the Course by another Participant following written permission of U4.

- 62.3 U4 has the option to cancel the Course, to combine this with one or more Courses or conduct this at a later date or time in the event that the number of Participants gives rise to this, in the opinion of U4. U4 reserves the right to change the Course location. U4 is entitled to make changes relating to the organisation and content of a Course, if necessary.
- 62.4 If an Agreement has been concluded with a view to the presentation by a certain person, such as a particular teacher, trainer or speaker, then U4 is entitled to replace this person by one or more other persons with the same or similar qualifications.
- 62.5 The consequences of cancelling the participation in a Course by the Client or by the Participant are governed by U4's usual regulations. Cancellation should always occur in writing and prior to the start of the Course or the section in question of that course, unless agreed otherwise. If the cancellation is received at least 2 weeks in advance, then this can be effected against a payment of € 35 (excl. BTW [Dutch VAT]) for administration fees. In other cases the Client must pay U4 a percentage of the Course fee owed, depending on the time of receipt of the cancellation, in accordance with the schedule below:
- 100% in the event that the cancellation is received less than 1 week before the start of the section of the Course day in question;
 - 50% in the event that the cancellation is received less than 2 weeks before the start of the section of the Course day in question.

The cancellation or non-appearance does not affect the Client's obligations under the Agreement in all other respects.

- 62.6 The Client should submit a request to move a Participant to a Course on a different date to U4 in writing. The move can be effected against payment of € 35 (excl. BTW [Dutch VAT]) for administration fees provided that the written request for a move has been received by U4 at least 2 weeks prior to the start of the Course in question. In other cases the Client must pay U4 a percentage of the fee owed for the Course, depending on the time of receipt of the written request for the move, in accordance with the schedule below:
- 50% in the event that the request for a move is received less than 1 week before the start of the section of the Course day in question;
 - 25% in the event that the request for a move is received less than 2 weeks before the start of the section of the Course day in question.
- 62.7 In the event of a cancellation by the Client or the Participant U4 shall determine if a request for sending out the course materials shall be granted.

63. Delivery of courses

- 63.1 U4 shall endeavour to deliver the Course with care to the best of its ability, where appropriate in accordance with the agreements and procedures agreed with the Client in writing. All services with regard to the Courses shall be carried out on the basis of an obligation to perform to the best ability. The Client accepts that U4 shall determine the content and the depth of the Course. U4 is free to subcontract the execution of the Course to a third party.

- 63.2 U4 is obliged to accept timely and responsible directions from the Client at the execution of the services only if this has been agreed in writing. U4 is not obliged to accept directions that change or complement the content or the extent of the agreed services. However, if such directions are accepted, the work in question shall be paid for according to the usual U4 rates.
- 63.3 Without affecting the other responsibility of the Client for the Participant's conduct, the Client shall inform the Participant about and see to the observance of the obligations from the Agreement by the Participant and the code of conduct dictated by U4 for participation in the Course. The Participant must strictly observe the stated course dates and times.
- 63.4 In the event that U4 shall use its own Equipment or Software for the delivery of the Course, U4 cannot guarantee that this Equipment or Software is without Errors or defects or shall operate without interruptions. If U4 delivers the Course at the location of the Client, the Client shall ensure that properly functioning Equipment and Software is available, unless otherwise agreed in writing.
- 63.5 The Agreement does not provide for examinations or tests, unless otherwise agreed in writing.
- 63.6 A separate fee is payable for the Documentation that has been produced or made available for the Course, and for documents or other course materials, unless agreed otherwise. The aforementioned also applies to any course certificates or duplicates of these.

64. Prices and payment

- 64.1 U4 may at all times request the payment owed prior to the start of the Course. U4 may exclude a Participant from the Course if the Client has failed to pay on time, expressly without prejudice to its other rights.
- 64.2 The Client is due to pay VAT on the fee unless U4 has specifically indicated that a fee is exempt from VAT as defined in section 11 of the Turnover Tax Act 1968. U4 is entitled to adapt its prices after the Agreement has been concluded in the event of amendment of the regime of VAT for Courses laid down by or in accordance with the law.

65. Intellectual Property

- 65.1 U4 expressly reserves all the rights to the Intellectual Property with regard to the Documentation, the documents and the materials for teaching, testing and examinations.
- 65.2 The Client is not permitted to make public, to exploit or to multiply information or parts from the Documentation, documents and/or course materials, test materials or examination materials that have been issued and/or extracts from the course materials, test materials or examination materials that have been issued.

Chapter 8 Management and/or other service provisions

66. Definition

- 66.1 **Management and/or other service provisions:** services in the field of information and communication technology such as, but not restricted to, consultancy, advising, contract and project management, ICT-systems management and associated services.

67. Management and/or other service provisions

- 67.1 U4 shall endeavour to perform the services with care to the best of its ability, where appropriate in accordance with the agreements and procedures recorded in writing with the Client. All U4 services are performed on the basis of an obligation to perform to the best ability, unless and insofar as U4 has specifically pledged a result in the written Agreement and the result has been sufficiently defined.
- 67.2 The Term of the Agreement is dependent on various factors and circumstances, such as the effort by U4, the quality of the data and the information supplied by the Client and the Client's and the relevant third parties' cooperation. U4 shall not wish to be bound in advance by the term of the Agreement, unless otherwise agreed in writing.
- 67.3 U4 is entitled to postpone the start of the services that are part of a stage, in the event that it has been decided that services shall take place in stages, until the Client has approved the results of the preceding stage in writing.
- 67.4 U4 is obliged to accept timely and responsible directions from the Client in the execution of the services only if this has been agreed in writing. U4 is not obliged to accept directions that change or complement the content or the extent of the agreed services. However, if such directions are accepted, the work in question shall be paid for according to the usual U4 rates.
- 67.5 If an Agreement has been concluded with a view to the presentation by a particular person, then U4 is entitled to replace this person by one or more other persons with the same or similar qualifications.
- 67.6 The employees to be put forward by U4 shall dispose over the qualifications that have been agreed with the Client in writing.
- 67.7 If U4 performs services based on information to be supplied by the Client, then this information shall be prepared by the Client in accordance with the conditions to be set by U4 and supplied at the risk and expense of the Client. The Client guarantees that all the materials, data, software, procedures and instructions placed at U4's disposal by the Client for the execution of the services are at all times correct and complete and that all data carriers supplied to U4 meet with the specifications of U4.
- 67.8 U4's services shall only be performed on the usual working days and times of U4.
- 67.9 The Client's use of advice issued by U4 is at all times at the risk and expense of the Client, unless otherwise agreed in writing.
- 67.10 The burden of proof for establishing that U4's services fail to meet the written requirements agreed in writing fully lies with the Client, without prejudice to U4's right to provide proof to the contrary, using all possible means.
- 67.11 All the Equipment, Software, software from third parties and Goods used by U4 in delivering the services remain the property or the Intellectual Property of U4, also in the event that the Client pays a fee for the development or purchase thereof by U4.
- 67.12 In the event that the Client makes software, Equipment or other operating assets available in connection with the services of U4, the Client shall be responsible for obtaining the required licences or approvals with regard to these operating assets which may be required by U4.
- 67.13 In the event that the Client cancels the requested services for whatever reason, the Client shall pay 50% of the fee if the cancellation takes place within 2 weeks of the day

on which the services would have been delivered and 100% if the cancellation takes place within 1 week of the day on which the services would have been delivered.

68. ICT-systems management

68.1 If the services of U4 concern the management of one or more ICT-systems designated in the Agreement and the content and the extent of the management have not been defined or insufficiently defined in the exclusive judgment of U4, U4 shall draw up a management plan for the delivery of the Agreement and make this management plan available to the Client within a reasonable period of time. The management plan shall state the management designs and the manner in which the various management forms could be executed. The management plan may contain the following provisions, to be decided by U4:

- a maintenance plan for prevention, correction and updating the ICT-systems;
- a plan for dealing with breakdowns and complaints and the reporting thereof;
- a security plan;
- a plan for the support of users of the ICT-systems;
- a plan for connecting new users to the ICT-systems;
- a plan for training the users of the ICT-systems;
- a plan for the management and the use of identification tools (passwords etc.);
- a plan for license and contract management;
- a plan for the management organisation and the administrative and financial aspects of the ICT-systems use.

Upon completion of the plan the Parties shall enter into proper consultation with regard to the question which part of the proposed management work shall be carried out by U4 and the manner and conditions of the performance of this work.

68.2 In the event that the services of U4 for the Client include support to users, U4 may issue conditions with regard to the qualifications and the number of contact persons that could qualify for support and U4 shall consider well-founded requests for support within a reasonable period of time. U4 shall not vouch for the correct, complete and timely responses or proposed support. Support shall only be given on working days during the usual opening hours of U4, unless otherwise agreed in writing.

68.3 The Client is responsible for the use of the service and the manner in which the results of the service are implemented, unless agreed otherwise. The Client is also responsible for the instruction to and the use by the users, whether or not these users are in a relationship of authority to the Client.

68.4 If the services by U4 under the terms of the Agreement also cover the provision of stand-by services, U4 shall keep one or more employees available during the days and times stated in the Agreement. In that event the Client is entitled to call in the support of the available employees in the event of an emergency or urgency as stated in the Agreement. U4 shall not guarantee that all breakdowns shall be remedied in that case or that the assistance of the employees who have been called out shall be effective.

69. Reporting

69.1 U4 shall report periodically on the execution of the work through a contact person designated by the Client in the manner agreed in writing. The Client shall report on

circumstances that are important or may be important to U4 in advance, such as the manner of reporting, the queries which the Client wishes to see addressed, the Client's priority issues, availability of means and personnel of the Client and particular facts or circumstances or any unknown facts or circumstances that U4 is unaware of. The Client shall ensure that information issued by U4 is distributed and acknowledged within its organisation.

- 69.2 In the event that an employee put forward by U4 is a member of a project group or steering group which also includes one or more person designated by the Client, then the distribution of information shall take place in the manner prescribed by the project group or steering group. Decisions that have been taken in such a composite project group or steering group are binding for U4 only if the decision making process is taking place under observance of the written agreements between the Parties or, in the absence of written agreement, if U4 has accepted the decision in writing. U4 shall never be obliged to accept a decision if U4 is of the opinion that this cannot be reconciled with the content of the Agreement. The Client guarantees that the persons designated to take part in a project group or steering group in which U4 representatives take part also, are entitled to take binding decisions for the Client.
- 69.3 The Client shall appoint a contact person or contact persons in connection with the continuity of the work who shall act as such for the duration of the work by U4. The Client's contact persons shall dispose over the necessary experience, specific knowledge of the matter and insight into the required goals of the Client.
- 69.4 The Client is not entitled to make an announcement to third parties without prior written permission of U4 about the operating procedure, the methods and techniques of U4 and/or the content of the advice and reports of U4. The Client shall not provide a third party with advice or reports of U4 or make these public (otherwise).

70. Payment

- 70.1 The services are provided on the basis of the agreed hourly rate. Services arising from the Agreement are not delivered at a fixed price unless agreed otherwise in writing by the Parties.
- 70.2 In the absence of an expressly agreed invoicing schedule all the sums relating to the services provided by U4 are at all times due and payable retrospectively per calendar month. U4 may always request advance payment.
- 70.3 U4 shall provide an insight into the delivered work, the time allocated and the costs made for the Client in the manner that is usual to U4, subject to other agreements.
- 70.4 A working day consists of 8 hours, exclusive of travel and lunch time. A service shall always be booked for 1 shift (= 4 hours) at least. The actual travel time shall be charged at 50% of the applicable hourly rate. Overtime shall be charged on the basis of the following surcharges to the applicable hourly rate:

Working days:

Between 18:00 and 23:00 o'clock (CET) 50% surcharge;

Between 23:00 and 08:00 o'clock (CET) 100% surcharge;

Saturdays: 100% surcharge;

Sundays and Public holidays: 100% surcharge;

Stand-by services:

In the event that stand-by services will be agreed with the Client, a U4 employee could also be deployed on a stand-by basis outside office hours, at the weekend and on public holidays. Stand-by services will be extended provided that suitable employees are available. The agreed stand-by services are charged at 50% of the applicable hourly rate for deployment during office hours (08:00 to 18:00 o'clock CET). At the active deployment of the Stand-by services the actual hours shall be charged increased by travel time based on the applicable hourly rate, multiplied by the surcharges mentioned above. In the event of support by telephone, the actual time shall be charged at the applicable hourly rate whereby deployment will be rounded up to full hours.

- 70.5 The Client shall be charged by U4 for all reasonable travelling- and hotel expenses for providing services outside of the Netherlands, in accordance with the applicable internal U4 regulations.

Chapter 9 Sale of Equipment

71. Sale and Purchase

- 71.1 U4 shall sell the Equipment according to type and number according to the written agreement between the Parties.
- 71.2 The Client shall bear the risk of the selection of the purchased Equipment. U4 guarantees that the Equipment shall be suitable for normal use on delivery and shall meet the specifications that have been agreed in writing between the Parties. U4 shall not guarantee that the Equipment is suitable for the use intended by the Client unless the purposes for use have been specified clearly and without reservations in the written Agreement.
- 71.3 In any event, the Agreement does not include assembly and installation materials, Software, user articles, batteries, stamps, ink cartridges, toner articles, cables and accessories, unless the Parties have agreed this in writing.
- 71.4 U4 shall not guarantee that all assembly, installation and user manuals that go together with the Equipment are without defects and that the Equipment has the characteristics stated in these manuals.

72. Delivery

- 72.1 The Equipment sold by U4 to the Client shall be delivered to the Client "ex-warehouse". U4 shall deliver the Equipment sold to the Client, or have this delivered, to a location appointed by the Client only in the event that this has been agreed in writing. In that event U4 shall inform the Client of the time when U4 or the contracted transport company intends to deliver the Equipment, if possible with sufficient notice. The delivery times stated by U4 are at all times indicative.
- 72.2 The purchase price of the Equipment does not include the cost of transport, insurance, tackling and hoisting, rental of temporary provisions, etc.
- 72.3 U4 shall (order to) package the Equipment in accordance with its standards or the manufacturer's standards. If the Client requests a particular manner of packaging then the additional costs will be at the Client's expense. The Client shall treat the packaging from the Equipment delivered by U4 in a manner that complies with the applicable

government regulations. The Client indemnifies U4 against claims from third parties due to non-observance of such regulations. If the Client requests U4 to remove old materials such as, but not limited to, networks, cabinets, cable ducts, packaging materials or Equipment, U4 could accept this request by written order at its usual rates, on the condition that the materials in question remain the property of the Client at all times.

- 72.4 U4 shall (order to) install, configure and/or connect the Equipment if this has been agreed in writing between the Parties. Any obligation to install and/or configure the Equipment by U4 does not include the execution of data conversion or the installation of Software.
- 72.5 All the services of U4 are executed on the basis of an obligation to perform to the best ability, unless U4 has specifically guaranteed a result in the written Agreement and the result concerned has moreover been sufficiently defined.
- 72.6 U4 is not responsible for any required permits.
- 72.7 U4 is at all times entitled to carry out the Agreement in part deliveries. U4 can take care of the maintenance of the Equipment, or can have this taken care of. A separate Agreement should be concluded for this.
- 72.8 The Client shall accept the Equipment within a reasonable period of time. In the absence of an agreement this shall be a term of 1 week. The Client shall legally be in default, without a notice of default being required, in the event of non-acceptance within the applicable term.

73. Test arrangement

- 73.1 U4 shall be obliged to make a test arrangement with regard to the Equipment which the Client has expressed an interest in only if this has been agreed in writing. U4 may impose (financial) conditions to a test arrangement. A test arrangement consists of a temporary installation of the Equipment on approval in a standard setting, exclusive of accessories, in an area to be made available by the Client, before the Client decides whether or not to buy the Equipment in question at the current prices. The Client is liable for the use, damage, theft or loss of Equipment that is part of a test arrangement.

74. Export

- 74.1 In the event of export of the Equipment for or by the Client, the relevant legislation or regulations with regard to export apply. The Client shall indemnify U4 against all claims from third parties relating to a breach of the aforementioned legislation or regulations, without prejudice to the provision concerning this in the General Terms of Delivery.

75. Returns

- 75.1 U4 is not obliged to accept returns which have been sent out without prior written permission from U4. U4 is entitled to impose conditions to this permission. Receipt of the returns shall in no way imply acknowledgement by U4 of the grounds for the return stated by the Client. The risk for returned Equipment shall remain with the Client also in the event that permission for the return has been granted by U4.
- 75.2 U4 is entitled to deduct 15%, with a minimum of € 100, of the price of the Equipment in the event of any credit for returned Equipment. The aforementioned is without prejudice to the possibility to deduct more if the circumstances justify that.

76. Cooperation by the Client

- 76.1 Without prejudice to the provisions in the General provisions (Chapter 1), the Client shall provide an environment that, where appropriate, meets the requirements specified by U4 with regard to temperature, humidity and technical environment requirements, amongst others.
- 76.2 The Client shall ensure that work to be carried out by third parties, including construction work, shall be performed adequately and on time.

77. Warranty

- 77.1 U4 shall endeavour to the best of its ability to replace any materials and manufacturing defects, as well as parts supplied by U4 if these have been submitted to U4 in a detailed report within a period of 3 months after delivery. U4 may charge its usual prices and rates for the costs for repair. Data conversion required as a result of a repair or replacement, is excluded from the warranty.

78. Suppliers' equipment

- 78.1 If and insofar as U4 supplies Equipment from third parties to the Client, the conditions of those third parties shall apply to that Equipment, replacing the conditions in deviation thereof in these General Terms of Delivery. The Client accepts the conditions of third parties referred to. These conditions are available for viewing by the Client at U4 and U4 shall send these to the Client free of charge upon request. If and insofar as the conditions of the third parties are deemed to be inapplicable to the relationship between the Client and U4, for whatever reason, or are declared inapplicable, the provisions in these General Terms of Delivery apply in full.



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