

# **SIM-CI Holding BV**

## **GENERAL TERMS & CONDITIONS**

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15 June, 2018

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### **SIM-CI HOLDING BV**

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# Chapter I: General

## I.1. Applicability

- 1.1 If an Agreement is entered into by the Parties, this chapter I (article I.1 up to and including article I.18) is applicable.
- 1.2 The SIM-CI General Terms and Conditions consist of the following chapters:
  - (i) General;
  - (ii) Use of SIM-CI Software;
  - (iii) Development of Solutions; and
  - (iv) Ancillary Services.
- 1.3 Additions to or deviations from the SIM-CI General Terms and Conditions shall only apply if agreed in writing.
- 1.4 The applicability of any purchase or other terms and conditions of the Client is expressly rejected.
- 1.5 If any provision of these general terms and conditions is voided or null, the other provisions of these general terms and conditions shall remain in full force and effect. In such case, SIM-CI and the Client shall enter into negotiations, the goal of which will be to agree new provisions to replace the voided or null provisions that reflect the purpose and purport of the voided or null provisions as closely as possible.

## I.2. Definitions

<b>Additional Work</b>	any services and/or activities that are not part of the agreed scope of the Services;
<b>Agreement</b>	any written (framework) agreement between SIM-CI and Client and/or written order of SIM-CI under an Agreement, including every amendment of or addition to it, to which the SIM-CI General Terms and Conditions apply and of which they form part;
<b>Ancillary Services</b>	any services provided by SIM-CI to Client based on an Agreement, other than providing the SIM-CI Software, granting a License or developing a Solution, as defined in the Agreements;
<b>Client</b>	the party SIM-CI entered into an Agreement with;
<b>Client Data</b>	any information, data and documents used, obtained or generated by Client in relation to the Services, including but not limited to personal data processed by Client by means of the SIM-CI Software;
<b>IP Rights</b>	means any and all (future) intellectual property rights in any country or jurisdiction including, but not limited to any patents, copyrights and neighbouring rights, trademarks, trade names and domain names, goodwill, design rights, rights related to software, database rights or other rights in compilation of data, know-how, trade secrets, all renewals or extensions of such rights and all similar or equivalent rights or forms of protection which are developed or will be developed, either registered, deposited, filed or not and including any and all applications for such rights that can in any way be related to the Services (as defined below);
<b>License</b>	a right to use the SIM-CI Software and/or the Solution, as defined in the Agreements;
<b>License Agreement</b>	a license agreement entered into by and between the Parties for the use of the SIM-CI Software;
<b>Parties</b>	SIM-CI and Client;
<b>Party</b>	SIM-CI or Client;
<b>Services</b>	any services, products, rights, licenses and solutions (to be) provided by SIM-CI to Client under an Agreement, including but not limited to the SIM-CI Software, the Solution and Ancillary Services;
<b>SIM-CI</b>	SIM-CI Holding B.V.
<b>SIM-CI Software</b>	the software as described in annex 2 to the License Agreement and SAAS Agreement, including the source code, object code and preparatory material;

**SIM-CI General**

<b>Terms and Conditions</b>	these general terms and conditions;
<b>SLA</b>	service level agreement;
<b>Solution</b>	the software solution (to be) developed by SIM-CI based on the Development Agreement, in accordance with the Specifications;
<b>Specifications</b>	the functional and technical requirements of the Solution, as further described in an annex to the Development Agreement.

### **I.3. Pricing and payment**

- 3.1 The prices indicated by SIM-CI and the prices Parties agreed upon are in Euros and exclusive of turnover tax (VAT) and other taxes. Clients can only derive rights from prices indicated in invoices. All other indications of prices are estimations and can be deviated from in the invoices issued by SIM-CI. Estimations of costs and prices issued by SIM-CI shall not be regarded as fixed prices.
- 3.2 The administration of SIM-CI shall be conclusive evidence of the amounts payable by Client for the Services.
- 3.3 All invoices shall be paid by Client within thirty (30) days of receipt. Payments not made when due, shall accrue interest from the original due date until paid at a rate equal to **2 %** per month. If part of the invoice is disputed, the Client shall notify SIM-CI of this fact within five (5) working days.
- 3.4 In case of non-payment, SIM-CI reserves the right to suspend the performance of the Services, retain the Services and/or terminate the Agreement automatically and without any further formalities. Client is not entitled to suspend any payments or to offset any amounts due.
- 3.5 If the Client fails to pay on time, it will be liable to pay not only the amount owed and the interest accrued thereon, but the full amount of both judicial and extrajudicial collection costs, including the fees charged by attorneys, bailiffs, and collection agencies. In such case, SIM-CI shall also be entitled to charge the Client EUR 50 in administration costs.

### **I.4. Confidentiality**

- 4.1 Sim-Ci and Client shall, both before and during the term of the Agreement and for an indefinite period of time after termination of the Agreement keep strictly confidential any information and/or documentation concerning the Agreement, the Services, the IP Rights and/or (the business of) SIM-CI, which has become known to Sim-Ci and/or Client under the Agreement, and which information Sim-Ci or the Client knew or should have known to be of a confidential nature. Sim-Ci and/or Client shall not disclose any information to any third party without the explicit prior written approval of the other party.
- 4.2 The following information shall at least be deemed to be of confidential nature: information regarding research, development, technical information, production and business plans and business processes and strategy, machines, designs, compositions, formula, techniques, improvements, procedures, specifications, ideas, computer hardware, software (including source code, object code and any accompanying documentation), methods, marketing plans, (intended) cooperation with third parties, personnel and employment matters, forecasts; all as acquired, developed, amended, used, generated and/or utilized by or on behalf of SIM-CI and/or the Client.

### **I.5. Client Data, Privacy & Security**

- 5.1 Client guarantees that the content, use and/or the processing of the Client Data by Client is not unlawful and does not infringe any rights of SIM-CI and any third parties.
- 5.2 Client shall defend, indemnify and hold harmless SIM-CI from and against any and all claims, demands, suits and/or proceedings made or brought against SIM-CI in relation to the Client Data, and shall reimburse SIM-CI for liabilities,

judgments, damages, costs or expenses payable by SIM-CI to the party bringing such action together with reasonable attorney's fees relating thereto.

- 5.3 SIM-CI's privacy and security policies may be viewed at <http://www.sim-ci.com> or such other website as may be identified to the Client from time to time. SIM-CI reserves the right to modify its privacy and security policies at its sole discretion from time to time.
- 5.4 In case and to the extent the Client Data contains personal data, Client guarantees that all requirements in respect of lawful processing of such personal data are met and Client shall notify SIM-CI without undue delay in writing in respect of the processing activities and the manner in which the Client executes its obligations based on the applicable data protection legislation.
- 5.4 SIM-CI does not own any data, information or material that the Client creates via the Service in the course of using the Service. The Client, not SIM-CI, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Data. SIM-CI shall not be responsible or liable for the deletion, correction, alteration, destruction, damage, loss, disclosure or failure to store any Data. In the event the Agreement is terminated (other than by reason of breach by the Client), SIM-CI will make available to the Client a file of the Data within 30 days of termination if the Client so requests at the time of termination. SIM-CI reserves the right to withhold, remove, discard and/or otherwise dispose of Data without notice for any breach, including, without limitation, non-payment of the Client. Upon termination for cause, the right of the Client to access or use Data immediately ceases, and SIM-CI shall have no obligation to maintain or forward any Data.

## **I.6. Audits**

- 6.1 At least once a month, SIM-CI is entitled to audit the compliance of Client with its obligations under the Agreements, including but not limited to the obligations of Client in respect of the quantitative and qualitative (including but not limited to restrictions in respect of territories and persons) restrictions of the License. Client is obligated to provide all cooperation that SIM-CI can reasonably expect, including but not limited to providing access and inspection to information, documentation, databases, buildings and systems. SIM-CI is entitled to appoint a qualified professional for the execution of the audit.
- 6.2 SIM-CI shall ensure that an audit will interrupt the business activities of Client as little as possible.
- 6.3 In order to realize an audit in accordance with this article, Client is obligated to establish and maintain an adequate administration, bookkeeping and archive (for as far as applicable). Client shall organize and manage this bookkeeping and the archives in accordance with the relevant market standards. Upon first request of SIM-CI, Client is obligated to provide SIM-CI with access to such bookkeeping and archives.

## **I.7. Intellectual property rights**

- 7.1 Except as agreed otherwise by and between the Parties in writing, all IP Rights are and shall remain exclusively vested in SIM-CI.
- 7.2 Any transfer of IP Rights and/or any Licenses or other rights or titles provided by SIM-CI to Client related to the Services shall not affect SIM-CI's right to use, (further) develop and exploit the Services on its own behalf or on behalf of another party, without any quantitative or qualitative restrictions being applicable to such right.
- 7.3 SIM-CI shall be entitled to install technical provisions for the purpose of protecting the Services. Client shall not be permitted to circumvent or remove such technical provisions.
- 7.4 Client shall not apply for, or seek to obtain any IP Rights and/or any other right in connection with the Services.
- 7.5 Client shall immediately notify SIM-CI in writing if any third party gains unauthorized access to the Services and/or SIM-CI's proprietary materials or confidential information.

- 7.6 Client shall not harm, misuse or bring into disrepute the IP Rights, the Services and/or (the reputation of) SIM-CI.
- 7.7 In case Client infringes the IP Rights or otherwise act unlawfully in respect of the IP Rights, Client shall be directly – without any formalities, including but not limited to notices of default, to be met – liable to pay SIM-CI the sum of EUR 25.000,- for every separate breach of the IP Rights and in addition EUR 10.000,- for every (part of a) day that the breach continues, without prejudice to any claim for compensation for related damages initiated by SIM-CI in relation to the breach and regardless of the actual costs to be recovered. The total amount of penalties to be recovered from Client pursuant to this article 7.7 shall not be deducted from the prices and fees to be paid by Client to SIM-CI under the Agreement(s).
- 7.8 If Client becomes aware of any attack on the validity or any infringement of an IP Right, Client notifies SIM-CI promptly in writing thereof. Unless agreed otherwise by and between the Parties in writing, Client shall not take any steps or make any admissions regarding any infringement of any of the IP Rights, but shall provide, at the first request of SIM-CI all assistance in taking any steps against any infringement of, or other proceedings instituted against, any of the IP Rights. Unless agreed otherwise by and between the Parties in writing, Client shall not make any commitments to or agree to any settlement with the claiming party.
- 7.9 Client shall defend, indemnify and hold harmless SIM-CI from and against any and all claims, demands, suits or proceedings made or brought against SIM-CI, and shall reimburse SIM-CI for liabilities, judgments, damages, costs or expenses payable by SIM-CI to the party bringing such action together with reasonable attorney's fees relating thereto, as a result of any infringement of any third party intellectual property right by Client's use of the Services, other than agreed between Parties.
- 7.10 Unless specifically agreed otherwise between Parties in writing, SIM-CI shall not be required to deposit (one or more copies and/or parts of) the SIM-CI Software with an escrow agent and/or another party.

## **I.8. Periods and dates**

- 8.1 All periods and dates specified by SIM-CI are indicative dates, not having any binding effect on SIM-CI. SIM-CI shall make reasonable effort to meet the specified and agreed periods and dates wherever possible.
- 8.2 The circumstance that a period or date specified by SIM-CI or agreed between Parties has been lapsed, shall not mean that SIM-CI is in default.

## **I.9. Term and termination of the Agreement**

- 9.1 Unless specifically agreed otherwise by and between the Parties in writing, the term of an Agreement shall be one (1) year upon the date Parties signed the Agreement.
- 9.2 Each Party is entitled to terminate the Agreement in full or in part with immediate effect by written notice to the other Party, if there is a breach by the other Party of material obligations under the Agreement which breach is (i) incapable of remedy or (ii) not remediated within thirty (30) days after notice of the breach has been given to the Party.
- 9.3 Without prejudice to article 9.2, SIM-CI is entitled to terminate the Agreement in full or in part with immediate effect by written notice, without prior notice of default or judicial intervention being required or obligation to pay compensation of any loss and without prejudice to the other (statutory) rights of SIM-CI including the right to compensation, if:
- (i) Client is declared bankrupt, is granted a moratorium, discontinues and/or terminates and/or winds up his business and/or there is a takeover of Client by a third party and/or Client is involved in a merger or de-merger;
  - (ii) a substantial part of the assets of Client is seized before judgment or seized under a warrant of execution so that there are well-founded reasons for suspecting that Client shall therefore no longer be able to correctly perform its obligations arising under the Agreement(s);
  - (iii) if third parties hold Client or SIM-CI liable for breach of IP Rights; and/or

- (iv) if there is a circumstance as specified in article 82, paragraph 2 and/or article 83 of Book 6 of the Dutch Civil Code (in Dutch: 'Burgerlijk Wetboek').
- 9.4 If the Agreement is fully or partially terminated on one of the grounds specified under this article 9, each claim of SIM-CI against Client is immediately due and payable.
- 9.5 Upon termination of the Agreement, Client will destroy any information and documentation relating to the Agreement, SIM-CI and the Services or – upon first request of SIM-CI - return such information and documentation to SIM-CI. Client will provide upon the first request of SIM-CI evidence of disposal of the aforementioned information and documentation.
- 9.6 In the event of full or partial termination of the Agreement (regardless of the reason for termination) by SIM-CI, Client has no right to compensation by SIM-CI of any loss suffered by it or third parties due to the termination. Customer indemnifies SIM-CI against claims of third parties in this connection.
- 9.7 The three articles indicated below shall survive and continue after termination of the Agreement(s) for an indefinite period of time.
  - (i) article 4 of the SIM-CI General Terms and Conditions (Confidentiality);
  - (ii) article 5 of the SIM-CI General Terms and Conditions (Client Data); and
  - (iii) article 7 of the SIM-CI General Terms and Conditions (Intellectual Property Rights).

## I.10. Liability of SIM-CI

- 10.1 The Parties' liability for any harm/loss [*schade*] arising from a culpable failure to perform the Agreement, or an unlawful act or other wrongful conduct, is excluded. To the extent the aforementioned liability cannot be excluded in the event of a culpable failure to perform the Agreement, SIM-CI shall only be liable to the Client for alternative compensation [*vervangende schadevergoeding*], that being payment equal to the value of the performance that was not rendered. In other cases, liability shall be limited to the direct harm/loss incurred in each event (a series of related events shall be considered a single event).
- 10.2 Direct harm/loss shall be understood to consist exclusively of all harm/loss consisting of:
  - harm directly inflicted on property ("property damage");
  - reasonable and demonstrable costs of demanding that the relevant Party properly perform (or resume the performance of) the Agreement;
  - reasonable costs of establishing the cause and scope of the harm/loss, to the extent it meets the aforementioned definition of direct harm/loss; and
  - reasonable and demonstrable costs the Responsible Party incurred to prevent or limit the direct harm/loss referred to in this article.
- 10.3 Any liability on the part of SIM-CI for any other form of harm/loss is excluded, including for any additional damages, regardless of their form, damages for indirect harm/loss, including all harm/loss that does not constitute direct harm/loss, including, but not limited to, consequential harm/loss, lost profit or turnover, missed savings, decreased goodwill, harm/loss associated with business stagnation, harm/loss associated with failing to determine marketing targets, harm/loss relating to the Client's use of prescribed data or data files, or loss, corruption, or destruction of data or data files, as well as any harm/loss associated with missing deadlines as a consequence of a change in circumstances.
- 10.4 In the case of liability pursuant to the first paragraph, the maximum amount that the Parties will be liable to pay shall be equal to the value of the annual engagements, but no more than EUR 1,000,000.
- 10.5 The exclusions and limitations referred to in this article shall lapse if and to the extent that the loss/harm is the consequence of an intentional act or omission or deliberate recklessness on the part of the relevant Party or its managers.
- 10.6 Unless performance by the relevant Party proves permanently impossible, that Party shall only become liable for a culpable failure to perform the Agreement if one Party immediately serves the other with notice of default and affords

the defaulting Party a reasonable term to render performance and the defaulting Party remains in default of performing its obligations even after the expiry of that term. The notice of default must contain a description of the failure to perform that is as complete and detailed as possible, so that the relevant Party is afforded the opportunity to respond adequately.

- 10.7 Client may not recover from SIM-CI, whether for breach in contract or tort, under statute or otherwise, and SIM-CI is not liable for any damage with respect to loss of profit, business interruption, loss as a result of claims of Clients customers, loss of data, information and/or goodwill, loss arising from the use of items, materials or software prescribed by Client, loss arising from the engagement of suppliers prescribed by Client or any other consequential, incidental, indirect, punitive and/or special damages in connection with claims arising out of an Agreement or otherwise relating to the Services, whether or not the likelihood of such loss or damage was contemplated.
- 10.8. In case SIM-CI is liable under an Agreement or otherwise in connection with the Services, for loss or damage to which any other persons have also contributed, SIM-CI 's liability to Client shall be several, and not joint, with such others, and shall be limited to SIM-CI 's share of that total loss or damage, based on SIM-CI 's contribution to the loss and damage relative to the others' contributions. 10.9. Clients rights of claims relating to the Services or otherwise under an Agreement shall in any event expire no later than three (3) months after the date on which Client became aware or may reasonably be expected to have become aware of such claim.

## **I.11. Indemnification**

- 11.1 Client shall indemnify and hold SIM-CI, its licensors and each such party's parent organizations, subsidiaries, affiliates, officers, directors, employees, contractors and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including legal fees and costs) arising out of or in connection with a claim:
- (a) alleging that use of the Customer Data infringes the rights of, or has caused harm to, a third party;
  - (b) which if true, would constitute a violation by you of your representations and warranties; or
  - (c) arising from the breach by Client or its Users of this Agreement, provided in any such case that SIM-CI:
    - 1. gives written notice of the claim promptly to Client;
    - 2. gives Client sole control of the defence and settlement of the claim (provided that the Client may not settle or defend any claim unless Client unconditionally release SIM-CI of all liability and such settlement does not affect SIM-CI's business or Service);
    - 3. provides to Client all available information and assistance; and
    - 4. has not compromised or settled such claim.

## **I.12. Force majeure**

- 12.1 SIM-CI is not obligated to meet any obligations, including any guarantee and warranty obligation, in case SIM-CI is prevented from doing so as a result of force majeure.
- 12.2 Force majeure shall include but is not limited to: (i) force majeure at SIM-CI's suppliers, (ii) failure by a suppliers engaged by SIM-CI on Client's instructions, (iii) unavailability of members of staff (including but not limited to strike actions), (iv) defectiveness of hardware and/or software that SIM-CI has been instructed to use by Client, (v) governmental measures, (vi) failures related to the energy networks, internet or telecommunication facilities, (vii) transport problems, (viii) defaults of sub-contractors and supplier, (ix) acts of God, (x) war, (xi) riots and (xii) in connection with compliance with law or governmental orders, rules or regulations.



### **I.13 Internet Delays**

13.1 SIM-CI'S services may be subject to limitations, delays, and other problems inherent in the use of the Internet and electronic communications. SIM-CI is not responsible for any delays, delivery failures, or other damage resulting from such problems.

### **I.14. Additional Work**

14.1 Should Client request SIM-CI to perform Additional Work, SIM-CI will not be obligated to comply with such request. The circumstance that SIM-CI cannot or chooses not to comply with a request for Additional Work, will not constitute a ground for termination of the Agreement, suspension of any payment obligation or payment of any remuneration or damages from SIM-CI to Client.

14.2 Additional Work shall be paid by the Client in accordance with the agreed hourly rates or SIM-CI 's standard hourly rates. Client acknowledges that any request for Additional Work could negatively affect the indicated dates and periods.

### **I.15. Transfer of rights and obligations**

Client is not entitled to assign or transfer any rights and/or obligations under the Agreement or these SIM-CI General Terms and Conditions to a third party.

### **I.16. Modification to Terms**

SIM-CI reserves the right to modify the terms and conditions of these SIM-CI General Terms and Conditions or its policies relating to the Service at any time, subject to 60 days written notice to customer Continued use of the Service after any such changes shall constitute your consent to such changes.

### **I.17. Escalation**

17.1 Parties each designate an employee as a single point of contact ("SPOC") and employees from higher management as an escalation point ("Escalation Point"). The function of the SPOC is to give answers to questions or find a solution to disputes and problems they become aware of. The Escalation Point is contacted if the SPOC do not react or if they fail to do so in a satisfactory manner.

17.2 Any dispute or controversy between Parties shall be handled by the SPOC and the Escalation Point prior to initiating an arbitration pursuant to article I.18 of these SIM-CI General Terms and Conditions.

17.3 Parties shall use their best endeavour to resolve disputes and problems as soon as possible. In case Parties have not resolved a dispute or problem within five (5) working days after the SPOCs have become aware of such dispute or problem, SIM-CI is entitled to start an arbitration pursuant to article I.18 of these SIM-CI General Terms and Conditions.

### **I.18. Applicable law and jurisdiction**

18.1 Any Agreement and these SIM-CI General Terms and Conditions shall be construed by and in accordance with the laws of the Netherlands.

18.2 All disputes arising between SIM-CI and Client that are connected to an Agreement and/or the SIM-CI General Terms and Conditions will be resolved by means of arbitration in accordance with the Arbitration Regulations of SGOA (Stichting Geschillenoplossing Automatisering, or 'foundation for the resolution of ICT disputes'), which has its registered office in

The Hague. This provision does not affect the right of each party to request summary arbitral proceedings, without prejudice to the right of each party to take precautionary legal measures. Arbitration will take place in Haarlem.

## Chapter II: Use of software

### II.19. Applicability

If a License Agreement and/or a SAAS Agreement is entered into by the Parties, this chapter II (article II.19 up to and including article II.31) is applicable.

### II.20. License

- 20.1 Subject to payment of the fees under the License Agreement or SAAS Agreement, SIM-CI grants a non-exclusive, non-transferable right to use the SIM-CI Software, without the right to sublicense the SIM-CI Software (“License”). In case Client shall be subject to a periodic payment obligation in respect of the License, Client shall be entitled to the right of use for as long as it continues to meet its periodic payment obligation.
- 20.2 Use of the SIM-CI Software by the Client outside the scope of the License as defined in the License Agreement or the SAAS Agreement will constitute an infringement of the IP Rights and a breach of the License Agreement or the SAAS Agreement.
- 20.3 The License is solely extended to the object code and not the source code and technical documentation of the SIM-CI Software.
- 20.4 The License Agreement or SAAS Agreement does not in any way constitute a transfer of ownership of IP Rights from SIM-CI to Client.
- 20.5 SIM-CI is not obligated to provide any services related to the SIM-CI Software, including but not limited to services related to maintenance, support and back-ups.
- 20.6 Client is not allowed to reverse engineer, decompile, disassemble or otherwise attempt to derive the source code, techniques, processes, algorithms, know-how or other information from the (code portions of the) SIM-CI Software. Without the prior written approval of SIM-CI, Client is not entitled to modify the SIM-CI Software and/or to grant any (restrictive) rights and/or access to the SIM-CI Software in the broadest sense of the meaning to any third party.
- 20.7 SIM-CI shall provide the information and documentation necessary for the use of the SIM-CI Software in digital or in paper format to Client.
- 20.8 SIM-CI is entitled to use and include in the SIM-CI Software third party proprietary programs or components, including but not limited to third party open source software, to the extent permitted based on the applicable conditions.
- 20.9 In case and to the extent the SIM-CI Software contains third party software, the license terms of such third parties in relation to the SIM-CI Software apply. SIM-CI will notify Client on such license terms of third parties in writing.
- 20.10 In case of termination of the License, irrespective of the reason for such termination, the Client shall immediately return to SIM-CI the SIM-CI Software and all copies, parts and documents related thereto. In connection therewith, the Client shall confirm in writing that it has fully complied with this obligation.

### II.21. Service Level Agreement

- 21.1 If the Parties enter into a SAAS Agreement, they must also enter into a Service Level Agreement (SLA), which shall be added to the SAAS Agreement as an appendix. SIM-CI shall supply all of the Services described in the SLA based on a duty to make its best efforts.
- 21.2 Unless the Client provides proof to the contrary, SIM-CI’s books and records shall serve as sufficient proof of the availability of the SIM-CI software. Maintenance (either preventive or corrective) and other services regarding the SIM-CI software shall be excluded from consideration when assessing the availability of the SIM-CI software.

## **II.22. Delivery and acceptance**

- 22.1 SIM-CI shall deliver the SIM-CI Software to the Client on a medium and in a format as determined by SIM-CI.
- 22.2 Except if and to the extent agreed otherwise by and between Parties in writing, SIM-CI is not obligated to install, set-up, configure and/or adapt the SIM-CI Software.
- 22.3 Except where the Parties have agreed in writing that an acceptance procedure should be carried out, Client accepts the SIM-CI Software 'as is'.

## **II.23. Services**

- 23.1 SIM-CI shall render to the Client the services stipulated in the Agreement which qualify as Software as a Service, as well as the other services agreed between the Parties. SIM-CI shall not be responsible for the procurement and/or proper operation of the Client's or third parties' infrastructure.
- 23.2 Unless agreed otherwise in writing, the Client shall be responsible for management (including checking the settings), the use of the Service, and the manner in which the results of the Service are used. The Client is also responsible for the instruction of, and use by, the users, regardless of whether these users are subject to the Client's authority as an employer. In the absence of express agreements in this regard, the Client shall install the necessary software (including auxiliary software) on its own equipment, choose the settings, set the parameters, and fine-tune the software, and, if necessary, modify the equipment used, other software (including auxiliary software), and the user environment to achieve the interoperability desired by the Client.
- 23.3 Unless agreed otherwise in writing, SIM-CI shall not be obliged to perform data conversion work.
- 23.4 If the Services to be rendered to the Client pursuant to the Agreement also entail providing user support, SIM-CI shall provide the advice on the use and functioning of the software referred to in the Agreement and the use of the Service by telephone or e-mail. SIM-CI may attach conditions to the qualifications and number of contacts who will be eligible for support. SIM-CI shall process properly substantiated requests for support within a reasonable period of time. SIM-CI cannot guarantee the correctness, completeness, or timeliness of the responses or the support offered. Unless agreed otherwise in writing, support shall be provided exclusively on working days during SIM-CI's normal opening hours.
- 23.5 If the Services to be rendered to the Client pursuant to the Agreement also include making back-ups of Client data, SIM-CI shall make a full back-up of the Client data in its possession in accordance with the schedule the Parties have agreed in writing, or in the absence of such schedule, once per week. SIM-CI shall retain the back-up during the period agreed between the Parties. In the absence of such agreement, the back-up shall be kept for the period customary at SIM-CI. SIM-CI shall exercise all due care in the handling and safekeeping of the back-up.
- 23.6 SIM-CI shall be obliged to maintain a disaster recovery centre or other disaster recovery facilities only if this has been expressly agreed in writing.

## **II.24. Performance of Services**

- 24.1 SIM-CI shall make its best efforts to exercise due care when performing the Services, as appropriate in accordance with the agreements and procedures agreed with the Client in writing. All SIM-CI Services shall be performed based on a contractual duty to make its best efforts, unless and to the extent that SIM-CI has expressly undertaken in writing in the Agreement to achieve a certain result and that result is described in sufficient detail.
- 24.2 SIM-CI shall perform Services only on the instruction of the Client. If SIM-CI performs work relating to data regarding the Client, its employees, or users upon the request or order of a government agency or in connection with a statutory obligation, the Client shall be invoiced for all costs relating thereto.
- 24.3 SIM-CI may change the substance or scope of the Services. If such changes result in a change to procedures undertaken at the Client, SIM-CI shall inform the Client of such changes as soon as possible, and the Client shall bear the costs

associated with this change. In that case, the Client may cancel the Agreement in writing with effect from the date on which the change enters into effect, unless the change relates to changes in the relevant legislation or other requirements imposed by competent authorities or unless SIM-CI bears the costs of this change.

- 24.4 SIM-CI may continue performing the Services using a new or changed version of the software. SIM-CI shall not be bound to maintain, change, or add Client-specific properties or functionalities to the Service or software.
- 24.5 SIM-CI may disable all or part of the Service on a temporary basis in order to perform preventive, corrective, or adaptive maintenance. SIM-CI shall not disable the service any longer than is necessary, and shall have as much maintenance as possible performed outside office hours and shall, as circumstances permit, commence maintenance after notifying the Client.
- 24.6 If SIM-CI performs the Service based on data to be supplied by the Client, the Client shall prepare and supply this data in accordance with the terms and conditions imposed by SIM-CI. The Client shall transfer the data to be processed to, and retrieve the results of the processing from, the location where SIM-CI performs the Service. Transfer and transmission shall be effected, in whatever way it is effected, at the Client's risk and expense, even if such services are performed or provided by SIM-CI. The Client guarantees that all of the materials, data, software, procedures, and instructions it provides to SIM-CI to perform the services will always be correct and complete and that all data carriers provided to SIM-CI will meet all of the latter's specifications.
- 24.7 All equipment, software, and items used by SIM-CI to perform the services shall remain, the intellectual property of SIM-CI or its suppliers, even if the Client pays a fee for SIM-CI's development or purchase thereof.
- 24.8 SIM-CI shall never be obliged to provide the Client with a physical carrier in the context of the Software as a Service.

## **II.25. Limitations of use**

- 25.1 The Client shall closely comply with the limitations of use agreed between the Parties with regard to the software. The Client is aware that violating an agreed limitation of use will constitute both a culpable failure to perform the Agreement with SIM-CI and an infringement of the intellectual property rights associated with the software. The agreed limitations of use may relate to such aspects as:
  - a. the category or type of equipment for which the software is intended and/or the maximum number of processing units for which the software is intended and/or certain persons within the Client's organisation – whether or not designated by name or job title – who may use the software, and/or
  - b. the maximum number of users in the Client's organisation that may use the software – simultaneously or otherwise – and/or
  - c. the location at which the software may be used and/or certain forms and purposes of use (e.g., whether the software is being used for business or personal purposes), and/or
  - d. any other quantitative or qualitative limitation.
- 25.2 If the Parties have agreed that the software may only be used in combination with certain equipment or a certain category or type of equipment, the Client shall, in the event of any failure of the relevant equipment, be entitled to use the software on other equipment of the same category or type for the duration of the failure.
- 25.3 SIM-CI may require the Client to refrain from using the software until after the Client has requested and received one or more codes (passwords, identity codes, etc.) needed for use from SIM-CI, its supplier, or the software manufacturer. SIM-CI is always entitled to take technical measures to protect the software from unauthorised use and/or from being used in a manner or for purposes other than those agreed between the Parties.
- 25.4 The Client shall never remove or circumvent technical provisions intended to protect the software, and shall never cause such removal or circumvention to be effected.
- 25.5 Unless agreed otherwise in writing, the Client may use the software only at or on behalf of its own company or organisation and exclusively for the purposes for which it was intended. Unless agreed otherwise in writing, the Client

shall not use the software to process data on behalf of third parties, such as would be the case in arrangements involving ‘time-sharing’, ‘application service provision’, ‘software as a service’, and ‘outsourcing’.

- 25.6 The Client is prohibited from selling, leasing, alienating, granting certain rights to the software, the carriers on which the software is stored, or the certificates of authenticity provided by SIM-CI when delivering the software, as well as from making it available to third parties in any other manner or for any other purpose. The Client is also prohibited from granting access – at a distance or otherwise – to the software or transferring the software to a third party for hosting, even if the third party uses the software exclusively for the Client.
- 25.7 Upon request, the Client shall cooperate fully with any audit being carried out by or on behalf of SIM-CI with regard to the Client’s compliance with the limitations of use. Upon SIM-CI’s first request, the Client shall grant SIM-CI access to its buildings and systems. SIM-CI shall treat as confidential all business information which is considered confidential and which SIM-CI receives from the Client in the context of such an audit, to the extent that information does not relate to the use of the software itself.

## II.26. Delivery and Acceptance

- 26.1 SIM-CI will supply the SIM-CI software to the Client on a medium and in a format determined by SIM-CI.
- 26.2 Unless the Parties agree otherwise in writing, SIM-CI shall not be obliged to install, set up, configure, and/or adjust the SIM-CI software.
- 26.3 Unless the Parties have agreed in writing that an acceptance procedure must be carried out, the Client shall accept the SIM-CI software ‘as is’.
- 26.4 If the Parties have agreed to an acceptance test in writing, the provisions of articles 26.5 to 26.11, inclusive, shall apply.
- 26.5 References to ‘defects’ include the substantive failure to meet the functional or technical specifications for the software as specified by SIM-CI in writing, and, if the software is partly or fully customised, the functional or technical specifications expressly agreed between the Parties in writing. A defect can only be deemed to exist if it can be demonstrated and reproduced by the Client. The Client is obliged to notify SIM-CI of any defects immediately.
- 26.6 If the Parties have agreed an acceptance test, the test period will consist of the fourteen (14) days following delivery or, if the Parties have agreed in writing that SIM-CI will perform an installation, following completion of the installation. During the test period, the Client shall not be entitled to use the software for production or operational purposes. The Client shall ensure that the agreed acceptance test regarding the software is carried out by sufficiently qualified personnel and that the test itself is of sufficient scope and depth, and the Client shall present a clear, written, and comprehensible report on the acceptance test to SIM-CI.
- 26.7 If an acceptance test has been agreed, the Client shall be fully and exclusively responsible for testing whether the software delivered meets the functional or technical specifications for the software as specified by SIM-CI in writing, and, if the software is partly or fully customised, the functional or technical specifications agreed between the Parties in writing. Unless agreed otherwise in writing, the Client shall bear the risk of any assistance SIM-CI provides during the performance of the acceptance test.
- 26.8 The Software shall be deemed to have been accepted by the Parties:
- if the Parties have not agreed an acceptance test: upon delivery, or if the Parties have agreed in writing that SIM-CI will perform an installation, following completion of the installation, or
  - if the Parties have agreed an acceptance test: on the first day after the test period, or
  - if SIM-CI receives a test report as meant in article 26.6 before the end of the test period: as soon as the defects reported in the test report have been remedied, notwithstanding the presence of imperfections that do not preclude acceptance pursuant to article 26.10. In deviation from this provision, if the Client uses the software in any way for production or operational purposes before express acceptance, the software shall be considered as having been accepted in full with effect from the start of that use.

- 26.9 If defects in the software are revealed while performing the agreed acceptance test, the Client shall notify SIM-CI of those defects by providing the latter with a detailed, written test report by no later than the last day of the test period. SIM-CI shall make its best efforts to cure the aforementioned defects within a reasonable period of time, in which respect SIM-CI will be entitled to install temporary solutions or work-arounds, or enter problem-avoidance restrictions, in the software.
- 26.10 Acceptance of the software may not be withheld on grounds that do not relate to the specifications expressly agreed between the Parties, or because of the existence of minor defects that cannot reasonably be said to preclude the software's use for operational or production purposes, without prejudice to SIM-CI's obligation – if and to the extent applicable – to cure these minor defects in the context of the warranty scheme laid down in article 28. Acceptance may also not be withheld due to aspects of the software that can only be subjectively assessed, such as aesthetic characteristics and characteristics regarding the appearance of user interfaces.
- 26.11 If the software will be delivered and tested in phases and/or parts, the non-acceptance of a certain phase and/or part shall not affect the acceptance of an earlier phase and/or other part.
- 26.12 Acceptance of the software in a manner as meant in this article shall result in SIM-CI being discharged for the performance of its obligations regarding the supply and delivery of the software as well as, if an installation by SIM-CI has been agreed, for the installation of the software. Acceptance of the software shall not prejudice the Client's rights pursuant to article 26.10 regarding minor defects or article 28 regarding the warranty.

## **II.27. Right-of-use Fee**

- 27.1 Unless agreed otherwise in writing, the right-of-use fee agreed between the Parties shall be due and payable on the dates agreed between the Parties, or, in the absence of an agreed date:
- a if the Parties have not agreed that SIM-CI will install the software: upon delivery of the software or, if right-of-use fees shall become due and payable periodically, upon delivery of the software and upon commencement of each new term of use;
  - b. if the Parties have agreed that SIM-CI will install the software: upon completion of the software installation, or, if right-of-use fees shall become due and payable periodically, upon completion of the software installation and upon commencement of each new term of use.
- 27.2 Unless agreed otherwise in writing, SIM-CI shall not be obliged to install and adjust the software. If, in deviation from the foregoing, SIM-CI must also perform installation work or adjustment work with respect to the software, SIM-CI may require the Client to enter into a separate Agreement for that work. As applicable, such work shall be invoiced separately at SIM-CI's usual rates.

## **II.28. Warranties and responsibilities**

- 28.1 SIM-CI does not warrant that the SIM-CI Software, its performance and/or results are fit for the intended use and/or purpose of Client.
- 28.2 Subject to the remainder of this article II.28, SIM-CI shall endeavour to undertake for a period of three (3) months upon the delivery of the SIM-CI Software, that the SIM-CI Software will perform substantially in accordance with the SIM-CI Software Description.
- 28.3 If the SIM-CI Software does not perform substantially in accordance with the SIM-CI Software Description, the entire and exclusive liability of SIM-CI and Client's sole and exclusive remedy will be limited to, at the discretion of SIM-CI, either (i) replacement of the SIM-CI Software, (ii) fixing of errors, bugs and/or defects or (iii) return of the SIM-CI Software for a refund of the fees and charges Client paid for the SIM-CI Software. This warranty applies only to the SIM-CI Software as originally delivered, and does not apply to updates or defects caused by the combination, operation or use of the SIM-CI

Software with software, hardware or other materials not provided by SIM-CI, or by devices, software, or other materials that do not conform to SIM-CI requirements set forth in the SIM-CI Software Description.

- 28.4 In case SIM-CI will fix errors, bugs and/or defects further to this article II.28, SIM-CI is entitled to apply problem-avoiding restrictions, program bypasses, workarounds and/or install temporary solutions. After a period of three (3) months upon the delivery of the SIM-CI Software has lapsed, SIM-CI is not obligated to fix any errors, bugs and/or defects to the SIM-CI Software.
- 28.5 Except in case and to the extent agreed otherwise by and between Parties in writing, SIM-CI is not responsible for data conversion, data migration, data quality, interoperability of the SIM-CI Software and any results Client desired to obtain through use of the SIM-CI Software.
- 28.6 Customer shall be responsible for installing, setting-up, configuring and/or adapting its own equipment, other software and operating environment necessary for the use of the SIM-CI Software. SIM-CI is not responsible for any compatibility of the SIM-CI Software with the equipment, other software and/or the operating environment of Customer.
- 28.7 During the term of the Agreement, SIM-CI is entitled to make available updated versions of the SIM-CI Software and terminate the provision of previous versions of the SIM-CI Software. It shall be the sole responsibility of Customer that the updated versions of the SIM-CI Software are compatible with its own equipment, other software and operating environment. Any liability of SIM-CI related to incompatibility of the SIM-CI Software with the equipment, other software and/or operating environment of Customer is excluded.

## **II.29. Disclaimer of Warranties**

- 29.1 SIM-CI and its licensors make no representation, warranty, or guarantee as to the reliability, timeliness, quality, suitability, truth, availability, accuracy or completeness of the service or any content. SIM-CI and its licensors do not represent or warrant that (A) the use of the service will be secure, timely, uninterrupted or error-free or operate in combination with any other hardware, software, system or data, (B) the service will meet clients requirements, (C) any stored data will be accurate or reliable, (D) the quality of any products, services, information, or other material purchased or obtained by client through the service will meet clients requirements or expectations, (E) errors or defects will be corrected, or (F) the service of the server(s) that make the service available are free of viruses or other harmful components. The service and all content is provided strictly on an 'as is' basis. All conditions, representations and warranties, whether express, implied, statutory or otherwise, including, without limitation, any implied warranty of merchantability, fitness for a particular purpose, or non-infringement of third party rights, are hereby disclaimed to the maximum extent permitted by applicable law by SIM-CI and its licensors. Nothing in this agreement excludes the liability of SIM-CI for death or person injury caused by SIM-CI's negligence or for fraud or fraudulent misrepresentation.

## **II.30. Supplier Software**

- 30.1 If and to the extent that SIM-CI provides third-party software to the Client – and provided that SIM-CI has notified the Client of same in writing – the licensing and other terms and conditions of that third party (or those third parties) shall apply and prevail over any provisions to the contrary contained in the present general terms and conditions. The Client shall accept the aforementioned third-party terms and conditions. These terms and conditions shall be made available to the Client for its inspection at SIM-CI, and SIM-CI shall send the Client a copy of same free of charge upon request. If and to the extent that the aforementioned third-party terms and conditions are, for whatever reason, considered or declared to be inapplicable to the relationship between the Client and SIM-CI, the provisions of the present general terms and conditions shall apply in full.



**II.31. Provision**

- 31.1 SIM-CI shall deliver the SIM-CI Software to Client using telecommunication facilities (online). SIM-CI shall not be obligated to provide the SIM-CI Software to Client on a physical medium.
- 31.2 During the term of the SAAS Agreement, SIM-CI is entitled to change the manner in which the SIM-CI Software is provided to Client. SIM-CI shall inform Client on such changes.
- 31.3 SIM-CI shall not be obligated to recover Client Data that is lost or corrupted as a result of the use of the SIM-CI Software.

# Chapter III: Development of software

## III.32. Applicability

If a Development Agreement is entered into by the Parties, this chapter IV (article III.32 up to and including article IV.39) is applicable.

## III.33. Solution

- 33.1 The Specifications shall be included as annex 1 to the Development Agreement.
- 33.2 Client guarantees the completeness, consistency and accuracy of any information and documentation provided to SIM-CI related to the Solution and the Specifications. Any faults or omissions in the Specifications shall be at risk of Client.
- 33.3 Unless agreed otherwise in writing between Parties, the development of the Solution solely relates to the source code and object code of the specified software.

## III.34. Project organization

SIM-CI and Client shall assign a project manager for managing the development of the Solution. The project managers shall be responsible for: (i) managing the day-to-day activities under the Development Agreement, (ii) serving as liaisons between the Parties, (iii) assigning and scheduling the appropriate personnel to perform all of the required services under the Development Agreement, and (iv) authorizing and executing any and all change order(s). Client hereby acknowledges and agrees that the Client project manager shall have the proper authority and power to execute and perform the duties and responsibilities set forth in the Development Agreement.

## III.35. Development of the Solution

- 35.1 SIM-CI shall develop the Solution on the basis of a best efforts obligation and is not obligated to follow instructions of Client in respect of the development of the Solution.
- 35.2 SIM-CI reserves the right, and Client hereby agrees, to assign subcontractors to this project to insure that the terms of this agreement are met as well as on-time completion.

## III.36. Delivery and acceptance

- 36.1 The Solution will be delivered by SIM-CI to Client on a medium and in a format as determined by SIM-CI.
- 36.2 Except where otherwise agreed in writing by and between the Parties, SIM-CI is not obligated to install, set-up, configure and/or adapt the Solution.
- 36.3. Except where the Parties have agreed in writing that an acceptance procedure should be carried out, Client accepts the Software 'as is', meaning in the condition at the time of delivery by SIM-CI.
- 36.4 The risk of loss, theft, misappropriation of or damage to the Solution shall pass to Client at the moment SIM-CI delivered the Solution to Client.
- 36.5 Upon delivery of the Solution by SIM-CI, Client shall have a five (5) days acceptance test. Client is not entitled to use the Solution for production or operational purposes during this acceptance test. During the acceptance test, Client shall assess whether the Solution meets the Specifications.
- 36.6 The Solution is deemed to have been accepted by Client:

- (i) in case Client uses the Solution in any other way than strictly necessary for performing the acceptance test, including but not limited to commercial or operational use;
  - (ii) on the first day following the test period of five (5) days upon delivery of the Solution; and/or
  - (iii) in case SIM-CI receives a test report which contains errors that do not reasonably prevent acceptance or errors that have been fixed at the end of the test period.
- 36.7 In case Client is of the opinion that the Solution contains errors in relation to the Specifications, Client shall report the test results in writing to SIM-CI no later than at the end of the test period, indicating a detailed description of the supposed errors. On the basis of a best efforts obligation, SIM-CI shall strive to fix the errors within a reasonable time period. When fixing such errors, SIM-CI is entitled to apply problem-avoiding restrictions, program bypasses, workarounds and/or install temporary solutions.
- 36.8 Minor errors, being errors that reasonably do not prevent the operational or productive use of the Solution and/or errors that are not related to the Specifications do not preclude acceptance of the Solution.
- 36.9 Upon acceptance of the Solution, SIM-CI is discharged of any obligations relating to the Solution, including but not limited to meeting the Specifications, making the Solution available or installing the Solution.

### **III.37. Agile Development**

- 37.1 This article III.37 is applicable in case and to the extent Parties have agreed on the development of the Solution in stages or in case SIM-CI uses such development method often referred to as 'agile' or 'scrum' ("Agile Development").
- 37.2 Client shall appoint a representative who is experienced in Agile Development projects ("Product Owner"). The key responsibilities of the Product Owner include:
- (i) the initial development and prioritization of the Product Vision (as defined below) and the Product Backlog (as defined below);
  - (ii) the ongoing revision and re-prioritization of the Product Backlog during the development; and
  - (iii) participation on behalf of Client in the agile planning and review meetings.
- 37.3 Client is responsible that the Product Owner:
- (i) dedicates a reasonable amount of its time and efforts tot he activities as mentioned in article 37.2;
  - (ii) responds to questions from the Development Team (as defined below) as soon as possible; and
  - (iii) is not removed from the project without good cause.
- 37.4 Employees and/or independent contractors of SIM-CI who will be engaged in the development of the Solution form the development team of the Agile Development project ("Development Team"). SIM-CI will use its best endeavours to ensure that the Development Team is appropriately skilled and experienced to carry out an Agile Development project. SIM-CI is entitled to change the composition of the Development Team during the course of the Agile Development project.
- 37.5 Client is obligated to provide SIM-CI with a clear and extensive overview of the overarching goals of the Agile Development project and the high-level benefits that are sought ("Product Vision"). Furthermore, Client is obligated to provide SIM-CI with a statement of requirements, including a prioritized list of items (deliverables) that are to be developed during the course of the Agile Development project ("Items" and the list of Items shall be referred to as "Product Backlog"). The Product Vision and Product Backlog shall be subject to the prior written approval of SIM-CI.
- 37.6 Based on the Product Vision and Product Backlog, the Development Team will provide Product Owner with an estimate of the effort required to develop each item in the Product Backlog. Client and/or Product Owner are not entitled to unilaterally change the estimates of offers received from the Development Team.
- 37.7 In the Development Agreement, Parties shall agree on the duration of sprints for the development of Items ("Sprints"). The duration of each Sprint as defined in the Development Agreement cannot be extended. During Sprint meetings, the Development Team shall determine how many items of the Product Backlog identified by the Product Owner can be

developed during the current Sprint. SIM-CI shall use its best endeavours to finalize the identified Items during the respective Sprint.

- 37.8 SIM-CI is entitled to postpone the start of a Sprint until Client has accepted the Items of the previous Sprint in writing.
- 37.9 Product Owner is obligated to review and test the Items developed during a Sprint, five (5) days upon completion of the respective Sprint. Any amendments to the deliverables requested by Product Owner shall be included in the Product Backlog. A Sprint shall be deemed to be accepted by Client in case upon completion of a Sprint, at least seventy-five (75) per cent of the Items identified for that Sprint are completed.
- 37.9 All Items shall be deemed to be accepted by Client in the meaning of article III.36 of these SIM-CI General Terms and Conditions and the Agile Development project shall be deemed to be completed:
- (i) after a period of five (5) days after SIM-CI delivered all Items included in the Product Backlog to Client without any request from Client to include additional Items in the Product Backlog; and
  - (ii) Client uses the Items for commercial and/or operational purposes.

### **III.38. Obligations Client**

- 38.1 Client agrees to perform all tasks assigned to Client as set forth in the Development Agreement. SIM-CI shall not be deemed in breach of the Development Agreement and/or these SIM-CI General Terms and Conditions in the event SIM-CI's failure to meet its responsibilities, time schedules and obligations is caused by Client's failure to meet (or delay in) its responsibilities, time schedules and obligations set forth in the Development Agreement.
- 38.2 In the event of any such failure or delay by Client, (i) all of SIM-CI's time frames, milestones, and/or deadlines shall be extended by the number of days of Client's failure and Client shall continue to make timely payments to SIM-CI as set forth in the Development Agreement as if all time frames, schedules, or deadlines had been completed by SIM-CI.
- 38.3 Client shall be responsible for making, at its own expense, any changes or additions to Client's current systems, software, and hardware that may be required to support operation of the Solution. Client shall be responsible for initially populating and then maintaining any databases on the Solution as well as providing all content for the Solution.

### **III.39. Warranty**

SIM-CI warrants that for a period of ninety (90) days from delivery of the Solution, the Solution will operate in accordance with all the material terms of the Specifications. All warranty claims not made in writing within such period shall be deemed waived. As the sole and exclusive remedy of Client for breach of the foregoing warranty, SIM-CI shall, at its option, either correct the nonconformity or refund to Client the amount of fees attributable to the number of actual hours SIM-CI spent developing the defective portion of the Solution. SIM-CI shall not be liable for failures caused by third party hardware or software (including Client's own systems), misuse of the Client, or the negligence or wilful misconduct of Client.

## Chapter IV: Ancillary Services

### IV.40. Hosting

- 40.1 This article IV.40 is applicable in case Parties have agreed in an Agreement that SIM-CI will provide hosting services to Client.
- 40.2 Client shall be responsible for management and use of the hosting services provided by SIM-CI, including installing, organizing parameterizing and tuning the software, equipment and operating environment used in this regard.
- 40.3 Unless agreed otherwise by and between the Parties in writing, SIM-CI shall not be obligated to perform data conversion services, back-up services, contingency and/or recovery services. For preventive, corrective and/or adaptive maintenance, SIM-CI is allowed to suspend (parts of) the hosting services.
- 40.4 Client shall not exceed the agreed maximum disk space, data traffic and/or any other loading of systems and infrastructure. The agreed disk space, data traffic and/or any other loading of systems and infrastructure that is not used during a certain period, cannot be transferred to another period. In case and to the extent the maximums are exceeded by Client, SIM-CI shall charge an additional amount of fees.
- 40.5 Client shall use the hosting services with due care and refrain from acts that could be deemed and/or are unlawfully and/or immoral, including but not limited to disseminating unlawful or immoral information, spreading viruses or other harmful data or programs. SIM-CI is entitled to take down any information, documentation, data and programs which are deemed by SIM-CI to be unlawful and/or immoral.

### IV.41. Support

- 41.1 This article IV.41 is applicable in case Parties have agreed in an Agreement that SIM-CI will provide support services to Client.
- 41.2 SIM-CI shall provide to Client advice on the use and the functioning of the SIM-CI Software by telephone or e-mail as agreed upon in the Agreement, including the applicable limitations in terms of the qualifications and number of persons eligible for support services from SIM-CI.
- 41.3 SIM-CI shall handle detailed and properly motivated requests of Client with due care within a reasonable term on working days during SIM-CI's normal business hours. SIM-CI does not guarantee the timelines, completeness and accuracy of the support services offered.

### IV.42. Consultancy

- 42.1 This article IV.42 is applicable in case Parties have agreed in an Agreement that SIM-CI will provide consultancy services to Client.
- 42.2 Client acknowledges that the quality, accuracy and completion of consultancy services and deliverables is a joint effort by both Client and SIM-CI. SIM-CI shall provide the consultancy services on the basis of a best efforts obligation and does not guarantee any timelines and accuracy or completeness of deliverables.
- 42.3 Unless agreed otherwise by and between the Parties in writing, Client shall only use the consultancy services and deliverables for internal purposes and not disclose SIM-CI's way of working, deliverables, methods and/or techniques to any third party. The use of the SIM-CI's consultancy services by Client shall be at the risk of Client.