

## GENERAL TERMS AND CONDITIONS OF DELIVERY UNISCAPE B.V.

Version 2021

**UNISCAPE B.V. (UNISCAPE)**, a private company with limited liability, having its registered office and principal place of business at (2719 EK) Zoetermeer on Louis Braillelaan 80, registered in the Commercial Register of the Dutch Chamber of Commerce under number 59444797 filed with the Rotterdam District Court under number 19/2021

### 1. Applicability

- 1.1. These Terms and Conditions apply to all offers, quotations, Agreements and resulting obligations in connection with the provision of Services and/or Products of any nature and under any name by UNISCAPE to or on behalf of the Customer.
- 1.2. Deviations from and additions to these Terms and Conditions and/or the Agreement are only valid if and to the extent that (i) the Parties have expressly agreed to this in writing and/or (ii) an amendment is accepted by the Parties because the Customer has effectively enabled UNISCAPE to perform an Agreement (amended and/or supplemented) and UNISCAPE has commenced performance. Deviations only apply to the Agreement for which they were designed and drafted. If any specific provisions in or relating to the Agreement are contrary to these Terms and Conditions, such provisions in or relating to the Agreement shall prevail.
- 1.3. If and insofar as UNISCAPE supplies products originating from a supplier to the Customer and the supplier's terms and conditions apply to these products and include one or more (guarantee) provisions that are more restrictive than these Terms and Conditions, those provisions will (also) apply in the relationship between UNISCAPE and the Customer in addition to and with the (partial) exclusion of these Terms and Conditions.
- 1.4. If any provision of these general conditions is null and void or is annulled, the other provisions of these general conditions will remain in full force. In that case, UNISCAPE and the Customer will consult with each other to agree new provisions to replace the void or annulled ones.
- 1.5. The Customer's terms and conditions, of whatever nature and/or however named, do not apply to the legal relationship between the Customer and UNISCAPE and are expressly rejected by UNISCAPE.

### 2. Definitions

- 2.1. In these Terms and Conditions, the following capitalized terms shall have the following meanings:

**Agreement:** an agreement - including any Exhibits - which is concluded between UNISCAPE and the Customer as well as any deviations and/or additions agreed upon in accordance with these Terms and Conditions.

**AVG:** the Dutch General Data Protection Regulation (*Algemene Verordening Gegevensbescherming*).

**Building:** the business centre, office building or any other building where UNISCAPE provides (part of) the Services.

**Building Owner:** the legal owner of the Building or a third party legally representing such owner.

**Connection:** the way(s) in which the Customer is connected (physically, electronically and/or by other means) to UNISCAPE's service provision or the Network.

**Connection Point:** the point where the Customer or the User gains access to UNISCAPE's services or the Network.

**Customer:** any Party with whom UNISCAPE enters into an Agreement.

**Demarcation Point:** the point at which UNISCAPE's service provision switches from (i) Project-related Infrastructure managed by UNISCAPE to infrastructure managed by the Customer or (ii) - if the Customer is a Building Owner - from infrastructure managed by UNISCAPE and/or third parties to the Project-related Infrastructure. This is the point where UNISCAPE's responsibility ends and the Customer's begins.

**Exhibits:** the exhibits to the Agreement which form an inseparable part of the Agreement and which may be amended by UNISCAPE from time to time.

**Fair Use Policy:** the (technical) instructions, conditions and procedures which are provided by or on behalf of UNISCAPE when providing Services and/or the conditions described in the Agreement or these Terms and Conditions. With regard to the latter reference is made amongst other things to article 9.

**IP Rights:** intellectual property rights, including but not limited to innovations, concepts, inventions, copyrights, patent rights, database rights, software, and the modules and components forming part thereof.

**MER:** Main Equipment Room or central server room of a Building. It is a locked and secure server room with a function for the entire Building. This room contains the most essential network infrastructure.

**Network:** the communication network of UNISCAPE or one of its suppliers.

**Notification:** a notification to UNISCAPE, sent to UNISCAPE 's postal address to the attention of the management or sent to the e-mail address [directie@uniscapenl](mailto:directie@uniscapenl)

**Number Retention:** the retention of the telephone number by the Customer when changing Telecommunications Services providers.

**Office Hours:** the hours between 08:30 and 17:30 on Working Days.

**Party/Parties:** Uniscape and the Customer jointly or each of them individually

**Personal Data:** the personal data as referred to in Article 4 subsection 1 of the AVG.

**Products:** the equipment, software or other items to be supplied to the Customer by or on behalf of UNISCAPE pursuant to the Agreement.

**Project-related Infrastructure:** all cabling and infrastructure present in the general areas (MER, SER, vertical and horizontal transit points) of the Building and which is installed by UNISCAPE within the framework of the Agreement.

**SER:** Secondary Equipment Room. A place in a Building where, in addition to the MER, (network) equipment or infrastructure may also be located and which can therefore be a Demarcation Point. An SER does not need to be a specific room and can in principle be located anywhere in the Building. The MER and any existing SER or SERs are connected to each other optically and/or electrically.

**Service(s):** services and/or goods to be provided by UNISCAPE to the Customer on the basis of the Agreement.

**Services and Product Specification:** the description of the technical and/or functional characteristics of UNISCAPE's Services and/or Products.

**SLA:** any agreement regarding a level of service as laid down in a Service Level Agreement.

**Software:** all computer-readable program codes and instructions - software - provided by UNISCAPE within the framework of the execution of the Agreement.

**User:** the (legal) person who directly or indirectly uses the Services and/or Products supplied by UNISCAPE.

**Working Days:** all calendar days from Monday through Friday, except for generally recognised public holidays.

### **3. Offers and formation of Agreement**

- 3.1. All offers made by UNISCAPE are without obligation and are valid for ten (10) Working Days. UNISCAPE reserves the right to revoke an offer made by it after the aforementioned period has elapsed if and insofar as the Customer has not accepted the offer within said period.
- 3.2. The Agreement - as well as any modification thereof - is concluded i) by the Customer's written (or digital) acceptance of UNISCAPE's offer, ii) by receipt of UNISCAPE's written (or digital) confirmation that the Customer's application has been accepted or iii) when the Customer actually enables UNISCAPE to provide the Service.
- 3.3. If, upon acceptance, the Customer deviates from the offer made by UNISCAPE, this will be regarded as an invitation to UNISCAPE to make a new offer. Section 225 paragraph 2 of Book 6 of the Dutch Civil Code is excluded.

### **4. Rates and invoicing**

- 4.1. Unless otherwise agreed, the Customer pays UNISCAPE a fee for the Services and Products in accordance with UNISCAPE's applicable rates. The rates are stated in Euros and are always exclusive of turnover tax and other government levies.
- 4.2. The rates agreed with the Customer (periodically and/or once-only) are increased by 2% annually - as of 1 January of each calendar year - without further notice. In addition, UNISCAPE is entitled at all times to adjust its rates without further notice in the event of price increases due to government measures or demonstrable changes in the (purchase) prices and/or the money market. The aforementioned rate changes will never give the Customer the right to terminate the Agreement (without having to pay compensation). Any other changes to the applicable rate will be announced by UNISCAPE in writing at least one (1) month prior to the change taking effect. In the latter case, the Customer has the right to terminate the Agreement with effect from the change in rates without any right to compensation or damages.
- 4.3. UNISCAPE charges the amounts to be invoiced to the Customer as follows:
  - a) non-recurring amounts are invoiced - at UNISCAPE's discretion - prior to, simultaneously with or after the delivery date. UNISCAPE is entitled to execute the Agreement in various phases and to invoice the part thus executed separately;
  - b) user costs and/or time- and material-based amounts are invoiced monthly in arrears.
- 4.4. UNISCAPE will start invoicing the agreed periodic rates as of the date the Service becomes operational. If the Service is not available on the commencement date due to circumstances attributable to the Customer, UNISCAPE is entitled to commence invoicing at the time it desires, provided that the date on which the service would have become operational if these circumstances had not occurred, has passed.
- 4.5. For its invoicing, UNISCAPE will use and/or state the invoicing details stated by the Customer in the Agreement.
- 4.6. Rates for labour will be increased as follows: (i) on Working Days outside Office Hours by 50%, (ii) on days other than Working Days within Office Hours by 100% and (iii) on days other than Working Days outside Office Hours by 150%.

### **5. Additional work**

- 5.1. If UNISCAPE, at the request or with the consent of the Customer, has carried out work, other performances or deliveries which (i) fall outside the content or scope of the Agreement and/or (ii) must be delivered or carried out at another Connection Point during the term of the Agreement, is this considered extra work. Adaptations in the sense of cleaning up and/or cutback of the Service can, depending on the specific situation, also lead to additional work. The Customer accepts that additional work can (i) change the agreed or expected time of delivery of the Service or

temporarily interrupt the Service, (ii) affect the mutual responsibilities of the Customer and UNISCAPE and (iii) change the agreed rates.

- 5.2. Additional work can also be involved if it is necessary for UNISCAPE to carry out further work for the delivery and/or continuation of the Service. This is the case, for example, in the event of an in-house relocation of the Demarcation Point, work outside the scope of the Agreement (including the associated SLA), and/or reconfiguration of the Services.
- 5.3. UNISCAPE will charge the Customer for additional work at UNISCAPE's usual rates or, if a fixed rate has been agreed, a fixed rate. UNISCAPE may require a separate written agreement for the additional work.

## **6. Payment**

- 6.1. Invoices must be paid by the Customer within thirty (30) days after the invoice date. Any reliance on any discount, settlement or suspension by the Customer - for whatever reason - is explicitly excluded.
- 6.2. With respect to the services provided by Uniscape and the sums due by the Customer for these services, the information in UNISCAPE's administration provides full evidence, without prejudice to the Customer's right to provide evidence to the contrary. Objections to invoiced amounts must be made known to UNISCAPE by means of a Notification before expiration of the payment term, in default of which the correctness of the invoiced amounts will be established between the Parties after the payment term expires.
- 6.3. UNISCAPE is at all times entitled to set off all or part of its obligations towards the Customer against any claim - whether or not payable - which it has or will have against the Customer at any time, whether or not this is conditional or subject to a time limit.
- 6.4. If the Customer does not, or not timely, pay the amounts due, the Customer will owe cumulative contractual penalty interest of 2% per month on the outstanding amount, without a reminder or notice of default being required. If the Customer continues to fail to pay the claim after a reminder or notice of default, the Customer will also owe an immediately payable penalty of €2,000, excluding VAT, in addition to the principal sum and interest owed and UNISCAPE's right to full reimbursement of the costs reasonably incurred, including all costs of external experts.
- 6.5. Whenever the Customer fails to make payment (on time) or fails to (timely) fulfil another obligation under the Agreement, and the Agreement is terminated for this reason, UNISCAPE - without prejudice to its other rights under the Agreement - shall be entitled to:
  - a) retain the data, documents, software and/or data files received or realised within the framework of the Agreement - insofar as permitted by law - despite an existing obligation to surrender or transfer them, until the Customer has paid all amounts owed to UNISCAPE;
  - b) suspend its cooperation in the transfer of Services to another supplier or to attach conditions thereto, including full payment and/or provision of security;
- 6.6. All Products delivered to or on the instruction of the Customer remain UNISCAPE's property until all amounts owed by the Customer to UNISCAPE pursuant to any Agreement have been paid to UNISCAPE in full. The Customer must inform UNISCAPE immediately if the Products or Project-Based Infrastructure are (in danger of being) seized or if UNISCAPE's property rights or those of third parties engaged by it are in danger of being harmed in any other way. As long as the ownership of the Products rests with UNISCAPE, UNISCAPE is entitled to retrieve them from the Customer. The costs hereof are for the Customer's account. The Customer must allow UNISCAPE access to all locations and areas where the items and/or Products are located.

## **7. Joint and several liability and additional security**

- 7.1. If several Customers are involved in an Agreement, each of these Customers shall be jointly and severally liable to UNISCAPE for fulfilment of the obligations ensuing from the Agreement.
- 7.2. If - in UNISCAPE 's opinion - there is reasonable doubt whether the Customer will be able to (continue to) fulfil its payment obligation, the Customer must, at UNISCAPE's first request, provide (additional) security in the form desired by UNISCAPE, including a surety agreement, bank guarantee, deposit or any other form of security. As long as the Customer has not met this obligation, UNISCAPE is entitled to suspend performance of its obligations under the Agreement. If the Customer has not provided the desired security within fourteen (14) days of receiving the request, the Customer is in default. In that case, UNISCAPE is entitled to (partially) terminate the Agreement, without being liable to pay any compensation and without forfeiting any of its other rights.
- 7.3. The amount for which security must be provided must in any case be equal to the amount which the Customer owes UNISCAPE over a period of six (6) months with regard to the agreed Services and/or Products. UNISCAPE will not pay interest on the security provided.

## **8. Services and Product Specification**

- 8.1. UNISCAPE will provide the Services and Products in accordance with the Agreement, whether or not further specified by means of a Services and Products Specification.
- 8.2. UNISCAPE is at all times entitled to change the (technical properties of) the Services and Products or to replace certain parts of the Services and Products in order to (continue to) (i) satisfy the requirements set by or under the law, (ii)

meet the standards of today and the state-of-the-art and/or (iii) if the continuation of the (unchanged) supply of Services and/or Products can no longer be reasonably expected of UNISCAPE (including but not limited to commercial reasons).

- 8.3. UNISCAPE endeavours to implement modifications without affecting the Customer's use of the Services. If a modification has material financial consequences for the Customer, such modification will not take place until one (1) month after it has been announced or as much later as is reasonably possible. The Customer has the right to terminate the Agreement within eight (8) days after the modification was announced, with effect from the date on which the modification in question becomes operational. The Customer explicitly does not have the aforementioned right if the modification has no material financial consequences.
- 8.4. UNISCAPE shall never be liable for the Customer's costs and/or damage resulting from a modification and/or the subsequent termination by the Customer on account of such modification.
- 8.5. If a modification as referred to in paragraph 3 of this article relates to a Public Electronic Communications Service as defined in the Dutch Telecommunications Act, the provisions of Article 7.2 of the Telecommunications Act shall only apply in so far as they are mandatory in nature.

## **9. Fair Use Policy**

- 9.1. With regard to the quantity and intensity of use, UNISCAPE reserves the right to adjust the Services and its prices in the event of excessive use if this use deviates significantly from what UNISCAPE could expect on the basis of the generally socially accepted or indicated use. UNISCAPE also reserves the right to limit the use to the indicated use. This shall never lead to terminability on the part of the Customer.
- 9.2. With regard to the content of the use, UNISCAPE reserves the right to suspend the Services if it becomes apparent that the use deviates from what can be expected on the basis of law or public decency. The Customer and/or User is not permitted to use the Services to send or post illegal content or other illegal messages or codes or for actions and/or conduct in violation of applicable statutory provisions, self-regulation, generally accepted standards of decency (including Netiquette), the Agreement or these General Terms and Conditions. This includes, but is not limited to, the following acts and conduct:
  - a) spamming: the unsolicited repeatedly and/or frequently sending of e-mail with the same content and/or the unsolicited repeated and/or frequent posting of a message with the same content in Internet newsgroups;
  - b) infringing on copyrighted works, database rights or otherwise violating the intellectual property rights of third parties;
  - c) publication and/or distribution of (child) pornography;
  - d) (sexual) harassment or any other form of harassment;
  - e) hacking: gaining unauthorized access to other computers or computer systems on the Internet.

## **10. Implementation of Services**

- 10.1. UNISCAPE will endeavour to perform the Service with due care. All UNISCAPE's Services are performed on the basis of a best-efforts obligation. Therefore, UNISCAPE does not guarantee an uninterrupted or error-free supply of Services and does not guarantee that the Service(s) and/or Product(s) are suitable for the actual and/or intended use of the Customer upon delivery, unless and to the extent that (i) a certain result is explicitly promised by UNISCAPE in the Agreement and such result is also described in a sufficiently precise manner in the Agreement and/or (ii) the purposes for use are clearly specified in the Agreement and the usability of the Service(s) for said purposes is explicitly and without reservation guaranteed by UNISCAPE.
- 10.2. UNISCAPE is not obliged to follow the Customer's instructions during the execution of the Agreement, particularly if these instructions concern changes or additions to the content or scope of the agreed services. If such instructions are followed, however, the work in question will be paid for in accordance with UNISCAPE's usual rates.

## **11. Manager**

- 11.1. The Customer has the right to appoint a manager who will be the first point of contact for UNISCAPE for practical matters concerning the Service and with whom UNISCAPE will consult during the performance of the Service. In the event of a change of manager, the Customer will immediately inform UNISCAPE of the changed (contact) details.

## **12. Co-operation and Information Obligations of the Customer**

- 12.1. The Customer will always provide full cooperation reasonably required by UNISCAPE and reasonably necessary for the execution of the Agreement. In order to enable UNISCAPE to execute the Agreement properly, the Customer shall in any case ensure, without any claim to compensation in this regard that:
  - a) UNISCAPE has timely access to all data or information which UNISCAPE indicates are necessary or which the Customer should reasonably understand are necessary for the execution of the Agreement. During the term of the Agreement the Customer will inform UNISCAPE in a timely manner about changes in the Customer's

organisation and information systems or other changes which may affect UNISCAPE's performance of the Agreement;

- b) the environment in which the Service and/or the Product is used meets the requirements specified by UNISCAPE (possibly in a Service and Product Specification) or is in accordance with generally accepted standards, including those relating to security, access control, temperature, air humidity and technical environmental requirements;
  - c) the work to be carried out by third parties that is necessary for the provision and/or delivery of the Service and/or the Product, such as construction work, is carried out adequately and on time;
  - d) insofar as UNISCAPE needs the cooperation of third parties - such as the manager, an ICT manager or a Building Owner - for the construction of the Project-related Infrastructure or otherwise, this cooperation will be provided on reasonable grounds. UNISCAPE is entitled to pass on any additional costs incurred in connection with this cooperation to the Customer. If obtaining cooperation from these third parties results in a delay in the delivery, the Customer accepts that this is beyond UNISCAPE's control.
- 12.2. The Customer guarantees the correctness and completeness of the data, information, designs and specifications it provides to UNISCAPE. UNISCAPE is not liable for damages of any nature whatsoever if UNISCAPE has based itself on incorrect and/or incomplete data, information, designs and specifications and/or materials, data, software, procedures and instructions provided by the Customer.
- 12.3. If the Customer provides facilities of third parties in connection with UNISCAPE 's Services and Products, including but not limited to internet access, software and/or equipment, the Customer guarantees to obtain all necessary licences and approvals concerning these facilities which UNISCAPE may require. The Customer is also responsible for the correct choice and timely and adequate availability of these facilities. UNISCAPE is never liable for damage or costs due to transmission errors, malfunctions or non-availability of these facilities, unless the Customer proves that this damage or these costs are the result of intentional acts, gross negligence or serious misconduct on the part of UNISCAPE or its managing employees.

### **13. Delivery and deadlines**

- 13.1. UNISCAPE will make reasonable efforts to observe the (delivery) dates and/or (completion) dates stated by it or agreed between the Parties, whether final or otherwise, as much as possible. Interim delivery or other dates stated by UNISCAPE or agreed between the Parties shall always apply as target dates, shall never be binding for UNISCAPE and are always of an indicative nature. The delivery dates partly depend on the technical facilities and circumstances of and/or at the Customer and any changes or adjustments which need to be made for the delivery of the agreed Services and/or Products. Deadlines may be affected by, among other things, (i) the absence of a Demarcation Point, (ii) the failure to obtain permission from competent authorities, the Building Owner (with respect to access to a Building and/or tenant parts) or the landowner (in the case of excavation work) or (iii) circumstances on the part of (infrastructure) suppliers. Such circumstances are at the expense and risk of the Customer.
- 13.2. If the Parties have explicitly agreed a strict deadline - and if it is foreseeable that this deadline will be exceeded- the Parties will enter into consultation to discuss the consequences of such delay for further planning. In any event, UNISCAPE shall never be in default until after receiving a Notification, whereby the Customer must give UNISCAPE a reasonable period of at least fourteen (14) days, while describing the failure in detail and as completely and accurately as possible. UNISCAPE has the option to deliver during this period without being obliged to pay any compensation or damages.
- 13.3. A period does not commence until after the Customer has made the data available to UNISCAPE. If the data or information necessary for the execution of the Agreement is not provided to UNISCAPE in time, UNISCAPE is entitled to suspend the execution of the Agreement and/or to charge the additional costs resulting from the delay to the Customer in accordance with UNISCAPE's applicable rates.
- 13.4. UNISCAPE will only connect, install, configure and/or maintain the Products or have them connected, installed, configured and/or maintained if the Parties have explicitly agreed to this in writing. Any obligation to install and/or configure the Products by UNISCAPE does not include data conversion and maintenance.

### **14. Project-related Infrastructure**

- 14.1. All Project-related Infrastructure which UNISCAPE installs or gets installed in connection with the supply of its Services - regardless of whether it charges connection fees for this - is and remains UNISCAPE's property. UNISCAPE is of the opinion that the installed Project-related Infrastructure falls within the scope of the Telecommunications Act and that the property-law consequences included therein apply to the instalment of (in-building) networks. In addition, the following applies.
- 14.2. The Project-related Infrastructure remains UNISCAPE's property at all times. During the term of an Agreement the Customer merely has a right of use with regard to (parts of) the Project-related Infrastructure.
- 14.3. UNISCAPE can install Project-related infrastructure for the provision of its Services or make use of the infrastructure already present. Uniscape shall never be responsible for and/or bear the risk of infrastructure which has not been installed by UNISCAPE, even if Uniscape makes use thereof for the performance of its Services.

- 14.4. The Customer must ensure (or arrange for) the Project-related Infrastructure to be placed at a suitable location. The Customer grants access or ensures that UNISCAPE gets access to the Project-related Infrastructure and the area(s) where it is located for the purposes of the Services to be provided by UNISCAPE, the maintenance of the Project-related Infrastructure and malfunctions, no later than 48 hours after UNISCAPE's written e-mail request. UNISCAPE will give the Customer and/or the Building Owner timely notice of when and by whom these activities will be carried out, except in urgent cases.
- 14.5. The Customer is not authorised to make changes to the Project-related Infrastructure (including changes to software supplied with or implemented in the Project-related Infrastructure) or to move or damage it, or to have it modified or moved by parties other than UNISCAPE, except with UNISCAPE's permission. The Customer shall leave the type and serial numbers, logos and/or other markings applied to the Project-related Infrastructure intact.
- 14.6. UNISCAPE is entitled to deploy (parts of) the Project-related Infrastructure on behalf of third parties, to remove it, to make adjustments to it or, if the Agreement is terminated, to remove it in full or in part or to oblige the Customer to remove it or have it removed and return it to UNISCAPE at the Customer's expense and risk and under UNISCAPE's instruction. The Customer guarantees that UNISCAPE will be given the opportunity to remove the Project-related Infrastructure on its first request after termination of the Agreement.

## **15. Risk transfer**

- 15.1. Unless explicitly stipulated otherwise in these Terms and Conditions, the Customer bears the risk of destruction, loss, unauthorised use, theft or damage of (i) Products and/or Services, (ii) Project-related Infrastructure and (iii) all other items, data (including user names, codes and passwords), documents, software or data files which are manufactured, delivered or used by UNISCAPE for the performance of the Agreement, from the moment that UNISCAPE has installed them or placed them on the Customer's location or has made them available to the Customer or one of the Customer's assistants in some other way.

## **16. Resell of Services**

- 16.1. The Customer is not permitted to resell the Services, unless it appears from the nature of a Service that it is intended for reselling and/or insofar as the Agreement (also) explicitly provides for the reselling of Services. If reselling is permitted, the other provisions of this article will apply.
- 16.2. Unless otherwise agreed in writing, the Customer will act in the case of resell in its own name and at its own expense and risk. The Customer is explicitly not permitted to conclude any agreements for or on behalf of UNISCAPE or to create the impression that it is acting as an agent or representative of UNISCAPE. The Customer is only entitled to resell in combination with or as part of the Customer's own products or services and without disclosing the name of UNISCAPE as supplier or subcontractor.
- 16.3. In case of resell, the Customer itself is responsible for offering support regarding services it provides to its clients.
- 16.4. The Customer must impose at least the same obligations on its clients as those used by UNISCAPE in relation to the Services. UNISCAPE may require the Customer to provide proof hereof. UNISCAPE may also take action in case of any breach of these Terms and Conditions by such client.
- 16.5. UNISCAPE will primarily contact the Customer's clients via the Customer. However, in urgent cases, such as (danger of) damage or nuisance to third parties due to a client's activities, UNISCAPE is entitled to contact such client directly.
- 16.6. The Customer is at all times fully liable to UNISCAPE for whatever its clients do or fail to do through the Services provided by UNISCAPE. The Customer will indemnify UNISCAPE against any third-party claims in this context.
- 16.7. The clients' failure to pay the Customer or their late payments shall never release the Customer from its payment obligations towards UNISCAPE.

## **17. Management by the Customer**

- 17.1. Unless the Parties have explicitly agreed otherwise in writing, the Customer is responsible for the management of the Services and Products supplied by UNISCAPE and the way in which the results of the Services and Products are used. The Customer itself will install, organise, parameterise and tune the necessary (auxiliary) software and, if necessary, adjust the equipment used, other (auxiliary) software and user environment and achieve the interoperability desired by the Customer.

## **18. Maintenance and malfunctions**

- 18.1. UNISCAPE will endeavour to ensure that the Service runs as smoothly as possible. However, it is technically impossible to prevent every service disruption or limitation. In addition one should be aware that - for example when the Service uses a wireless network technique, xDSL or DOCSIS - the possibilities to make a connection and its quality and properties are not always and everywhere (equally) good. Liability for malfunctions exists only within the limits of these Terms and Conditions.
- 18.2. In the event of a malfunction in the Service provided to the Customer, the Customer must inform UNISCAPE as soon as possible with a clear description of the malfunction, the items, hardware and software used and the consequences

for the Customer. After the Customer has informed UNISCAPE of the malfunction, UNISCAPE will investigate and/or resolve the malfunction in accordance with the SLA - or in the absence of an SLA - as soon as reasonably possible and/or make an alternative arrangement.

- 18.3. In principle, the costs of the malfunction investigation, alternative arrangements and repair are for UNISCAPE's account. However, these costs may be charged to the Customer if the investigation shows that the failure is a result of:
- a) shortcomings on the part of the Customer;
  - b) improper use by the Customer or the User of the Service provided and/or the Products made available;
  - c) exceeding the capacity to which the installation and/or Service is designed; and/or
  - d) infrastructure not functioning properly, unless the malfunctioning is the result of Project-related Infrastructure installed by UNISCAPE.
- 18.4. If the failure is a consequence of one or more of the situations referred to in paragraph 3 and extends to:
- a) Demarcation Points made available to third parties;
  - b) other services provided by UNISCAPE; and/or
  - c) third parties engaged by UNISCAPE,
- then UNISCAPE may also charge the Customer for the costs and damage caused by this, unless these cannot reasonably be attributed to the Customer.
- 18.5. The Customer is furthermore liable for damage which UNISCAPE suffers as a result of disruption to UNISCAPE's Services insofar as this damage is the result of one or more of the situations referred to in paragraph 3 under (a) or (b).
- 18.6. UNISCAPE and/or its suppliers may temporarily deactivate the Service(s) supplied to the Customer or restrict its/their use, for example for maintenance. UNISCAPE shall inform the Customer of this as early as possible and - if possible - in advance. The Customer can never recover any loss it suffers as a result of disruptions from UNISCAPE and/or its suppliers, other than on the basis of the compensation scheme for disruptions exceeding 12 hours, which provides for a compensation of at least 1/30th part of the monthly fixed fee with a minimum compensation of €1.

## **19. Service and Backup**

- 19.1. Any agreements concerning service and maintenance on Services and/or Products must be explicitly agreed in writing. The Customer shall always immediately inform UNISCAPE of all circumstances which affect or could affect the service level and its availability.
- 19.2. If there are agreements made about service levels, the availability of the Services shall always be measured in such a way that the shutdown announced in advance by UNISCAPE for preventive, corrective or adaptive maintenance or other forms of service, as well as circumstances beyond UNISCAPE's control, are not taken into consideration. Subject to evidence to the contrary to be provided by the Customer, the availability measured by UNISCAPE will constitute conclusive proof.

## **20. Product warranties**

- 20.1. If UNISCAPE has supplied Products under a manufacturer's guarantee, Article 1.3 of these Terms and Conditions shall be applicable. In other cases, a guarantee period of one (1) year applies to new Products and three (3) months to used (refurbished) Products, always commencing on the date of delivery. The warranty on the Products includes free repair or - at UNISCAPE's discretion - replacement of (parts of) the Products in the event of material and/or manufacturing faults with other similar, but not necessarily identical, Products. The guarantee does not include the delivery and/or replacement of any consumable item.
- 20.2. The guarantee lapses if:
- a) repairs, changes or extensions to the Products have been carried out by parties other than UNISCAPE without UNISCAPE's prior written consent;
  - b) in UNISCAPE's opinion, Products have been neglected or have been used, treated and/or maintained negligently and/or incompetently;
  - c) type numbers, serial numbers and/or guarantee stickers are damaged, removed and/or altered;
  - d) defects have occurred due to incorrect insertion and/or leakage of replaceable batteries;
  - e) defects have arisen due to incorrect connection and/or installation of (approved) Products;
  - f) defects have occurred as a result of deviating environmental conditions as referred to in article 12.1;
  - g) defects have occurred due to other external causes;
  - h) the seal of warranty of Products, if any, has been broken.
- 20.3. The guarantee work will be carried out within the Netherlands at an address to be indicated by UNISCAPE or - at UNISCAPE's discretion - at the delivery address. The guarantee period is not extended or renewed through the work carried out under guarantee, on the understanding that the guarantee on performed guarantee work, including the replaced parts, is three (3) months.

## **21. IP rights**

- 21.1. The Agreement does not extend to the transfer of IP rights used by UNISCAPE in the context of the Agreement. The Customer acquires a non-exclusive, non-transferable right to use any software and any user documentation for the duration of the Agreement, insofar as this is necessary to be able to use the Service. The rights of use are given for the duration of the Agreement, including renewal thereof.
- 21.2. As soon as the Agreement is terminated, whether or not prematurely, the Customer will return to UNISCAPE, at UNISCAPE's first request, (carriers with) the software, Project-Based Infrastructure and/or other materials made available by UNISCAPE on which IP rights and property rights rest with UNISCAPE or its suppliers.

## **22. Security, Privacy and Data Processing**

- 22.1. UNISCAPE endeavours to realise adequate security of the Services up to the Demarcation Point. For the rest the Customer bears the responsibility and risk for adequate security of its own systems, data and other information - sensitive or otherwise.
- 22.2. The provisions of the following paragraphs shall apply to the processing of Personal Data, unless otherwise agreed in a separate processing agreement.
- 22.3. Solely on written instruction of the Customer shall UNISCAPE process Personal Data for the execution of the Agreement and UNISCAPE's administration and management tasks. UNISCAPE shall treat all Personal Data it receives with confidentiality and in accordance with the provisions of Article 28 of the AVG.
- 22.4. Personal Data concerns both account and traffic data or other types of Personal Data set out in the Agreement. Personal Data is only accessible to UNISCAPE and is not provided to third parties, unless UNISCAPE is or will be obliged to do so pursuant to the law or a court decision.
- 22.5. UNISCAPE implements appropriate technical and organisational measures to protect the Personal Data against loss or any form of unlawful processing. These measures, taking into account the state-of-the-art and the costs of implementation, guarantee an appropriate security level in view of the risks involved in processing and the nature of the Personal Data to be protected. However, UNISCAPE accepts no liability whatsoever for direct or indirect (consequential) loss resulting from the release, destruction or other impairment of the data referred to here.
- 22.6. Without prior written instruction from the Customer, UNISCAPE will not process, provide, make accessible or pass on Personal Data to a country outside the European Economic Area if UNISCAPE is of the opinion that this country does not offer an adequate level of protection with regard to Personal Data.
- 22.7. If Personal Data is transported to a country outside the European Economic Area by the Customer through UNISCAPE Services, the Customer indemnifies UNISCAPE against all legal claims of third parties based on the allegation that said Personal Data is processed in violation of the AVG.
- 22.8. UNISCAPE is entitled to engage sub-processors for the processing of Personal Data.
- 22.9. At the request of the Customer, UNISCAPE will provide assistance in the fulfilment of the Customer's obligations pursuant to the AVG, such as the exercise by a data subject of his/her right to inspect or correct Personal Data.
- 22.10. At the Customer's expense, UNISCAPE will make all information available to the Customer that is reasonably necessary to prove UNISCAPE's compliance with its obligations under the AVG and this article, and will facilitate and contribute to the Customer's audits in this regard.
- 22.11. UNISCAPE is not liable for any damage as a result of a failure to comply with the AVG and/or a separately concluded processing agreement, including fines imposed on the Customer by the Dutch Data Protection Authority.
- 22.12. The Customer indemnifies UNISCAPE against claims from third parties, including data subjects and supervisors, in connection with a failure to comply with the AVG and/or a separately concluded processing agreement and any ensuing costs (including the costs of legal assistance) and damages.
- 22.13. After the Agreement is terminated, UNISCAPE will retain the Personal Data of the Customer which it has collected and saved for a maximum period of six (6) months, after which the data will be destroyed or returned to the Customer at its request. UNISCAPE is not liable for any resulting damage for the Customer.

## **23. Liability UNISCAPE**

- 23.1. UNISCAPE will take care of a (company) liability insurance with generally accepted policy conditions and a cover of €2,500,000 per claim with a maximum of €2,500,000 per insurance year. UNISCAPE's total liability on account of an attributable failure to perform the Agreement or on any legal ground whatsoever, explicitly including any failure to perform a guarantee obligation agreed with the Customer, is limited to the amount which is paid out under its liability insurance in the case in question. If, for whatever reason, no payment is made under the insurance referred to in the previous sentence and/or the said insurance is cancelled, UNISCAPE's liability is limited to a maximum of €1,000 per incident, whereby a series of connected incidents is regarded as a single incident, and never more than €10,000 over the entire term of the Agreement.
- 23.2. Only direct damage qualifies for compensation. Direct damage is exclusively understood to be:
  - a) damage to the Product, the Service and/or data files, including in any case: material damage, malfunctioning or non-functioning, reduced dependability and increased susceptibility to malfunctions;



- b) damage to other properties of the Customer and/or third parties;
  - c) costs of necessary modifications and/or changes to the Product and/or the Service, made to reduce or repair damage;
  - d) the reasonable costs of (i) emergency provisions, such as switching to other computer systems, hiring third parties or applying contingency procedures or deviating working methods and/or (ii) keeping old systems and related facilities operational out of necessity for a longer period of time;
  - e) the reasonable costs of not being able to deploy employees (underutilization), goods and facilities of the Customer and the costs of not being able to deploy (underutilization) third parties hired by the Customer for the performance of the Agreement, insofar as these costs cannot reasonably be avoided;
  - f) the reasonable costs of rectifying the shortcoming on the part of the Customer or any third parties engaged by it, or any additional costs associated with the forced early replacement of the Product and/or Service by a third-party system;
  - g) fees and penalties demonstrably owed to third parties as well as the value of the loss of guarantees provided by third parties;
- 23.3. Any liability for damages other than those mentioned in paragraph 2, including any form of consequential damages which is connected with a failure on the part of UNISCAPE to perform the Agreement, is excluded. Consequential damage in this context is understood to mean (the recovery of):
- a) lost profits and lost savings;
  - b) unauthorised access to and/or loss of data;
  - c) loss due to business interruptions and underutilization of staff;
  - d) compensation and penalties payable to third parties; and
  - e) reduced goodwill.

Furthermore, UNISCAPE is never liable for any damage as a result of any shortcomings in the service provided by providers, service providers or third parties used by UNISCAPE in connection with the Services it provides.

- 23.4. A claim for compensation cannot be considered unless the Customer immediately sends UNISCAPE a Notification and in any case within two (2) months after the occurrence of the damage - or in case of a continuous damage - of the first occurrence of the damage, unless the Customer can demonstrate that it could not have reported the damage earlier. All claims and legal actions against UNISCAPE shall prescribe or expire, except for provisions of mandatory law, after a period of six (6) months from the day on which the event which caused the damage occurred or - in the case of a continuous event - occurred for the first time or the relevant obligation of UNISCAPE becomes due.
- 23.5. The exclusions and limitations of UNISCAPE's liability described in this article apply by analogy to indemnifications and do not affect the other exclusions and limitations of UNISCAPE's liability described in these Terms and Conditions. The limitations of liability referred to in this article lapse in the event the damage is caused by intent or wilful recklessness on the part of UNISCAPE's management. The provisions in this article as well as all other limitations and exclusions of liability referred to in these Terms and Conditions also apply in favour of all (legal) persons used by UNISCAPE for the execution of the Agreement.

## **24. Liability of the Customer**

- 24.1. UNISCAPE is entitled at all times to rely on the accuracy of the (legal) acts performed by representatives appointed by the Customer and the Customer must guarantee this towards UNISCAPE.
- 24.2. The Customer is not permitted to transfer or allow use of the Service and any rights arising from this to a third party, unless expressly permitted by UNISCAPE.
- 24.3. The Customer is fully responsible for the actions, acts and omissions of its employees and User(s) on and/or with Networks and/or Services of UNISCAPE and/or its suppliers and the Customer will point out the applicability of these Terms and Conditions and the Fair Use Policy to its employees and User(s). The Customer is furthermore liable for any (un)authorised use of Services and Products, including in particular the access codes, by third parties.
- 24.4. The Customer indemnifies UNISCAPE and UNISCAPE's employees against all third-party claims for whatever reason connected with or arising from the use of Services and Products supplied by UNISCAPE, including liability for infringement of (intellectual property) rights, violation of privacy, cross-border data traffic and in particular for claims from third parties for product liability as a result of a defect in a product or system which is supplied by the Customer to a third party and which partly consisted of equipment, software, websites, data files or other materials supplied by UNISCAPE, except if and insofar as the Customer proves that the damage was caused by such equipment, software, websites, data files or other materials. The Customer will compensate UNISCAPE for all costs, damages and fines arising from such claims.

## **25. Force majeure**

- 25.1. Neither Party is obliged to fulfil any obligation if prevented from doing so as a result of force majeure. If the situation of force majeure lasts longer than forty-five (45) days, UNISCAPE is entitled to demand that the Agreement is amended in such a way that it can still execute the Agreement, unless this cannot reasonably be demanded of the Customer in

the given circumstances and termination is justified. In the latter case, the Agreement shall be terminated without any right to compensation for the Customer. What has already been performed pursuant to the Agreement shall in that case be settled proportionately between the Parties, without any further mutual obligations or claims.

- 25.2. In so far as not already included by law, force majeure is also understood to mean failures in the connections to the Network and other failures in or interruptions of telecommunication connections or other telecommunication facilities, cable breakdowns, sluggishness of connections, electricity failures, war (or danger of war), terrorist attacks, riots, strikes, (natural) disasters, accidents, government measures, delayed/no supply to UNISCAPE (including fuel, energy and water), transportation problems, fire and disruptions in UNISCAPE's company and other circumstances which are beyond UNISCAPE's control or which it cannot reasonably foresee.

## **26. Confidentiality and publications**

- 26.1. The Customer and UNISCAPE ensure that all information received from the other Party which they know or should reasonably know is of a confidential nature remains secret. Information is in any case regarded as confidential if it is designated as such by one of the Parties. This prohibition shall not apply if and insofar as the provision of the data concerned to a third party is necessary as a result of a court order, a statutory regulation or for the proper execution of the Agreement. The Party receiving confidential data shall only use it for the purpose for which it has been provided. In addition to the provisions of these Terms and Conditions, the Parties may make further arrangements regarding confidentiality in a separate (confidentiality) agreement to be concluded between the Parties.
- 26.2. UNISCAPE has the right to make it known that the Customer is its customer and to use the Customer's company name, logos and/or trade name for marketing purposes.

## **27. Transfer of rights and obligations, subcontracting**

- 27.1. UNISCAPE is entitled to transfer the rights and obligations arising from the Agreement and/or the Terms and Conditions (in part) to a third party without the Customer's written permission. The Customer is not entitled to make the Agreement and/or the Services available and/or transfer them to third parties, unless this has been expressly agreed in writing between the Parties.
- 27.2. UNISCAPE is authorised to use the services of suppliers and other third parties for the execution of an Agreement. The applicability of Sections 404, 407(2) and 409 of Book 7 of the Dutch Civil Code is expressly excluded.

## **28. Duration and termination of the Agreement**

- 28.1. The term of the Agreement commences on the date stated in or with the Agreement for a period specified therein. Unless the Agreement has been entered into for an indefinite period, interim termination of the Agreement is not allowed, unless expressly agreed otherwise or provided for in these Terms and Conditions. If a minimum term has been agreed, termination can only take place after the minimum term has expired, subject to a notice period of one (1) month.
- 28.2. The Customer may terminate an Agreement with immediate effect without further notice of default or judicial intervention by means of a Notification, in the event of:
- a) failure by UNISCAPE to fulfil one of its obligations under the Agreement or these Terms and Conditions which is not remedied by UNISCAPE within a period of at least fifteen (15) Working Days specified in the notice of default;
  - b) (an application for) suspension of payments or bankruptcy of UNISCAPE.
- 28.3. UNISCAPE may terminate or dissolve any Agreement with the Customer in writing with immediate effect - in addition to the statutory grounds for termination - without any further notice of default or judicial intervention in the event of:
- a) failure in the performance of one of the Customer's obligations under the Agreement or these Terms and Conditions;
  - b) sale or pledging of the Customer's business;
  - c) (an application for) the Customer's bankruptcy, (a request for) the application of (temporary) suspension of payments or if any other similar arrangement has become applicable, all this irrespective of whether the relevant court ruling has become irrevocable and/or any negotiations by the Customer with one or more creditors regarding the rescheduling of debts or a private settlement;
  - d) attachment of the Customer's movable and/or immovable property;
  - e) de facto or de jure dissolution and/or liquidation of the Customer's company, the substantial change or relocation of the Customer's company or professional activities outside the country in which the Customer was based at the time the Agreement was concluded, or a merger or division or a decision to merge or divide;
- 28.4. UNISCAPE shall never be under the obligation to refund monies already received or to pay damages because of the termination referred to in this article. If the Customer has already received services in execution of the Agreement at the time of the termination, these services and the associated payment obligations will not be subject to cancellation. Amounts which UNISCAPE has invoiced before the termination in connection with what it has already properly

performed or delivered in the performance of the Agreement remain due in full with due observance of the previous sentence and become immediately payable at the time of termination.

- 28.5. If an Agreement is terminated by one of the Parties before the expiry of the (minimum) contractual term for a reason other than stated in article 28.2 above, UNISCAPE is also entitled to the remaining fees which would have been owed by the Customer if the Agreement had not been terminated prematurely.
- 28.6. On termination of the Agreement, the Customer will return to UNISCAPE all of UNISCAPE's property relating to the Agreement, except for the Agreement itself, undamaged and at its own expense and will not keep any copies. In that case, the Customer no longer has the right to use the Services, without any act of termination on UNISCAPE's part being required.
- 28.7. After termination of the Agreement, the Customer is responsible for the termination of any other Agreements under which the Customer purchases Services and/or Products (related to the terminated Agreement).
- 28.8. Obligations which, by their nature, are intended to continue after the termination of the Agreement, shall also continue after the termination of the Agreement.

## **29. Final provisions**

- 29.1. Only the Parties can derive rights from and rely on the provisions of the Agreement. Unless expressly provided otherwise, third parties cannot derive any rights from the Agreement and the Agreement does not contain any third-party stipulations as referred to in Section 253 et seq. of Book 6 of the Dutch Civil Code.
- 29.2. To the extent permitted by law, the Parties hereby waive the right (i) to terminate or annul the Agreement, in whole or in part or to have it terminated or annulled in whole or in part (ii) to invoke Section 228 of Book 6 of the Dutch Civil Code, in the sense that any error shall remain at the risk and expense of the erring Party, and (iii) to institute a claim for modification of the consequences of the Agreement in order to remove any disadvantage as referred to in Section 230 paragraph 2 of Book 6 of the Dutch Civil Code. The applicability of Section 17 of Book 7 of the Dutch Civil Code is explicitly excluded between the Parties.
- 29.3. If the Agreement proves to be partially invalid or non-binding, the Parties shall remain bound by the other provisions of the Agreement. In this case, the Parties shall consult with each other to replace the invalid or non-binding part by stipulations which are valid and binding, the legal consequences of which, in view of the contents and tenor of this Agreement, correspond as far as possible with the invalid or nonbinding part.
- 29.4. UNISCAPE will only waive any right to performance by the Customer of any obligation the Customer has under the Agreement if this is explicitly recorded in a written document signed by UNISCAPE .
- 29.5. Any waiver by UNISCAPE of any or all of its rights under the Agreement in a particular situation, shall not constitute a waiver with respect to any subsequent violations or rights and shall not confer any rights on the Customer in the future.

## **30. Choice of law and forum**

- 30.1. The Agreement is governed by Dutch law. All disputes arising from the Agreement or from agreements resulting from it will be settled in the first instance by the Rotterdam District Court.

These General Terms and Conditions are originally drawn up in the Dutch language; Uniscape provides this English version only as a service. The Dutch version of these General Terms and Conditions is binding in case of any conflict or any (nuance) difference in content or scope between the Dutch and the English versions.