

## Terms and Conditions Data4Development b.v.

### **1. Applicability**

1. These Terms and Conditions apply to all offers and agreements in which Data4Development b.v. (D4D) delivers goods and/or services of any kind to a client.
2. Any deviation from these Terms and Conditions must be in the form of a written agreement.
3. Any terms of purchase or other conditions from the client of any kind do not apply and are expressly declined.
4. If any provision in these Terms and Conditions is void or voidable, the other provisions shall remain fully applicable.

### **2. Offer**

Offers made by D4D are non-binding and are valid for a period of four weeks following the date of the offer, unless the offer states otherwise. The client guarantees that the requirements and specifications regarding the performance and other data, given to D4D by or on behalf of the client and upon which D4D bases its offer, are both comprehensive and correct.

### **3. Confidential Information**

1. Both parties will ensure that all information of a confidential nature, including offers made, which have been received from the other party in the context of the agreement, will be kept confidential and will not be made known to any third parties. This includes any information which has been marked as confidential by the disclosing party or should reasonably be understood as such by the receiving party.
2. Materials provided to D4D by the client in the context of the agreement will be returned immediately upon request of the client.
3. D4D reserves the right to publish the existence of the agreement and the name of its clients for the purpose of providing references and for marketing purposes.

### **4. Acquisition of staff**

For the duration of an agreement and one year after its termination, both parties agree to neither employ staff members of the other party who have been involved in the execution of

the agreement, nor approach them for employment or ask them to work for them in any other way, directly or indirectly, without prior consent of the other party.

## **5. Intellectual property rights**

1. All intellectual property rights to software, analyses, designs, documentation, reports and models, developed or provided by D4D remain the property of D4D or its licensors.
2. The client receives, for an indeterminate period, a non-exclusive, non-transferable, unlimited right of use to the software, analyses, designs, documentation, reports and models specifically designed for the client by D4D. This includes the right to make any amendments.
3. D4D shall indemnify the client against any legal proceedings based on the claim that products developed by D4D infringe a Netherlands law of intellectual property which is in force, under the condition that the client informs D4D in writing without delay about the existence and content of the legal proceeding and leaves the handling of the legal case, including any settlement agreements, entirely to D4D. The client shall provide D4D with the necessary power of attorney, information, and cooperation which is needed to defend itself, and if needed in the name of the client, against these legal proceedings.
4. In the case that it is irrevocably deemed by law that the products developed by D4D infringe the intellectual property rights of a third party, or in the case that D4D judges there is a strong possibility that such a infringement has occurred, D4D shall either: withdraw the delivered product and credit any purchasing costs minus a reasonable usage fee to the client; or ensure that the client is able to continue their use of the same product or a product that is equal in its functionality without disturbance. D4D has no other or further liability and the client has no further or other release from its obligations in connection with any violation of a third party's intellectual property rights. This includes indemnification of D4D of liability for violations made by using the delivered products (I) in a form other than provided by D4D, (II) in conjunction with products not supplied by or provided by D4D, or (III) in any way other than the manner in which the products have been developed or intended.
5. The provisions in article 13 apply without prejudice to the release of obligations mentioned in article 5.

## **6. Third party products**

1. In the case that D4D or client uses open source software, the terms of licence of the software of the open source concerned are exclusively applicable. There shall not be a further agreement between D4D and the client regarding the use of the open source software.
2. In cases where D4D provides, uses and/or supplies products (including services) of third parties to a client, the third parties' conditions of use concerning these products apply unless overruled by the provisions in the agreement and these Terms and Conditions. The client shall accept the third party conditions to which these Terms and Conditions refer. D4D shall send a copy of the third party conditions to the client upon request.
3. In cases where the conditions of third parties do not apply or are declared not applicable to the relationship between client and D4D, the provision in the agreement and these Terms and Conditions will apply.
4. The liability of D4D for third party products is limited to what can be recovered from the third party.

## **7. Retention of Title**

1. All products (goods and rights) delivered by D4D to the client will, without prejudice to the provisions in article 5, remain the property of D4D until the client has fulfilled its obligations as stated in the agreement and all claims made by D4D arising out of a failure to meet the agreement by the client have been settled.
2. The client can only make use of the tools used by D4D if this usage is part of the agreement or the client has received permission via a written agreement. The property rights shall always remain with D4D.

## **8. Pricing and payment**

1. All prices and rates shall include travel expenses from and to the agreed work location within the Netherlands, excluding business trips. Prices and rates do not include sales tax (VAT) or other charges imposed by the government, unless otherwise agreed.
2. Unless otherwise agreed, D4D can adjust its rates at the following times:
  - a. Each year on January 1st;
  - b. In the case of a promotion of an employee of D4D, who is involved in the execution of the assignment;

- c. At any time when circumstances make it necessary according to D4D, commencing one month after the adjustment has been made known to the client.

In the case that the client does not agree with the increased rate as announced by D4D, he/she shall be entitled to terminate the agreement on the date on which the announced adjustment will be enforced. The client must terminate the agreement within 5 working days after the adjustment has been made.

3. For consultancy activities,

- a. The minimum unit of time registration is 30 minutes for each day of activity.
- b. Invoices are based on actual time spent and rounded to the nearest half hour.

4. The payment period shall be two weeks after the invoice date. Client shall not be not entitled to settlement or suspension of payment.

5. In the case that the client has not paid the amount due within the agreed period, the client is in default and shall, without need of a letter of formal notice, be obliged to pay the commercial interest rate as referred to in article 6:120 section 2 of the Dutch Civil Code over the outstanding amount. In the case that the client has not paid the amount due within fourteen (14) days after receiving a formal notice letter, the client shall be required to pay a complete compensation of the legal extrajudicial debit expenses, as well as all legal costs, including costs charged by external specialists and lawyers.

6. Hours lost due to delays in decision making or in supplying information by or in the name of the client can be charged to the client.

## **9. Collaboration by the client**

1. The client will always and promptly provide D4D with all data and information that is useful and necessary to properly execute the agreement, and as far as cooperation can be reasonably required for the execution of the agreement. Parties will keep each other updated on organisational and personal developments and/or changes in the area of information technology within their organisations that can be of importance regarding the execution of the agreement.

2. In the case that it has been agreed that the activities shall, partly or entirely, take place at another location than a D4D location, the client is obligated to provide appropriate accommodation and the means for D4D or its subcontractors to efficiently execute their work.

3. The client shall indemnify D4D, including D4D employees, against any claims from third parties who, in relation to the execution of the agreement, were damaged as the result of negligence or acts of the client or by unsafe situations in the client's organisation.

4. The client will comply and shall remain in compliance with all of its obligations regarding the protection of privacy, especially the obligations that follow from the General Data Protection Regulation (GDPR). The client shall indemnify D4D against all third party claims regarding a failure by the client to fulfil the obligations imposed by the GDPR.

5. The client is responsible for the use and application of the software and other services and products supplied by D4D in its organisation, as well as ensuring proper system management and implementing the necessary control and protection procedures.

## **10. Delivery times**

All delivery times named by D4D are target dates based on the information available at the time of entering into the agreement. D4D will comply with these target dates as far as possible but cannot be held in default if the target date is exceeded. If there is a risk of delay, D4D and client will consult with each other as soon as possible. D4D cannot be held accountable for delays due to lost hours as described in article 8.5, or due to other causes that can be attributed to the client.

## **11. Advice**

In the case that D4D's activities include providing advice to the client, D4D shall advise the client to the best of its abilities. Advice provided by D4D shall meet the quality standards generally expected of a competent ICT consultancy company. However, D4D does not guarantee that following the advice will lead to the desired result and is not liable for any damage that arises as result of following the advice.

## **12. Termination**

1. In cases where the parties have entered into an agreement for an indefinite period of time, without agreeing upon conditions for its termination, either party is entitled to terminate the agreement with a period of three months' notice.

2. Agreements for a limited period of time cannot be terminated before the end date except in accordance with article 12.3 or 12.6.

3. A party is allowed to terminate an agreement if the other party fails to fulfil the obligations arising from the agreement. It can only do this after a written letter of formal

notice has been delivered and the other party has been given a reasonable period of time to remedy the failure.

4. Notice to terminate an agreement must be given by means of a letter sent by registered mail. The letter must specify the reason for termination.

5. In the case that the client at the moment of termination as referred to in article 12.3, has already received performances related to the implementation of the agreement, these performances and related payment obligations shall not be nullified, unless D4D is at fault regarding the claim. Sums that D4D has invoiced in connection to services or products it has already provided or delivered will remain due and shall be payable at the time of termination of the agreement.

6. Either party can terminate the agreement by written statement without notice, in the following cases:

- a. The counterparty has filed for bankruptcy or has been declared bankrupt;
- b. The counterparty has applied for suspension of payment or suspension of payment has been granted;
- c. The counterparty is in liquidation, or otherwise in the process of being dissolved, other than for the purposes of restructuring or the merger of entities;
- d. Acts or behaviour of the counterparty, or factual circumstances regarding the counterparty, give reasonable grounds for fear that the counterparty shall not meet with its obligations;
- e. Tax authorities apply their rights from the Collection of Taxes Act to the client. In this case D4D's claim shall fall due immediately.

Termination based on sections a through e of this provision shall not give the counterparty right to compensation.

7. The termination does not release parties from obligations of the agreement which in their nature are continuous, such as - but not limited to - the provisions regarding: confidentiality, liability, intellectual property, governing law, and competent court, and - as far as it applies - user's rights.

### **13. Liability**

1. The total liability of D4D under an agreement is limited to the compensation of the direct loss or damage, up to the amount formalized in the agreement as payment (excluding sales tax) for the services performed by D4D. Where the agreement is primarily a continuing term contract with a duration of one year or longer, the obligation to compensate for loss or

damage shall be limited to the total net payments (excluding sales tax) stipulated for the year in which the loss or damage occurred. In no case will the total compensation for direct loss or damage exceed 500.000 EUR.

2. D4D's total liability for loss resulting from physical injury or death will be limited to 1.250.000 EUR per event, whereby a series of related events shall be considered as one event.

3. D4D is not liable for indirect loss or damage, including consequential damage, loss of profit, missed savings and loss resulting from company stagnation, of any nature whatsoever.

4. Any right to compensation is conditional upon the client notifying D4D of the loss or damage in writing as soon as possible, within a maximum of 12 months after the loss or damage has been sustained.

5. The client indemnifies D4D against all claims by third parties arising out of product liability resulting from a defect in a product or system which has been supplied to third parties by the client and which (in part) consists of a product supplied by D4D, except if and insofar as the client proves that the loss or damage was caused by the product supplied by D4D.

#### **14. Force majeure**

1. In cases of force majeure the obligations of the party affected by it will be partially or fully suspended, without the party being required to pay the other party any compensation.

2. If the force majeure persists for more than ninety days or it is determined that further compliance is no longer possible, each party can terminate the agreement by a letter sent by registered mail, without either party being required to pay the other party compensation. The services that have been supplied at the time the force majeure took place have to be settled in due proportion.

#### **15. Applicable law and disputes**

1. Dutch law is applicable to the agreement. The applicability of the Vienna Sales Convention 1980 is excluded. With regard to software, as far as legally possible, title 7:1 of the Dutch Civil Code is not applicable.

2. All disputes between D4D and the client related to the agreement will be handled under the guidance of a Nederlands Mediation Instituut (NMI) mediator, in accordance with the mediation regulations of the NMI. If no solution has been found in the aforesaid manner within 60 days after the dispute has been reported by one party to the other party, either



party has the right to refer the dispute to the competent court in Rotterdam. The aforesaid does not affect the right of parties to request a provisional ruling from the preliminary injunction court of the Rotterdam Court, if the case is urgent.

## Signatures

Date:

Date:

Data4Development

Organisation:

Mrs. Maaïke Blom  
Managing Director

Name:  
Function:

Signature for approval:

Signature for approval: