

## DEFINITIONS

Customer:	The party with whom Datling has entered into a Contract for the provision of Services.
Contract:	The Contract between Customer and Datling, consisting of a description of the relationship between the parties, the specific provisions and conditions and the corresponding Annexes, pursuant to which Datling provides Services.
Datling:	Datling Nederland B.V. a company organised and existing under the laws of the Netherlands and having its registered office at (3011 TA) Blaak 16 in Rotterdam, The Netherlands and/or its affiliates/subsidiaries.
General Terms and Conditions:	The Datling General Terms and Conditions for the provision of Services, as applicable to the Contract.
SaaS:	Software as a Service – remote services that are available to Customers electronically over the internet, without Customers being provided with a physical carrier containing the requisite software.
Services:	The services to be provided by Datling to the Customer based on a Contract, the work to be performed, and the performance to be delivered as part of this Contract. The Services are described in Annex 3 to the Contract.
User:	Employee of the Customer or a third party engaged by Customer and affiliated with the Customer, who, pursuant to the Contract entered into between the Customer and Datling, has access to Datling's (SaaS) services and is authorised to use these services.
User Credentials:	User ID and password.

## ARTICLES

### 1. Scope of the General Terms and Conditions

- 1.1. These General Terms and Conditions govern all juridical and other acts of Datling such as the making of offers, Contracts or the acceptance of instructions within the context of a master contract or other type of contract.
- 1.2. These General Conditions take precedence over any general terms and conditions of the Customer unless Datling has expressly excluded their application. Datling will not be bound by any reliance by the Customer upon its own general terms and conditions of purchase, tender or otherwise.

1.3. Any exception to these General Conditions is only valid if expressly agreed in writing.

1.4. The General Conditions may be amended by Datlinq. If Datlinq decides to make any amendment, it must send customers the revised version of the General Conditions.

1.5. Any amendments to the General Conditions will also apply to pre-existing Contracts.

## **2. Subject of the Contract**

2.1. The parties agree that Datlinq will supply Services and related work to the Customer under the terms and conditions set out in their Contract.

2.2. The Customer will use the Service, including the information and data supplied, at its own expense and risk. Datlinq requires the Customer to thoroughly check newly-supplied files and data for irregular or unlawful disclosure of the information.

2.3. The Customer is not permitted to use the name, logo, brands or look and feel of Datlinq or its products or services in its own advertising and publications without the prior written consent of Datlinq. Datlinq may attach conditions to such consent.

## **3. User Credentials**

3.1. Datlinq reserves the right to change or withdraw the User Credentials it supplies. If this could have consequences for the Services, Datlinq will endeavour to notify the Customer as quickly as possible and where possible will operate a transitional period.

3.2. The Customer will not act or use the User Credentials in any way that is in breach of current laws and regulations.

## **4. Additional services**

4.1. Additional services and related work are to be agreed separately and set out in writing in the relevant annex/annexes of the Contract.

4.2. Additional services and related work will commence on the date(s) agreed in the relevant annex/annexes of the Contract.

4.3. If Datlinq supplies the Services, additional services and related work in the absence of any written, signed agreement between the parties contained in the relevant annex/annexes, then these Services, additional services and related work will be supplied at the risk and expense of the Customer on a 'best effort' basis and will not entitle the Customer to any kind of result or to claim for non-compliance with any result.

## **5. Obligations upon Datlinq**

5.1. Datlinq will endeavour to supply the Services with proper skill and care in accordance with the

provisions of the Contract and to ensure that the Services do not infringe any third-party rights and are not in breach of any current laws and regulations.

- 5.2. Datlinq has adequately ascertained the objectives of the Customer in entering into the Contract. To this end, the Customer has supplied Datlinq in good time with accurate and complete information, and will – if asked – supply Datlinq with further information insofar as such information is available to the Customer.
- 5.3. Datlinq undertakes to inform the Customer about any major changes or additions to, or enlargement of, the products used for access to and the availability of the Services for the Customer.
- 5.4. Datlinq will ensure that the Services are documented as well as possible.
- 5.5. If requested, Datlinq will provide all information about relevant quality standards so that the Customer can learn about the factors that enable the optimal use of the Services. If required, Datlinq can apply standards to the hardware and software that fall within the responsibility of the Customer.
- 5.6. In the event of a disaster Datlinq is not obliged to supply the Services and related work according to the agreed service levels. In such a case, Datlinq will use its best endeavours to restore – where disrupted - the supply of the Services and related work as quickly as possible. The reasonable cost incurred in undertaking such steps will be passed on by Datlinq to the Customer.

## **6. Telecommunications Facilities and Internet**

- 6.1. The Customer is responsible for entering into a contract with a third party for suitable telecommunications facilities to enable the Services to be actually used. Datlinq is not responsible for these facilities, or for the cost of the facilities payable as a result of their use.
- 6.2. In accessing the data or application via the internet, the Customer must bear in mind that other people make use of the internet, and that consequently the Customer must act in accordance with the degree of skill and care that is generally required for such purposes.
- 6.3. The Customer undertakes not to disclose any offensive, unethical or improper materials including, but not limited to, spam, pornography, obscene texts or images, privacy-sensitive information, computer viruses, incorrect information about any third party, or information that could encourage any unlawful acts.
- 6.4. In disclosing information via the internet, the Customer is not entitled to pose as any other person or legal entity. The Customer must ensure that its name is clearly shown whenever any information is disclosed. There should be no confusion in the mind of the internet user as to the source of the information disclosed.
- 6.5. The Customer is not permitted to change the source reference of email messages or other electronic messages.
- 6.6. The Customer may not use a mailing list to send unsolicited emails and spam via the Datlinq

systems. The Customer may not undertake any activities that result in any excessive or undesirable transfer of messages via the Datling systems. Such activities include those that in the opinion of Datling are deemed to be harmful to its systems.

## **7. Obligations upon the Customer**

- 7.1. The Customer will cooperate insofar as reasonably necessary for the performance of the Contract by, for example, supplying the required information to Datling, its employees or any third party engaged by Datling.
- 7.2. The Customer is not entitled to disclose information on behalf of or in the name of Datling or any third party without obtaining the express consent for such disclosure.
- 7.3. The Customer may not attempt to undermine the security and operations of the Datling systems.
- 7.4. The Customer must take the greatest care in handling confidential, important and personal information belonging to, and about, third parties, and comply with relevant statutory regulations in this regard.
- 7.5. The Customer will process personal data in accordance with the relevant statutory regulations.
- 7.6. The Customer is responsible for adopting appropriate organisational and technical measures to secure personal data. Personal data will not be stored for any longer than is required for effective business operations or than is required by law.
- 7.7. The Customer may not act in a way, or disclose any information, that could harm the interests, professionalism or good name of Datling or of other Users.
- 7.8. The Customer's employees and any third party engaged by the Customer must also comply with the provisions of the Contract and the specific rules and regulations as referred to in this article.
- 7.9. The Customer will indemnify Datling against any third-party claim relating to its obligations under the Contract or to any other kind of third-party claim arising from the use of the electronic mail facilities via the Datling systems. In the event of such a claim, Datling is entitled to terminate the Contract with immediate effect or to permanently or temporarily cease the supply of the Services and related work. Datling is entitled to hold the Customer primarily liable for the loss and additional costs thereby incurred.

## **8. Data Privacy and Data Protection**

- 8.1. Each party shall comply with the applicable data protection laws, when carrying out the obligations under the between parties agreed and underlying contract.
- 8.2. Each party shall implement appropriate technical, physical and organisational measures to secure and protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access.

- 8.3. Each party shall keep personal data confidential and shall not disclose personal data in any way to any employee, subordinate or third party, except where;
- the disclosure is required for the performance of the processing; or
  - personal data need to be disclosed to a competent public authority to comply with a legal obligation or as required for audit purposes;
  - applicable data protection law provides otherwise.
- 8.4. Each party shall submit its relevant processing systems, facilities and supporting documentation to an inspection or audit relating to the processing by a competent public authority if this is necessary to comply with a legal obligation.
- 8.5. Each party shall promptly inform the other party if:
- it receives an inquiry, a subpoena or a request for inspection or audit from a competent public authority relating to the processing, except where the party is otherwise prohibited by law from making such disclosure;
  - it intends to disclose personal data to any competent public authority; or
  - it detects or reasonably suspects that a data security breach has occurred.
- 8.6. In the event of a data security breach, each party shall promptly take adequate remedial measures. Furthermore, the party shall promptly provide the other party with all relevant information as requested regarding the data security breach.
- 8.7. Each individual party is responsible for complying with the obligations in this clause included by the sub-data processor engaged by the Party in question. The Party will contractually oblige each sub-data processor to comply with the provisions set out in this clause.

## **9. Contract variations**

- 9.1. Contract variations may be implemented if they are separately offered, instructed or agreed, or are dealt with in accordance with section 2 of this article. Any additional work performed that does not meet the written standards will be performed on a 'best efforts' basis and is entirely at the risk and expense of the Customer. In situations in which Datlinq is unable to contact the Customer and where immediate action needs to be taken, Datlinq is entitled to take steps on its own initiative to a maximum cost of € 1.000 per situation.
- 9.2. If Datlinq is of the opinion that any change to the project specified by the Customer after the Contract has been signed constitutes a contract variation it must notify the Customer accordingly before performing the work. This notice must be in writing but may be preceded, where the performance of the work so requires, by a provisional, oral notice. The notice must be followed by a written, properly itemised statement setting out the price consequences.

## **10. Invoicing and payment**

- 10.1. Datlinq will invoice the Customer for the sums it owes.
- 10.2. Unless agreed otherwise in writing, invoicing of the Services will be per calendar year in

advance. Additional work will be invoiced on the basis of actual work performed.

- 10.3. Payment must be made into a bank or giro account specified by Datling, in the manner specified on the invoice and within thirty days of the date the invoice is sent. The date the invoice is sent is deemed to be the date of the invoice.
- 10.4. The Customer is entitled to object to the accuracy of an invoice in writing, specifying the objection, to be sent to Datling within five working days of receipt of the disputed invoice. Even if the Customer disputes the accuracy of all or any part of the invoice, it must nevertheless still pay the disputed amount.
- 10.5. If the Customer fails to pay in time, it will be sent a written reminder stipulating a further term for payment. The date of payment is deemed to be the date on which Datling receives the payment. If the Customer still fails to make payment within the additional term, it is automatically in breach and notice of such breach will be sent to the Customer.
- 10.6. Datling may recover from the Customer the reasonable costs incurred in enforcing payment out of court. The recoverable costs are those costs that are reasonably incurred and that are of a reasonable amount in relation to the outstanding debt. As from the date that the Customer is in breach, Datling may also charge statutory interest on the outstanding debt.
- 10.7. If the Customer fails to pay on time, then as from that moment Datling may choose either:
- to supply the Services and related work on a 'best efforts' basis whereby the Customer cannot make any claim based on any type of result or non-compliance with any result; or
  - to suspend the supply of the Services and the related work until it has received payment; or
  - to terminate the supply of the Services and the related work.

## **11. Liability**

- 11.1. Datling is not liable for loss suffered by the Customer due to breaches by Datling in the performance of the Contract except in the following cases:
- if in performing the work damage is caused to property belonging to the Customer that can only be attributed to Datling, then Datling will pay repair and replacement costs up to a maximum of € 2.500 per incident;
  - if in performing the work death or physical injury results from something that can only be attributed to Datling, then Datling will pay costs resulting therefrom up to a maximum of € 25.000 per incident.
- 11.2. Datling is not liable for any indirect or consequential loss, including loss of turnover or profits, or lost man hours.
- 11.3. Datling will indemnify the Customer against any third-party claims for compensation. The indemnity will only cover loss that is recoverable from Datling pursuant to section 1 of this article.
- 11.4. Loss as described in this article must be reported to Datling in writing as soon as possible and in any event within four weeks of it arising. Loss not reported to Datling within this period is not

eligible for compensation, unless the Customer can establish that the loss could not have been reported any sooner.

## **12. Transfer of rights and obligations**

- 12.1. The Customer is not entitled to transfer the user rights and other rights and obligations under the Contract to any third party without the written consent of Datlinq. Conditions may be attached to such consent.
- 12.2. The Customer consents in advance to any future transfer by Datlinq of its rights and obligations under the Contract to a third party. Datlinq will give proper notice of any such transfer.
- 12.3. As an exception to the provisions of sections 1 and 2 of this article, either party may transfer its rights and obligations under the Contract to a company within the same group that assumes all or a substantial part of the activities of the transferring party that are the subject of the Contract.
- 12.4. The transfer of Contract referred to in section 3, above, will be effected by a written statement from the transferor and transferee parties to the other party. The transfer cannot take effect until one month after the said statement has been sent to the other party.

## **13. Non-attributable breach**

- 13.1. In the event of a non-attributable breach, compliance with the relevant obligations and related obligations will be suspended in part or in full for the period of such breach, without thereby incurring either party in any obligation to pay compensation to the other. A party that relies on such a breach must notify the other party in writing of this fact as soon as possible.
- 13.2. A breach cannot be attributed to a party if it is not to blame for the breach, it is outside its sphere of influence, it is not a risk that it bears or ought to bear, and it is not otherwise attributable by virtue of any law, juridical act or general presumption. This could be caused, for example, by a Distributed Denial of Service (DDoS) by means of:
- cracking, such as viruses and worms;
  - signalling, such as IRC, specific ICMPs via relays;
  - flooding, such as TCP SYN flood, UDP, ICMP, or other IP protocols.
- 13.3. If a party is in non-attributable breach of any obligation under the Contract, the other party may terminate the Contract with immediate effect by notice sent by registered post with proof of receipt, without thereby incurring any liability for compensation, if it is established that compliance by the other party remains impossible, or there is no compliance within a further reasonable term as specified in writing.

## **14. Changes**

- 14.1. Datlinq is entitled to adopt technical measures during the term of the Contract to protect the integrity of the Services and their content.
- 14.2. Datlinq is entitled to make changes to the Services provided that such changes do not affect

the functionality and quality of the Services or have any possible adverse effect upon the Customer. Datlinq will not exercise this right without compelling reasons for doing so.

14.3. Datlinq will endeavour to notify the Customer in good time of any changes as referred to in the preceding section.

14.4. If the Customer wishes changes to be made to the Services it purchases, it must make a written request to Datlinq. Datlinq reserves the right to attach conditions to certain changes. It is up to Datlinq alone to determine whether the desired change is possible and will be implemented.

## **15. Termination of the Contract**

15.1. In addition to the possible grounds for termination specified by law, either party is entitled to terminate all or any part of the Contract with immediate effect and without the need for a court order, if the other party:

- applies for, or is granted, a moratorium;
- is declared insolvent or an insolvency application is filed;
- is in liquidation or ceases business operations;
- is unable to comply with its obligations under the Contract for a period longer than 30 days or as soon as it is reasonably certain that such period will exceed 30 days;
- or if any change to any law or regulation, or any court judgment or any government measure, prohibits the performance of the activities described in the Contract or makes any part of them impossible.

15.2. Any notice of termination must be sent by registered post.

## **16. Jurisdiction and disputes**

16.1. The Contract is governed by Dutch law.

16.2. Any dispute arising under the Contract will be determined by the court with jurisdiction according to the law.

16.3. Before submitting any dispute to the court, the parties will use their best endeavours to solve their dispute amicably. This does not affect the right of either party to apply for provisional relief in an urgent case.

Any changes we may make to our General Terms and Conditions Privacy Statement in the future will be posted on our website and where appropriate notified by e-mail. Please check back frequently to see any updates or changes made.