

# TERMS & CONDITIONS OF USE

## ClickOnSite Membership Agreement

### **PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY!**

*These Conditions of Use ("Conditions") apply to the use of COS (as defined below). Please read these Conditions carefully before using COS. By using COS, the User (as defined below) accepts and agrees to be bound by these Conditions. In this respect, User also warrants that, in its capacity of representative of either Deployment partner (as defined below) or Client (as defined below), it is authorized and entitled to duly and legally represent Client and/or Deployment partner – whichever the User represents. If the User does not accept these Conditions or if the User is not authorised to legally represent either Deployment partner or Client, the User may not use COS.*

### **Article 1 –Right to use COS**

- 1.1 IT-Development hereby grants the User a personal, non-transferable, non-exclusive right to use COS and/or the Data in accordance with these Conditions.
- 1.2 The right to access and/use COS is limited to the remote access and/or use of COS by means of electronic access via the Internet for purposes of processing and/or generating the Data. COS and the Data may be used only for either the Client's or the Deployment partner's internal business purposes.
- 1.3 The specific rights for the User regarding the use of COS and the use of the Data, depend on whether the User represents the Deployment partner or the Client. In principle, the User representing the Client will be granted broader rights than the User representing the Deployment partner. When providing the User with a login code and password, IT-Development will specify the exact scope of the user rights.
- 1.4 Except as expressly stipulated in these Conditions or except as expressly allowed by mandatory law, the User may not - nor permit any third party to - (a) copy, make available, sublicense or otherwise commercialise COS, (b) modify, translate or otherwise create a derivative work of COS within the meaning of Article 13 of the Dutch Copyright Act 1912, (c) disassemble, decompile or reverse engineer the object code or source code of COS. Furthermore, the User may not use (which includes to copy, retrieve, make available, re-use or otherwise commercialise) the Data for purposes other than the Client's or the Deployment partner's internal business purposes.
- 1.5 IT-Development may take technical measures to protect COS. The User may not remove or circumvent such technical measures.
- 1.6 IT-Development reserves the right to audit – or to have a third party audit – whether User complies with the granted rights regarding the use of COS and/or the Data.
- 1.7 The User is responsible for meeting the technical and functional requirements (provided by IT-Development to the User) in order to be able to access and use COS. The use of COS and/or the Data is for the User's own account and risk. The use of electronic communication facilities in order to gain access to COS is also for the User's own account and risk. IT-Development will in no event be liable for any damage, loss or costs, including loss of Data, or any inability of the User to use COS as a result of a shortcoming, defect or other malfunction of the aforesaid electronic communication facilities. Furthermore, the risk of loss or theft of or damage to the Data will at all times be borne by the User.
- 1.8 The User will indemnify IT-Development from and against any loss, damage, liability or expense (including, but not limited to reasonable attorney's fees) incurred by or awarded against IT-Development to the extent that these are based upon a claim that the Data infringe any third party rights (including intellectual property rights) and/or the use of such Data is otherwise unlawful.

## **Article 2 – User’s obligations**

- 2.1 The User warrants it will correctly and properly use COS and/or the Data, which includes but is not limited to compliance with these Conditions and other statutory requirements. The User may in any case not use COS and/or the Data for any acts and/or conduct contrary to the law, public order, public decency or these Conditions. Furthermore, the User’s acts and/or conduct must be in accordance with what may in all respects be expected of a responsible and diligent User.
- 2.2 The access and use of COS is personal. Therefore, the User may not give any other person remote or other access to COS without IT-Development’s prior express written consent. The login and password made available to the User are also personal. The User must keep these codes strictly confidential and/or use these codes with due care. The use of said codes shall be solely the responsibility of and the risk of User. The User shall indemnify, defend, and hold harmless IT-Development from any claim, proceeding, loss or damages based upon any use, misuse, or unauthorized use of User’s login code and/or password relating to the access and/or use of COS.

## **Article 3 – Intellectual property rights**

- 3.1 All ownership rights and all intellectual or industrial property rights (including but not limited to copyrights and/or database rights) in respect of COS exclusively vest in IT-Development. Furthermore, IT-Development exclusively owns all rights in any ideas, concepts, know-how, documentation, techniques with respect to COS as well as the technology (other than the Data) available on the servers of IT-Development.
- 3.2 The User may not change, render illegible or remove any trademark or recognition signs affixed to COS and/or any references to copyright or other intellectual property rights, including references to its confidential nature and confidentiality.

## **Article 4 – Functioning of COS**

- 4.1 Without prejudice to IT-Development’s limitation of liability, COS will be in conformity with these Conditions if it will substantially perform in accordance with its specifications, when correctly and properly used. The User acknowledges and accepts, however, that:
  - (a) COS will not and cannot meet all of User’s expectations;
  - (b) COS will not be free of errors and will not function without interruption; and,
  - (c) not all the errors in COS will be repaired.
- 4.2 User’s exclusive remedy and IT-Development’s entire liability for breach of the conformity statement in clause 4.1 is that IT-Development will use its commercially reasonable efforts to correct or provide a workaround for reproducible errors (which shall mean COS not substantially functioning in accordance with the specifications) that cause a breach of the conformity statement. If IT-Development is not able to make COS in conformity with the statement as provided in clause 4.1 within a reasonable period (taking into account the severity of the error and its impact on the User), IT-Development in its sole discretion shall be entitled to terminate the granted user rights with regard to COS and to recover the fees paid to IT-Development for the COS license, without compensating User for any damages following such termination.

## **Article 5 – IT-Development’s liability**

- 5.1 The liability of IT-Development, whether based upon breach or tort, is limited to property damages (in Dutch: “zaakschade”). IT-Development shall not be liable for any (financial) damages as a result of the property damages (in Dutch: “vermogensschade”) and/or any purely financial damages (in Dutch: “zuivere vermogensschade”), which shall include, without limitation, damages due to late delivery, loss of or damage to data (including the Data), loss of profits or income, incurred by User.
- 5.2 In no event, the aggregate and cumulative liability of IT-Development will exceed the amount of the total fees paid to IT-Development up to 12 months before the damage causing event occurred.
- 5.3 This Article does not limit IT-Development’s liability for damages caused by gross negligence or wilful intent by the board of directors or the executive management of IT-Development.
- 5.4 In the event that the User has terminated these Conditions for cause (“ontbinding” article 6:265 Dutch Civil Code), the limitations and exclusions of liability are absolute such that User waives the right to claim damages in addition to restitution of amounts paid resulting from the rescission. However, already received performance and the related payment obligations shall not be cancelled, unless the User proves that IT-Development is in default with regard to that specific performance. Amounts which IT-Development has invoiced before the termination in connection with what it has already properly performed shall continue to be owed in full and shall be immediately payable at the time of termination.

#### **Article 6 – Other provisions**

- 6.1 IT-Development may (i) suspend access to and/or the use of COS, or (ii) terminate the granted rights to User, with immediate effect upon written notice if User breaches these Conditions and/or otherwise acts unlawful against IT-Development (including but not limited to infringing IT-Development’s rights in COS). If the rights granted to User under these Conditions terminate, Deployment partner shall immediately cease using COS and destroy any and all entry codes and/or passwords. Upon termination (for whatever reason) IT-Development will, if the User so requests, try to provide User with the Data (as processed up until the termination being effective) in an excel sheet format, but shall have no duty or obligation to deliver such Data nor to convert the Data.
- 6.2 Dutch law shall govern these terms and conditions. All matters arising out of or relating to these terms and conditions shall be irrevocably submitted to the exclusive jurisdiction of the courts of Amsterdam. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to these terms and conditions.
- 6.3 IT-Development may amend these Conditions. Any such amendments will be reported to the User beforehand. Any continued use of COS by User will subsequently constitute acceptance of the Conditions (as amended).
- 6.4 In the event any provision of these Conditions is held to be invalid or unenforceable, the remaining provisions will remain in full force.

#### **Article 7 – Definitions**

- 7.1 **IT-Development:** IT-Development.com B.V., a company incorporated under the laws of the Netherlands and having its principal place of business at Spieringdam 1, 2492 ND The Hague, the Netherlands – including its subsidiaries.
- 7.2 **User(s):** personnel of either Client or Deployment partner authorised to access and/or use COS on behalf of either Client or Deployment partner, whichever the User represents. The definition of User may, where necessary, also include Client and/or the Deployment partner whichever the User represents.

- 7.3 **Client:** the legal entity with which IT-Development has concluded an agreement regarding, among other things, the use of COS and the provisions of related services.
  - 7.4 **Deployment partner(s):** the Deployment partner(s) of Client authorised to access and/or use COS;
  - 7.5 **COS (ClickOnSite):** the remotely accessible web-based database functionality of IT-Development by means of which a User can process or generate Data (dependent on the scope of the various user rights) including but not limited to rollout data.
  - 7.6 **Data:** the information processed or generated by means of COS.
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