



**Terms and Conditions
Redkiwi**

dated 16th of July 2019

TERMS AND CONDITIONS

Article 1 Definitions

1.1 The following terms are capitalized in these Terms and Conditions, both in the singular and in the plural. These terms have the following meanings:

<i>Agreement:</i>	The agreement between Redkiwi B.V. and the Client regarding the provision of the Service;
<i>Client:</i>	A natural person who or legal entity that has concluded, or will conclude, an Agreement with Redkiwi B.V.;
<i>IP Rights:</i>	All intellectual property rights and associated rights such as copyrights, trade mark rights, patent rights, design rights, trade name rights, database rights and related rights, as well as rights to know-how and performances on a par with these rights;
<i>Parties:</i>	Redkiwi B.V. and the Client;
<i>Personal data:</i>	Each piece of information relating to an identified or identifiable natural person within the meaning of Section 1(a) of the Dutch Personal Data Protection Act and Article 4(1) of the General Data Protection Regulation;
<i>Schedule:</i>	An appendix to the Terms and Conditions with specific provisions relating to the Service to be provided; and
<i>Service:</i>	The services to be provided to the Client by Redkiwi B.V. pursuant to the Agreement, including, if applicable, results of services.

Article 2 General

- 2.1 The Terms and Conditions apply to and form an integral part of all offers and quotations of Redkiwi B.V., Agreements and any other legal acts related thereto between Redkiwi B.V. and the Client or its legal successor. In addition to these Terms and Conditions, the specific Schedule(s) to the Terms and Conditions that have been agreed between Redkiwi B.V. and the Client also apply.
- 2.2 If the Terms and Conditions state that an act must be carried out in writing, this is deemed to refer to email as well.

- 2.3 Any departures from the Terms and Conditions are only valid if they have been agreed explicitly in writing by Redkiwi B.V. and the Client and they only apply to the specific agreement for which they were agreed.
- 2.4 The Terms and Conditions will always prevail over any purchasing or other terms and conditions used by the Client.
- 2.5 Once these Terms and Conditions have been applied to a legal relationship between Redkiwi B.V. and the Client, the Client is deemed to have agreed in advance to the applicability of these Terms and Conditions to any Agreements concluded or to be concluded thereafter.
- 2.6 If and to the extent that any provision in these Terms and Conditions is declared to be null and void or is annulled, the other provisions in the Terms and Conditions will remain in full force. In that case the Parties will consult to determine a new provision to replace the provision that is null and void or that has been annulled, thereby taking the purport of the void or annulled provision into account as far as possible.
- 2.7 In the event of a conflict between provisions in an Agreement and the Terms and Conditions, the provisions of the Agreement will prevail. In the event of a conflict between the Terms and Conditions and a specific Schedule, the provisions in the specific Schedule(s) will prevail.
- 2.8 Electronic communication between the Parties will be deemed to have been received on the day it was sent, unless proof to the contrary is furnished.

Article 3 Quotations and formation of the Agreement

- 3.1 Quotations and other offers made by Redkiwi B.V. are without obligation and should be regarded as an invitation to make an offer to form an Agreement, unless Redkiwi B.V. has indicated otherwise in writing.
- 3.2 Offers and quotations lose their validity four weeks after their date, unless otherwise indicated in writing.
- 3.3 The Client warrants that the details disclosed by it to Redkiwi B.V., on which Redkiwi B.V. has based its offer, are correct and complete. If those details should prove not to be correct or complete, Redkiwi B.V. is entitled to modify the offer.
- 3.4 An Agreement is formed by written confirmation from the Client of an unmodified valid quotation and/or offer made by Redkiwi B.V..

Article 4 Performance of the Agreement and delivery

- 4.1 Redkiwi B.V. will perform the Agreement to the best of its knowledge and ability and in accordance with the standards of the profession and on the basis of the latest scientific and technical knowledge. The Agreement to be formed between Redkiwi B.V. and the Client involves a best efforts obligation, unless and to the extent that Redkiwi B.V. has explicitly promised a particular result in the written Agreement and the result concerned is also described in the

- Agreement in a sufficiently precise manner. Any arrangements about a service level (Service Level Agreement) will always be agreed in writing.
- 4.2 In the Agreement the Parties will determine the delivery term and delivery dates as well as the place and manner in which the Services will be delivered and/or provided. The duration of an assignment depends on various factors and circumstances, such as the quality of the data and information disclosed by the Client and the cooperation of the Client and relevant third parties. The aforementioned delivery terms are therefore not strict deadlines, unless the Parties have explicitly agreed otherwise in writing. In the event that a delivery term or other term is exceeded, or is likely to be exceeded, the Parties will consult with each other as soon as possible in order to take suitable measures.
- 4.3 If it has been agreed that the Agreement will be performed in phases, Redkiwi B.V. is authorized to postpone the commencement of the Services that form part of a subsequent phase until the Client has approved the results of the prior phase in writing.
- 4.4 Redkiwi B.V. is not obliged to follow instructions that alter or add to the content or scope of the agreed Services; if such instructions are followed, the activities concerned will be paid in accordance with Redkiwi B.V.'s usual rates and Redkiwi B.V. will notify the Client of this.
- 4.5 Redkiwi B.V. is entitled to have the Agreement carried out by third parties wholly or in part, or to engage third parties for the performance of the Agreement.
- 4.6 Services will be deemed by the Parties to have been accepted if the Client has not substantiated in writing and in detail within five (5) working days after delivery of the Services concerned why the Services have not been accepted. If they are not accepted, Redkiwi B.V. must replace the Services or make adjustments to them within a reasonable term. If the Client again does not accept the Services, the Parties will perform the acceptance procedure again. This procedure will be repeated if the Client again substantiates during the new acceptance test why the Services have not been accepted.
- 4.7 The risk of loss, theft, misappropriation or damage to items of property, products, information/data, documents or programs created or used in the context of the performance of the Agreement passes to the Client when the Client or an auxiliary person, servant or agent of the Client has taken actual possession of the goods.

Article 5 Prices and terms of payment

- 5.1 All prices are exclusive of turnover tax (VAT) and other government levies.
- 5.2 Unless explicitly agreed otherwise, price indications, estimates, budgets and/or cost estimates issued by Redkiwi B.V. are merely for information purposes, and no rights or expectations may be derived from them. Only if the Parties have so agreed is Redkiwi B.V. obliged to inform the Client when a cost estimate or estimate will be exceeded.
- 5.3 The Parties will set down in the Agreement the date or dates on which Redkiwi B.V. will charge the fee for Services to the Client. The Client will pay invoices in accordance with the terms of

payment stated on the invoice. In the absence of a specific arrangement, the Client will pay within fourteen (14) days after the invoice date.

- 5.4 If the Client does not pay the amounts due on time, the Client will owe statutory interest on the outstanding amount without any demand or notice of default being required. If after a demand or notice of default the Client still fails to pay the claim, Redkiwi B.V. may refer the debt for collection, in which case the Client will be obliged to pay, in addition to the total amount due, all judicial and extrajudicial costs, including costs of external experts.
- 5.5 Redkiwi B.V. is entitled to retain Services that are still in its possession if the Client does not comply with its payment obligation, until the Client has settled its payment obligation, regardless of whether the arrears are related to the Services retained by Redkiwi B.V..
- 5.6 During the term of an Agreement, Redkiwi B.V. is authorised to increase the prices for its Services each year with effect from 1 January in conformity with the price index figure for the preceding calendar year as published by Statistics Netherlands (CBS) (consumer price index for 'all households'), plus a maximum of fifteen percent (15%). Redkiwi B.V. is entitled to implement the cost increase at a later date if it finds this desirable from an administrative point of view.
- 5.7 Comments or complaints about invoices, bills and fee statements must be made known in writing within fourteen (14) days after receipt of the invoice, bill or fee statement concerned, failing which they will be deemed to have been accepted. Such complaints do not suspend the obligation to make payment.
- 5.8 Redkiwi B.V. is entitled to send the Client interim invoices and/or to invoice on the basis of advance payments, to offset or to require security for compliance by the Client.
- 5.9 The Client agrees to electronic invoicing by Redkiwi B.V..

Article 6 Changes to the assignment and/or extra work

- 6.1 The Client accepts that the time schedule of the Agreement may be affected if the scope of the Agreement is expanded and/or altered while the Agreement is still being performed. If the interim alteration affects the agreed remuneration, Redkiwi B.V. will notify the Client of this as soon as possible.
- 6.2 If on the basis of an alteration to the Agreement as a result of extra requests or wishes on the part of the Client Redkiwi B.V. must carry out extra work (additional work), this work will be charged to the Client on the basis of actual costs at the usual rates that apply at that time, unless explicitly agreed otherwise in writing.
- 6.3 Redkiwi B.V. is entitled to carry out this additional work without the Client's advance written permission to the extent that the costs entailed by this additional work are not more than ten percent (10%) of the originally agreed total payment.
- 6.4 If the costs of extra work are more than ten percent (10%), Redkiwi B.V. will inform the Client of this. In that case the Parties will consult to discuss the measures to be taken.

Article 7 Obligations of the Client

- 7.1 The Client will ensure that all data and/or information that Redkiwi B.V. has indicated are necessary, or which the Client reasonably ought to understand will be necessary for the performance of the Agreement, including information about legislation or regulations to be complied with by Redkiwi B.V. that applies specifically to the Client's field of work, are disclosed to Redkiwi B.V. in good time and will cooperate with Redkiwi B.V. to the extent that the latter requires. Quotations and offers issued by Redkiwi B.V. as well as the Agreement concluded afterwards are based on the information disclosed by the Client.
- 7.2 If data needed for the performance of the Agreement is not disclosed to Redkiwi B.V. in good time, Redkiwi B.V. is entitled to suspend performance of the Agreement and/or to charge to the Client the extra costs arising from the delay at the usual rates that apply at that time.
- 7.3 To the extent that in the context of the Agreement Redkiwi B.V. discloses user names and/or passwords, the Client is responsible for these user names and/or passwords and is entirely and independently liable for any misuse made of the user names or passwords, unless such misuse is the result of intent or gross negligence on the part of Redkiwi B.V..
- 7.4 To the extent that Redkiwi B.V. discloses user names and/or passwords in the context of the Agreement, the Client is prohibited from disclosing these user names and/or passwords to third parties without Redkiwi B.V.'s consent.

Article 8 Termination, premature termination and the consequences of these

- 8.1 An Agreement takes effect on the date stated in Article 3 for the period agreed in writing between the Parties and ends by operation of law on the date agreed by the Parties or when the provision of Services has been completed.
- 8.2 Unless explicitly agreed otherwise, the Parties may not terminate the Agreement prematurely.
- 8.3 Each of the Parties is entitled to dissolve the Agreement wholly or in part if the other Party is declared bankrupt/insolvent or is granted a suspension of payments, as well as if the other Party's business is closed down or liquidated other than for purposes of reconstruction or merger of companies, or if the decisive control of the business of the other Party changes.
- 8.4 The Agreement may only be dissolved on the basis of attributable failure after a written notice of default has been sent that is as detailed as possible, with a reasonable term being set within which the failure can be remedied, unless these Terms and Conditions or the law provide otherwise.
- 8.5 If the Agreement is dissolved, anything that Redkiwi B.V. has delivered and/or carried out as well as the related payment obligation will not be undone unless the Client proves that Redkiwi B.V. is

in default with regard to the material part of those services. Amounts invoiced by Redkiwi B.V. before dissolution in connection with anything Redkiwi B.V. has already properly performed or delivered in performing the Agreement will continue to be owed in full with due observance of the provision in the preceding sentence and will become immediately due and payable at the time of dissolution.

- 8.6 If the Agreement is dissolved, all rights granted to the Client will cease to have effect. The Client will no longer be authorized to make use of the Service.
- 8.7 Articles that, by their nature, are intended to continue to apply after the end of the Agreement will remain fully effective after the Agreement is terminated.

Article 9 IP Rights

- 9.1 Unless otherwise determined in the Agreement, all IP Rights to all the Services provided in the context of the Agreement as well as to all other materials or information made available by Redkiwi B.V. will be vested exclusively in Redkiwi B.V. and/or its licensors.
- 9.2 Nothing in these Terms and Conditions and/or the Agreement implies a transfer of IP Rights. The Client will obtain solely the non-exclusive and non-transferable right of use to the Services for the purposes stipulated in the Agreement and on the conditions stipulated in the Agreement. Unless otherwise stipulated in writing, the right of use granted applies only for the Netherlands.
- 9.3 If a customer wishes to say goodbye to Redkiwi, Redkiwi will transfer the entire delivered product to the customer. Both files and databases of the web application will be transferred. The client is then entitled to host and further develop the web application itself or with another service provider. The client is not permitted to sell the web application - or parts thereof - to third parties. The client is also responsible for correctly dealing with the (Open Source) license conditions of the application and indemnifies Redkiwi against any liability after transfer.
- 9.4 The Client is not permitted to remove or alter any identifiers concerning IP Rights from the results of Services.
- 9.5 Redkiwi B.V. explicitly does not relinquish its personality rights referred to in section 25 of the Dutch Copyright Act (*Auteurswet*).
- 9.6 Redkiwi B.V. is permitted to use the Services and the materials used for the implementation of the Agreement, such as designs, drawings, films, software, files whether electronic or otherwise, reports, formats and interviews, for purposes of its own promotion and/or publicity, unless otherwise stipulated in the Agreement.
- 9.7 Redkiwi B.V. reserves the right to introduce technical protective measures into the Services. The Client is not permitted to circumvent these technical protective measures or to offer means to do so.
- 9.8 Redkiwi B.V. indemnifies the Client against legal action by third parties based on the allegation that the Services or parts thereof developed by Redkiwi B.V. infringe any IP Right currently in

force in the Netherlands on the condition that the Client informs Redkiwi B.V. immediately in writing of the existence and the substance of the legal action and leaves the handling of the case, including affecting a settlement, entirely to Redkiwi B.V.. The Client will give Redkiwi B.V. any powers of attorney, information and cooperation necessary to defend itself against such legal action, if necessary in the name of the Client.

- 9.9 The above-mentioned obligation to indemnify will not apply if the claimed infringement is connected with:
- (i) materials made available to Redkiwi B.V. by the Client; and/or
 - (ii) changes the Client has made, or has had third parties make, to the Service.
- 9.10 If according to a binding court decision the Services developed by Redkiwi B.V. itself infringe any IP Right vested in a third party, or if in the opinion of Redkiwi B.V. there is a reasonable chance that such an infringement has occurred, Redkiwi B.V. will if possible ensure that the Client can continue to use the Service (or something functionally equivalent) without interruption. If in Redkiwi B.V.'s sole opinion, it cannot ensure that the Client can continue to use the Service provided without interruption, or that it will only be able to do so in a way that is unreasonably onerous (including financially) for it, Redkiwi B.V. will take back that which has been delivered and will credit the acquisition costs after deducting a reasonable usage fee. Any other or further liability or obligation to indemnify on the part of Redkiwi B.V. on account of infringement of IP Rights of third parties is entirely excluded.

Article 10 Privacy

- 10.1 If in the context of performing the Services Redkiwi B.V. must process Personal Data of customers of the Client, Redkiwi B.V. must be deemed to be the “processor” within the meaning of the Dutch Personal Data Protection Act and the General Data Protection Regulation and the Client must be deemed to be the “controller”.
- 10.2 The Client and Redkiwi B.V. will, pursuant to article 28(3) General Data Protection Regulation, conclude a processing agreement which governs the processing of Personal Data by Redkiwi B.V. in accordance with relevant law.

Article 11 Confidentiality

- 11.1 The Parties will treat all information they obtain from one another in any form whatsoever - written, verbal, electronic or physical - including but not limited to software, code, source code, programs, applications, customer details, know-how, technical specifications, documentation (“Confidential Information”) as strictly confidential and will keep it secret.
- 11.2 The Parties will only use the Confidential Information for the purposes for which it was disclosed and in doing so, they will observe at least the same duty of care and safeguards that apply to their own internal confidential information. The Parties will only disclose the Confidential

Information to employees to the extent necessary in the context of the Agreement and its implementation.

- 11.3 The obligations to maintain secrecy with regard to the Confidential Information will not apply to the extent that the Party that received the information can demonstrate that the information concerned:
- i) was already known to it when it was received;
 - ii) was already publicly known when it was received;
 - iii) became publicly known after receipt and this is not attributable to the receiving Party;
 - iv) was received in a lawful manner from a third party along with the right to communicate it to the public, free of any obligation to maintain secrecy;
 - v) must be disclosed pursuant to legislation or regulations or pursuant to a court order and the disclosing Party has informed the other Party of such an obligation to communicate it to the public;
 - vi) was made public with the approval of the Party disclosing it.
- 11.4 For the duration of the Agreement and 1 (one) year after it terminates, except with the advance consent of the other Party neither Party will employ employees of the other Party who are or were involved in the implementation of the Agreement, nor will it employ them or have them work for it in some other manner, directly or indirectly.

Article 12 **Liability**

- 12.1 Redkiwi B.V.'s liability for attributable failure to perform its obligations and/or on the basis of an unlawful act is limited to the reimbursement of direct damage sustained by the Client up to a maximum of the amount paid out in the case concerned by Redkiwi B.V.'s insurance, or up to a maximum of the amount of the fee stipulated for the performance of the Agreement, with the fee stipulated for one year applying in cases of continuing performance contracts.
- 12.2 Direct damage is exclusively taken to mean:
- i) reasonable costs the Client would have to incur so for Redkiwi B.V.'s performance to conform with the Agreement; however, this alternative damage will not be reimbursed if the Agreement is dissolved by or on the demand of the Client;
 - ii) reasonable costs incurred by the Client because it was necessary to keep its old system or systems and the associated facilities operational longer because Redkiwi B.V. did not deliver on a delivery date which was a binding deadline for it, less any savings that result from the deferred delivery;
 - iii) reasonable costs incurred to determine the cause and the scope of the damage, to the extent that this relates to direct damage in the sense meant in this Agreement;
 - iv) reasonable costs incurred to prevent or limit damage, to the extent that the Client demonstrates that these costs resulted in a limitation of direct damage in the sense meant in this Agreement.

- 12.3 Any liability of Redkiwi B.V. for anything other than direct damage (“indirect damage”), including but not limited to consequential damage, loss and/or damage to data, loss of profits and loss of sales, is excluded.
- 12.4 The limitations referred to in the preceding paragraphs of this article will not apply if and to the extent that the damage is the result of intent or wilful recklessness on the part of Redkiwi B.V. or its management (“own acts”).
- 12.5 In all cases, Redkiwi B.V. is only liable on account of an attributable failure to perform the Agreement if the Client immediately and in the form of a proper written notice informs Redkiwi B.V. that it is in default, stating a reasonable term in which the attributable failure can be remedied, and after this term Redkiwi B.V. continues to fail attributable to perform its obligations, except in the event of permanent attributable failure. The notice of default must comprise a description of the failure that is as complete and detailed as possible, so that Redkiwi B.V. is able to respond adequately.
- 12.6 The creation of any right to compensation is always conditional on the Client reporting the damage to Redkiwi B.V. in writing as soon as possible after it has come about. Any claim for compensation against Redkiwi B.V. will cease to exist simply by the passage of twelve (12) months after the claim arose.
- 12.7 The Client bears the full risk and responsibility for its use of the Services. Redkiwi B.V. does not accept any liability for the use made by the Client of the Services. The Client indemnifies Redkiwi B.V. against any claims of third parties arising from the Client’s use of the Services.

Article 13 Force majeure

- 13.1 In the event of force majeure there is no attributable failure in the performance of the Agreement by the Parties.
- 13.2 Force majeure includes, among other things, disruptions in the supply of electricity, strikes, riots, government measures, fire, natural disasters, floods, failure on the part of the Parties’ suppliers, failure on the part of third parties enlisted by the Parties, disruptions in the internet connection, hardware malfunctions, malfunctions in networks, including telecommunication networks, and other unforeseen circumstances.
- 13.3 If the force majeure lasts at least thirty (30) days, the Parties are entitled to dissolve the Agreement without being obliged to reimburse any damage, to undo any work or to pay any compensation for such dissolution.
- 13.4 If Redkiwi B.V. can still perform in part at the time of the force majeure, or if it has performed, it is authorized to perform this service and to invoice it separately, as if it concerned a separate Agreement.

Article 14 Transfer of rights and obligations

14.1 The Parties may only license, sublicense or transfer the rights and obligations arising from the Agreement to third parties if the other Party agrees to this in writing.

Article 15 Settlement and mediation

15.1 If a dispute between the Parties cannot be resolved to their satisfaction, before submitting the dispute to a court it will be submitted to the Parties' authorized representatives to investigate the possibilities of a settlement, or to an independent mediator for mediation.

Article 16 Applicable law and competent court

- 16.1 These General Terms and Conditions are governed exclusively by Dutch law.
- 16.2 The applicability of the Vienna Sales Convention (CISG) is expressly excluded.
- 16.3 Any disputes that arise between Redkiwi B.V. and the Client in the context of or in connection with this Agreement will exclusively be submitted to the competent court in the district of Amsterdam.