

## Appendix 4

### WMDA General Terms and Conditions

#### SECTION 1. GENERAL PROVISIONS

##### Article 1 – Definitions

In these general terms and conditions the following definitions apply:

1. **Client:** the party with whom WMDA enters into an agreement or to whom WMDA makes an offer.
2. **WMDA:** World Marrow Donor Association, with offices at Schipholweg 55, 1<sup>st</sup> floor, Unit 14-15, 2316 ZL Leiden, the Netherlands, registered in the Dutch Chamber of Commerce under number 40448326.
3. **Agreement:** any agreement concluded between WMDA and the client, any amendment or addition thereto, as well as all legal acts in preparation and implementation of that agreement.

##### Article 2 – Applicability

1. These general terms and conditions apply to every offer from WMDA and to every agreement concluded between WMDA and the client, insofar as the parties have not expressly and in writing deviated from these general terms and conditions.
2. The applicability of any purchasing or other terms and conditions of the client is expressly rejected.

##### Article 3 – The agreement

1. In all cases, WMDA is only bound after it has accepted or confirmed an assignment or arrangement in writing (including by email). Oral commitments only bind WMDA after it has confirmed them in writing.
2. Quotations or offers, or any part thereof, do not bind WMDA if there is an obvious mistake or typo.

##### Article 4 – Price

1. Unless stated otherwise in writing, the prices quoted by WMDA are always in Euro and exclusive of VAT.
2. WMDA is entitled to index its prices and rates annually in accordance with the CBS consumer price index (CPI). WMDA is also entitled to charge price increases from third party suppliers, provided these price increases are properly documented.

##### Article 5 – Payment

1. Unless otherwise agreed, amounts owed by the client must be received within 30 days after the invoice date into the account number specified by WMDA.
2. If the client does not fulfil his payment obligation(s) on time, he will be in default (*verzuim*) without any notice of default (*ingebrekestelling*). In that case, the client owes the statutory commercial interest on the outstanding amount. The interest on the amount due will be calculated from the moment the client is in default until the moment the full amount is paid.
3. If timely payment is not made, even after repeated written reminders, WMDA is entitled to suspend the execution of the agreement.
4. If the client is in default (*verzuim*) or defaults in the (timely) fulfilment of his obligations, WMDA has the

right to charge the client for all costs reasonably incurred in obtaining payment out of court.

5. Client is never entitled to settlement or suspension of amounts owed to WMDA.

##### Article 6 – Duration of the agreement

1. If and insofar as the agreement is a continuing performance contract, the agreement is entered into for the term agreed on by the parties. A term of one year applies if a specific term has not been agreed on.
2. The duration of the agreement for a definite period is tacitly extended, each time by the period of time originally agreed on with a maximum of one year, unless client or WMDA should terminate the agreement by serving written notice of termination (*opzeggen*) to the other party, taking into account a notice period of three months prior to the end of the relevant term.

##### Article 7 – Performance of services

1. WMDA will endeavour to provide the services to the best of its knowledge and ability and in a professional and careful manner. All WMDA services are performed on the basis of a best-effort obligation (*inspanningsverplichting*), unless and insofar as WMDA has expressly promised a result in a written agreement and the result concerned has been described in the agreement in a sufficiently precise manner.
2. Possible arrangements about service levels are exclusively agreed in writing in a Service Level Agreement (SLA).

##### Article 8 – Obligation to render assistance

Parties acknowledge that the success of the activities to be carried out in the field of Information Communication Technology (ICT) depends on timely, complete and accurate cooperation between parties. Parties undertake to provide each other all cooperation within reasonable limits and in a timely manner and shall inform each other correctly, promptly and completely about matters reasonably important for the performance of the agreement.

##### Article 9 – Terms and deadlines

1. Delivery terms and/or (delivery) deadlines always apply as target dates and will not be considered strict deadlines (*fatale termijnen*), unless expressly designated as such in the agreement.
2. In the event of late delivery or compliance, the client must notify WMDA in writing, granting WMDA a reasonable period to comply. Default (*verzuim*) and the right to terminate for cause (*ontbinding*) only arise when the latter term is also exceeded by WMDA.

##### Article 10 – Confidentiality

1. The parties are obliged to maintain confidentiality of all information from the other party that they know or should reasonably know to be confidential.
2. The obligations included in this article do not apply if and insofar as provision of the relevant information is

necessary pursuant to a court decision, a statutory requirement or for the proper performance of the agreement.

3. If WMDA carries out work in relation to client data based on a request or authorised order from a government agency or in connection with a legal obligation, all associated costs will be charged to the client.

#### **Article 11 – Privacy**

1. Where WMDA processes personal data on behalf of the client, in such a way that WMDA qualifies as the 'processor' within the meaning of the General Data Protection Regulation (GDPR), the parties will conclude a data transmission and data use agreement with each other that meets the requirements of Article 28(3) General Data Protection Regulation.
2. Where WMDA processes personal data for its own purposes, such that WMDA is considered the 'controller' within the meaning of the GDPR, WMDA will process this data in accordance with its privacy statement. This privacy statement can be consulted via the link in the footer of the wmda.info website.

#### **Article 12 – Information security**

1. If WMDA is obliged to provide some form of information security under the agreement, this protection meets the specifications on security that the parties have agreed on in writing. If the agreement does not include an explicitly defined security method, WMDA has implemented reasonable organisational and technical security measures to secure network and information systems and data under WMDA's control in accordance with applicable data protection and cybersecurity law. These measures form part of WMDA's Information Security Management System, which is certified to ISO/IEC 27001.
2. The client has studied the measures referred to in the previous paragraph, together with any additional security measures, as further agreed, and has concluded that these measures, taking into account the state of the art, the implementation costs, as well as the nature and extent, the context and the processing purposes – and in combination with the security measures that the client takes himself – result in an appropriate level of protection.
3. WMDA does not guarantee that information security is effective under all circumstances.
4. The access or identification codes, certificates and other security resources provided to the client by or on behalf of WMDA are confidential and will be treated as such by the client and will only be made known to authorised members from the client's own organisation. Client is responsible for managing these authorisations (e.g API credentials).

#### **Article 13 – Intellectual property**

1. All intellectual property rights to the digital content made available to the client under the agreement, such as software, websites and data files, or other materials such as analyses, designs, documentation, reports, quotations, as well as preparatory material thereof, rest exclusively with WMDA, its licensors or its suppliers. Client obtains the rights of use that are expressly granted under the agreement concluded between the

parties and by law. A right of use granted to the client is non-exclusive, non-transferable, non-pledgeable (*niet-verpandbaar*) and non-sublicensable.

2. If WMDA is prepared to undertake to transfer an intellectual property right, such undertaking may only be explicitly effected in writing.
3. WMDA indemnifies the client against any claim from a third party which is based on the allegation that software, websites, databases, equipment or other materials developed by WMDA itself infringe an intellectual property right of that third party, on the condition that the client immediately informs WMDA in writing of the existence and content of the claim and leaves the handling of the claim, including any settlements, entirely to WMDA.

#### **Article 14 – Termination for cause**

If the client has already received services in performance of the agreement at the time of termination for cause (*ontbinding*), these services and the associated payment obligations cannot be made undone (*ongedaanmaking*), unless the client proves that WMDA is in default (*verzuim*) with regard to the essential part of the performance due. Amounts that WMDA has invoiced before the termination in connection with what it has already properly performed or delivered in the execution of the agreement, remain due without prejudice to the provisions of the previous sentence and become immediately due and payable at the time of termination for cause.

#### **Article 15 – Liability**

1. WMDA is only liable for direct damages. Liability for indirect damages, including lost profits, consequential damages, losses suffered, missed savings and damages due to business stagnation, is expressly excluded. Client further acknowledges and agrees that WMDA does not provide any medical services and has no involvement in, or responsibility for, any medical decision-making, patient treatment, patient outcomes or clinical processes. Accordingly, WMDA shall not be liable for any claims, damages, losses, or costs arising out of, or related to, individual patient cases, including but not limited to medical decisions, patient outcomes, clinical complications, or any consequences at any point in the medical or operational chain.
2. Any liability for direct damage of WMDA towards the client, on whatever grounds, is limited per event (where a related series of events counts as one event) to the price stipulated for that agreement (excl. VAT). If the agreement is mainly a continuing performance agreement with a term of more than six months, the price stipulated for that agreement is set at the total of the fees (excl. VAT) stipulated for twelve months. Under no circumstances will WMDA's total liability for direct damage, on whatever legal basis, explicitly including each and every failure to meet a guarantee or indemnification obligation, exceed € 50,000 (fifty thousand euros).
3. The limitations of liability included in this article do not apply if the damage is due to intent or gross negligence (*opzet of bewuste roekeloosheid*) on the part of WMDA's management staff.
4. The right to compensation of damages exclusively arises if client reports the damage to WMDA in writing as soon as possible after the damage has occurred. Any

claim for compensation of damages filed against WMDA lapses (*vervalt*) by the mere expiry of a period of eighteen months following the inception of the claim unless client has instituted a legal action for damages prior to the expiry of this term.

5. Client will defend, indemnify and hold harmless WMDA, and its employees, officers, directors, and representatives against any losses arising from or related to any third-party claim that arises from a violation of the agreement by client.

#### **Article 16 – Force majeure**

Neither party will be liable for failure or delay in performance of its obligations to the extent caused by circumstances beyond its reasonable control (*overmacht* within the meaning of Art. 6:75 of the Dutch Civil Code).

#### **Article 17 – Changes**

WMDA may change these general terms and conditions from time to time to reflect changing business conditions. Updates shall not have a material adverse impact on client's rights or obligations under the agreement. WMDA will provide 60 days' prior notice to client before changes become effective. If a change materially adversely affects the client's rights or obligations under the agreement, the client may object in writing within thirty (30) days after receipt of the notice.

#### **Article 18 – Governing law and venue**

1. Agreements between WMDA and the client to which these general terms and conditions apply are exclusively governed by Dutch law, even if an obligation is fully or partially executed abroad. The applicability of the United Nations Convention on Contracts for the International Sale of Goods (Vienna Convention) is excluded.
2. All disputes arising from offers or agreements, however named, will be subject to the judgement of the competent court in The Hague, the Netherlands.

### **SECTION 2. SOFTWARE-AS-A-SERVICE (SAAS)**

*The provisions in this section 'Software-as-a-Service (SaaS)' apply, apart from the general provisions of these general terms and conditions, if WMDA performs services under the name or in the field of SaaS. For the application of these general terms, SaaS is understood to mean a service by which WMDA makes functionality available to and keeps functionality available for client remotely, through the Internet or another data network, without providing client with a physical carrier or download of the relevant underlying software.*

#### **Article 19 – SaaS implementation**

1. WMDA provides the SaaS on behalf of the client. Client may only use the SaaS for its own organisation or company and only insofar as required for the use intended by WMDA. The client may not allow third parties to make use of the SaaS.
2. WMDA may adjust the content or scope of the SaaS. If such adjustments are substantive and result in a change in client's current procedures, WMDA will inform the client about this as soon as possible. Costs

related to client adjustments to changes will be borne by the client.

3. WMDA may continue to provide the SaaS using a new or modified version of the underlying software. WMDA is not obliged to maintain, modify or add particular features or functionalities of the SaaS specifically for the client, unless expressly agreed otherwise.
4. All clients serviced may be subject to SaaS service interruptions for preventive, corrective or adaptive maintenance. WMDA will make its best effort to minimize the period of time during which the SaaS is out of operation and endeavours, where possible, to perform maintenance at times when worldwide SaaS utilization is at its lowest.
5. Under no circumstances will WMDA be obligated to provide the client with a physical carrier or download of the underlying software.
6. If no further arrangements have been made in this regard, client itself is responsible for configuring the SaaS, converting and uploading possible data and, where required, for modifying the hardware and user environment used.

#### **Article 20 – Guarantees**

1. WMDA does not guarantee that the SaaS is free of errors and does not guarantee it functions without any interruptions. WMDA will make its best efforts to repair errors in the underlying software within a reasonable period if and insofar as underlying software is concerned that has been developed by WMDA itself and the relevant errors have been reported to WMDA in writing by the client in detail. Where appropriate, WMDA may postpone repairing errors until a new version of the underlying software is put into service. WMDA does not guarantee that errors in parts of the SaaS that have not been developed by WMDA itself, including errors caused by third-party services and APIs, will be repaired. WMDA is entitled to implement temporary solutions, program bypasses or problem avoiding restrictions in the SaaS, if accompanied by a written remediation plan with defined timelines for permanent resolution. WMDA is never obliged to repair imperfections other than those referred to in this article.
2. Where these general terms and conditions refer to the term 'errors', this is understood to mean a substantial failure of the SaaS to meet the functional or technical specifications explicitly made known by WMDA in writing. An error only exists if it can be demonstrated by the client and if it is reproducible. Client is obliged to report errors without delay.
3. WMDA shall ensure that the SaaS remains compliant with data protection and cybersecurity law applicable to WMDA. WMDA does not guarantee that the SaaS will always be adapted in a timely manner to changes in relevant laws, rules and regulations applicable to client.

#### **Article 21 – Commencement of the service**

The SaaS to be provided by WMDA (and associated support) commences within a reasonable period after entering into the agreement. Unless otherwise agreed, the SaaS commences when WMDA makes available the means to gain access to the SaaS. The client ensures that, after entering into the agreement, he provides all relevant

information and data required for the start-up phase in a timely, accurate, and complete manner, including but not limited to corporate identity designs and, where applicable, APIs.

#### **Article 22 – Payment**

In the absence of an agreed payment schedule, all amounts relating to the SaaS provided by WMDA are payable in advance each calendar year.

#### **Article 23 – Support**

If WMDA's services under the agreement also include support to users and/or administrators of the SaaS, WMDA will advise online, by telephone or by email about the use and functioning of the SaaS. Specific arrangements regarding the availability of support teams, eligibility for support and response times may be recorded in writing in a Service Level Agreement (SLA).

#### **Article 24 – Acceptable use**

1. At all times, client acts with due care and does not act unlawfully vis-à-vis third parties.
2. If the SaaS allows the client to upload content, including but not limited to text, images and video, into the SaaS or link to such content via the SaaS, client guarantees that such content (i) is not unlawful or discriminatory and does not incite violence; (ii) does not infringe any proprietary rights, including but not limited to the copyright, trademark or trade secret rights, of any third party; (iii) does not infringe the privacy of third parties; (iv) does not contain or install any viruses, worms, malware, Trojan horses or other harmful or destructive content; and (v) is not spam or promotes or facilitates other unlawful acts.
3. Client indemnifies WMDA against any claim from a third party based on the allegation that content uploaded by the client in the SaaS or to which the client has linked via the SaaS infringes a right of that third party.

#### **Article 25 – Notice and Take Down**

1. To prevent possible liability to third parties, WMDA is always entitled to take measures with respect to client data or client's access to WMDA systems. Before taking such measures, WMDA will make reasonable efforts, to the extent legally permitted, to consult with the client. In the event of a breach or an imminent breach of Article 24.1 or 24.2, WMDA is entitled to deny client access to WMDA's systems with immediate effect and without prior notice only where reasonably necessary to prevent material harm, legal non-compliance, or a serious information security incident. All of this is without prejudice to WMDA taking any other measures or exercising any other statutory and contractual rights with respect to client.
2. WMDA cannot be expected to form an opinion on the validity of the claims of third parties or of client's defence, or to become involved, in any way whatsoever, in any dispute between a third party and client. Client is to deal with the relevant third party in this matter and is to inform WMDA in writing, properly substantiated and supported by documents.