

# General terms and conditions for the development of bespoke functionality



 **Workspace365**

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# Workspace 365 | General terms and conditions for the development of bespoke functionality

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## 1. Version June 2019

These standard terms and conditions are used by New Day at Work B.V. Berencamperweg 6D, 3861 MC Nijkerk ("we", "our" or "us") and shall apply to all oral and written offers and resulting agreements for the development and subsequent introduction of bespoke functionality in Workspace 365 or in (changes or enhancements of) Business Apps.

## 2. Definitions

The terms used in these general terms and conditions have the following meaning without the requirement to identify them with a capital letter.

- 2.1 **Agreement:** The agreement for the development of bespoke Workspace 365 and Business Apps functionality, which is composed exclusively of our offer, the functional design, project planning and these terms and conditions.
- 2.2 **Business App:** Additional functionality specific to your business, which is provided by us or by you licensor on top of Workspace 365 in exchange for a supplementary subscription fee.
- 2.3 **Bespoke Functionality:** The specific functionality as described in the functional design, which we will add to Workspace 365 or introduce by means of a new Business App or an upgrade of an existing Business App.
- 2.4 **Defects:** A discrepancy of the delivered Bespoke Functionality with the functional design.
- 2.5 **Functional design:** A description of the Bespoke Functionality.
- 2.6 **Intellectual Property Rights:** Copyright, patent rights, trade secret rights and database rights.
- 2.7 **Offer:** Our offer for the development of Bespoke functionality.
- 2.8 **Sprint:** A specific period of time during which we will realize a predefined part of the Bespoke functionality.
- 2.9 **Terms and Conditions:** These Standard terms and conditions for the development of bespoke Workspace 365 and Business Apps functionality.

- 2.10 You: The subscriber of Workspace 365 to which we have directed our offer or with whom we have entered into an agreement.

### 3 Scope

- 3.1 You and we will enter into an agreement when you sign our offer and return this signed offer back to us. By entering into an agreement you and we agree that in response to your specific prior request we shall develop the Bespoke Functionality in accordance with and as described in the agreement. In exchange for the performance of our obligations you agree to pay us the development fee that we have specified in the offer.
- 3.2 Our offer expires on the expiration date mentioned in the offer. If we haven't specified an expiration date in our offer it expires 14 days after the date of transmission of the offer.
- 3.3 You agree that "bespoke" only means that in consideration of your payment of the development fee we shall prioritize the development of the Bespoke Functionality in our roadmap for Workspace 365. You accept that you won't have a copyright or other intellectual property right in the Bespoke Functionality nor shall you be entitled to restrict us in any way from offering the Bespoke Functionality to other Workspace 365 subscribers.
- 3.4 Any dates or terms specified in our offer, functional design, project planning these terms and conditions, shall be indicative only and shall not represent a fatal term. If we do not meet a date or exceed a term we shall only be in default if you have send us a prior written notice of default by which you have provided us with a reasonable term to correct our default and we have failed to do so within that reasonable term.
- 3.5 The development fee is always specified in Euro's and without VAT.
- 3.6 In case you respond to our offer by applying your own general purchasing terms or other terms and conditions, these terms and conditions shall not be applicable to the agreement and we shall consequently not be bound by them.

### 4. Development Process

- 4.1 On the date we have entered into an agreement with you, we will commence drawing up the functional design of the Bespoke Functionality. The functional design shall be drawn up by us in consultation with you and presented to you for acceptance. We shall start developing the Bespoke Functionality once you have accepted the functional design. You shall provide us at your cost with your timely cooperation and resources that we may reasonably require to deliver the functional design and the Bespoke Functionality to you on the agreed milestone dates.

- 4.2 When we you have accepted the functional design we will allocate the agreed upon functional elements of the Bespoke Functionality to one or more predefined sprints of 3 weeks and will provide you with a written project planning for these sprints. The project planning will include a start date and a delivery date for the end-result of each sprint. The result a sprint will be delivered to you by presenting a demo of the developed functionality to you.

## 5. Acceptance procedure

- 5.1 You shall commence testing the delivered Bespoke Functionality for any Defects on the date of delivery of the last sprint. The outcome of your test shall be that you either (i) accept the Bespoke Functionality or (ii) notify us per e-mail that the Bespoke Functionality has one or more defects. In your notification you shall identify the defect and provide us with the information which we may reasonable require to replicate them. If you fail to confirm the outcome of your test to us within 7 days after the date of delivery of the last sprint you shall be deemed to have accepted the Bespoke Functionality.
- 5.2 We shall correct defects in the Bespoke Functionality within 30 days after our receipt of your notification. When we have corrected the defects we shall again deliver the Bespoke Functionality to you. Upon our delivery article 4.1 shall apply accordingly.
- 5.3 You accept that you shall only be entitled to withhold your acceptance of the Bespoke Functionality if it has material defects. This is notwithstanding our obligation to you to correct non-material defects within 1 month after the date of your acceptance.
- 5.4 If you haven't accepted the Bespoke Functionality after we have delivered it to you for a second time, you may terminate the agreement without any resulting liability to us. The fact that you are withholding your acceptance does not restrict us from enabling other Workspace 365 users to use the Bespoke Functionality and to subscribe to any Business Apps that carry the Bespoke Functionality.
- 5.5 The correction of defects that arise later than 1 month after the date of your acceptance is subject to the maintenance terms that are part of your current Workspace 365 subscription.
- 5.6 Your acceptance of the Bespoke Functionality shall mean that you unconditionally confirm to us that we have developed the App in accordance with the agreement. This is notwithstanding our obligation pursuant to article 4.3 to correct non-material defects in the Bespoke Functionality.

## 6. Additional work

- 6.1 If you request us to include functional elements in the Bespoke Functionality which are outside of the scope of our offer and/or functional design, this extra functionality shall be qualified as additional work. If we qualify requested functional elements as additional work, we shall tell you in writing prior to realizing these functional elements as part of the Bespoke Functionality.
- 6.2 For additional work you shall be required to pay an extra development fee. Additional work shall be the subject of a supplemental offer.
- 6.3 You accept that our agreement to perform additional work may result in a later delivery of the Bespoke Functionality. Previously agreed planning dates may change as the consequence of the performance of additional work or additional work may require the addition of an extra sprint.

## 7. License

- 7.1 When you have accepted the Bespoke Functionality, we shall take update the current working version of Workspace 365 accordingly or enable you to subscribe to the Business App which carries the Bespoke Functionality, pursuant to the terms, and for the duration, of your current Workspace 365 subscription.
- 7.2 Your right to use the Bespoke Functionality is subject to your payment in full of the development fee.
- 7.3 You agree that if you don't accept the bespoke Business Functionality and consequently terminate the agreement pursuant to article 4.4 we shall have the right to deny you a subscription for any Business App, which carries all, or part of the Bespoke Functionality.

## 8. Intellectual Property Rights

- 8.1 All intellectual property rights that vest in the Bespoke Functionality, the functional design and any know-how incorporated therein, shall belong to us.
- 8.2 If by application of the law you are entitled to claim a copyright in the Bespoke Functionality or in the functional design you hereby agree to transfer this copyright to us. For such purpose the agreement shall be regarded as a deed within the meaning of article 2 of the Copyright Act (Auteurswet).
- 8.3 If the establishment of a right in the Bespoke Functionality or the functional design requires the filing of an application with a competent body, you hereby provide us with an irrevocable power of attorney to file such an application on your behalf.

## 9. Your information

- 9.1 You warrant to us that the information you provide to us in the course of the development of the Bespoke Functionality, including the information that we use to draw up the functional design, is 100% accurate, complete, in accordance with the general business practices in the industry in which you are active and does not violate any third party right.
- 9.2 All information that you provide to us in the course of the development of the Bespoke Functionality, including the information that we use to draw up the functional design, is provided free of charge by you and without any applicable use restrictions (applied by yourself or by a licensor).

## 10. Warranty

- 10.1 We do not warrant that the Bespoke Functionality shall meet your intended purpose nor that it shall function without interruption or defects.
- 10.2 We shall not be required to repair or replace your data that was processed by means of the Bespoke Functionality.

## 11. Payment

- 11.1 You shall pay us the development fee that is specified in our offer per sprint. 50% before the start of each sprint and 50% when we have delivered the result of the sprint to you. You shall pay each invoice within 14 days of the date that is listed on the invoice.
- 11.2 If you terminate the agreement pursuant to article 4.4 we shall issue a credit invoice to you for the amount you already paid to us until the date of termination and shall pay the amount identified on the credit invoice back to you within 30 days after the date of the credit invoice.
- 11.3 If you haven't paid us upon the date of expiration of the payment term of an invoice you shall be immediately in default (verzuim) without a requirement for us to send you a prior written notice of default. As a result of your default you shall be liable to pay us legal commercial interest over the outstanding amount from the date of expiration of the payment term. In addition, we can require you to pay statutory out of court debt collection fees to us.

## 12. Limitation of liability

- 12.1 Our total liability for any direct damages that you or a third party may incur as a result of our attributable failure to perform a material obligation arising from the agreement or because of an act of tort, is limited to development fee that you have actually paid to us
- 12.2 We are not liable for any indirect damages. Indirect damages include but are not limited to: consequential damages, loss of profit, loss of revenue, loss of savings and damages due to loss or corruption of your data and documents.
- 12.3 Our total liability for damages resulting from material damages to property, death or personal injury is limited to an amount of EUR 1.000.000,-.
- 12.4 You shall need to claim any damages no later than 3 months after you have become first aware of them. If you fail to do so your claim shall expire and we shall no longer be liable for these damages.
- 12.5 No limitation of liability applies in case the damages are directly attributable to the willful misconduct or gross negligence of our senior management.

## 13. Applicable law and competent court

- 13.1 The law of the Netherlands shall apply to the agreement. The applicability of the Vienna Convention of 1980 on the sale of Goods (CISG) is excluded.
- 13.2 All disputes in connection with the agreement shall exclusively be settled by the competent court in the city of Utrecht.