TERMS & CONDITIONS

CLIENT AGREEMENT

Last updated November 2026 · Tunga B.V. · KvK 67015697

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Welcome to the Tunga Client Agreement. Tunga is a talent partner: it makes software developers and other digital professionals from Africa available to work in its clients' teams, and supports clients and developers throughout each engagement.

This Client Agreement contains the terms & conditions that apply to the usage of the Tunga Website, Staff Augmentation Services and/or Consulting Services (together the Services). The Services are provided on a remote basis and offered exclusively to businesses and not to consumers. Using the Tunga Website and/or Services is only allowed after agreeing with these terms & conditions. Thus the Tunga Client Agreement is a lawful agreement between you and Tunga covering all aspects of the Services. Any applicability of terms & conditions of the Customer is denied.

Tunga may amend this Client Agreement. The amended version applies to Proposals accepted after its publication on the Website. For Service Contracts that are already running, the amended version applies thirty (30) days after Tunga has notified the Customer of it by email. If the Customer does not accept the amendment, it may terminate the affected Service Contract by written notice within that period, with effect from the date on which the amendment would otherwise apply. Amendments that are solely in the Customer's favour, or that are required by law, apply immediately.

DEFINITIONS

In this Client Agreement, unless the context otherwise requires, the following terms shall have the following meanings:

Confidential Information: Shall include, but not necessarily be limited to, all information which is not publicly known including the business, finances, technology (including without limitation the Software and the Work Product) trade secrets, and any other commercially sensitive information of either party regardless of its nature.

Consulting Services: All services specifically requested by the Customer and provided on a remote basis, including scoping activities consisting of a detailed analysis of Customer demand and Freelancer availability in order to create a complete team with all required skills for the full Customer demand.

Customer (also referred to as "you"): A business that engages Freelancers through Tunga and/or orders separate Services.

Freelancer: An independent software developer who has entered into a Developer Agreement with Tunga and who is made available by Tunga to the Customer on a remote basis, either individually or as part of a Managed Team.

Intellectual Property Rights: All copyrights and other intellectual property rights, howsoever arising and in whatever media, whether or not registered, including (without limitation) patents, trademarks, service marks, trade names, registered design and any applications for the protection or registration of these rights and all renewals and extensions thereof throughout the world.

Managed Teams: A combination of dedicated Freelancers and a team leader, working on a remote basis in the Customer's team as described in Article 2.2 and provided by Tunga.

Price: The fees for the Services as set out in the Proposal, which may take the form of a fixed price, a weekly or monthly fee, and/or Rates.

Proposal: Document in which Tunga outlines the terms and scope of the specific Services to be provided and/or the (team of) dedicated Freelancer(s) that will be provided.

Rates: The hourly, daily, weekly or monthly fees that apply to the allocation of Freelancers.

Service Contract: A formal agreement between Customer and Tunga that includes:

- this Client Agreement;
- the specific terms of the Services as agreed in the Proposal;
- the Tunga Data Processing Agreement or, where applicable, the data processing agreement agreed under Article 11.2; and
- any additional agreement between Customer and Tunga that is signed by both parties and does not conflict with this Client Agreement.

Services: The Staff Augmentation and Consulting Services provided by Tunga to the Customer on a remote basis as agreed upon in a Service Contract.

Software: The software to which contributions are made by a Freelancer.

Staff Augmentation Services: Services consisting of matching the staffing demand of the Customer with Freelancers, including Managed Teams, making the capacity of those Freelancers available to the Customer's team, and supporting the Customer and the Freelancers during the assignment.

Tunga: Tunga B.V., registered at Jan van Ghestellaan 40, 3054 CJ Rotterdam, The Netherlands (Chamber of Commerce nr: 67015697).

Website: The website operated by Tunga, which is hosted at https://tunga.io, and all the services, tools and applications offered there.

Work Product: All works, software (including source and object code), documentation, designs and other results created by a Freelancer for the Customer in the performance of the Services, including results generated with the assistance of AI tools.

ARTICLE 1

USING THE TUNGA WEBSITE & SERVICES

1.1 The Services are offered to businesses only. You cannot use the Services if you:

- act as a consumer, meaning a natural person not acting in the course of a business or profession;
- are legally not allowed to enter into contracts by the laws governing your country of residence; or
- have been suspended as a Customer by Tunga.

1.2 The Customer is obliged to provide Tunga only with valid, accurate and true information into its Tunga Account or otherwise.

1.3 If you act on behalf of a legally registered company, you declare to have all necessary power of attorney to solicit Services from Tunga on behalf of this legally registered company.

1.4 The Customer is responsible for maintaining the secrecy of its account information, including username and password. In the event of misuse or suspected misuse of its account, the Customer must immediately notify Tunga.

1.5 The Customer is not entitled to perform any actions that would interfere with the proper working of the Website and the Services.

ARTICLE 2

ENGAGING FREELANCERS

2.1 The agreement to engage Freelancers shall be dependent on the acceptance of a Proposal issued by Tunga.

2.2 Freelancers, whether provided individually or as part of a Managed Team, work as part of the Customer's team. The Customer determines the requirements, priorities and planning of the work. The Freelancer determines the method, manner and means of performing the work, within the Customer's requirements and policies. Tunga does not direct or supervise the Freelancer's day-to-day work. No employment relationship is created between the Customer and any Freelancer, nor between Tunga and any Freelancer.

2.3 Unless the Proposal provides otherwise, during the first four weeks of a Freelancer's assignment either party may terminate that assignment at any time with a notice period of one working day. After the first four weeks, either party may terminate the assignment with a notice period of four weeks. Notice must be given in writing, which includes email.

2.4 Tunga will use reasonable efforts to keep the same Freelancer available to the Customer for the duration of an assignment.

2.5 If a Freelancer becomes unavailable, or if the Customer notifies Tunga in writing, with reasons, that a Freelancer does not meet the profile described in the Proposal or is not a good fit for the Customer's team, Tunga will propose a replacement Freelancer at no additional cost and as soon as reasonably possible. This applies throughout the assignment and is not limited to an initial period.

2.6 Replacement in accordance with Article 2.5, and termination in accordance with Article 2.3, are the Customer's sole and exclusive remedies for any shortcoming in the performance, quality or fit of a Freelancer, without prejudice to Article 14.5.

2.7 Tunga supports the Customer and the Freelancers during each assignment, for example through regular check-ins. Tunga does not, however, warrant or guarantee the quantity, quality or timeliness of the work performed by Freelancers or of any Work Product, or that any deadline set by the Customer will be met.

ARTICLE 3

OBLIGATIONS OF TUNGA

3.1 Tunga will perform the obligations described in the Proposal.

3.2 Tunga shall select Freelancers with care, in accordance with Article 13.1, and shall only propose Freelancers whose skills and experience, in Tunga's reasonable assessment, match the profile described in the Proposal.

3.3 Tunga shall ensure that all Freelancers engaged by the Customer shall comply with the provisions in this Client Agreement relating to Confidential Information.

ARTICLE 4

OBLIGATIONS OF THE CUSTOMER

4.1 Customer agrees to assume the following responsibilities when it engages Freelancers, as far as reasonably relevant:

- Onboarding the Freelancer(s) to the development team, including but not limited to:
  - Establish clear rules of engagement and communicate these to the Freelancer(s);
  - Grant access to all relevant tools and information (source code, designs, issue management tool, hour tracking tool etc.);
  - Providing and maintaining a secure work environment in accordance with Article 5.
- All project management related to the development team, including but not limited to:

    - Hour registration, estimation and project planning;
    - Prioritizing of work and distribution of tasks;
    - Monitoring progress;
    - Requirements analysis;
    - Management of all resources including the team leaders in case of a managed team.
- Establish clear quality guidelines for the Freelancer(s) on the development team.
- Provide direction for the execution of tasks to the Freelancer(s) (a clear direction of architecture, product components to be implemented, specific software tools and libraries to use, Definition of Done, Coding Guidelines etc).
- Testing all delivered software within 5 working days of delivery by the Freelancer(s).
- Providing timely and regular feedback to both the Freelancer(s) and Tunga:
    - Provide weekly feedback on the performance of the Freelancer to the Freelancer(s);
    - Report missed hours by the Freelancer to Tunga within 5 working days;
    - Report performance issues of the Freelancer to Tunga within 3 working days;
    - Report incorrect invoices to Tunga within 10 working days.

4.2 Once the timelines mentioned above have expired, this will be regarded as acceptance of the delivery of services by Tunga.

4.3 Customer ensures that its representative is available as reasonably required by Tunga.

4.4 Tunga shall not be deemed in breach of this Client Agreement or the Services in the event Tunga's failure to meet its responsibilities and time schedules is caused by Customer's failure to meet (or delay in) its responsibilities, obligations and time schedules set forth in this article, Article 5 and the Proposal.

ARTICLE 5

SECURITY OF THE WORK ENVIRONMENT

5.1 The Customer is responsible for the security of the environment in which Freelancers perform work for the Customer. This includes: (a) determining the security requirements that apply, based on the Customer's own risk assessment; (b) granting, managing, limiting and revoking access to its systems, source code, data and tools on a need-to-know and least-privilege basis; (c) providing secure means of access, such as VPN, virtual desktops, managed accounts and multi-factor authentication; (d) providing managed devices where the Customer requires work to be performed on managed hardware; (e) monitoring access and activity within its own systems; and (f) revoking all access promptly at the end of each assignment.

5.2 Before the start of each assignment, the Customer shall inform Tunga in writing of any security, privacy or compliance policies that apply. Tunga will require the Freelancer to comply with them.

5.3 Tunga requires Freelancers to comply with its Device Security Checklist. This is a baseline measure only and does not replace or transfer the Customer's responsibility under Article 5.1. Freelancers work on their own devices unless the Customer provides devices. Tunga does not manage, monitor or control those devices; its responsibility in respect of them is set out in Article 5.4.

5.4 Responsibility for security incidents relating to the Services is allocated by cause, not by the place where they occur.

(a) The Customer is responsible for incidents caused by or originating from: (i) the configuration, infrastructure, access controls, policies or other security measures of the Customer's environment, including access rights the Customer has granted; and (ii) work performed by a Freelancer in good faith in accordance with the Customer's instructions.

(b) Tunga is responsible for incidents caused by or originating from: (i) its own acts or omissions, including the selection and contracting of Freelancers and informing them of their obligations; (ii) systems and accounts controlled by Tunga; and (iii) a Freelancer's failure to comply with the Device Security Checklist or with the policies communicated under Article 5.2, including careless handling of access granted by the Customer.

(c) A Freelancer's failure to comply with the Device Security Checklist is not work performed in accordance with the Customer's instructions, unless the Customer expressly instructed that non-compliance in writing.

(d) Where both parties contributed to an incident, responsibility is apportioned according to each party's contribution.

(e) Where an incident is not caused by either party as described in paragraphs (a) and (b), each party bears its own damage.

(f) Tunga's liability under this Article is subject to Article 14.

5.5 Each party shall notify the other without undue delay, and in any event within 48 hours, after becoming aware of a security incident relating to the Services.

ARTICLE 6

EXECUTION OF THE SERVICES

6.1 Each party shall nominate in writing upon the signing of this Client Agreement the person who will act as its representative for the purposes of this Client Agreement and who will be responsible for providing any information which may be required by the other party to perform its obligations under this Client Agreement.

6.2 The parties shall determine in the Proposal how often their respective representatives will (virtually) meet during the term of this Client Agreement.

6.3 Tunga may perform any or all of its obligations under this Client Agreement through agents or subcontractors, including Freelancers, provided that Tunga remains responsible towards the Customer for the performance of its own obligations under this Client Agreement, subject to the limitations and exclusions set out in Article 14.

ARTICLE 7

TERM & TERMINATION

7.1 This Client Agreement enters into force when the Customer accepts its first Proposal and is entered into for an indefinite period.

7.2 This Client Agreement cannot be terminated as long as a Service Contract is in place on the basis of which Services are (still to be) provided.

7.3 If no Service Contract is in place, either party may terminate this Client Agreement at any time by written notice.

7.4 Either party shall be entitled to terminate this Client Agreement forthwith at any time by written notice to the other party if:

- the other party commits a breach of any of the terms of this Client Agreement and (if the breach is capable of remedy) fails to remedy the breach within 30 days after receipt of notice in writing to do so; or

- the other party becomes subject to an administration order; a receiver or administrative receiver or similar is appointed over, or an encumbrancer takes possession of any of the other party's property or assets; the other party enters into an arrangement or composition with its creditors, ceases or threatens to cease to carry on business, becomes insolvent, ceases to be able to pay its debts as they fall due or becomes subject to international sanctions, or Tunga reasonably believes that the Customer has become subject to such sanctions.

7.5 Forthwith upon the termination of this Client Agreement, Tunga shall return to the Customer the Software, all related materials and documentation and any Confidential Information belonging to the Customer and all copies of the whole or any part thereof or, if requested by the Customer, shall destroy the same and certify in writing to the Customer that it has been destroyed.

7.6 Any termination of this Client Agreement (howsoever occasioned) shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

7.7 Upon termination Customer shall pay Tunga for all Services rendered and work performed up to the effective date of termination for any reason.

ARTICLE 8

PRICE & PAYMENT TERMS

8.1 In consideration of the performance of the Services, the Customer shall pay to Tunga the Price which shall be invoiced to the Customer in the specified proportions set out in the Proposal. If any additional Services are requested, Rates mentioned in the Proposal shall apply.

8.2 The Customer shall pay to Tunga the amounts invoiced by Tunga to the Customer based on the Rates.

8.3 The Customer shall also pay or procure the payment to Tunga of all reasonable travelling and other out-of-pocket expenses incurred by Freelancers and Tunga employees, as long as they were pre-approved by the Customer.

8.4 Payment of sums due by the Customer to Tunga shall be made within the time and other conditions set out in the Proposal.

8.5 With effect from the beginning of each calendar year, Tunga may increase the Rates in effect during the previous year, provided that not less than 10 working days prior written notice has been given to the Customer by Tunga.

8.6 All amounts under this Client Agreement and/or a Proposal are exclusive of VAT, which shall be payable by the Customer at the rate and in the same manner for the time being prescribed by law against submission of a valid tax invoice.

8.7 Unless the Proposal provides otherwise, Tunga invoices only the hours actually worked by Freelancers. Hours not worked, for example due to holidays, illness or a replacement, are not invoiced.

8.8 If the Customer fails to pay an invoice when due, the Customer owes statutory commercial interest under article 6:119a of the Dutch Civil Code from the due date, as well as the reasonable extrajudicial collection costs. If an invoice remains unpaid five (5) working days after a written reminder, Tunga may suspend the Services, including the work of the Freelancers, until the overdue amounts have been paid.

ARTICLE 9

INTELLECTUAL PROPERTY RIGHTS

9.1 The Intellectual Property Rights in the Work Product, together with any related materials or documentation, are hereby assigned by Tunga to the Customer, by way of advance assignment of future rights, with effect from the moment the Customer has paid the invoice covering the period in which that Work Product was created. Until that invoice has been paid in full, the Customer only has the non-exclusive licence referred to in Article 9.2, which is revocable: if the invoice remains unpaid thirty (30) days after Tunga has sent the Customer a written reminder, Tunga may revoke that licence for the Work Product created in the period covered by that invoice. Tunga shall procure that each Freelancer has assigned these rights to Tunga.

9.2 Until the relevant invoice has been paid, Tunga grants the Customer a non-exclusive, non-transferable licence to use the Work Product for its own business purposes.

9.3 Where a Freelancer incorporates intellectual property that the Freelancer owned before the assignment, or developed independently of it ("Pre-existing IP"), into the Work Product, Tunga grants the Customer, upon payment of the relevant invoice, a perpetual, irrevocable, worldwide, royalty-free licence to use, modify and exploit that Pre-existing IP as part of the Work Product. Tunga requires Freelancers to disclose any intention to incorporate Pre-existing IP in advance.

9.4 Freelancers may only incorporate third-party or open-source components into the Work Product where this is permitted under the Customer's policies or approved by the Customer. The Customer is responsible for setting these policies and for approving the use of such components.

9.5 This Article applies equally to Work Product generated with the assistance of AI tools. The Customer is responsible for setting any policies on the use of AI tools by Freelancers in its projects.

9.6 Tunga shall notify the Customer immediately if Tunga becomes aware of any unauthorised use of the whole or any part of the Work Product by any person.

ARTICLE 10

CONFIDENTIALITY

10.1 Both during this Client Agreement and after its termination, the parties shall treat as strictly confidential (and shall procure that its personnel and subcontractors and each of them treat as confidential) and shall not (and shall procure that their personnel and subcontractors and each of them does not), other than in the proper provision of the services required to fulfil the task, use or disclose to any person, firm or company any Confidential Information belonging to the other party or its clients, suppliers or customers, nor permit its use or disclosure. In particular, both parties shall protect any source code provided by the other party with appropriate security measures. Subject to Article 5, both parties shall take adequate security measures according to professional standards to protect Confidential Information disclosed by the other party on their systems. Both parties shall actively inform the other party when they believe that Confidential Information has been compromised.

10.2 The provisions of clause 10.1 shall not apply where Confidential Information is divulged to:

- either party's own employees, and then only to those employees who need to know the same;
- either party's subcontractors, including Freelancers, who need to know the Confidential Information for the performance of the Services and who are bound by confidentiality obligations no less strict than those in this Article;

- either party's auditors, tax authorities, a court of competent jurisdiction, governmental body or applicable regulatory authority and any other persons or bodies having a right, duty or obligation to know the business of the other party, and then only in pursuance of such right, duty or obligation.

10.3 Both parties undertake to ensure that persons and bodies referred to in clause 10.2 are made aware, before the disclosure of any part of the Confidential Information, that the same is confidential and that they owe a duty of confidence to the other party.

10.4 Each party to this Client Agreement shall promptly notify the other party if it becomes aware of any breach of confidence by any person to whom it divulges all or any part of the Confidential Information, and shall give the other party all reasonable assistance in connection with any proceedings which the other party may institute against such person for breach of confidence.

10.5 The provisions of this clause shall survive the termination of this Client Agreement, but the restrictions contained in clause 10.1 shall cease to apply to any information which may come into the public domain otherwise than through unauthorised disclosure.

ARTICLE 11

DATA PROTECTION

11.1 Where Freelancers process personal data on behalf of the Customer in the performance of the Services, the Customer acts as controller, Tunga as processor and each Freelancer as sub-processor of Tunga. The Tunga Data Processing Agreement attached as Annex 1 to this Client Agreement applies to that processing and forms part of each Service Contract, without the need for a separate signature.

11.2 The Customer and Tunga may agree in writing that a data processing agreement provided by the Customer applies instead of the Tunga Data Processing Agreement for one or more Service Contracts. That agreement then forms part of the Service Contract in its place. Where that agreement contains provisions on liability, including any cap, exclusion or indemnity, those provisions govern liability under or in connection with it instead of Article 14, and Freelancers have the benefit of the limitations of liability that apply to Tunga under that agreement. Where that agreement contains no provisions on liability, Article 14 applies. A data processing agreement that the Customer and Tunga signed before this version of the Client Agreement applied to them is an agreement under this Article 11.2.

11.3 The Customer informs Tunga before the start of each assignment whether Freelancers will have access to personal data and, if so, which categories of data subjects and types of personal data are involved, including any special categories of personal data. The Customer also informs Tunga of any data protection law other than the GDPR that applies to the processing.

11.4 Tunga shares profiles of Freelancers, which contain personal data, with the Customer for the purpose of selection. The Customer shall use this information only to assess and engage Freelancers through Tunga, shall keep it confidential, shall comply with the GDPR in doing so, and shall delete the profiles of Freelancers it does not engage once the selection has been completed.

11.5 Tunga processes the personal data of the Customer's contact persons in accordance with its privacy notice, as published on the Website.

ARTICLE 12

EXCLUSIVITY & NON-SOLICITATION

12.1 Tunga shall not use the Work Product or the Customer's Confidential Information to develop, market or sell a product that competes with the Customer's product.

12.2 Tunga hereby covenants and agrees that it has no rights to market, distribute, sell or license any of the applications or deliverables being developed by Freelancers for Customer.

12.3 The Customer shall not, directly or indirectly, solicit, hire, contract with or engage the services of any Freelancer that Tunga has introduced or proposed to the Customer, other than through Tunga. This restriction applies during the assignment of that Freelancer and for twelve (12) months after that Freelancer's last assignment for the Customer has ended or, for a Freelancer who was introduced or proposed but not engaged, for twelve (12) months after the introduction. Tunga shall not solicit, hire, contract with or engage the services of any of the Customer's staff during the term of this Client Agreement and for twelve (12) months after its termination.

12.4 The Customer may engage a Freelancer directly, or through a third party, outside Tunga, provided that the Customer notifies Tunga in writing in advance and pays Tunga a one-off conversion fee of EUR 20,000 (twenty thousand euros) per Freelancer. The conversion fee is due upon the start of the direct engagement. After payment, the restriction in Article 12.3 no longer applies to that Freelancer.

12.5 If the Customer engages a Freelancer in breach of Article 12.3 without following Article 12.4, the conversion fee set out in Article 12.4 is nevertheless due. If Tunga breaches its obligation in Article 12.3 with respect to the Customer's staff, the Customer is entitled to compensation of the damage it suffers. Each party may also seek injunctive relief.

12.6 Clause 12.3 applies to the Customer as a legal entity and also to any other company, partnership, employee relationship, contracted relationship or similar that the Customer or one of its employees and subcontractors enter into.

ARTICLE 13

WARRANTIES

13.1 Tunga warrants that the selection of Freelancers takes place in a professional manner and in conformity with generally prevailing industry standards.

13.2 This warranty is exclusive. To the extent permitted by law, all other warranties and representations, whether express or implied, are excluded, including any oral or written representations, proposals or statements made on or before the effective date of this Client Agreement.

13.3 The Services do not constitute a technology development contract. The Customer is solely responsible for the development of its technology and products, including the Work Product incorporated therein, and, except as set out in Article 9 and this Article 13, the Customer bears all risks relating to its technology and products.

ARTICLE 14

LIABILITY

14.1 Tunga's maximum aggregate liability to the Customer under or in connection with this Client Agreement and any Service Contract, for any cause whatsoever (whether in the form of the additional cost of remedial services or otherwise), will be for direct costs and damages only and will be limited to the lower of (i) the fees paid by the Customer to Tunga for the Services that are the subject of the claim during the six (6) months preceding the event giving rise to the claim, and (ii) EUR 35,000.

14.2 The parties acknowledge and agree that the limitations contained in this Article 14 are reasonable in the light of all the circumstances.

14.3 In no event will Tunga be liable for any damages resulting from loss of data or use, lost profits, loss of anticipated savings, nor for any damages that are an indirect or secondary consequence of any act or omission of Tunga, whether such damages were reasonably foreseeable or actually foreseen.

14.4 All liability that is not expressly assumed in this Client Agreement is excluded. These limitations will apply regardless of the form of action, whether under statute, in contract or tort including negligence or any other form of action. For the purposes of this Article 14, Tunga includes its employees, subcontractors (including Freelancers) and suppliers who shall all have the benefit of the limits and exclusions of liability set out above.

14.5 Nothing in this Client Agreement shall exclude or limit liability for fraud, or for damage caused by the intent or gross negligence of a party's management.

ARTICLE 15

GOVERNING LAW & JURISDICTION

15.1 The laws of the Netherlands are applicable if any disputes arise concerning this Client Agreement.

15.2 All disputes arising from or in connection with this Client Agreement shall be submitted exclusively to the competent court in Rotterdam, the Netherlands.

ARTICLE 16

FORCE MAJEURE

16.1 Notwithstanding anything else contained in this Client Agreement, neither party shall be liable for any delay in performing its obligations under this Client Agreement if such delay is caused by circumstances beyond its reasonable control (including without limitation any delay caused by any act or omission of the other party), provided however that any delay by a subcontractor or supplier of the party so delaying shall not relieve the party from liability for delay except where such delay is beyond the reasonable control of the subcontractor or supplier concerned. Subject to the party so delaying promptly notifying the other party in writing of the reasons for the delay (and the likely duration of the delay), the performance of such party's obligations shall be suspended during the period that the said circumstances persist and such party shall be granted an extension of time for performance equal to the period of the delay. Save where such delay is caused by the act or omission of the other party (in which event the rights, remedies and liabilities of the parties shall be those conferred and imposed by the other terms of this Client Agreement and by law):

- any costs arising from such delay shall be borne by the party incurring the same;
- either party may, if such delay continues for more than 10 weeks, terminate this Client Agreement forthwith by giving notice in writing to the other by reason of such termination, in which case the Customer shall pay Tunga for the Services rendered up to the date of termination.

ARTICLE 17

NOTICES

17.1 Notices shall be deemed to have been duly given:

- when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or
- when sent, if transmitted by e-mail and a successful transmission report or return receipt is generated; or
- on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or

- on the tenth business day following mailing, if mailed by airmail, postage prepaid, in each case addressed to the most recent address, or e-mail address notified to the other party.

ARTICLE 18

GENERAL PROVISIONS

18.1 Parties are themselves solely responsible for complying with the obligations following from this Client Agreement, including with obligations relating to any applicable local or international laws and regulations.

18.2 In the event of conflict or inconsistency between the documents that make up a Service Contract, the following order of precedence applies: (i) the Proposal, for commercial terms only (such as scope, hours, fees, payment terms and notice periods); (ii) the data processing agreement referred to in Article 11, for the processing of personal data and, as provided in Article 11.2, for liability relating to it; (iii) this Client Agreement; and (iv) any additional agreement. A Proposal may also deviate from other provisions of this Client Agreement, including Article 14, provided that it expressly identifies the Article from which it deviates.

18.3 Tunga may refer to the Customer as a client of Tunga, including by using the Customer's name and logo on its website and in its marketing materials, unless the Customer objects in writing. Any other public announcement regarding this Client Agreement or a Service Contract requires the prior written consent of the other party.

18.4 This Client Agreement supersedes all prior agreements, arrangements and undertakings between the parties and constitutes the entire agreement between the parties relating to the subject matter of this Client Agreement. However, the obligations of the parties under any pre-existing non-disclosure agreement shall remain in full force and effect insofar as there is no conflict between the same. The parties confirm that they have not entered into this Client Agreement on the basis of any representation that is not expressly incorporated into this Client Agreement. If the Customer and Tunga have signed a separate framework or master agreement, that agreement prevails over this Client Agreement to the extent of any conflict.

18.5 If any provision of this Client Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from this Client Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Client Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of this Client Agreement.

18.6 This agreement shall be binding upon, and inure to the benefit of, the parties and their respective successors and permitted assignees, and references to a party in this Client Agreement shall include its successors and permitted assignees.

18.7 In this Client Agreement, references to a party include references to a person:

- who for the time being is entitled (by assignment, novation or otherwise) to that party's rights under this Client Agreement (or any interest in those rights); or
- who, as administrator, liquidator or otherwise, is entitled to exercise those rights, and in particular those references include a person to whom those rights (or any interest in those rights) are transferred or pass as a result of a merger, division, reconstruction or other reorganisation involving that party. For this purpose, references to a party's rights under this Client Agreement include any similar rights to which another person becomes entitled as a result of a novation of this Client Agreement.

ARTICLE 19

WEBSITE & AVAILABILITY

19.1 Tunga is never liable for claims as a result of outages or unavailability of the server. Tunga has the objective for hundred percent (100%) server up-time, but cannot guarantee this.

19.2 Tunga reserves the right to perform maintenance or changes to the Tunga Account, the Services and/or Website. This may result in periods during which the Tunga Account, the Services and/or Website may be temporarily unavailable. Tunga will announce such interruptions in advance, if possible. Tunga is never liable for claims as a result of unavailability of the Tunga Account, the Services or the Website.

19.3 Tunga is never liable for the content used by a Customer on the Tunga Website. If a Customer comes across content that is not correct, offensive or in violation of these terms of use, the Customer has to report this immediately to Tunga. Tunga has the right to delete content of Customers, if necessary.

19.4 The content on the Website, including, without limitation, the text, software, scripts, graphics, photographs, sounds, videos, articles and the trademarks, service marks and logos contained therein, are owned by or licensed by Tunga, subject to intellectual property rights, unless otherwise explicitly indicated by Tunga.

19.5 All legal notices should be sent via e-mail to hello@tunga.io. Also, if you have any questions about this Client Agreement or if you wish to report breaches of this Client Agreement, please contact us by e-mail at this e-mail address.

ANNEX 1

DATA PROCESSING AGREEMENT

This Data Processing Agreement (the "DPA") forms part of each Service Contract between Tunga and the Customer under Article 11 of the Tunga Client Agreement (the "Client Agreement"). It applies to all personal data that Freelancers process on behalf of the Customer in the performance of the Services. It does not apply where the Customer and Tunga have agreed in writing that a data processing agreement provided by the Customer applies instead (Article 11.2 of the Client Agreement).

Capitalised terms have the meaning given to them in the Client Agreement. Terms such as "personal data", "processing", "controller", "processor", "sub-processor", "personal data breach" and "data subject" have the meaning given to them in the General Data Protection Regulation (EU) 2016/679 ("GDPR").

ARTICLE 1

ROLES

1.1 The Customer is the controller of the personal data processed under this DPA. Tunga is the processor. Each Freelancer who processes personal data for the Customer is a sub-processor engaged by Tunga.

1.2 The Customer is responsible for the lawfulness of the processing, including the legal basis, the information provided to data subjects and the instructions it gives.

1.3 "Applicable Data Protection Law" means the GDPR and any other data protection law that applies to the processing and of which the Customer has informed Tunga in writing under Article 11.3 of the Client Agreement.

ARTICLE 2

SUBJECT MATTER AND DETAILS OF THE PROCESSING

2.1 The subject matter, nature, purpose and duration of the processing, the types of personal data and the categories of data subjects are described in Schedule A. The Proposal may supplement or narrow Schedule A for a specific Service Contract.

ARTICLE 3

INSTRUCTIONS

3.1 Tunga processes personal data only on documented instructions from the Customer, including with regard to transfers to a third country, unless required to do so by Union or Member State law to which Tunga is subject. In that case Tunga informs the Customer of that legal requirement before processing, unless that law prohibits such information.

3.2 The Customer's documented instructions are: (a) this DPA and the Service Contract; (b) the security, privacy and compliance policies the Customer communicates under Article 5.2 of the Client Agreement; and (c) instructions given in writing, including through the Customer's own tools (such as its issue tracker or team chat), by the Customer's personnel designated for the assignment.

3.3 Tunga immediately informs the Customer if, in its opinion, an instruction infringes Applicable Data Protection Law.

ARTICLE 4

CONFIDENTIALITY

4.1 Tunga ensures that every Freelancer who is authorised to process personal data has committed to confidentiality by written agreement, on terms no less protective than Article 10 of the Client Agreement.

ARTICLE 5

SECURITY

5.1 The Freelancers process personal data within the Customer's environment. Responsibility for security is therefore shared as set out in Article 5 of the Client Agreement: the Customer is responsible for the security of its environment, including access rights, secure means of access, monitoring and revoking access, and Tunga is responsible for the measures described in Schedule B.

5.2 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of the processing, the parties consider the measures in Schedule B, together with the Customer's measures under Article 5.1 of the Client Agreement, to be appropriate within the meaning of Article 32 GDPR. Where the Customer requires additional measures from the Freelancers, it shall specify them in writing under Article 5.2 of the Client Agreement; Tunga will require the Freelancers to comply with them.

5.3 Tunga shall not, and shall ensure that the Freelancers do not, copy or store personal data outside the Customer's environment, except to the extent strictly necessary for the performance of the Services and permitted by the Customer's policies. Any such copies are deleted as soon as they are no longer needed.

ARTICLE 6

SUB-PROCESSORS

6.1 The Customer gives Tunga general written authorisation to engage Freelancers as sub-processors. The Freelancers engaged at any time are those named in the Proposal or, in the case of a replacement under Article 2.5 of the Client Agreement, those proposed to the Customer in writing. Because the Customer decides whether to accept each proposed Freelancer, the Customer can object to any intended change of sub-processor before it takes effect by declining the proposed Freelancer.

6.2 Tunga does not engage any other sub-processor to process personal data under this DPA without informing the Customer in writing at least fourteen (14) days in advance. The Customer may object on reasonable grounds within that period. If the parties cannot resolve the objection, the Customer may terminate the affected Service Contract with effect from the date on which the new sub-processor would be engaged.

6.3 Tunga imposes on each sub-processor, by written contract, the same data protection obligations as set out in this DPA, in particular sufficient guarantees to implement appropriate technical and organisational measures.

6.4 Tunga remains liable to the Customer for the performance of each sub-processor's obligations, within the limits of Article 11 of this DPA.

ARTICLE 7

TRANSFERS OUTSIDE THE EEA

7.1 The Customer acknowledges that Freelancers work remotely from countries outside the European Economic Area, as stated in the Proposal, and instructs Tunga to have the Services performed from those countries.

7.2 Where access by a Freelancer from outside the European Economic Area constitutes a transfer of personal data under Chapter V GDPR, Tunga ensures that the transfer is subject to the standard contractual clauses adopted by the European Commission in Implementing Decision (EU) 2021/914 (Module Three, processor to processor), concluded between Tunga as data exporter and the Freelancer as data importer, or to another transfer mechanism permitted under Chapter V GDPR. Tunga makes a copy available to the Customer on request.

7.3 Tunga documents an assessment of the laws and practices of the countries from which Freelancers work, as required by Clause 14 of those standard contractual clauses, and makes a summary of that assessment available to the Customer on request.

7.4 Where the Customer is to be regarded as data exporter for a transfer under Article 7.2, the parties shall cooperate in good faith to put in place the appropriate standard contractual clauses, including by the Customer entering into those standard contractual clauses (Module Two, controller to processor) with the Freelancer. Tunga procures the Freelancer's cooperation.

ARTICLE 8

ASSISTANCE

8.1 Taking into account the nature of the processing, Tunga assists the Customer by appropriate technical and organisational measures, insofar as possible, in responding to requests from data subjects exercising their rights under Chapter III GDPR.

8.2 Tunga forwards to the Customer, within five (5) working days, any request, complaint or enquiry from a data subject that Tunga or a Freelancer receives. Tunga does not respond to the data subject itself unless the Customer instructs it to do so.

8.3 Taking into account the nature of the processing and the information available to Tunga, Tunga assists the Customer in ensuring compliance with its obligations under Articles 32 to 36 GDPR (security, personal data breaches, data protection impact assessments and prior consultation).

8.4 Assistance under this Article 8 is provided at no additional cost to the extent it is reasonable in scope. Tunga may charge its Rates for assistance that goes beyond that, provided it has informed the Customer in advance.

ARTICLE 9

PERSONAL DATA BREACHES

9.1 Tunga notifies the Customer without undue delay, and in any event within twenty-four (24) hours, after becoming aware of a personal data breach affecting personal data processed under this DPA. Further information follows under Article 9.2.

9.2 The notification describes, to the extent then known: the nature of the breach, the categories and approximate number of data subjects and records concerned, the likely consequences, the measures taken or proposed, and a contact person. Information that is not yet available is provided as soon as it becomes available.

9.3 Tunga requires each Freelancer to report any actual or suspected personal data breach to Tunga, and to the Customer contact designated in the Proposal, without undue delay and in any event within twenty-four (24) hours.

9.4 Tunga cooperates with the Customer and takes reasonable steps to contain the breach and mitigate its effects. Tunga does not notify the supervisory authority or data subjects of a breach on the Customer's behalf unless the Customer instructs it to do so or the law requires it.

ARTICLE 10

INFORMATION AND AUDITS

10.1 Tunga makes available to the Customer all information necessary to demonstrate compliance with Article 28 GDPR and this DPA. This includes, on request, the signed Device Security Checklists of the Freelancers working for the Customer, evidence of their confidentiality obligations, and Tunga's answers to a written security questionnaire once per calendar year.

10.2 Where the information under Article 10.1 is insufficient to demonstrate compliance, Tunga allows for and contributes to audits, including inspections, by the Customer or an independent auditor mandated by the Customer and bound by confidentiality. The Customer gives at least thirty (30) days' written notice, or five (5) working days after a personal data breach or at the request of a supervisory authority, audits no more than once in any twelve (12) month period unless a personal data breach or a supervisory authority requires otherwise, and bears the costs of the audit. If the audit reveals a material non-compliance by Tunga, Tunga bears its own costs and the reasonable costs of a follow-up audit.

10.3 Because the processing takes place within the Customer's environment, an audit relates to Tunga's procedures and records and to the Freelancers' compliance with Schedule B. Tunga procures that the Freelancers cooperate, including by providing evidence of the security settings of the devices they use for the Customer, limited to what is necessary for that purpose.

10.4 Tunga remedies any non-compliance identified in an audit within a reasonable period agreed with the Customer.

ARTICLE 11

RESPONSIBILITY AND LIABILITY

11.1 Responsibility for a personal data breach or other incident is allocated by its cause, as set out in Article 5.4 of the Client Agreement. In particular, Tunga is responsible towards the Customer for a Freelancer's failure to comply with the Device Security Checklist (Schedule B, item 3) or with the Customer's policies communicated under Article 5.2 of the Client Agreement, including careless handling of access granted by the Customer, and the Customer is responsible for incidents caused by its own environment or by work performed in good faith in accordance with its instructions.

11.2 Tunga's liability under or in connection with this DPA, including any obligation to compensate, reimburse or indemnify, is subject to the limitations and exclusions in Article 14 of the Client Agreement, and counts towards the maximum set out in Article 14.1 of the Client Agreement.

11.3 For the purposes of Article 14 of the Client Agreement, the reasonable and documented costs of investigating, containing and remedying a personal data breach for which Tunga is responsible under Article 11.1, and of notifying affected data subjects and the supervisory authority, are direct costs and are not excluded by Article 14.3 of the Client Agreement.

11.4 Nothing in this DPA limits or excludes any liability that cannot be limited or excluded under applicable law, including liability towards data subjects under Article 82 GDPR. An administrative fine imposed on a party is borne by that party.

ARTICLE 12

DURATION, RETURN AND DELETION

12.1 This DPA applies for as long as Freelancers process personal data on behalf of the Customer under a Service Contract.

12.2 At the end of a Freelancer's assignment, or earlier at the Customer's request, Tunga ensures that the Freelancer deletes or returns, at the Customer's choice, all personal data processed for the Customer, including copies on the Freelancer's devices, and confirms this in writing within ten (10) working days, unless Union or Member State law requires storage. The Customer revokes the Freelancer's access to its environment in accordance with Article 5.1(f) of the Client Agreement.

12.3 Articles 4, 9, 10, 11 and 12 survive the termination of this DPA for as long as any personal data processed under it has not been deleted or returned, and Article 11 thereafter.

ARTICLE 13

PRECEDENCE AND GOVERNING LAW

13.1 In the event of a conflict between this DPA and the Client Agreement concerning the processing of personal data, this DPA prevails, in accordance with Article 18.2 of the Client Agreement. This DPA does not displace Article 14 of the Client Agreement, which applies by virtue of Article 11.2 of this DPA.

13.2 This DPA is governed by the laws of the Netherlands. Article 15.2 of the Client Agreement (jurisdiction) applies.

SCHEDULE A

DETAILS OF THE PROCESSING

Subject matter	Making the capacity of Freelancers available to the Customer's team (Staff Augmentation and Consulting Services).
Nature of the processing	Access to and use of personal data present in the Customer's systems, as necessary for software development, testing, maintenance, support, data migration and related work assigned by the Customer: viewing, querying, structuring, altering, copying within the Customer's environment, and deleting.
Purpose	Performance of the Services under the Service Contract.
Duration	The term of the Service Contract, and until deletion or return under Article 12.
Categories of data subjects	As present in the Customer's systems, typically: the Customer's end users and customers, employees and contractors, and business contacts. To be specified in the Proposal where known.
Types of personal data	As present in the Customer's systems, typically: identification and contact data, account and usage data, and transaction data. The Customer informs Tunga in the Proposal or in writing before the start of the assignment if special categories of personal data (Article 9 GDPR) or data relating to criminal convictions (Article 10 GDPR) are processed.

Location	The Customer's environment. Access by Freelancers from the countries stated in the Proposal.
Customer contact for personal data breaches	To be stated in the Proposal.

SCHEDULE B

TUNGA'S TECHNICAL AND ORGANISATIONAL MEASURES

1. Selection. Identity verification of each Freelancer, and background checks to the extent permitted by applicable law.

2. Contracting. Each Freelancer is bound by a written agreement with Tunga containing confidentiality obligations and data processing obligations no less protective than this DPA (Developer Agreement and its Data Processing Annex).

3. Device security. Each Freelancer signs Tunga's Device Security Checklist before starting and complies with it throughout the assignment. Baseline: full-disk encryption; device used only by the Freelancer; strong unique password and automatic screen lock after no more than five (5) minutes; two-factor authentication on all Customer accounts; VPN on public or untrusted networks; operating system and software kept up to date; active anti-malware software; no local storage of Customer personal data beyond immediate need; no personal cloud storage.

4. Information. Before the start of an assignment, Tunga informs each Freelancer in writing of the data protection obligations that apply, including the Customer's policies communicated under Article 5.2 of the Client Agreement.

5. Incident reporting. Freelancers report actual or suspected security incidents to Tunga and to the Customer's designated contact within twenty-four (24) hours.

6. Offboarding. Tunga notifies the Customer without delay when a Freelancer ceases to work on the Customer's assignment, so that the Customer can revoke access, and requires the Freelancer to delete Customer data and confirm this in writing.

7. Records. Tunga keeps the signed Device Security Checklists and the deletion confirmations for the duration of the Service Contract and one year thereafter, and keeps a record of processing activities under Article 30(2) GDPR.

SCHEDULE C

AUTHORISED SUB-PROCESSORS

The Freelancers named in the Proposal, and replacement Freelancers proposed and accepted under Article 2.5 of the Client Agreement. No other sub-processors.