

**Terms & Conditions of PD-value B.V.**  
version: August 2022

**Article 1. PD-value**

- 1.1 The private limited liability company PD-value B.V. ("*PD-value*") has its registered office in Houten, and has places of business at Yalelaan 1 in (3584CL) Utrecht, the Netherlands and elsewhere. This company's line of business is advanced PK-PD modelling and simulation, and systems biology. PD-value is registered with the Chamber of Commerce under number 60978082.

**Article 2. Scope of application**

- 2.1. The present Terms & Conditions govern all engagements granted to PD-value by a client (e.g., contracts and other agreements), including additions, changes and follow-ups to engagements, regardless of whether a consideration is paid in exchange for them (the "*Engagement*"). The client is hereinafter referred to as: the "*Client*", and PD-value and the Client together as: "*Parties*" or, when referring to either of them, "*Party*".
- 2.2. Besides PD-value, all persons whose services have been engaged by PD-value for the performance of any Engagement may also rely on these Terms & Conditions, including present and former employees and executives of PD-value, third parties whose services are engaged and their heirs.
- 2.3. Those provisions in these Terms & Conditions that, by their nature, are intended to survive the termination of the Engagement, irrespective the cause, shall remain in effect after termination, such as, but not limited to Articles 3.1, 6, 7, 8.4, 9, 10, 11, 12, 13, 14 and 16.

**Article 3. Engagement**

- 3.1. All Engagements are considered to be granted exclusively to PD-value, even where the explicit or implied intention is that an Engagement will be carried out by a particular person. Application of the following statutes is excluded: 1) Section 404 of Book 7 of the Dutch Civil Code ("*DCC*"), which contains a provision for the situation described above, and 2) Section 407(2) of Book 7 of the DCC, which establishes joint and several liability in situations where an Engagement is granted to two or more persons.
- 3.2. The manner in which an Engagement is carried out, and by whom, is determined by PD-value.
- 3.3. All Engagements are best-efforts engagements. PD-value will carry out the work to the best of its abilities and in the manner of a prudent professional. PD-value does not guarantee that any contemplated result will be achieved.
- 3.4. Third parties cannot derive any rights from a legal relationship between PD-value and the Client, nor from any product and/or service delivered to or for the Client by PD-value.

**Article 4. Obligations on the part of the client**

- 4.1. The Client must provide PD-value with any and all data and information necessary for performing the Engagement. The Client must also warrant that those data and information are truthful, complete and reliable.

**Article 5. Fee and invoicing**

- 5.1 Except where PD-value has agreed on a fee in the form of a flat rate with the Client, the calculation of the fee will be based on the hours worked multiplied by the appropriate rate, plus VAT. These hours are calculated in units of fifteen minutes.
- 5.2 PD-value is entitled to revise its rates annually, at 1 January. The revised rates will then be based on various factors, including the price index for professional services.
- 5.3 All costs that PD-value incurs in connection with its performance of an Engagement will be passed on to the Client; however, PD-value will only incur such costs if it has the Client's prior consent.
- 5.4 PD-value is entitled, at all times and for whatever reason, to charge the Client an advance for the work that it will carry out; that work will then not be carried until PD-value has received payment of the invoice for the advance.
- 5.5 In principle, and unless other arrangements have been made, PD-value will invoice the Client after the end of each month for the work performed to date. Depending on the amount of work involved, PD-value may invoice the Client with a greater or lesser frequency. All invoices must be paid within 30 days after the date on which they were issued.

**Article 6. Confidentiality**

- 6.1. "*Confidential Information*" means any and all technical, commercial, financial, scientific or technical information, information regarding research and development, know-how, procedures, processes, models, advice, notes, analyses, formulas, calculations, software programs, source codes, object codes, flow charts, databases, compilations, interpretations, samples, specifications, client information, studies, presentations, drawings or other documents, in whatever form, controlled by either Party and which has been disclosed to, or obtained by, one of the Parties (the "*Receiving Party*") from the other Party (the "*Disclosing Party*") in oral, written, graphic, machine readable (including computer programs or data bases), model or sample form, or any derivation thereof. Such information shall be Confidential Information if it would ordinarily be treated as confidential by the Disclosing Party or would ordinarily be considered information of a confidential nature in the industry, whether or not specifically designated as such. All Parties explicitly acknowledge that all non-public information regarding the Client Products and the PD-value Products is intrinsically Confidential Information. "*Client Products*" means products and services that have been developed by the Client. "*PD-value Products*" means products (including software and models) and services (translational medicine, general pharmacometrics and systems biology) that have been developed by PD-value.
- 6.2. A Party's Confidential Information includes, without limitation, any and all copies, notes, compilations and summaries of that information prepared by or for the other Party.
- 6.3. The Receiving Party will return (or destroy, per the Disclosing Party's request) all Confidential Information and any copies thereof promptly to the Disclosing Party upon the Disclosing Party's first written request. Notwithstanding the foregoing provisions, the Receiving Party may retain one copy of Confidential Information for archival purposes only and/or in so far as the Receiving Party needs said Confidential Information in connection with obligations under applicable laws and regulations or legal proceedings between parties in which said Confidential Information is relevant, provided that any such copies (archived or otherwise) at all times remain subject to these Terms & Conditions.

- 6.4. Parties acknowledge that the Client Products and the PD-value Products are protected by intellectual property rights (including copyrights and database rights) of the Client and PD-value, respectively. Therefore, Parties acknowledge that the use of information regarding PD-value Products and Client Products beyond the scope of an Engagement will constitute not only a breach of that Engagement but will also independently constitute an infringement of the intellectual property rights of the Party concerned.
- 6.5. Parties agree that, unless the Disclosing Party gives its prior written authorization, they shall:
- I. not disclose the Confidential Information to third parties;
  - II. ensure proper and secure storage of the Confidential Information and not remove labels or other information that either does or could identify the Disclosing Party;
  - III. not use the Confidential Information disclosed by the other Party for any other purpose than strictly for the performance of the Engagement in question (the "*Authorized Purpose*");
  - IV. protect the other Party's Confidential Information against disclosure in the same manner and with the same degree of care with which it protects its own Confidential Information, though not with less than an above-average degree of care;
  - V. limit circulation of the Confidential Information disclosed by the other Party to its own employees who are under Receiving Party's direct supervision and control on a need-to-know basis only in connection with the Authorized Purpose and only if they are bound by written non-disclosure agreements whose terms are no less restrictive than the terms of this Engagement;
  - VI. not modify, disassemble, decompile, copy or reverse engineer the received Confidential Information in any manner;
  - VII. make copies of the Confidential Information only to the extent strictly necessary for the Authorized Purpose, other than in connection with remote working the receiving Party's enterprise, in the usual manner for that enterprise and on the condition that sufficient safeguards are provided; and
  - VIII. be jointly and severally liable for any breach of this Engagement by its employees or its affiliates' employees.
- 6.6. The Receiving Party shall not make any use of the Confidential Information except as expressly permitted under these Terms & Conditions. The Disclosing Party retains full ownership of the disclosed information.
- 6.7. Without prejudice to any other obligation under this Agreement for the Receiving Party, the Receiving Party shall immediately notify the Disclosing Party upon becoming aware of any breach of confidence by anybody to whom the Receiving Party has disclosed the Confidential Information and provide to the Disclosing Party all necessary assistance in connection with any steps which the Disclosing Party may wish to take to prevent, stop or obtain compensation for such (actual or threatened) breach.
- 6.8. Parties agree that information disclosed by either Party pursuant to an Engagement that would otherwise be Confidential Information shall not be deemed Confidential Information to the extent that it can be proven that such information:
- I. is part of the public domain without violation of that Engagement;
  - II. is known and on record at the Receiving Party prior to disclosure by the Disclosing Party;
  - III. is lawfully obtained by the Receiving Party from a third party who is not bound by similar confidentiality obligations;
  - IV. is developed by the Receiving Party completely independently from any such disclosure by the Disclosing Party;
  - V. is disclosed pursuant to administrative or judicial action, provided that the Receiving Party shall use its best efforts to maintain the confidentiality of the Confidential Information, e.g., by asserting in such action any applicable privileges, and shall, in so far as is legally permitted, promptly notify the Disclosing Party after learning or receiving notice of such action and give the Disclosing Party the opportunity to avail itself of other rights and remedies at law so as to maintain the confidential nature of said Confidential Information, or
- if only part of the Confidential Information falls within scope of Article 6.7, said part shall be excluded from the use and disclosure restrictions of this Engagement.
- 6.9. If during this Agreement Confidential Information becomes public through Article 6.8 the Client shall never mention PD-value as the or a (initial) source of the Confidential Information.

## Article 7. Intellectual property rights

- 7.1 Definitions:
- I. "*Intellectual Property Rights*" means copyrights, trademark rights, patent rights, (registered and non-registered) design rights, tradename rights and all other intellectual property or other proprietary rights as may exist now and/or hereafter come into existence and all renewals and extensions thereof, regardless of whether such rights arise under the laws of the Netherlands or any other jurisdiction.
  - II. "*Background Intellectual Property*" means all Intellectual Property Rights and know-how owned by a Party (or a licensor of such a Party) prior to the performance of an Engagement (including any services by PD-value, agreed upon by Parties in a work order ("*Work Order*")) or that is generated other than through the performance of this Engagement. For the avoidance of doubt: all Intellectual Property Rights in PD-value's PK-PD modelling and simulation software (including any updates and upgrades whether or not performed during the Agreement) will at all times qualify as PD-value's Background Intellectual Property.
  - III. "*Foreground Intellectual Property*" means all Intellectual Property Rights and know-how directly arising from the performance of an Engagement (or any Work Order), exclusive of Background Intellectual Property. In particular, Foreground Intellectual Property covers intellectual property rights on the results of the modelling and simulation services performed by the PD-value specifically for the Client.
- 7.2 Background Intellectual Property will at all times remain the property of the Party that owns it, meaning that Background Intellectual Property shall remain unaffected by these Terms & Conditions and/or any Work Order. Neither the Client nor PD-value will acquire any rights under Background Intellectual Property other than expressly provided for in these Terms & Conditions.
- 7.3 Under the condition precedent that the Client must pay all fees due under an Engagement in full to PD-value, PD-value hereby assigns all its rights and interest in Foreground Intellectual Property that has arisen from the performance of that Engagement to the Client, which assignment is hereby accepted by the Client (where necessary in advance). To the extent permitted by law, as regards the Foreground Intellectual Property PD-value also waives its moral rights towards the Client. For the avoidance of doubt and without prejudice to the PD-value's existing Background Intellectual Property, the assignment as mentioned above does not affect PD-value's right to use knowledge, techniques, methods, models and instruments relating to Foreground Intellectual Property at its own discretion.

- 7.4 PD-value hereby grants the Client a non-exclusive, royalty-free and perpetual license to use the PD-value's Background Intellectual Property solely to the extent that this is necessary for the Client's use of the Foreground Intellectual Property. This license does not include the right to grant sublicenses.
- 7.5 The Client hereby grants PD-value a non-exclusive, royalty-free and perpetual license to use the Client's Background and Foreground Intellectual Property for the sole purpose of performing services under this Agreement. This license does not include the right to grant sublicenses.

#### **Article 8. Termination of the engagement, suspension of work**

- 8.1 The Client may cancel an Engagement at any time.
- 8.2 PD-value may cancel an Engagement if the circumstances change to such a degree that PD-value cannot be required to perform any further work, for example in the case of a breach of trust between the Parties, if the Client makes impossible demands, if the Client gives instructions for the performance of that Engagement that are objectively injudicious and the Client insists on those instructions despite an explanation of why they are injudicious and/or in a situation as described in Article 12.2.
- 8.3 An Engagement ends by operation of law if and when a petition is made for bankruptcy or suspension of payments (temporary or permanent) of either of the Parties, or if either of them files for bankruptcy for itself, or if either of the parties ceases to exist, or if either of them finds itself in a legal or actual situation under non-Dutch law that can be equated to one of those situations.
- 8.4 If an Engagement ends, the agreed fee for all work that has already been performed and all work that is yet to be performed (including work needed to finish and hand over the work) will remain payable by the Client. If the Engagement ends before the agreed services have been completed or the period for which that Engagement was granted has expired, and payability of the fee is linked to that completion or to the expiry of that period, PD-value is entitled to a reasonable portion of the fee, bearing in mind the work already performed by PD-value, the benefit of that work for the Client and the grounds on which that Engagement ended. In these situations, PD-value is only entitled to the full fee if the Client is responsible for the Engagement's termination and/or if payment of the full fee is reasonable considering all the circumstances of the case. The fee will be lowered to reflect the amount that PD-value saves from the Engagement having been terminated before its agreed end.
- 8.5 PD-value may terminate or suspend its performance of an Engagement if an invoice has not been paid by its due date and continues to go unpaid despite a written reminder, and/or if the Client fails to comply with the provisions set out above in Article 4.1. The Client will be notified accordingly without delay.

#### **Article 9. After the Engagement for advisory services ends**

- 9.1 Unless this has been explicitly agreed in writing, granting an Engagement to PD-value does not include an instruction for it to inform the Client of developments that occur (or are revealed) after that Engagement with PD-value for advisory services relating to the issue concerned or to connected or related issues has effectively or formally ended, even where those developments have/could have consequences for the Client.

#### **Article 10. Interest and collection costs**

- 10.1 In the event that payment is not made by the due date, the Client is in breach of the Engagement by operation of law. This means that no reminder or further notice of breach is required. As soon as this occurs, the Client owes interest at the Dutch statutory rate. For legal entities and persons acting in the performance of a profession or business, this is the statutory commercial interest.
- 10.2 In addition, the breaching Client will owe PD-value for extrajudicial collection costs, at a rate of 15% of the amount outstanding, subject to a minimum of €150.00 except in situations where mandatory law declares the Dutch Extrajudicial Collection Costs (Standardisation) Act (*Wet normering buitengerechtelijke incassokosten*) and the accompanying Decree to be applicable; in that situation, the extrajudicial costs will be established in accordance with these regulations.
- 10.3 If PD-value brings legal proceedings to seek payment of its claim, the Client is obliged to compensate all actual costs incurred in connection with those proceedings, unless mandatory law dictates otherwise. This includes the costs of lawyers, legal representation, court fees and other costs, even where these are higher than if the Client is ordered to pay the costs of the proceedings in accordance with Sections 237ff. of the Dutch Code of Civil Procedure.

#### **Article 11. Complaints**

- 11.1 Complaints about the amounts invoiced and services performed by PD-value must be made to the firm in writing. All written complaints must be in PD-value's possession within a reasonable amount of time, but no later than four weeks after the moment when the act and/or omission to act triggering the complaint became known or could reasonably have been known to the Client, otherwise all rights derived from that act and/or omission to act will lapse.
- 11.2 Making a complaint does not relieve the Client of any obligation to fulfil his/her/its obligations, including the obligation to pay invoices by their due date, nor does it prejudice the effect of the provisions set out above in Article 11.1.

#### **Article 12. Liability**

- 12.1 "*Force Majeure*" means any causes beyond the reasonable control of a Party (other than a breach by any vendor, supplier, contractor or subcontractor engaged by such party, by circumstances that in and of themselves cannot be regarded as force majeure), such as but not limited to, acts of God, acts of government, terrorist activity, sabotage, expropriations, riots, wars, natural disasters, pandemics, civil commotion, power shortage, explosion, equipment failure, widespread material shortages, breakdown of facilities or materials by fire, earthquake, flood, storm, labor disturbances and strikes external to a Party, and failure of public utilities.
- 12.2 The failure of either of the Parties hereto to perform any obligation under an Engagement solely by reason of Force Majeure shall not be deemed to be a breach of that Engagement; provided, however, that the Party so prevented from complying herewith shall continue to take all reasonable actions within its power to comply as fully as possible herewith. If such event causes or is reasonably anticipated to cause delay in performance for more than thirty (30) days, then either Party may terminate that Engagement, in accordance with Articles 8.1 and 8.2.

- 12.3 Any rights to claim or recover payment that arise, in any fashion, as a result of and/or in connection with an Engagement granted to and services performed by PD-value will be exercised exclusively in respect of PD-value, not its direct or indirect executive or shareholder, agents, employees, clients and/or contractors.
- 12.4 The limitations of liability described in the paragraphs below do not apply in so far as mandatory law dictates that a limitation of liability is not permitted.
- 12.5 In all cases, the Parties' liability is limited to direct loss or damage. Liability is excluded for any and all indirect, incidental, special, or consequential damages arising from or in any way connected with the services performed under that Engagement, including, but not limited to, loss of profits or other economic loss; provided, however, that this limitation will not apply to damages resulting from (a) breaches by a Party of its duty of confidentiality imposed under Article 6, (b) a Party's indemnification obligations under Article 12.13 or (c) a Party's gross negligence, wilful misconduct or fraud.
- 12.6 Where an event (including any omission to act) occurs during the performance of an Engagement that leads to liability, the total compensation (and where applicable the total accumulated compensation) for loss or damage payable to the Client and/or third parties in that connection is limited to the amount paid out under the professional liability insurance taken out by PD-value, plus the excess that PD-value is obliged to pay under the insurance policy. At present, the insured amount is €1,500,000 (one million and five hundred thousand euros) with (in the aggregate) a maximum of €2,500,00 (two million and five hundred thousand euros) per year.
- 12.7 Where persons or objects suffer loss or damage as a result of or in connection with the performance of an Engagement or otherwise (including loss or damage resulting from an omission to act), and that loss or damage results in liability on the part of PD-value, the total compensation (and where applicable the total accumulated compensation) for loss or damage payable to the Client and/or third parties in that connection is limited to the amount(s) paid out under the general liability insurance taken out by PD-value, plus the excess that PD-value is obliged to pay under the insurance policy. At present, the insured amount is €1,250,000 (one million and two hundred fifty thousand euros) with (in the aggregate) a maximum of €2,500,00 (two million and five hundred thousand euros) per year.
- 12.8 If no payment is made under the insurance policies described above in Articles 12.6 and/or 12.7, those paragraphs will not apply and PD-value's accumulated liability is instead limited to the fee paid by the Client in the case in question during the calendar year in which the initial event causing the loss or damage occurred, not including VAT and subject to a maximum of €100,000 (one hundred thousand euros). The latter limitation does not apply if and in so far as the loss or damage ensues from wilful recklessness and/or a deliberate breach on the part of PD-value.
- 12.9 The limitations of liability laid down in the previous paragraphs of this Article also apply if an Engagement was refused that should not have been refused and that refusal causes loss or damage, and/or if the loss or damage was caused by operational errors of the equipment, software, data files, registers and/or other objects used in connection with the Engagement.
- 12.10 If PD-value engages the services of an unassociated person in the performance of an Engagement, the limitations of liability laid down in this Article also apply for any shortcomings in that third party's services.
- 12.11 PD-value will take whatever reasonable measures are appropriate to secure electronic communications as best as possible. The Client accepts that it is impossible to guarantee complete security of electronic communications, and that PD-value is not liable in this respect, unless caused by gross negligence, wilful misconduct, or fraud. Similarly, PD-value is not liable if, despite the measures described above, electronic communications are intercepted, manipulated, infected, delayed, sent or forwarded to the wrong recipient, for example owing to viruses or spam filters.
- 12.12 Unless they have already lapsed (for example under Article 11.1) or become prescribed, or if this is not permitted under mandatory law, any and all claims (such as for compensation for loss or damage and/or based on an assertion of breach of contract or tort) and any arguments based on such claims expire when one year has passed since the day following the day on which the Client became aware, or could within reason have become aware, of the loss or damage and the possibility that PD-value is the party liable. All such claims and arguments expire (*vervalen*) after one year has passed since the end of the Engagement to which the claim relates and that is governed by the present Terms & Conditions.
- 12.13 In so far as this may reasonably be expected, the Client will challenge and defend against any and all claims from third parties that could lead to a claim on and/or defence against PD-value.
- 12.14 The Client indemnifies PD-value against any and all claims from third parties in this connection if and in so far as they are (for whatever reason) not covered by the liability insurance described above or if and in so far as those claims exceed the payments made under those insurance policies, plus the excess that is payable under the appropriate policy.

#### **Article 13. Communications**

- 13.1 The Client agrees to exchange data using digital methods (Internet and email), in the realisation that it is impossible to guarantee with absolute certainty, despite all security measures observed by PD-value, that unauthorised access is impossible.

#### **Article 14. Documents kept on file**

- 14.1 Hard copies (i.e. non-digital versions) of documents will be kept on file for ten years after the matter is closed, after which PD-value may destroy them, without giving any prior notice. PD-value is entitled at all times to retain files in digital form only.

#### **Article 15. Privacy**

- 15.1 PD-value processes personal data as part of its business, including performing engagements. It does so in full compliance with the appropriate laws and regulations. For details about the manner in which PD-value processes personal data, see the firm's privacy statement on its website at [www.pd-value.com](http://www.pd-value.com). That privacy statement includes information about the rights of the persons whose data are processed.

#### **Article 16. Governing laws and choice of forum**

- 16.1 All Engagements and the ensuing legal relationships and contracts between PD-value and the Client are exclusively governed by Dutch law, with the exclusion of the rules regarding the choice of applicable law pursuant to the rules of international private law. The applicability of the Vienna Sales Convention is expressly excluded.

- 16.2 The present English version of these Terms & Conditions is a translation of the original Dutch version of the Terms & Conditions. Given that Dutch legal terms and phrases do not always have an exact equivalent in English, in some instances the English is followed in brackets by the original Dutch term or phrase. In the event of any conflict between the languages, the Dutch term or phrase will prevail. If any ambiguity arises with regard to any part of these Terms & Conditions, the Parties' intention will be considered to be to apply the legal concept under Dutch law that most closely approximates that part of the Terms & Conditions.
- 16.3 Unless mandatory law dictates otherwise, All disputes that may arise between Parties in connection with an Engagement or in connection with further Engagements and other acts related to that Engagement such as, but not limited to disputes that stem from or are otherwise related to the formation and/or performance of an Engagement (e.g., a contract for services), the quality of the services and/or the amounts invoiced, unlawful acts, undue payments and unjustified enrichment, will be settled by the District Court of Midden-Nederland seated in Utrecht, the Netherlands.

**Article 17. Amendments to these Terms & Conditions**

- 17.1 PD-value is entitled to amend and/or add to the present Terms & Conditions. In the event of such amendments and/or additions, the Client will be informed accordingly as soon as possible.