

4DI SOFTWARE-AS-A-SERVICE

SUBSCRIPTION TERMS

Last updated: September 10, 2019

These Software-as-a-Service Subscription Terms (“**Terms**”) create a legal agreement between 4Di Inc. (“**4Di**,” “**us**,” or “**we**”) and the entity or person accessing the Service (as defined below) (“**Customer**,” or “**you**”). **BY ACCEPTING THE TERMS OR USING THE SERVICE, YOU REPRESENT THAT YOU ARE OF LEGAL AGE AND HAVE THE AUTHORITY TO BIND THE CUSTOMER TO THESE TERMS, THE APPLICABLE USE LEVELS, AND OUR PRIVACY POLICY** (collectively the “**Agreement**”).

I. ACCESS AND USE OF THE SERVICES.

- A. **Services.** 4Di provides cloud-based digitization software-as-a-service for the architecture, engineering, and construction industry (“**Service**”). The Service provides electronic materials resulting from the Customer Data (as defined below) (“**Reports or Analysis**”).
- B. **Right to Use Service.** You agree to use the Service in accordance with the use levels by which we measure, price and offer the Service as posted on our website (“**Use Levels**”). You may use the Service only as permitted in these Terms. We grant you a limited right to use the Service only for business and personal purposes. If you, your affiliates, or your employees/contractors (collectively your “**Users**”) use the Service, you warrant that you have the authority to bind those Users to the terms of this Agreement, and you will be liable if your Users do not comply with the Agreement.
- C. **Limitations on Use.** By using the Service, you agree on behalf of yourself and your Users not to (i) modify, prepare derivative works of, or reverse engineer, the Service; (ii) knowingly or negligently use the Service in a way that abuses or disrupts our networks, user accounts, or the Service; (iii) transmit through the Service any obscene, offensive, pornographic, fraudulent, deceptive, defamatory, harassing, abusive, hateful, or unlawful material; (iv) use the Service in violation of our policies, applicable laws or regulations; (v) harvest, collect, or gather user data; or (vi) transmit through the Service any material, including Customer Data that may infringe the intellectual property or other rights of third parties.
- D. **Changes to Service; Additional Services.** We reserve the right to enhance or modify features of the Service but will not materially reduce

the core functionality or discontinue the Service unless we provide you with prior written notice. We may offer additional functionality to our standard Service or premium feature improvements for an additional cost. Any additional Service you order will be subject to these Terms.

- E. **Proprietary Rights and 4Di Marks.** You acknowledge that we or our licensors retain all right, title and interest in the Service, and our name, logo or other trademarks marks (together, the “**4Di Marks**”), and any related intellectual property rights, including, without limitation, all modifications, enhancements, derivative works, and upgrades thereto. You agree that you will not use or register any trademark, service mark, business name, domain name or social media account name or handle which incorporates in whole or in part the 4Di Marks or is similar to any of them.

II. FEES AND PAYMENT.

- A. **Fees and Payment.** You agree to pay all fees for the Service applicable to your Use Level. Any and all payments you make to us for access to the Service are final. You are responsible for all fees and charges imposed by your data transmission providers related to your access and use of the Service. You are responsible for providing accurate and current billing, contact and payment information to us. You agree that we, or our payment processor, may take steps to verify whether your payment method is valid, charge your payment card or bill you for all amounts due for your use of the Service. You agree that your credit card information and related personal data will be provided to third parties for payment processing and fraud prevention purposes. We may suspend or terminate your Account (as defined below) if at any time we determine that your payment information is inaccurate or not current, and you are responsible for fees and overdraft charges that we may incur when we charge your card for payment. We reserve the right to update the price for Service at any time after your Initial Term. We will notify you of any price changes by publishing on our website, and sending an email to the address used to set up your Account. If you do not cancel your subscription by thirty (30) days prior to the end of the then-current billing cycle, the price changes will become effective as of the next billing cycle.

- B. **Disputes; Delinquent Accounts.** You must notify us of any fee dispute within fifteen (15) days of payment, and once resolved, you agree to pay those fees within fifteen (15) days. We may also suspend or terminate your Account if you do not pay undisputed fees when due, and you agree

to reimburse us for all reasonable costs and expenses incurred in collecting delinquent amounts.

III. TERM AND TERMINATION.

- A. **Term.** Your initial subscription term shall be one (1) year (“**Initial Term**”) and will automatically renew for additional such terms (“**Renewal Terms**”) (collectively, the “**Term**”) unless you cancel no later than thirty (30) days prior to the end of the then-current Term. You may cancel at any time during the Term; provided, however, that no refunds will be made for remaining days within the then-current Term. If we permit you to reinstate Service at any time after termination, you agree that you will be bound by the then-current Terms.
- B. **Termination for Cause.** Either party may terminate the Agreement (i) if the other party breaches its material obligations and fails to cure within five (5) days of receipt of written notice, or (ii) if the other party becomes insolvent or bankrupt, liquidated or is dissolved, or ceases substantially all of its business; provided, however, that we may suspend or terminate your Account immediately in the event of your breach of Sections I.C, IV or V.
- C. **Effect of Termination.** If the Agreement is terminated for any reason, you must immediately discontinue all use of the Service; provided, however, that you will have thirty (30) days from the date of termination to retrieve your Customer Data from the Service. We have no obligation to maintain your Customer Data after that period. Termination will not affect any claim arising prior to the effective termination date. If we discontinue Service in accordance with Section I.D above, your access to the Service will be terminated immediately, and you will be refunded for remaining days within the then-current Term. You agree to pay for any use of the Service past the date of expiration or termination.
- D. **Survival.** The provisions of Sections VII (Disclaimers; Limitation of Liability), VIII (Indemnification), and IX (Additional Terms) will survive any termination of the Agreement.

IV. YOUR CONTENT AND ACCOUNTS.

- A. **Your Customer Data.** “**Customer Data**” means electronic data and information submitted to the Service by Customer, or collected from Customer by the Service. You retain all rights to your Customer Data. You warrant represent and warrant that (i) you have the right to upload the Customer Data onto the Service and use the Customer Data as contemplated by the Service, (ii) none of the Customer Data infringes on the rights of any third party, including any intellectual property right, or right of privacy or publicity; (iii) none of the Customer Data contains any

obscene, offensive, pornographic, fraudulent, deceptive, defamatory, harassing, abusive, hateful, or unlawful material. We will not view, access or process any of your Customer Data, except: (x) to provide the Service, or (y) as required to comply with our policies, applicable law, or governmental request. You agree to comply with all legal duties applicable to you as a data controller by virtue of the submission of your Customer Data within the Service, and we will have no liability in connection therewith.

- B. License by Customer to Host and Use Customer Data.** You grant 4Di a worldwide, limited-term license to host, copy, transmit and display Customer Data, as necessary for 4Di to provide the Service and the Reports or Analysis in accordance with this Agreement. Subject to the limited licenses granted herein, 4Di acquires no right, title or interest from you under this Agreement in or to any Customer Data.
- C. Your Accounts.** In order to access the Service, you will be required to create an account (“**Account**”). You are solely responsible for (i) all use of the Service by you and your Users, (ii) obtaining consent from your Users to the collection, use, processing and transfer of Customer Data, and (iii) providing notices or obtaining consent as legally required in connection with the Service. We do not send emails asking for your usernames or passwords, and to keep your Account secure, you should keep all usernames and passwords confidential. We are not liable for any loss that you may incur if a third party uses your password or Account. We may suspend your Account or terminate the Agreement if you or your Users are using the Service in a manner that is likely to cause harm to the Service. You agree to notify us immediately in the event that any unauthorized access to the Service, or other security breach, occurs through your Account.
- V. COPYRIGHT POLICY.** It is 4Di’s policy to respond promptly to claims of copyright infringement, and to remove, or disable access to, infringing material. If you believe that any of the Customer Data or materials appearing on this Service are infringing on your copyrights, please send a notice to our designated agent at the address stated below. Your notice should contain the following: a physical or electronic signature of a person (i.e., claimant) authorized to act on behalf of the copyright owner; identification of the copyrighted work claimed to be infringed; identification of the content or material claimed to be infringing; a reference or link to the infringing material or activity, or the subject of the infringing activity, including information to enable us to locate that material or reference; the address, telephone number or email address of the claimant; a statement that the claimant has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and a statement that the information in the notice is accurate and, under penalty of

perjury, that the claimant is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed. Our designated agent to whom you should direct your infringement claim is:

DMCA Agent
4Di Inc.
legal@4Di.ai

4Di may terminate a Customer's Account if 4Di has been notified of bona fide infringing activity by that Customer.

VI. **EXPORT LAWS.** The Service may be subject to export laws and regulations of the United States and other jurisdictions. You represent and warrant that you are not named on any U.S. government denied-party list. You further agree that you will not permit any User to access or use the Service in or by a national of a U.S.-embargoed country (currently Cuba, Iran, North Korea, Sudan or Syria) or in violation of any U.S. export law or regulation.

VII. **DISCLAIMERS; LIMITATION OF LIABILITY.**

- A. **Disclaimers.** 4DI PROVIDES THE SERVICE, THE REPORTS, AND ANALYSIS "AS-IS," AND DOES NOT MAKE ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. WITHOUT LIMITING THE FOREGOING, 4DI DOES NOT WARRANT THAT THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS OR THAT THE SERVICES WILL OPERATE UNINTERRUPTED OR ERROR-FREE.
- B. **Limitation of Liability.** 4DI'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL NOT EXCEED THE AMOUNT PAID BY CUSTOMER HEREUNDER IN THE 6 MONTHS PRECEDING THE INCIDENT GIVING RISE TO LIABILITY. THE ABOVE LIMITATIONS WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, INCLUDING WITHOUT LIMITATION NEGLIGENCE.
- C. **Exclusion of Consequential and Related Damages.** IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS OR LOST REVENUES OR FOR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE

DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, INCLUDING WITHOUT LIMITATION NEGLIGENCE, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING EXCLUSION WILL NOT APPLY WITH RESPECT TO A BREACH BY EITHER PARTY OF ITS CONFIDENTIALITY OBLIGATIONS UNDER THIS AGREEMENT, A PARTY'S INDEMNIFICATION OBLIGATIONS UNDER THE AGREEMENT, OR TO THE EXTENT PROHIBITED BY LAW.

VIII. INDEMNIFICATION. You agree to indemnify, defend and hold 4Di harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including reasonable attorneys' fees and costs) arising out of any third party claim in connection with your use of the Service or your breach or alleged breach of any term, condition, obligation, representation or warranty in this Agreement.

IX. ADDITIONAL TERMS

- A. General Terms.** If any term of this Agreement is deemed unenforceable, this will not affect any other terms. Both parties are independent contractors and nothing in this Agreement creates a partnership, agency, fiduciary, or employment relationship between the parties. No person or entity not a party to the Agreement will be a third party beneficiary. Failure to enforce any right under the Agreement will not waive that right. Unless otherwise specified, remedies are cumulative. No party will be responsible for any delay or failure to perform under the Agreement due to force majeure events (e.g. natural disasters; terrorist activities, activities of third party service providers, labor disputes; and acts of government) and acts beyond a party's reasonable control. You hereby waive any and all defenses you may have based on the electronic form of this Agreement and the lack of signing by the parties hereto to execute this Agreement.
- B. Security Emergencies.** If we reasonably determine that the security of the Service or infrastructure may be compromised due to hacking attempts, denial of service attacks, or other malicious activities, we may temporarily suspend the Service and we will take action to promptly resolve any security issues. We will notify you of any suspension or other action taken for security reasons.
- C. Assignment.** You may not assign your rights or delegate your duties under the Agreement either in whole or in part without our prior written consent.

- D. **Notices.** Notices to 4Di should be sent to us at legal@4Di.ai and we will send notices to you at the email address last designated on your Account. Notice is deemed given when the return receipt is received by the sender.
- E. **Governing Law.** The Agreement will be governed accordance with the laws of the Commonwealth of Massachusetts, USA, without regard to its conflicts of laws rules.
- F. **Mandatory Arbitration.**
- i. If you and 4Di are unable to resolve a dispute, controversy or claim related to this Agreement (“**Dispute**”) through informal negotiations within thirty (30) days, either you or 4Di may elect to have the Dispute (except those Disputes expressly excluded below) finally and exclusively resolved by binding arbitration. Any election to arbitrate by one party will be final and binding on the other. YOU UNDERSTAND THAT ABSENT THIS PROVISION, YOU WOULD HAVE THE RIGHT TO SUE IN COURT AND HAVE A JURY TRIAL. The arbitration will be commenced and conducted under the Streamlined Arbitration Rules and Procedures (the “**Rules**”) of JAMS, which is available at the JAMS website www.jamsadr.com. The determination of whether a Dispute is subject to arbitration will be governed by the Federal Arbitration Act and determined by a court rather than an arbitrator. Your arbitration fees and your share of arbitrator compensation will be governed by the Rules. The arbitration may be conducted in person, through the submission of documents, by phone or online. The arbitrator will make a decision in writing, but need not provide a statement of reasons unless requested by a party. The arbitrator must follow applicable law, and any award may be challenged if the arbitrator fails to do so.
 - ii. Notwithstanding the above, you and 4Di agree that arbitration will be limited to the Dispute between 4Di and you individually. To the full extent permitted by law, (a) no arbitration will be joined with any other; (b) there is no right or authority for any Dispute to be arbitrated on a class-action basis or to utilize class action procedures; and (c) there is no right or authority for any Dispute to be brought in a purported representative capacity on behalf of the general public or any other persons.
 - iii. You and 4Di agree that the following Disputes are not subject to the above provisions concerning informal negotiations and binding arbitration: (a) any Disputes seeking to enforce or protect, or concerning the validity of, any of your or 4Di’s intellectual property rights; (b) any Dispute related to, or arising from, allegations of theft, piracy, invasion of privacy or unauthorized use; and (c) any

claim for injunctive relief or to compel arbitration, stay proceedings pending arbitration, or to confirm, modify, vacate or enter judgment on the award entered by the arbitrator.