

GENERAL TERMS AND CONDITIONS

DYFLEXIS

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MODULE A – GENERAL

ARTICLE A.1. DEFINITIONS

The capitalised terms in these General Terms and Condition have the following meaning.

- A.1.1. **General Terms and Conditions:** the provisions laid down in this document.
- A.1.2. **Data:** the data and personal data which have been stored by Client and are accessible via the Service.
- A.1.3. **Service(s):** the service(s) that Dyflexis will perform for Client as described in Dyflexis's proposal or quotation including, but not limited to, supplying Hardware and software (-as-a-service).
- A.1.4. **Hardware:** the equipment to be supplied to Client by Dyflexis under the terms and conditions set out in the Agreement.
- A.1.5. **Commencement date:** the date on which the Agreement comes into effect and on which the provision of the Service starts.
- A.1.6. **Intellectual Property Rights:** all intellectual property and related rights including, but not limited to, copyrights, data bank rights, domain names, trade name rights, brand rights, model rights, related rights, patent rights, as well as rights to know-how.
- A.1.7. **Dyflexis:** the private limited liability company in accordance with Dutch law Dyflexis B.V., with its registered office in The Hague and which is registered with the Chamber of Commerce under file number 59584327. This also comprises all trade names of Dyflexis B.V. registered with the Chamber of Commerce, including the trade name Wodan Brothers.
- A.1.8. **Client:** the natural or legal person with whom Dyflexis has concluded an Agreement. This also comprises the party with whom negotiations are being conducted to enter into an agreement as well as its representative(s), authorised person(s), successor(s) in title, or heirs.
- A.1.9. **Delivery:** the moment that the Service has (or the login codes have) been made available to Client.
- A.1.10. **Agreement:** every agreement between Dyflexis and Client arising from a proposal or quotation made by Dyflexis and the valid acceptance thereof by Client.

- A.1.11. **SLA:** the concluded service level agreement between Dyflexis and Client containing the agreements regarding the level, the quality, and the manner in which problems in connection with the Service will be solved.
- A.1.12. **Updates:** changes in and updates of the Service in connection with bug fixing, improving the functionality and/or remedying faults.
- A.1.13. **Upgrades:** structural changes in and upgrades of the Service in order to add (important) functionalities.
- A.1.14. **Working Days:** Monday through Friday, with the exception of national holidays in the Netherlands.
- A.1.15. **Work(s):** the websites, applications, lay-out, databases, software, documentation, advice, reports, analyses, designs or other products developed or designed by Dyflexis, whether or not on behalf of and/or at the request of Client.
- A.1.16. **Working Hours:** hours on Working Days between 9 am and 5 pm.

ARTICLE A.2. APPLICABILITY AND ORDER OF PRECEDENCE

- A.2.1. These General Terms and Conditions are applicable to every quotation or proposal made by Dyflexis regarding Services and constitute an integral part of every Agreement.
- A.2.2. If the company name used by Client refers to more than one natural or legal person or organisation, each is responsible for the complete fulfilment of the obligations arising from the agreement with Dyflexis.
- A.2.3. The specific modules apply if the requested or offered Services fall under the scope of application described in the module. If a specific module applies, this module prevails over Module A.
- A.2.4. The definitions as described in Article A.1 apply to all modules of these General Terms and Conditions, unless a meaning is attributed elsewhere in the Agreement and/or the General Terms and Conditions.
- A.2.5. Provisions or conditions imposed by Client that deviate from, or do not appear in, these General Terms and Conditions are only binding for Dyflexis if and insofar as these have been accepted explicitly by Dyflexis in writing.
- A.2.6. In the event of any contradiction between provisions in the Agreement, General Terms and Conditions or annexes thereof, the following order of precedence applies:
 - i. the Agreement;
 - ii. the concluded Service Level Agreement;
 - iii. any annexes to the Agreement;
 - iv. these General Terms and Conditions.

ARTICLE A.3. QUOTATIONS AND COMMENCEMENT OF THE AGREEMENT

- A.3.1. The agreement commences upon explicit acceptance of the quotation or the proposal by Client.
- A.3.2. If Client does not explicitly indicate that it accepts the quotation or the proposal, but nevertheless agrees, or gives the impression that it agrees, that Dyflexis carries out activities that fall within the description of the Services, then the quotation is regarded as accepted. This is also the case when Client asks Dyflexis to carry out certain activities without waiting for a formal quotation.
- A.3.3. Quotations made by Dyflexis are valid for the period indicated in the quotation. If no period has been specified, the quotation is valid up to thirty (30) days after the date on which the quotation was sent by Dyflexis.
- A.3.4. If it appears that the information provided by Client when requesting an Agreement was incorrect, Dyflexis has the right to adjust the prices accordingly.
- A.3.5. The Agreement commences as from the moment on which the Service has been delivered to Client technically ("the Commencement Date") unless a different

Commencement Date has been agreed in writing.

ARTICLE A.4. EXECUTION OF THE AGREEMENT

- A.4.1. After the commencement of the Agreement, Dyflexis will undertake to deliver the Service within a reasonable period of time in accordance with the quotation.
- A.4.2. Insofar as not agreed otherwise in writing, Dyflexis guarantees that the Service will be performed to the best of its abilities with sufficient care and expertise.
- A.4.3. The (delivery) periods stated are only indicative and under no circumstances rigid, unless agreed otherwise in writing.
- A.4.4. If and to the extent that this is required for the proper execution of the Service, Dyflexis has the right to have certain activities carried out by third parties without notifying Client. Dyflexis will not charge the costs incurred by the third party to Client, unless agreed otherwise in writing.
- A.4.5. Client must do everything, or refrain from doing anything, that is reasonably necessary or desirable to enable the timely and correct execution of the Service. In particular, Client must ensure that all data, which Dyflexis indicates are necessary, or which Client reasonably should understand to be necessary, for the execution of the Service, are provided timely to Dyflexis.
- A.4.6. Besides the data as referred to in Article A.4.5, Client must provide up-to-date contact details to Dyflexis for the communication between Dyflexis and Client. Client will immediately inform Dyflexis in the event of a change in these contact details.
- A.4.7. If the data and contact details referred to in Article A.4.5 and A.4.6 are not provided to Dyflexis timely or if Client does not fulfil its obligations in another manner, Dyflexis has the right to suspend fulfilment of its obligations without being obliged to pay any compensation.

ARTICLE A.5. PRIVACY

- A.5.1. In connection with the Service, Dyflexis is regarded as the Processor and Client as the Controller in accordance with the General Data Protection Regulation.
- A.5.2. Both parties undertake to act in accordance with the General Data Protection Regulation and other privacy-related laws and regulations.
- A.5.3. The personal data that Dyflexis receives from Client shall only be used for the execution of the Service.
- A.5.4. Dyflexis will endeavour to take sufficient technical and organisational measures with regard to the to be carried out processing of personal data, against loss or against any form of unlawful processing (such as unauthorised access, infringement, change or distribution of the personal data).
- A.5.5. Dyflexis is authorised to make Client's company name and logo available to third parties for their information.
- A.5.6. During a period of 12 (twelve) months after the termination or dissolution of the Agreement, Client shall not enter into any direct or indirect employment relationship or other similar relationships with employees of Dyflexis without Dyflexis's written permission.

ARTICLE A.6. INTELLECTUAL PROPERTY

- A.6.1. For Works and/or Services developed by Dyflexis itself, the Intellectual Property Rights are with Dyflexis, unless agreed with Client in writing that the rights will be transferred.
- A.6.2. The Intellectual Property Rights with regard to (open source) third-party software used by Dyflexis, are with the developer of this software or another owner. Such rights can in no case be transferred to Client. Client is responsible for compliance with the (open source) software licences and indemnifies Dyflexis for claims from third parties

regarding compliance with these licences.

- A.6.3. Client acquires a non-exclusive and non-transferable user right for the term of the Agreement from Dyflexis for the Works which have been developed specifically for Client and at the Client's Request. Under this user right, Client has the right to use the Works for its own purposes. In addition, Dyflexis can impose limitations and/or conditions on the use of the Works.
- A.6.4. Dyflexis may use the developed Works, corresponding source files and source codes, completely or partially for other clients and purposes.
- A.6.5. Dyflexis is not required to make source files and the source codes of the developed Works available to Client, unless agreed otherwise in writing.
- A.6.6. Dyflexis may take technical measures to prevent changes in the developed Works, corresponding source files and source codes. This also comprises securing the Works by means of encryption.

ARTICLE A.7. LIABILITY

- A.7.1. Dyflexis is only liable vis-à-vis Client for direct damages as a consequence of attributable failure in the fulfilment of an Agreement. Direct damages comprise exclusively all damage consisting of:
 - a. direct damage to material property (“property damage”);
 - b. reasonable and demonstrable costs that Client has had to make to summon Dyflexis to fulfil the Agreement properly (again);
 - c. reasonable costs to determine the reason and the size of the damages insofar as this concerns the direct damages as referred to here;
 - d. Reasonable and demonstrable costs that Client has made to prevent or limit the direct damages such as referred to in this Article.
- A.7.2. Dyflexis is not liable under any circumstances for compensation of indirect or consequential damages or damages due to loss of revenue or profit, delays, loss of data, exceeding deadlines due to a change of circumstances, damages due to Client providing insufficient cooperation, information or materials and damages due to information and advice provided by Dyflexis, the content of which does not explicitly form part of the Agreement.
- A.7.3. The maximum amount that will be paid out in the event of liability by virtue of paragraph 1 of this Article is limited per event or a series of interrelated events to the amounts that Client is required to pay per year under an Agreement (excluding VAT). However, the total compensation per year for direct damages will never amount to more than € 15,000 (excluding VAT).
- A.7.4. The limitation of liability as referred to in the previous paragraphs of this Article does not apply in the event that and insofar as the damage is the consequence of intent or gross negligence on the part of the management of Dyflexis.
- A.7.5. The liability of Dyflexis due to attributable failure in the fulfilment of an Agreement only arises in the event that Client issues a written notice of default to Dyflexis immediately and properly providing a reasonable period of time to cure such default, and Dyflexis continues to attributable fail to fulfil its obligations after this period. The notice of default must contain an as detailed description as possible of the shortcoming, in order that Dyflexis can respond adequately.
- A.7.6. Client indemnifies Dyflexis for all claims of third parties (including customers of Client) regarding compensation of damages, costs, or interest, in connection with this Agreement and/or a Service.

ARTICLE A.8. FORCE MAJEURE

- A.8.1. Dyflexis is not obliged to fulfil any obligation vis-à-vis Client if it is unable to do so due to any foreseen or unforeseen external cause, which is beyond Dyflexis's control and as a result of which Dyflexis is unable to fulfil its obligations.
- A.8.2. This is defined as a circumstance for which Dyflexis cannot be blamed, nor can be held accountable by law, by a legal act or according to generally accepted standards. Force majeure comprises in particular; civil unrest, mobilisation, wars, traffic obstructions, strikes, network attacks such as SYN floods or (distributed) denial of service attacks, disruption of networks in the internet with which Dyflexis has not concluded a contract, business interruptions, stagnation of deliveries, fire, flood, import and export restrictions, and in the case that Dyflexis is unable to deliver due to its own suppliers, irrespective of the reason for this, as a result of which the fulfilment of the Agreement cannot reasonably be demanded of Dyflexis.
- A.8.3. Dyflexis may suspend the obligations pursuant to the Agreement during the period in which the force majeure lasts, with which Client's payment obligations are also suspended. If this period lasts longer than ninety (90) days, each party has the right to terminate the Agreement, without any obligation to pay compensation for damages to the other party.
- A.8.4. Insofar as Dyflexis has partially fulfilled an obligation in the Agreement at the time that force majeure occurs or could fulfil this obligation during the period of force majeure, and attributes an independent value to the fulfilled or to be fulfilled part, Dyflexis has the right to invoice the already fulfilled or to be fulfilled part separately. Client is obliged to pay this invoice.

ARTICLE A.9. CONFIDENTIALITY

- A.9.1. Parties are bound to secrecy with regard to all confidential information that they receive about the company of the counterparty, including the contents of the Agreement. Parties also impose this obligation on their employees as well as on third parties that they have contracted for the execution of the Agreement.
- A.9.2. Information that is deemed confidential in any case: all information that becomes known to the other party in connection with the Agreement, information that should be regarded as confidential due to the nature of the information including, but not limited to, the personal data provided by Client, or information which has been designated as such by one of the parties.

ARTICLE A.10. PRICES

- A.10.1. The charges for the provision of the Services are stated in the quotation submitted by Dyflexis. All prices are stated in euros and exclusive of VAT.
- A.10.2. If the Agreement is a continuing contract, the payments due in accordance with the quotation will be invoiced to Client before each new period, unless agreed otherwise in writing. Any extra costs will be settled in arrears.
- A.10.3. Dyflexis may adjust the prices annually on 1 January with the percentage applying for the past year based on the CBS index for commercial services (DPI index), without Client having the right to terminate the Agreement.

ARTICLE A.11. PAYMENT CONDITIONS

- A.11.1. Dyflexis will send an invoice to Client for the amount owed by Client. The payment period of this invoice is fourteen (14) days after the invoice date, unless specified otherwise in the invoice or agreed otherwise in the Agreement. If payment in advance has been agreed, the Service will only be provided after the invoice has been paid.
- A.11.2. Client agrees to electronic invoicing by Dyflexis. Invoices will be sent as a PDF or other generally accepted format to the email address of Client known at Dyflexis.

If Client has not yet paid all amounts due (in full) at the end of the payment period, Dyflexis will grant Client the opportunity to pay the invoiced amount as yet within a reasonable period. As from sixty (60) days after the due date of the invoice, Client who has not paid timely is automatically in default by force of law, without a notice of default being required. As from that moment, Dyflexis has the right to limit all of its services, for example, by limiting the access to the Service or temporarily suspending the Service, or showing a warning message in the Service without Client having the right to demand compensation for any damage it may suffer as a result. In the event of a suspension by Dyflexis, the obligations of Client remain in effect in full including, but not limited to, the payment obligation. This suspension right also applies with regard to Services for which Client has fulfilled all its obligations.

- A.11.3. In the event of non-timely payment, Client is obliged to refund all out-of-court and legal expenses, including all lawyer expenses, in addition to the amount due and the accrued interest on this amount.
- A.11.4. The payment obligation is immediately due and payable in the event Client or a third party applies for the bankruptcy of Client or applies for a moratorium of payments of Client, or in the event of a general seizure of the Client's assets by a third party, or Client enters into liquidation or is dissolved.
- A.11.5. Client may not suspend or settle the payment of amounts that are due.

ARTICLE A.12. DURATION OF THE AGREEMENT

- A.12.1. The Agreement is entered into for the period specified in the quotation. If no period is specified, the Agreement is entered into for a period of twelve (12) months or for the period that is necessary for the provision of the Service. Early termination of the Agreement is only possible as stipulated in the Agreement, or with the consent of both parties. If the Agreement concerns a contract for professional services, this agreement cannot be terminated early by Client.
- A.12.2. If the Agreement concerns a continuing contract (for example, in the event of a SaaS agreement), this agreement is automatically extended for the same period if a written notice of termination is not received before the end of the aforementioned period, taking into account the notice period, unless agreed otherwise.
- A.12.3. Both parties will take a notice period of three (3) months into account.
- A.12.4. Dyflexis has the right to terminate the Agreement immediately and without any obligation to pay compensation for damages, insofar as reasonable, if:
 - a) Client has failed to fulfil its obligations and such a failure has not been remedied by Client within five (5) working days after receiving a written notice of default.
 - b) Client is declared bankrupt, applies for a moratorium of payments, or a general seizure is imposed on the Client's assets.
- A.12.5. In the event of complete or partial cancellation of the Agreement by Client, on grounds whatsoever, Client is obliged to pay 50% of the non-recurring costs specified in the quotation or the hours already spent - depending on which amount is higher. Cancellation is only possible up to the moment that Dyflexis has taken the order into production.

ARTICLE A.13. AMENDMENT OF AGREEMENT

- A.13.1. Dyflexis may amend these General Terms and Conditions provided that it announces the intended amendment to Client no later than thirty (30) days in advance. These amendments also apply with regard to existing Agreements.
- A.13.2. Amendments of minor importance can be carried out at all times, without Client having the right to terminate the Agreement.

- A.13.3. If Client refuses to accept an amendment in these Terms and Conditions, Client can terminate the Agreement up to the date on which the new terms and conditions come into force.

ARTICLE A.14. OTHER PROVISIONS

- A.14.1. Dutch Law applies to the Agreement.
- A.14.2. Unless mandatory statutory provisions specify otherwise, all disputes that may arise pursuant to this Agreement are submitted to the competent court in the court district of The Hague, location The Hague.
- A.14.3. The version of any communication and administration received by or stored by Dyflexis is deemed authentic and conclusive evidence, with the exception of evidence to the contrary to be provided by Client.
- A.14.4. Communication by email is also regarded as “written” in these General Terms and Conditions provided that the identity of the sender and the integrity of the contents are sufficiently ascertained.
- A.14.5. If Client is acquired by a third party or if Client acquires a third party, it must immediately notify Dyflexis as soon as Client has become aware of the acquisition.
- A.14.6. Dyflexis has the right to transfer its rights and obligations pursuant to the Agreement to a third party who takes over the Service or the business activity concerned from Dyflexis, without the approval of Client being required for this.
- A.14.7. If a provision in the Agreement turns out to be void, this does not affect the validity of the whole Agreement. Parties of the Agreement will then determine a new provision or new provisions as a replacement, with which as much as legally possible the intention of the original Agreement will be maintained.
- A.14.8. The heading above the clauses of these Terms and Conditions are only intended to enhance the readability of this document. The content and meaning of a clause that is placed under a heading is therefore not limited to the meaning and content of the heading.

MODULE B – CONSULTANCY AND PROJECT MANAGEMENT

If the Service (also) includes providing advice with regard to ICT and ICT infrastructure, implementation and/or use of software or providing training, that which is stipulated in this module also applies.

ARTICLE B.1. CONSULTANCY AND PROJECT MANAGEMENT

- B.1.1. Dyflexis will carry out consultancy and project management to the best of its abilities with care and expertise.
- B.1.2. Parties will determine in advance which items are part of the consultancy and/or project management. If necessary, this will be adjusted during the project management in mutual consultation. Dyflexis has the right to charge any extra costs in connection with this.
- B.1.3. Consultancy and project management within the context of the Agreement is always a best-efforts obligation unless agreed otherwise in writing.
- B.1.4. Client is aware that following advice given by Dyflexis is completely for Client's own risk. Dyflexis is only liable for damages suffered insofar as this follows from the Agreement.
- B.1.5. Dyflexis will always inform Client in advance about the time and costs in connection with work to be carried out. The time that is necessary for the work in question is dependent on various factors, including the cooperation of Client.

ARTICLE B.2. TRAINING SESSIONS AND COURSES

- B.2.1. Dyflexis determines the contents of training sessions or courses. Client can inform Dyflexis about its preferences with regard to the contents; however, Dyflexis cannot guarantee at all times that these preferences will be taken into account in the training sessions or courses.
- B.2.2. Training sessions and courses take place in the training accommodation of Dyflexis in The Hague unless agreed otherwise in writing.
- B.2.3. In the event that Dyflexis gives a training session or course at a location of Client, Client is responsible for providing the facilities required by Dyflexis (including in any case sufficient course space, computers, beamers, internet connections, food and drinks) for the training session or course, as well as handling the registrations.
- B.2.4. Cost-free cancellation and/or rescheduling of a training session or course by Client can only take place up to five (5) Working Days before the date of the planned training session or course. In the event of cancellation and/or rescheduling within five (5) days before the date, 50% of the agreed costs must be paid.
- B.2.5. In the event of cancellation and/or rescheduling on or after the day of the training session, 100% of the agreed costs must be paid. When Client does not appear on the day of the training session without announcing this (a No-show), 100% of the agreed costs must be paid.
- B.2.6. In the event of mandatory training sessions, Dyflexis is not obliged under any circumstances to repay the paid fees.
- B.2.7. Dyflexis has the right to cancel and or reschedule a training or course free of costs up to five (5) working days before the date of the planned training or course. The amounts that have already been paid in connection with training or courses that have not taken place will be repaid within ten (10) Working Days. In the event of mandatory training sessions, Dyflexis is not obliged under any circumstances to repay the fees paid. In such a case, parties will set another date in consultation.
- B.2.8. For the protection of your and our property, we make use of camera surveillance at our office.

MODULE C – SUPPLYING HARDWARE

If the Service (also) includes supplying (ICT) Hardware that which is stipulated in this module also applies.

ARTICLE C.1. DELIVERY

- C.1.1. Dyflexis strives to deliver the Hardware on the agreed date. However, Dyflexis is dependent on its suppliers and cannot exert any influence on the transporters. Therefore, Dyflexis cannot guarantee that the Hardware will be delivered within the agreed period.
- C.1.2. The Hardware will be delivered, in principle, at the address of the Client that is known at Dyflexis. Client is responsible for providing the correct address details if this changes, or if Client wishes to use a different delivery address.
- C.1.3. If the Hardware ordered by Client is not or no longer deliverable, Dyflexis may deliver similar Hardware that meets the specifications. If possible, Dyflexis will inform Client of this in advance.
- C.1.4. Client is obliged to check the Hardware immediately after receiving the Hardware. If Client observes visible shortcomings, Client must inform Dyflexis within ten (10) Working Days.
- C.1.5. Other shortcomings must be reported to Dyflexis within twenty (20) days of receipt of the Hardware or completion of the work.
- C.1.6. If Dyflexis is not informed of the above-mentioned complaint within the aforementioned periods, the received Hardware is deemed to have been in a good state or the work is deemed to have been carried out properly.
- C.1.7. Minor deviations with regard to specified sizes, weights, colours and such are not regarded as shortcomings on the part of Dyflexis.
- C.1.8. Complaints do not suspend Client's payment obligation.
- C.1.9. If after delivery the nature and/or composition of Hardware has been changed or completely or partially adapted, processed or damaged, Client no longer has the right to lodge a complaint.

ARTICLE C.2. PAYMENTS AND RETENTION OF TITLE

- C.2.1. For the delivery of Hardware, Client must pay half of the agreed amount to Dyflexis in advance. Dyflexis will only send and/or make this Hardware available to Client after this first payment. Dyflexis is not liable for damage due to late delivery as a result of a delay in payment by Client.
- C.2.2. As long as Client has not paid the total agreed amount in full, all delivered goods remain the property of Dyflexis.

ARTICLE C.3. REAL-TIME TIME REGISTRATION MODULE INCLUDING HARDWARE

- C.3.1. Article C.3. Is only applicable in the event that Client makes use of the real-time time registration module including Hardware.
- C.3.2. Hardware that is supplied to Client in a module is on loan and remains the property of Dyflexis. The on-loan use ends automatically upon the termination of the subscription.
- C.3.3. Client shall follow all instructions issued by Dyflexis regarding the use and installation of the Hardware. The Hardware can be exchanged at Dyflexis's request.

- C.3.4. Client may not encumber Hardware with (limited) rights and may not sell, rent, or make equipment available to third parties in another manner.
- C.3.5. If there is such a defect, caused by improper handling by Client or unauthorised changes in the Hardware made by Client, that the Hardware can no longer be repaired, Client is obliged to pay compensation to Dyflexis for the amount of the residual value of the Hardware and/or any repair costs.
- C.3.6. Client shall handle the Hardware with due care. If the Hardware that Dyflexis has made available is damaged, becomes unusable or no longer functions properly in another manner, due to circumstances that can be attributed to Client, Client shall compensate Dyflexis for the damage.
- C.3.7. Upon the termination of the Service, Client shall return the Hardware within 10 Working Days.

ARTICLE C.4. **WARRANTIES**

- C.4.1. Dyflexis provides a twenty-four (24) month warranty on the supplied Hardware.
- C.4.2. If the Hardware shows shortcomings within the first year of purchase, Client can return the Hardware to Dyflexis. The costs for returning the Hardware to Dyflexis are for Client's account.
- C.4.3. After inspection by Dyflexis, it will repair the Hardware free of charge, unless it appears from the inspection that the shortcomings are the consequence of Client's own acts. If that is the case, then Dyflexis may charge the costs of repair to Client. Dyflexis will always inform Client in advance of an estimate of the costs. In addition, Dyflexis may return refurbished Hardware if repair is not possible.
- C.4.4. After the second year, as referred to in the first paragraph, Client can submit a request to Dyflexis for the repair of the Hardware. After receiving the Hardware, Dyflexis will inform Client about the costs in connection with the repair. After approval, Dyflexis will repair the Hardware.
- C.4.5. Dyflexis is not obliged to provide (temporary) replacement Hardware to Client, unless agreed otherwise in writing.

MODULE D – SAAS SERVICES

If the Service (also) includes services concerning the supply of software (as a service), or installing, administrating, and maintaining software (as a service), that which is stipulated in this module also applies.

ARTICLE D.1 DELIVERY OF SOFTWARE (AS-A-SERVICE)

- D.1.1. Dyflexis grants the non-exclusive, non-transferable, and limited right to make use of the Service to Client for the duration and under the terms and conditions of this Agreement.
- D.1.2. The right of use as referred to in the previous paragraph also includes all future Updates. Dyflexis is entitled to charge additional costs for the installation of Upgrades.
- D.1.3. Client has the right to make use of the Service under the right of use for Client's company or institution. The limitations, also including the number of employees and/or administrators and available functions are specified in the Agreement.
- D.1.4. Unless agreed otherwise in writing, Client may not sub-lease the Service or make the Service available to third parties in another manner. This does not include the employees of Client's company or institution.
- D.1.5. When making use of the Service, Client shall ensure that all applicable statutory obligations are complied with.
- D.1.6. Dyflexis will send or deliver the login details of the Service to Client around the Commencement Date. Client is aware that loss of the login details can lead to unauthorised access to the Service. Therefore, Client shall ensure that unauthorised persons are unable to view the login details.
- D.1.7. Client is responsible for uploading all data into the Service using the uploading option or one of the synchronisation options that Dyflexis has made available in the Service. Dyflexis is not liable for any errors after the uploading or when synchronising the data, unless in the case of intent or gross negligence.
- D.1.8. Client will at least impose the same terms and conditions as stated in Article D.5 on the end users with regard to the use of the Service.
- D.1.9. Dyflexis may use the anonymised Data for statistic analyses and/or benchmarking. Furthermore, Dyflexis may monitor the use of the Service based upon which it can make recommendations to Client.

ARTICLE D.2. AVAILABILITY AND MAINTENANCE

- D.2.1. If a SLA (Service Level Agreement) has not been concluded between the parties, the following provisions apply.
- D.2.2. Dyflexis aims to ensure that the Service is available; however, it does not guarantee uninterrupted availability.
- D.2.3. Dyflexis actively maintains the Service. Maintenance can take place at every moment, also when this could lead to limited availability. However, Dyflexis will make an effort to carry out the maintenance during times that minimal use is made of the Service. Maintenance will be announced in advance in as far as possible.

ARTICLE D.3. GUARANTEES AND MODIFICATIONS

- D.3.1. Client accepts that the Service only contains the functionalities and other features as Client encounters in the Service at the time of delivery (“as is”), therefore with all visible and invisible errors and shortcomings.
- D.3.2. Dyflexis will make an effort to remedy problems/shortcomings in the Service. However, Dyflexis does not give any guarantees with regard to this.
- D.3.3. Client is responsible for checking the calculations or processing of Data by the Service. Dyflexis does not guarantee that all calculations and/or processing will be error-free at all times.
- D.3.4. Dyflexis may modify the functionality of the Service from time to time. The feedback and suggestions of Client are welcome in this case; however, Dyflexis has the right not to implement the modifications if it has reasonable grounds for this. Dyflexis aims to, but is not obliged to, announce which modifications it plans to implement at least two (2) Working Days in advance. Client may not continue to make use of the old version of the Service under any circumstances.

ARTICLE D.4. SUPPORT BY DYFLEXIS

- D.4.1. Dyflexis offers support in connection with the delivery of the Service in the form of oral (telephone) and written (email) advice on the use and functioning of the Service.
- D.4.2. Dyflexis is entitled to charge costs for Upgrades. Dyflexis will always inform Client in advance about the costs.

ARTICLE D.5. RULES OF CONDUCT

- D.5.1. Client may not make use of the Service to violate Dutch laws or regulations or other laws and regulations that apply to the Client or Dyflexis or to infringe upon the rights of others.
- D.5.2. It is forbidden by Dyflexis (whether this is legal or not) to make use of the Service to offer, store, or distribute materials that:
 - a. are clearly primarily intended to help others violate the rights of third parties, such as websites with (exclusively or mainly) hack tools or explanations about computer crime that are clearly intended to enable the readers to carry out the described criminal activities or to have these carried out, and not to be able to defend themselves against this;
 - b. are clearly dishonourable, defamatory, insulting, racist, discriminating or spread hatred;
 - c. contain child pornography or bestiality pornography or are clearly aimed at helping others to find such materials;
 - d. result in a violation of the privacy of third parties, including in any case, but not limited to, distributing the personal data of third parties without permission or necessity or repeatedly bothering third persons with undesired communication;
 - e. contain hyperlinks, torrents or references with (locations of) materials that clearly infringe upon copyrights, related rights or portrait rights;
 - f. contain unsolicited commercial, charitable, or idealistic communication; or
 - g. contain malicious content such as viruses or spyware.
- D.5.3. Client shall refrain from hindering other customers or internet users or causing damage to systems or networks of Dyflexis or other customers.

Client may not start processes or programmes, whether or not via the systems of Dyflexis, of which Client knows or could reasonably suspect that these would hinder or damage Dyflexis, its customers or internet users.

- D.5.4. If, in the opinion of Dyflexis, hinder, damage or another danger arises for the functioning of the computer systems or the network of Dyflexis or third parties and/or the service provision via internet, in particular due to excessive sending of emails and other data, (distributed) denial of service attacks, inadequate security of systems or activities of viruses, trojans and similar software, Dyflexis is entitled to take all measures that it deems reasonably necessary to avert or prevent this danger. Dyflexis may recoup the costs that are reasonably necessarily connected to these measures from Client.

ARTICLE D.6. NOTICE & TAKEDOWN (COMPLAINTS PROCEDURE)

- D.6.1. When Dyflexis receives a complaint regarding a violation of the previous Article by Client, or when Dyflexis observes that this appears to be the case, Dyflexis will inform Client as soon as possible about the complaint or violation. Client shall respond to this as soon as possible, after which Dyflexis will decide on what action to take.
- D.6.2. If Dyflexis is of the opinion that this concerns a violation, it will block the access to the data and/or files in question; however, without removing these permanently (unless this is technically impossible, in which case Dyflexis will make a back-up). Dyflexis will make an effort not to affect any other data and/or files. Dyflexis will inform Client as soon as possible about the measures taken.
- D.6.3. If Dyflexis is of the opinion that this concerns a violation of the previous Article (Rules of Conduct) it has the right - 24 hours after sending the notification - to limit all of its services, for example by restricting the access to the Service or temporarily suspending the Service, without Client having the right to demand compensation for any damages that it could suffer as a result. Dyflexis may also always report the observed criminal facts to the authorities. Dyflexis is only obliged to hand over data of Client to a third party after a court summons.
- D.6.4. Although Dyflexis aims to act as reasonably, carefully, and adequately as possible after receiving a complaint about Client, Dyflexis is never obliged to pay compensation for damages as a consequence of measures referred to in this Article.
- D.6.5. Dyflexis has the right to terminate the Agreement in the event of frequent complaints about Client or about the information stored by Client.

ANNEX 1 – SERVICE LEVEL AGREEMENT

ARTICLE 1. DEFINITIONS

In addition to the definitions as used in the General Terms and Conditions, the following definitions are used in this SLA.

- 1.1. **Actual Availability:** the actual realised degree of availability of the Service.
- 1.2. **Fault:** substantially not satisfying the functional specifications explicitly agreed between Parties in writing. It is only considered a Fault when Client can demonstrate this, and this Fault can be reproduced by Dyflexis.
- 1.3. **Desired Availability:** the degree of availability of the Service aimed for by Dyflexis.
- 1.4. **Recovery time:** the time between (i) the time at which Dyflexis has discovered a Fault or Client has reported a Fault and this has been confirmed by Dyflexis and (ii) the time at which the Fault has been remedied, (the Fault in) the Service has been replaced, or a Workaround has been created, as determined by Dyflexis.
- 1.5. **Maintenance:** carrying out repairs, taking precautionary measures and regularly checking the Service as well as scheduled maintenance.
- 1.6. **Support:** providing oral (telephone) or written advice and/or other supporting activities with regard to the use and the functioning of the Service.
- 1.7. **Response time:** the time between (i) the time at which Client has reported a Fault and (ii) the time at which Dyflexis sends a response to Client regarding receipt of the report, as determined by Dyflexis.
- 1.8. **Working Day:** from 9 am to 5 pm on Monday through Friday, with the exception of recognised and official holidays in the Netherlands.
- 1.9. **Modifications:** a structural modification in the Service which has been requested by Client and registered by Dyflexis.
- 1.10. **Workaround:** an act with which a Fault can be circumvented temporarily or permanently.

ARTICLE 2. NATURE OF THE AGREEMENT

- 2.1. This document forms the SLA for the Service as this is provided by Dyflexis. The purpose of the SLA is to lay down the service level. This is achieved by describing important elements, setting performance standards, and laying down the consequences of not achieving these standards.
- 2.2. The SLA comes into force at the time of the first delivery of the Service and is entered into for the same period as the Agreement under which the Service is delivered. The SLA ends automatically on the date on which the Agreement ends. A termination of the Agreement will also be regarded as a termination of this SLA.
- 2.3. This SLA only pertains to the following standard support activities of Dyflexis:
 - a. carrying out (periodic) Maintenance;
 - b. remedying Faults;
 - c. implementing Modifications;
 - d. monitoring the Desired Availability; and
 - e. providing Support.
- 2.4. In addition to these standard support activities, Dyflexis can carry out other activities for Client. These activities may be charged separately. Dyflexis will always provide an overview of the costs to Client in advance.

- 2.5. The General Terms and Conditions apply to this SLA. In the event of a contradiction between the provisions, the order of precedence set out in the General Terms and Conditions applies.

ARTICLE 3. CONTACT INFORMATION

- 3.1. Client shall make use of the following contact information to report Faults:

When	Email address	Telephone number
During Working Hours	support@dyflexis.com	NL: 0880 111 567 BE: 038 083 695
Outside Working Hours	N.A.	NL: 0880 111 567 BE: +31 880 111 599

- 3.2. Outside Working Hours, Client can contact Dyflexis via the above-mentioned telephone number if, in Client's opinion, it concerns a Fault as described in priority level 1. Should that not be the case in Dyflexis's opinion and should Dyflexis believe that misuse has been made of the emergency number, then Dyflexis has the right to charge the hours worked.
- 3.3. Client and (certified) employees of Client may contact Dyflexis under this SLA.

ARTICLE 4. PRIORITY LEVELS AND FAULT HANDLING

- 4.1. Faults are reported to Dyflexis by Client in accordance with the overview specified in Article 3 (Contact information). If Faults are reported to Dyflexis in another manner, for example via other telephone numbers or email addresses, a correct handling cannot be guaranteed.

The following information must be provided to Dyflexis when reporting a Fault:

- a) the name of Client's organisation;
 - b) the name of the contact person for this Fault at Client;
 - c) up-to-date contact information ((mobile) telephone number, email address) of this contact person;
 - d) description of the Fault, as accurately as possible;
 - e) description of the steps already taken by Client.
- 4.2. The Faults, provided they are amenable to further action by Dyflexis, are categorised into the following priority levels:

Level	Description	Explanation
1	High	The Service not being available at all.
2	Average	Partially interrupted / reduced availability of the Service.
3	Low	Problems with limited consequences for Client. The Service is available but does not function completely.

After receiving a report by Client, the priority level is determined reasonably by the Dyflexis support employee, who will start handling the Fault.

- 4.3. The best-efforts obligation of Dyflexis with regard to handling Faults is set out in the columns below for each priority level:

Priority	During Working Days		Outside Working Days	
	Response time	Recovery time	Response time	Recovery time
1	0.5 hours	4 hours	2 hours	8 hours
2	2 hours	8 hours	4 hours	2 Working Days
3	1 Working Day	10 Working Days	1 Working Day	10 Working Days

In deviation from the above-mentioned overview, Dyflexis may pass Faults with priority level 3 on to next releases of the Service. In doing so, Dyflexis will take the consequences for Client into account in as far as possible; however, Dyflexis is not obliged to do so.

- 4.4. The support employee of Dyflexis will inform the contact person at Client of the specific Fault by email within the Response Time about:
- a) The priority level of the Fault; and - if this is already known -:
 - b) The cause and the solution of the Fault.
- 4.5. In order to inform Client about the handling of the Fault, Dyflexis must have Client's up-to-date contact details. It is Client's responsibility to provide correct and up-to-date contact details. If the contact details that are known at Dyflexis are not correct due to an act or omission on the part of Client, or if not timely providing information to Client regarding handling of the Fault by Dyflexis is due to circumstances for which Dyflexis cannot be held accountable, then the time of providing information on the handling of the Fault is deemed to be the attempt that Dyflexis has made to do so.
- 4.6. Client agrees to provide assistance to the best of its abilities with remedying the Fault.
- 4.7. If assistance is not provided as referred to in the previous paragraph, not due to Dyflexis's actions, the Recovery Time will only commence at the time that Client provides the necessary assistance.
- 4.8. Dyflexis makes use of an escalation procedure which is implemented when a Fault cannot be solved within a specific period of time (Recovery Time). During this procedure, Dyflexis will make use of all available resources (including, when it considers this necessary, external technical engineers) to expedite solving the Fault. In addition, specific agreements can be made with Client regarding solving the Fault during the escalation procedure. During the escalation procedure, Dyflexis will inform Client about the progress with regard to solving the Fault every working day.
- 4.9. Dyflexis maintains the right not to provide any Support one working day a year in connection with team building and training purposes. The day in question will not be defined as a Working Day.

ARTICLE 5. **AVAILABILITY**

- 5.1. Dyflexis makes an effort twenty-four (24) hours a day, seven (7) days a week during the whole year to ensure that the Service is available 99.8% of the time, this is the Desired Availability.
- 5.2. Availability means that the Service can be accessed and used by Client. Interruptions of the connection and/or equipment that are beyond Dyflexis's control, including Client's own connection and/or equipment are not included.

- 5.3. The Actual Availability is calculated by Dyflexis monthly as follows:

$$DB = \frac{GB - \sum G}{GB} * 100\%$$

“DB” = Percentage of Actual Availability;
“GB” = Desired Availability in minutes;
“G” = The number of minutes that a Fault occurs.

- 5.4. Non-availability caused by force majeure, Maintenance, Hardware and/or equipment supplied by Dyflexis over which Dyflexis has no control, is not regarded as a Fault and does not under any circumstances have an effect on the calculation of the Actual Availability.

ARTICLE 6. **MONITORING AVAILABILITY**

- 6.1. Dyflexis will take a sample of relevant data every five minutes in order to determine whether the guarantees laid down in Article 5 (Availability) are adhered to. An average is calculated based on these samples. This average determines whether the specified standards are exceeded unless Client provides evidence to the contrary.
- 6.2. At Client's request regarding alleged non-availability and after receiving a notification of non-availability of a Service, Dyflexis will respond in accordance with the Response Times as specified in Article 4.3.

ARTICLE 7. **MAINTENANCE**

- 7.1. Dyflexis can carry out Maintenance of the Service from time to time as it sees fit. Dyflexis shall seek to carry out such Maintenance resulting in non-availability as much as possible outside Working Days. Dyflexis will make an effort to inform Client at least two (2) Working Days in advance about such Maintenance, but Dyflexis is not under any circumstances obliged to do so. Maintenance will not affect the guarantees in Article 4 (Performance levels and fault handling) and 5 (Availability).

ARTICLE 8. **MODIFICATIONS**

- 8.1. Client can request Modifications by contacting Dyflexis via the contact details as described in Article 3 (Contact information). Dyflexis will make an effort to handle the request as soon as possible but does not guarantee this.
- 8.2. Dyflexis can also take the initiative to propose a Modification to Client if this Modification would solve a structural Fault. However, Dyflexis is not obliged to make such a proposal and can implement this Modification without Client's permission if it considers this necessary. Client also does not have any influence on the Modification in question.
- 8.3. For each Modification request, Dyflexis will submit a proposal to Client with regard to the contents, planning and costs of the Modification.
- 8.4. Dyflexis will make an effort to carry out modification requests, but until agreement has been reached regarding the contents, planning and costs of the Modification, Dyflexis can always decide not to carry out the Modification partially or completely if it considers the effort that has to be made disproportional.

- 8.5. If a requested Modification is not going to be carried out, Dyflexis will immediately inform Client.

ARTICLE 9. BACK-UP

- 9.1. Dyflexis makes a back-up of the Service every day. This back-up can only be accessed by Dyflexis. Client can request Dyflexis to make the back-up available; however, Dyflexis can always refuse such requests.
- 9.2. Dyflexis may charge reasonable costs to Client for making a back-up available or replacing a back-up. Dyflexis will always inform Client in advance about the costs.
- 9.3. Dyflexis is under no circumstances liable for loss of Data due to a failure of the Service and/or the back-up (software). Client remains responsible at all times for the storage of the Data stored via the Service.
- 9.4. Client is responsible for the security of the data stored via the Service. Dyflexis is under no circumstances responsible for loss of data in any manner whatsoever, unless agreed otherwise in writing.

ARTICLE 10. SUPPORT BY DYFLEXIS

- 10.1. Dyflexis offers Support when providing the Service in the form of telephone support, making a connection with software of third parties and other activities that are supporting in Dyflexis's opinion and can be carried out quickly and easily. Dyflexis may charge costs for the activities in question. Dyflexis will always send a quotation to Client before carrying out the activities.
- 10.2. Dyflexis may refuse to provide support to non-certified users.
- 10.3. Dyflexis will always inform Client in advance about the costs of the Support before carrying out the activities.
- 10.4. Dyflexis maintains the right not to provide any Support one working day a year in connection with team building and training purposes. The day in question will then not be defined as a Working Day in accordance with Article 4 (Priority level and fault handling).

ARTICLE 11. PENALTY CLAUSE

- 11.1. In the event that Dyflexis does not fulfil the response obligation in accordance with the Response and Recovery Times stipulated in Article 4 (Priority levels and fault handling), for each hour in which the response or recovery does not take place, Dyflexis will pay a penalty that equals one-thirtieth of the monthly amount due for the Service in question.
- 11.2. In the event that Dyflexis does not comply with one or several of the guarantee provisions in Article 5 (Availability), Dyflexis will pay a penalty for every day (or part of a day) that a guarantee is not satisfied that equals one-thirtieth of the monthly amount due for the Service in question.
- 11.3. This penalty takes the place of any compensation for damages that Client could claim for non-compliance.
- 11.4. If Client concludes that a compensation is payable, Client shall inform Dyflexis in writing and this will be credited on the next invoice.
- 11.5. If Client is of the opinion that compensation is payable whereas Dyflexis does not pay this, Client must submit a request for payment and provide proof if requested.
- 11.6. The to be paid compensation per month will never exceed the total amount of the monthly payment.

ARTICLE 12. CHANGES IN TERMS AND CONDITIONS

- 12.1. Dyflexis may amend this SLA at any moment.
- 12.2. Dyflexis will announce the amendments or additions at least thirty (30) days before they come into effect in writing or via the Service so that Client can take cognizance of the amendment.
- 12.3. If Client does not wish to accept an amendment or addition to the SLA, Client can give notice of termination until the date that the amendment or addition comes into force. Making use of the Service after the date of the coming into effect is regarded as acceptance of the amendment or addition to the SLA.

ANNEX 2 PROCESSING AGREEMENT - DATA PRO STATEMENT

This Data Pro Statement together with the Standard Clauses for processing form the processing agreement for Dyflexis.

DATA PRO STATEMENT

This Data Pro Statement has been drawn up by the following processor:

Dyflexis B.V., Binckhorstlaan 36 M449, 2516 BE The Hague.

For questions regarding this Data Pro Statement or data protection, please contact: Thomas van den Ende, privacy@dyflexis.com, telephone 088-0111555.

1. This Data Pro Statement applies as from 11 NOVEMBER 2020.

We update this Data Pro Statement and the security measures described in this statement regularly in order to always remain prepared and up to date with regard to data protection. We will keep you informed about new versions via our website and Product Update newsletter.

2. THIS DATA PRO STATEMENT APPLIES TO THE FOLLOWING PRODUCTS AND SERVICES OF THE DATA PROCESSOR.

Dyflexis Workforce Management Software and Hardware.

3. DESCRIPTION OF PRODUCT.

Dyflexis is market leader in user-friendly workforce management, staff planning, time registration software and Hardware. Dyflexis comprises the following items.

- a. Staff planning:** Efficient planning based on budgets, availability (leave requests), labels and external information streams. Changes are visible for everyone immediately by means of push notifications.
- b. Time registration:** Time is registered quickly and efficiently with our in-house developed clocking system, the Rex-O-Matic NOA. The clocked hours can be viewed in one overview next to the scheduled hours and the differences are immediately visible. The system automatically calculates all payments and allowances. Manual registration by the employee or employer is also possible.
- c. Time registration system:** With our clocking system, the Rex-O-Matic NOA, employees can easily clock in and out. By scanning a personal card such as a public transport card or bank card, working hours are automatically registered in Dyflexis.
- d. App for Android and iOS:** In the Dyflexis app, employees can see when they are scheduled or when a change has taken place. Employees receive a notification when a new shift is created for which they can sign up. Employees can also quickly indicate their availability via the app and they also have access to their balance.

4. INTENDED USE

The product has been developed and designed to process the following types of data:

- Name and address details
- Email address
- Contract data (such as salary and allowances)
- Personal schedule
- Time registration
- Balances (leave, leave days, absenteeism, etc.)

Dyflexis is intended for time registration and staff planning and provides all the information necessary for payroll administration. Dyflexis is not a payroll administration system but does provide various links to other payroll administration software.

5. THE PROCESSING OF SPECIAL CATEGORIES OF PERSONAL DATA HAS BEEN TAKEN INTO ACCOUNT IN THIS PRODUCT.

Dyflexis has been designed in such a manner, with appropriate technical and organisational measures, that personal data related to time registration and staff planning can be processed safely, also when these personal data can be regarded as special personal data. Please note that Dyflexis offers the possibility to provide insight to all staff regarding who is scheduled when or who is possibly on leave. The reason that someone is on leave can be filled in by the employer, the employer must make its own choices with regard to this possibility and visibility and should include this in its privacy policy.

When Client opts to make use of the Rex-O-Matic Hardware for time registration, the clocking system, in addition to Dyflexis, a finger scan can be used for time registration by means of the clocking system. The scan only stores a hash of a number of unique characteristics so that the fingerprint can no longer be recognised or reconstructed.

Within the context of the General Data Protection Regulation (GDPR), this hash is regarded as biometric data. Therefore, it qualifies as special personal data.

Please note that a Data Privacy Impact Assessment is obligatory when making use of biometric data. Asking your employees to clock in using their finger is not allowed. As an employer, you may not even ask for permission because there is a dependency relationship between employer and employee. An employee must always have a completely free choice between clocking with a card or with his/her finger and must always be able to change this preference. There may be no obstacles or disadvantages to a choice for a card, such as a deposit or a penalty in the event of loss.

6. WHEN DEVELOPING THE PRODUCT/SERVICE, DATA PROCESSOR APPLIED PRIVACY BY DESIGN/PRIVACY BY DEFAULT IN THE FOLLOWING MANNER:

In order to implement privacy by design and privacy by default properly within the products that we develop and deliver, Dyflexis takes the principles as laid down in the GDPR, including data minimalization, security, transparency, and accountability into account. In the development process, we constantly ask ourselves the question whether processing personal data is really necessary or if anonymised or pseudonymised data can be used by means of encryption and access control.

We also pay attention to privacy in the default standard settings. The setup is such that personal data are never visible with the standard settings.

7. DATA PROCESSOR USES THE STANDARD CLAUSES FOR PROCESSING, WHICH CAN BE FOUND IN THE ANNEX TO THE AGREEMENT.

8. DATA PROCESSOR PROCESSES THE PERSONAL DATA (PARTIALLY) OUTSIDE THE EU/EEA. THE DATA PROCESSOR HAS ENSURED AN ADEQUATE LEVEL OF DATA PROTECTION IN THE FOLLOWING MANNER:

Dyflexis processes personal data mainly within the EU/EEA. The data processors in question that are located outside the EU/EEA are listed on our website:

<https://www.dyflexis.com/nl/subverwerkers/>

Dyflexis has appropriate safeguards in place for processing data outside the EU/EEA such as: (i) the assessment whether the country in question is qualified as safe by the European Commission in the adequacy decision of the European Commission; and (ii) concluding a processing agreement including the standard contractual clauses as stipulated by the European Commission.

9. DATA PROCESSOR MAKES USE OF THE FOLLOWING SUB-PROCESSORS:

<https://www.dyflexis.com/nl/subverwerkers/>

10. DATA PROCESSOR SUPPORTS CLIENT IN THE FOLLOWING MANNER WITH REGARD TO REQUESTS FROM DATA SUBJECTS (SUBJECT ACCESS REQUEST):

A request from a data subject such as access, rectification, or erasure can be carried out by Client itself in the Dyflexis software. Should Client run into problems or have questions regarding such requests, the Dyflexis support department can assist Client.

11. DATA PROCESSOR WILL COOPERATE IN THE FOLLOWING MANNER WITH DATA PRIVACY IMPACT ASSESSMENTS:

A request to cooperate with a DPIA can be submitted to the Dyflexis support department. Dyflexis will first make an estimate of the time and costs and prepare a quotation which will be sent to Client for the work in connection with the DPIA.

12. AFTER TERMINATION OF THE AGREEMENT WITH A CLIENT, DATA PROCESSOR WILL DELETE THE PERSONAL DATA THAT IT PROCESSES FOR CLIENT IN PRINCIPLE WITHIN 3 MONTHS IN SUCH A MANNER THAT THE DATA CAN NO LONGER BE USED AND ARE NO LONGER ACCESSIBLE (RENDER INACCESSIBLE).

13. AFTER TERMINATION OF THE AGREEMENT WITH CLIENT, DATA PROCESSOR WILL RETURN ALL PERSONAL DATA THAT IT PROCESSES FOR CLIENT WITHIN 3 MONTHS.

The standard procedure is by means of a database export. Further agreements regarding the execution, such as the manner of sending and delivery, as well as any costs in connection with these activities, are always determined in advance in consultation between Dyflexis and Client.

14. RETENTION PERIODS

The standard retention periods that are used within Dyflexis are 7 years in connection with statutory provisions regarding financial obligations following from staff planning and time registration. At Client's request, and in consultation with Client, other periods can be used as desired by Client.

SECURITY POLICY

15. DATA PROCESSOR HAS TAKEN THE FOLLOWING SECURITY MEASURES TO PROTECT ITS PRODUCT OR SERVICE:

Dyflexis is ISO 27001 certified. Within the ISO 27001 certification, the security measures are laid down in various manuals, including the Dyflexis's Security Manual & Quality Manual.

- Confidentiality and integrity are ensured as follows:
 - only employees who need to access the data have access;
 - security audits are constantly performed on Dyflexis;
 - there is logging at crucial points.
- Customer systems have a back-up and redundancy is applied on the servers that contain customer data. This ensures the timely recovery of the availability of and access to the personal data in the event of an incident.
- The software is reviewed and tested extensively before it is taken into production.
- Our computers are secured with passwords and anti-virus software.

16. DATA PROCESSOR ADHERES TO THE FOLLOWING INFORMATION SECURITY MANAGEMENT SYSTEM (ISMS):

- NEN-ISO 27001

17. CERTIFICATIONS

Data processor has the following certificates which are very important for both Dyflexis and its customers. Safeguarding data and security have the highest priority. Customers must be able to trust this blindly.

- Data Pro Certificate
- ISO 27001
- ISO 9001

DATA LEAK PROTOCOL

18. IN THE EVENT THAT SOMETHING SHOULD NEVERTHELESS GO WRONG, DATA PROCESSOR HAS A DATA LEAK PROTOCOL TO ENSURE THAT ALL NECESSARY MEASURES ARE TAKEN AND THE CLIENT IS INFORMED OF INCIDENTS:

When a security incident occurs, this is immediately investigated. If a security incident should appear to possibly be a data leak, the Client is immediately informed so that Client can fulfil its obligations as "controller" under the GDPR to inform the Dutch Data Protection Authority and/or the data subjects about the data leak within the statutory time period.

Dyflexis will of course assist Client when reporting a data leak and provide the necessary information for this.

If the security incident is a possible data leak, the following step-by-step plan is activated:

Process steps	Activity	Responsible person
1. A data leak or possible data leak is discovered	<ul style="list-style-type: none"> - Report the data leak or possible data leak immediately internally; - Inform the data protection officer within Dyflexis; 	- Employee within Dyflexis who discovers the data leak or possible data leak
2. Assess the data leak	<ul style="list-style-type: none"> - Investigate the security incident; - Investigate whether personal data have been lost or can be used wrongfully; - Assess whether a sub-processor is involved in the incident. If so, then the sub-processor must be involved in the process; 	- Security manager Dyflexis
3. Combat the data leak;	<ul style="list-style-type: none"> - Stop the data leak if that is still possible; - Take other measures to limit the data leak and the resulting damage; - Document the actions of the measures taken in the file. 	- Security manager Dyflexis
4. Inform Client	<ul style="list-style-type: none"> - Inform Client within 24 hours after discovering the data leak; - Instruct Client about the Data Leak Protocol and process. 	- Director Dyflexis

Process steps	Activity	Responsible person
5. Determine impact of data leak	<ul style="list-style-type: none"> - Investigate the data leak and consequences thereof; - Investigate the nature of the data that was leaked, for example medical data, passwords, information about financial situation or that could lead to stigmatising / wrongful use. - Investigate the scope of the leaked data; - Assess the impact that the leak could have on the data subjects; - Determine what the negative consequences could be; 	<ul style="list-style-type: none"> - Client - Security manager Dyflexis
6. Determine report and recovery approach	<ul style="list-style-type: none"> - Determine approach /Inform Dutch Data Protection Authority; - Determine approach / inform Data Subject; - Determine actions for after care Data Subject; - Determine actions for the organisation; - Determine actions for improving security; 	<ul style="list-style-type: none"> - Client - Security manager Dyflexis
7. Report to Dutch Data Protection Agency	<ul style="list-style-type: none"> - If the decision is taken to inform the Dutch Data Protection Authority this must take place within 72 hours. 	<ul style="list-style-type: none"> - Client

Process steps	Activity	Responsible person
8. Inform Data Subject	<ul style="list-style-type: none"> - Inform Data Subject, for example, through a mailing, communicate what has happened, which personal data are affected, and what could be the consequences of the data leak; - Inform about the measures that the organisation is taking and that the Data Subject can take himself/herself to avoid damage; 	- Client
9. Carry out recovery activities	<ul style="list-style-type: none"> - Fix the data leak; - Improve the security; 	- Security manager Dyflexis
10. Optimise the security and the Data Leak process	Document, evaluate and improve the security and the process regarding reporting data leaks.	- Client - Security manager Dyflexis

ANNEX 3 PROCESSING AGREEMENT - STANDARD CLAUSES FOR PROCESSING

VERSION: AUGUST 2020

FORMS THE PROCESSING AGREEMENT TOGETHER WITH THE DATA PRO STATEMENT AND IS AN ANNEX TO THE AGREEMENT AND THE ACCOMPANYING ANNEXES SUCH AS THE APPLICABLE GENERAL TERMS AND CONDITIONS.

ARTICLE 1. DEFINITIONS

The following terms have the following meaning in these Standard Clauses for processing, in the Data Pro Statement, and in the Agreement:

- 1.1 **DUTCH DATA PROTECTION AUTHORITY (AP):** supervising authority, as described in Article 4, sub 21 of the AVG (the Dutch GDPR).
- 1.2 **AVG:** Algemene verordening gegevensbescherming = the Dutch GDPR.
- 1.3 **DATA PROCESSOR:** party that, as the ICT supplier within the context of the execution of the Agreement, processes Personal Data as processor on behalf of its Client.
- 1.4 **DATA PRO STATEMENT:** statement of Data Processor in which it also provides information about the intended use of its product or service, security measures taken, sub-processors, data leaks, certifications, and dealing with the rights of Data Subjects.
- 1.5 **DATA SUBJECT:** an identified or identifiable natural person.
- 1.6 **CLIENT:** a party at whose request Data Processor processes data. The Client can be either a “controller” or another processor.
- 1.7 **AGREEMENT:** the agreement between Client and Data Processor, based upon which the ICT supplier supplies services and/or products to Client, of which the processing agreement forms a part.
- 1.8 **PERSONAL DATA:** all information about an identified or identifiable natural person, as described in Article 4 (1) of the Dutch GDPR, that Data Processor processes when carrying out its obligations pursuant to the Agreement.
- 1.9 **PROCESSING AGREEMENT:** these Standard Clauses for processing that, together with the Data Pro Statement (or similar information) of Data Processor form the processing agreement as referred to in Article 28 (3) of the Dutch GDPR.

ARTICLE 2. GENERAL

- 2.1 These Standard Clauses for processing apply to all processing of Personal Data that Data Processor carries out in connection with supplying its products and services and to all Agreements and quotations. The applicability of processing agreements of the Client is explicitly rejected hereby.
- 2.2 The Data Pro Statement, and in particular the security measures described in this statement, can be adapted to changing circumstances from time to time by Data Processor. Data Processor will inform Client of significant changes. If Client cannot reasonably agree with the adjustments, Client may terminate the processing agreement in writing stating grounds for the termination within 30 days after being informed of the adjustments.
- 2.3 Data Processor processes the Personal Data on behalf of Client and at the request of Client in accordance with Client's written instructions agreed with the Data Processor.

- 2.4 Client, or its customer, is the controller within the meaning of the GDPR, has the control over the processing of the Personal Data and has determined the purpose of and the means for the processing of the Personal Data.
- 2.5 Data Processor is the processor within the meaning of the GDPR and therefore has no control over the purpose of and the means for the processing of the Personal Data and therefore also does not take decisions about the use of the Personal Data.
- 2.6 Data Processor executes the GDPR as laid down in the Standard Clauses for processing, the Data Pro Statement, and the Agreement. It is up to Client to assess, based on this information, whether Data Processor offers sufficient safeguards with regard to applying appropriate technical and organisational measures to ensure that the processing satisfies the requirements of the GDPR and the protection of the rights of Data Subjects is safeguarded adequately.
- 2.7 Client guarantees vis-à-vis Data Processor that it acts in accordance with the GDPR, that the security of its systems and infrastructure is adequate at all times, and that the contents, the use and/or the processing of Personal Data are not unlawful and do not violate any rights of third parties.
- 2.8 An administrative fine imposed on Client by the AP cannot be recovered from Data Processor.

ARTICLE 3. SECURITY

- 3.1 Data Processor shall take the technical and organisational security measures as described in its Data Pro Statement. In taking the technical and organisational security measures, Data Processor has taken into account the current state of technology, the implementation costs of security measures, the nature, size and context of the processing, the purposes and the intended use of its products and services, the processing risks and the probability and seriousness of various risks for the rights and liberties of Data Subjects that it could possibly expect given the intended use of its products and services.
- 3.2 Unless explicitly stated otherwise in the Data Pro Statement, the product or the service of Data Processor is not designed for the processing of special categories of Personal Data or data regarding criminal convictions or criminal offences or personal numbers issued by the government.
- 3.3 Data Processor aims to ensure that the security measures that it has taken are appropriate for the use of the product or the service intended by the Data Processor.
- 3.4 In Client's opinion, the described security measures, taking into account the factors set out in Article 3.1, provide a security level that is appropriate for the risk of the processing of the Personal Data used or provided by Client.
- 3.5 Data Processor may make changes in the security measures that it has taken if this is necessary in its opinion to continue to offer an appropriate security level. Data Processor shall document important changes, for example in an amended Data Pro Statement, and shall inform Client of the changes where this is relevant.
- 3.6 Client can request Data Processor to take additional security measures. Data Processor is not obliged to carry out changes in its security measures following such a request. Data Processor may charge the costs in connection with the changes made at the Client's request to Client. Only after the changed security measures desired by Client have been agreed in writing and signed by both Parties, is Data Processor obliged to actually implement these security measures.

ARTICLE 4. BREACHES IN CONNECTION WITH PERSONAL DATA

- 4.1 Data Processor does not guarantee that the security measures are effective under all circumstances. If Data Processor discovers a breach in connection with Personal Data (as referred to in Article 4 (12) of the AVG), it will inform Client without unreasonable delay. The manner in which the Data Processor shall inform Client about breaches in connection with Personal Data is laid down in the Data Pro Statement (under data leak protocol).
- 4.2 The controller (Client, or its customer) is the one who assesses whether the breach in connection with Personal Data about which the Data Processor has informed the controller must be reported to the AP or Data Subject. Reporting breaches in connection with Personal Data, which have to be reported to the AP and/or Data Subjects pursuant to Article 33 and 34 of the AVG, remains the responsibility of the controller at all times (Client or its customer). Data Processor is not obliged to report breaches in connection with personal data to the AP and/or the Data Subject.
- 4.3 If necessary, Data Processor will provide additional information about the breach in connection with Personal Data and will cooperate in providing the necessary information to Client in connection with reporting the breach as referred to in Article 22 and 34 of the Dutch GDPR.
- 4.4 Data Processor may charge the reasonable costs that it incurs in connection with this to Client at the then applicable rates.

ARTICLE 5. CONFIDENTIALITY

- 5.1 Data Processor guarantees that the persons who process Personal Data under its responsibility are bound by a confidentiality obligation.
- 5.2 Data Processor may provide the Personal Data to third parties, if and insofar as providing this is necessary pursuant to a court decision, a statutory provision or based on an authorised order issued by a government institution.
- 5.3 All access and/or identification codes, certificates, information regarding access policy and/or password policy provided by Data Processor and all information provided to Client by Data Processor regarding the technical and organisational security measures laid down in the Data Pro Statement are confidential and will be treated by Client as such and will only be made known to Client's authorised employees. Client shall ensure that its employees comply with the obligations laid down in this Article.

ARTICLE 6. DURATION AND TERMINATION

- 6.1 This processing agreement forms part of the Agreement and any new or additional agreement resulting there from, comes into effect at the time the Agreement comes into effect and is entered into for an indefinite period.
- 6.2 This processing agreement ends automatically by force of law upon the termination of the Agreement or any new or further agreement between parties.
- 6.3 In the event of the end of the processing agreement, Data Processor will delete all Personal Data in its possession that it has received from Client within the period of time specified in the Data Pro Statement in such a manner that the data can no longer be used and is not longer accessible (render inaccessible), or, if agreed, return the Personal Data to Client in a machine readable format.
- 6.4 Data Processor can charge any costs that it incurs in connection with that which is stipulated in Article 6.3 to Client. Further agreements regarding this matter can be laid down in the Data Pro Statement.

6.5 The provisions in Article 6.3 do not apply if a law or regulation prohibits the complete or partial deletion or returning of the Personal Data by Data Processor. In that case, the Data Processor will only continue to process the Personal Data insofar as necessary by virtue of its statutory obligations. The provisions in Article 6.3 also do not apply if Data Processor is a controller as specified in the GDPR with regard to the Personal Data.

ARTICLE 7. RIGHTS OF DATA SUBJECTS, DATA PROTECTION IMPACT ASSESSMENT (DPIA) AND AUDIT RIGHTS

- 7.1 Data Processor will, where possible, cooperate with reasonable requests of Client in connection with requests from Data Subjects who are exercising their Data Subject rights. If Data Processor is approached directly by a Data Subject, it will refer the Data Subject to Client where possible.
- 7.2 If Client is obliged to do so, Data Processor will cooperate with a Data Protection Impact Assessment (DPIA) after receiving a reasonable request for this or a subsequent prior inspection as referred to in Article 34 and 36 of the Dutch GDPR.
- 7.3 Data Processor will cooperate with requests from Client to delete personal data insofar as Client cannot carry this out itself.
- 7.4 Data Processor can demonstrate the compliance with its obligations pursuant to the processing agreement if so desired by means of a valid Data Pro Certificate or certificate that is at least equal to this certificate or an audit report (Third Party Memorandum) issued by an independent expert, if it has such a certificate or audit report.
- 7.5 Furthermore, Data Processor will make all further information available at Client's request that is reasonably necessary to demonstrate compliance with the agreements laid down in this processing agreement. If Client nevertheless has a reason to believe that the processing of Personal Data is not taking place in accordance with the processing agreement, then it can have an audit performed no more than once a year by an independent, certified, external expert who has demonstrable experience with the type of processing that is carried out based on the Agreement, for which the costs are paid by Client. The audit will be limited to checking the compliance with the agreements regarding the processing of Personal Data such as laid down in this Processing Agreement. The expert will be bound by a confidentiality obligation regarding its findings and will only report the findings to Client that constitute a failure in the fulfilment of obligations that the Data Processor has pursuant to this processing agreement. The expert will provide a copy of its report to Data Processor. Data Processor may refuse an audit or instruction of the expert if, in its opinion, this is in violation of the GDPR or other laws and regulations or constitutes an unacceptable infringement upon the security measures that it has taken.
- 7.6 Parties will enter into consultation regarding the outcomes of the report as soon as possible. Parties will carry out the proposed improvement measures laid down in the report insofar as this can reasonably be expected from them. Data Processor will carry out the proposed improvement measures insofar as these are appropriate, in its opinion, taking into account the processing risks connected to its product or service, the current state of technology, the implementation costs, the market in which it operates, and the intended use of the product or service.
- 7.7 Data Processor may charge the costs that it incurs in connection with that which is stipulated in this Article to Client.

ARTICLE 8. SUB-PROCESSORS

- 8.1 Data Processor has stated in the Data Pro Statement whether it makes use of third parties (sub-processors) and if so, which sub-processors Data Processor makes use of when processing the Personal Data.
- 8.2 Client gives permission to Data Processor to make use of other sub-processors to carry out its obligations pursuant to the Agreement.
- 8.3 Data Processor will inform Client about a change in the third parties that Data Processor makes use of, for example, by means of a revised Data Pro Statement. Client has the right to lodge an objection against the aforementioned change made by Data Processor. Data Processor shall ensure that the third parties that it makes use of commit to the same security level with regard to the protection of Personal Data as the security level to which Data Processor is bound vis-à-vis Client by virtue of the Data Pro Statement.

ARTICLE 9. OTHER

These Standard Clauses for processing together with the Data Pro Statement form an integral part of the Agreement. All rights and obligations laid down in the Agreement, including the applicable general terms and conditions and/or limitations of liability, are therefore also applicable to the processing agreement.