

# TERMS AND CONDITIONS

## DYFLEXIS

Dutch law applies to these term

*Version* 2.3

*Date* May 23th 2019

### *CONTENT*

MODULE A - GENERAL .....	1
MODULE B - CONSULTANCY AND PROJECT SUPERVISION .....	8
MODULE C – DELIVERY OF HARDWARE .....	9
MODULE D – SAAS-SERVICE .....	11
ANNEX 1 – SERVICE LEVEL AGREEMENT .....	14
ANNEX 2 – PROCESSOR’S AGREEMENT .....	20

### *MODULE A - GENERAL*

#### A.1 DEFINITIONS

In the General Conditions Dyflexis, the following words and expressions are capitalized. Any of the following words and expressions in the singular, shall have the same meaning when used in the plural and vice-versa.

- A.1.1 **General Conditions:** the provisions contained in this document.
- A.1.2 **Data:** The personal data that is stored by the Client and made accessible via the Service.
- A.1.3 **Service(s):** The service(s) that Dyflexis will provide for the Client and as described in Dyflexis’ quotation or offer, including but not limited to the supply of hardware and software as a service.
- A.1.4 **Hardware:** The equipment supplied to the Client by Dyflexis under the terms and conditions of the Agreement.
- A.1.5 **Start Date:** the date on which the Agreement enters effect and on which the supply of the Service commences.
- A.1.6 **Intellectual Property:** all intellectual property and related rights, including but not limited to copyrights, database rights, domain names, trade name rights, trademark rights, design rights, neighbouring rights, patent rights and also rights to know-how.

- A.1.7 **Dyflexis:** The B.V. (Besloten Vennootschap) Dyflexis B.V., established in The Hague and registered at the Chamber of Commerce under record number 59584327. This is also understood to include all trade name rights of Dyflexis B.V. registered at the Chamber of Commerce, including the trade name Wodan Brothers.
- A.1.8 **Client:** the natural person or legal entity with which Dyflexis has entered into an Agreement. It also refers to anyone who is in negotiations about this as well as its representative(s), authorised person(s), successor(s) in title or heirs.
- A.1.9 **Agreement:** Each agreement between Dyflexis and the Client that arises from an offer or quotation made by Dyflexis and the valid acceptance of this by the Client.
- A.1.10 **SLA:** The service level agreement entered into between Dyflexis and the Client which includes agreements about the level, quality and manner of problem solving with regard to the Service.
- A.1.11 **Updates:** Changes and updates to the Service for the purpose of bug fixing, improving functionality and/or repairing faults.
- A.1.12 **Upgrades:** structural changes and upgrades to the Service for the purpose of adding major functionalities.
- A.1.13 **Working days:** Monday to Friday, excluding public holidays in the Netherlands.
- A.1.14 **Work(s):** the websites, applications, lay-out, database files, software, documentation, advice, reports, analyses, designs or other creations developed or designed by Dyflexis whether or not these are for the purpose and/or on the instructions of the Client.
- A.1.15 **Working hours:** hours on Working days between 09:00 and 17:00 (CEST).

## A.2 APPLICABILITY AND ORDER OF RANK

- A.2.1 These Standard Terms and Conditions apply to each quotation or offer by Dyflexis concerning the Services and form an integral part of each Agreement.
- A.2.2 If the business name used by Customer denotes more than one (legal) person or organization, each will be responsible for the entire fulfilment of the obligations that may flow forth from the agreement with Dyflexis.
- A.2.3 The specific modules apply if the requested or offered Services fall within the area of application described in the module. If a specific module is applicable, this will prevail over Module A.
- A.2.4 The definitions described in article A.1 apply to all of the modules in these Standard Terms and Conditions, unless another meaning is attributed to these elsewhere in the Agreement and/or the Standard Terms and Conditions.
- A.2.5 Provisions or terms stated by the Client which depart from or do not occur in these Standard Terms and Conditions are only binding for Dyflexis insofar as they have been expressly accepted in writing by Dyflexis.
- A.2.6 In the event of a conflict between the provisions in the Agreement, the Standard Terms and Conditions or the annexes to thereof, the following order of priority shall apply:
  - i. The Agreement
  - ii. The Service Level Agreement entered into (SLA).
  - iii. Any annexes to the Agreement
  - iv. These Standard Terms and Conditions.

### A.3 OFFERS AND THE FORMATION OF AN AGREEMENT

- A.3.1 The Agreement is formed through the express acceptance of the quotation or the offer by the Client.
- A.3.2 If the client does not expressly agree to the quotation or the offer, but nevertheless agrees or gives the impression of agreeing that Dyflexis perform work which falls within the description of the Services, then the offer will be deemed to have been accepted. This also applies if the Client requests Dyflexis to perform specific work without waiting for a formal offer.
- A.3.3 Offers from Dyflexis are valid for the period specified in the offer. In case no period is specified, the offer is valid until thirty days after the date on which the offer was sent by Dyflexis.
- A.3.4 If it emerges that the information provided by the Client when it requested the Agreement was incorrect, Dyflexis has the right to amend the prices accordingly.
- A.3.5 The Agreement runs from the moment on which the technical Service is supplied to the Client ("the Start Date") unless another start date has been agreed in writing.

### A.4 PERFORMANCE OF THE AGREEMENT

- A.4.1 After the Agreement enters effect, Dyflexis will make every effort to perform the Service within a reasonable period.
- A.4.2 Where not agreed in writing otherwise, Dyflexis guarantees that it will perform the Service to the best of its ability and will employ sufficient care and professionalism.
- A.4.3 The aforementioned periods and delivery periods are merely indicative and are not firm deadlines unless agreed otherwise in writing.
- A.4.4 If and insofar as required for a good implementation of the Service, Dyflexis has the right to have certain work performed by third parties without notifying the Client. Dyflexis will not charge the expenses incurred by the third party to the Client, unless agreed otherwise in writing.
- A.4.5 The Client is under the obligation to do everything and allow everything that is reasonably necessary and desirable to enable the timely and correct performance of the Service. In particular, the Client will ensure that all data which Dyflexis states are necessary or which the Client reasonable ought to understand as being necessary for the performance of the Service are provided on time to Dyflexis.
- A.4.6 In addition to the data referred to in article A.4.5, the Client is under the obligation to provide up-to-date contact details to Dyflexis for communication between Dyflexis and the Client. The Client will immediately inform Dyflexis of any change to these contact details.
- A.4.7 If the details referred to in articles A.4.5 and A.4.6 are not provided to Dyflexis in time or if the Client does not meet these obligations in another manner, Dyflexis will be entitled to suspend compliance with its obligations without being under the obligation to pay any form of compensation.

### A.5 PRIVACY

- A.5.1 In the context of the Service, Dyflexis is deemed among the parties to be a processor and the Client is deemed to be a Responsible within the meaning of the GDPR (General Data Protection Regulation).
- A.5.2 The Parties undertake to act towards each other in accordance with the General Data Protection Regulation and other privacy-related laws and regulations.
- A.5.3 Dyflexis will only use the personal data it receives from the Client for the performance of the Service.

- A.5.4 Dyflexis will make every effort to take adequate technical and organisational measures against loss or any form of unlawful processing (such as unauthorised inspection, violation, alteration or provision of personal data) with regard to the personal data to be processed.
- A.5.5 Dyflexis is authorized to place the name and logo of Customer or Customer's clients who are given rights to the Products and Services on the Dyflexis website and/or reference list and to make them available to third parties for information.
- A.5.6 Customer and its clients will not enter into any direct or indirect commercial, employment, or other such relations with employees from Dyflexis during the agreement and for a period of 12 (twelve) months after termination or dissolution of the agreement, without the written consent of Dyflexis. Customer will ensure that its clients will comply with the foregoing obligation.

#### A.6 INTELLECTUAL PROPERTY RIGHT

- A.6.1 For Work and/or Services developed by Dyflexis, the Intellectual Property Rights lie with Dyflexis unless it has been agreed in writing with the Client that the rights will be transferred.
- A.6.2 The Intellectual Property Rights concerning the open source software belonging to third parties that is used by Dyflexis are vested in the software developer or another rights holder. Such rights may not be transferred to a Client under any circumstances. The Client is responsible for compliance with open source software licences and indemnifies Dyflexis against claims by third parties concerning compliance with these licences.
- A.6.3 The Client will obtain a non-exclusive and non-transferrable user right from Dyflexis for the duration of the Agreement for the Work that was specifically developed for and under the Instructions of the Client. Under this user right the Client has the right to use the Work for its own purposes. Furthermore, Dyflexis also places restrictions and/or conditions on the use of this Work.
- A.6.4 Dyflexis is permitted to fully or partially use the developed Work and the associated source files and source code for other clients and purposes.
- A.6.5 Dyflexis is not under the obligation to make the source files and source code of the developed Work available to the Client, unless agreed otherwise in writing.
- A.6.6 Dyflexis is permitted to take technical measures to prevent changes to the developed Work and the associated source files and source code. This also includes protecting the Work using encryption.

#### A.7. LIABILITY

- A.7.1 Dyflexis is only liable vis-à-vis the Client for direct damage resulting from a breach in the performance of this Agreement. Direct damage is solely understood to mean all loss arising from:
  - a. damage directly caused to material objects ("property damage")
  - b. reasonable and demonstrable expenses that the Client has been forced to incur in order to urge Dyflexis to properly comply again with the Agreement
  - c. reasonable expenses for determining the cause and scope of the damage where this concerns the direct damage described here;
  - d. reasonable and demonstrable expenses that the Client has incurred to avoid or limit the direct damage referred to in this article.

- A.7.2 Dyflexis is not liable under any circumstances for the compensation of indirect damage, consequential damage or damage due to lost sales or profit, damage due to delay, damage due to data loss, damage due to exceeding deadlines as a result of changed circumstances, damage as a result of providing inadequate assistance, information or materials by the Client and damage as a result of information of advice provided by Dyflexis where the content does not expressly form part of the Agreement.
- A.7.3 The maximum amount payable in the event of liability under paragraph 1 of this article per event or per series of connected events will be limited to the Client's annual outstanding payments under this Agreement (excluding VAT). However, the total compensation per year for direct damage will under no circumstances exceed 15,000 euros (excluding VAT). thousand euros), whereby a sequence of events is regarded as one event.
- A.7.4 The limitation of liability as referred to in the previous paragraphs of this article will expire if and insofar as the damage results from intentional acts or gross negligence by the management of Dyflexis.
- A.7.5 The liability of Dyflexis owing to a breach in the performance of the Agreement will arise solely if the Client immediately and properly issues a notice of default to Dyflexis, which stipulates a reasonable period for rectification of the breach and if Dyflexis also continues to breach its obligations even after this period. The notice of default should contain the most detailed possible description of the breach, so that Dyflexis is able to respond appropriately.
- A.7.6 The Client indemnifies Dyflexis for all claims by third parties (including clients of the Client) concerning the compensation of damage, costs or interest which are connected to this Agreement and/or the Service.

## A.8 FORCE MAJEURE

- A.8.1 Dyflexis is not required to meet any obligation vis-à-vis the Client if it is obstructed in doing so as a result of any external cause, whether foreseen or otherwise, which Dyflexis is unable to control and for which reason Dyflexis is unable to meet its obligations.
- A.8.2 This includes circumstances which are not attributable to negligence and which do not constitute a legal action in law or in generally accepted practice are at the expense of Dyflexis. In particular, force majeure is understood to be: national riots, mobilisation, wars, obstructions to traffic, strikes, network outages such as SYN floods or distributed denial of service attacks, network faults in the internet which Dyflexis has not contracted, business interruptions, supply stagnation, fire, flood, import and export restrictions and in the event that Dyflexis is held in a position in which it is unable to deliver which means that Dyflexis cannot be reasonably required to comply with the Agreement.
- A.8.3 Dyflexis may suspend the Agreement for the duration of the force majeure, which will also suspend the payment obligations of the Client. If this period is longer than ninety (90) days, each party is entitled to terminate the Agreement without the obligation to compensate for the losses of the other party
- A.8.4 Where Dyflexis has already partly met an obligation under the Agreement at the time of occurrence of the force majeure or will be able to meet it during this period, and the part that has been met or will be met has an independent value, Dyflexis is

entitled to separately charge for the part that has been met or will be met respectively. The Client is under the obligation to settle this invoice.

**A.9. CONFIDENTIALITY**

- A.9.1 The parties undertake to not disclose any confidential information that they receive about the business of the other party, including the content of the Agreement. The parties will also impose this obligation on their employees and the third parties they engage for the performance of the Agreement.
- A.9.2 Information that is considered as confidential under all circumstances: all information that is obtained by the other party in the context of the Agreement, information that should be deemed confidential due to its nature which includes but is not limited to personal data provided by the Client or information that is deemed confidential by one of the parties.

**A.10 PRICES**

- A.10.1 Payments for the provision of the Services are stated in the quotation provided by Dyflexis. All prices are stated in euros and exclude VAT.
- A.10.2 If the Agreement is a continuing performance contract, the outstanding amounts shown in the quotation will be invoiced to the Client prior to each new period, unless agreed otherwise in writing. Any additional charges will be settled at a later date.
- A.10.3 Dyflexis is entitled to adjust its prices annually at January 1<sup>st</sup> in accordance with the applicable percentage for the previous year based on the Statistics Netherlands index for commercial services (DPI index) without the Client having the right to terminate the Contract.

**A.11 PAYMENT CONDITIONS**

- A.11.1 Dyflexis will send an invoice to the Client for the amount payable by the Client. The payment term of this invoice is fourteen (14) days from the invoice date, unless stated otherwise on the invoice or agreed otherwise in the Contract. If advance payment has been agreed upon, the Service will only be supplied once the invoice has been settled.
- A.11.2 The Client agrees to electronic invoicing by Dyflexis. Invoices will be sent in PDF format or in another acceptable format to the Client's email address held by Dyflexis.
- A.11.3 If the Client has not paid or has not fully paid after the payment term, Dyflexis will give the Client a further option to pay the sum of the invoice within a reasonable period. If the Client does not settle the invoice within thirty (30) days of the due date, the Client will be in default by operation of law, without requiring a notice of default being. From that moment onward, Dyflexis is entitled to limit the provision of all its services, for instance by limiting access to the Service or temporarily suspending the Service, without the Client having a right to demand compensation for any damage that this may cause it. In the event of suspension by Dyflexis, the obligations of the Client continue to apply in full, which also include but are not limited to the payment obligation. This right to suspend also applies to Services where the Client has met its obligations.
- A.11.4 In the event of non-timely payment, the Client is under the obligation to fully compensate the extra-judicial and legal costs, including lawyers fees, in addition to the amount owed..
- A.11.5 The action for payment can be claimed immediately if the Client or a third party institutes winding-up proceedings against the Client, there is an application for a

moratorium of the Client or garnishee proceedings or a seizure of assets are instituted against the Client, or if the Client is wound-up or dissolved.

A.11.6 The Client is not permitted to suspend or off-set the payment of amounts owed.

#### **A.12 DURATION OF THE AGREEMENT**

A.12.1 The Agreement is entered into for the term stated in the offer. If a term is not stated, the Agreement will be entered into for a term of twelve (12) months or for the time necessary to provide the Service. The Agreement can only be terminated in the intervening period in the manner stated in the Agreement, or with the agreement of both parties. However, if the Agreement concerns an agreement for services, this cannot be terminated early by the Client.

A.12.2 If the Agreement concerns a continuing performance agreement (for instance in the case of an SaaS agreement), in the absence of a written notice of termination within the specified time before the end of the aforementioned period and with consideration of the termination period, this will be always automatically extended by an equal period, unless agreed otherwise in writing.

A.12.3 Both parties will observe a notice period of three (3) months.

A.12.4 Dyflexis has the right to suspend the Agreement with immediate effect and without any obligation to pay compensation where reasonable, if

- a. the Client is in breach of its obligations and a similar breach is not rectified by the Client within five (5) days of a written notice of default;
- b. the Client is put into liquidation, there is an application for a moratorium or garnishee proceedings or a seizure of assets are instituted by the other Client.

A.12.5 In the event of a full or partial cancellation of the Agreement by the Client, under whatever grounds, the Client is required to reimburse 50% of the start-up costs stated in the offer or the hours already spent, depending on which sum is higher. Cancellation is only possible until the moment the order will be taken into production at Dyflexis.

A.12.6 Dyflexis will store the Data for at least 7 years after the termination of the Agreement. After 7 years, Dyflexis is entitled to delete the Data, unless agreed otherwise in writing.

#### **A.13 AMENDENDING THE AGREEMENT**

A.13.1 Dyflexis is entitled to amend these Standard Terms and Conditions, provided that it communicates the intended changes to the Client within thirty (30) days. These amendments also apply to existing Agreements.

A.13.2 Minor amendments may be implemented at any time without giving the Client the right to terminate the Agreement.

A.13.3 If the Client does not wish to accept an amendment to these terms, it can terminate the Agreement before the date on which the new terms enter effect.

#### **A.14 ADDITIONAL PROVISIONS**

A.14.1 All agreements made between Dyflexis and the Client are governed by the laws of The Netherlands

A.14.2 If the rules of mandatory law do not prescribe otherwise, disputes between parties which cannot be resolved amicably, will be placed before the qualified court of The Hague, location The Hague.

- A.14.3 The version of any communication or administration received or stored by Dyflexis is valid as authentic and conclusive evidence, unless evidence to the contrary is provided by the Client.
- A.14.4 “Written” or “In Writing” in these Standard Terms and Conditions also includes communication sent by email, provided that the identity of the sender and the integrity of the content is sufficiently established.
- A.14.5 If the Client is acquired by a third party or if the Client acquires a third party, it will always notify Dyflexis immediately once the Client is aware of the acquisition.
- A.14.6 Dyflexis is entitled to transfer its rights and obligations from the Agreement to a third party that takes over the Service or the respective business activity for it, without requiring the consent of the Client.
- A.14.7 If a provision in the Agreement proves to be void, this will not affect the validity of the Agreement as a whole. The parties to the Agreement will furthermore determine a new provision or provisions to replace this, which will be given the essence of the meaning of the original Agreement insofar as is legally possible.
- A.14.8 The headings above the clauses of these conditions are only intended to increase the legibility of this document. The content and meaning of a clause placed under a particular heading is, therefore, not limited to the meaning and content of the heading.

## ***MODULE B - CONSULTANCY AND PROJECT SUPERVISION***

If the Service also extends to providing consultancy on ICT or ICT infrastructure, implementation and/or the use of software or the provision of training, the provisions of this module will additionally apply.

### **B.1. CONSULTANCY AND PROJECT SUPERVISION**

- B.1.1 Dyflexis will perform consultancy and project supervision to the best of its ability and will employ sufficient care and professionalism.
- B.1.2 The parties will determine in advance the elements that constitute the consultancy and/or project supervision. If necessary, these will be adjusted through joint consultation during the supervision. Dyflexis has the right to charge account any additional costs.
- B.1.3 Consultancy and project supervision within the context of the Agreement is always an obligation to use best endeavours, unless agreed otherwise in writing.
- B.1.4 The Client is aware that it follows up the recommendations from Dyflexis entirely at its own risk. Dyflexis is only liable for any damage suffered where this arises from the Agreement.
- B.1.5 Dyflexis will at all times communicate to the Client in advance the time and costs of work to be performed. The time required for the respective work will therefore depend on various factors, including the cooperation of the Client.

### **B.2. TRAINING**

- B.2.1 Dyflexis determines the content of the training sessions or courses to be provided. The Client may inform Dyflexis of its preferences for the content, but Dyflexis is not



able to guarantee at all times that these preferences will be included in the training sessions or courses.

- B.2.2 Training sessions and courses will be held at Dyflexis' training facilities in The Hague, unless agreed otherwise in writing.
- B.2.3 If Dyflexis provides a training session or course at the premises of the Client, the Client is responsible for providing the facilities that Dyflexis requires (including in all cases an adequate training room, computers, projectors, internet connection, food and drink) for the training session or course, as well as handling registrations.
- B.2.4 The Client can only cancel and/or reschedule a training session or course at no charge up to five (5) days before the date of the scheduled training session or course. If cancelled and/or rescheduled within five (5) days of that date, the Client must pay 50% of the agreed charges. If the training courses are obligatory, Dyflexis is not under any obligation to reimburse any payments made.
- B.2.5 If cancelled and/or rescheduled on or after the day of the training the Client must pay 100% of the agreed charges. When the Client doesn't show up on the day of the training without notifying (a No-show), the Client must pay 100% of the agreed charges
- B.2.6 If the training courses are obligatory, Dyflexis is not under any obligation to reimburse any payments made.
- B.2.7 Dyflexis has the right to cancel or reschedule a training or course with no charge when done within five (5) days before the set date of that specific training or course. The already made payments concerning this specific training or course will be refunded within ten (10) days when it is cancelled. In case of mandatory training, Dyflexis can't refund these costs. In this case both parties should consult to plan a new date.
- B.2.8 We use security cameras at our offices to protect our property.

## ***MODULE C – DELIVERY OF HARDWARE***

If the Service also extends to providing ICT hardware, this module will additionally apply.

### **C.1 DELIVERY**

- C.1.1 Dyflexis will make every effort to deliver the Hardware on the agreed date. However, Dyflexis is dependent on its suppliers and does not have any influence over the transporter firms. For this reason, Dyflexis is unable to guarantee that the Hardware will be delivered within the agreed period.
- C.1.2 The Hardware will be delivered in principle to the Client's address that Dyflexis holds on file. The Client is personally responsible for providing the correct address details should there be any changes or if the Client wishes to use an alternative delivery address.
- C.1.3 If the Hardware ordered by the Client is unable to be delivered or can no longer be delivered, Dyflexis is entitled to deliver equivalent Hardware which meets the specifications. Dyflexis will notify the Client of this in advance wherever possible
- C.1.4 The Client is under the obligation to immediately inspect the hardware after accepting delivery. If the Client discovers visible defects, these should be reported to Dyflexis within ten (10) Working Days.

- C.1.5 Any other defects should be notified to Dyflexis within twenty (20) Working Days of receipt of the hardware or completion of the services
  - C.1.6 If the aforementioned complaint is not submitted to Dyflexis within the aforementioned periods, the Hardware will be considered to have been received in good condition or the work will be considered to have been performed well.
  - C.1.7 Minor variations to the stated sizes, weights, colours and suchlike do not count as breaches on the part of Dyflexis.
  - C.1.8 The right of reclamation (recht op reclame) does not interfere with the payment obligation of the Client.
  - C.1.9 If the Hardware has changed in whole or in part after delivery of its nature and / or composition, any Right of reclamation will fall due.
- C.2 **PAYMENT AND RETENTION OF TITLE (EIGENDOMSVOORBEHOUD)**
- C.2.1 Before the Hardware is delivered, the Client must pay half of the agreed amount in advance to Dyflexis. Dyflexis will only send the Hardware and/or make it available to the Client once this first payment has been made. Dyflexis is not liable for damage as a result of a late delivery due to payment that is not forthcoming.
  - C.2.2 Until the Client makes full payment for the entire agreed amount, all goods delivered will remain the property of Dyflexis. C.3
- C.3 **WARRANTY**
- C.3.1 Dyflexis provides a twenty-four (24) month guarantee on the Hardware supplied.
  - C.3.2 If the Hardware displays defects within the first year of purchase, the Client may return the Hardware to Dyflexis. The costs for sending the Hardware to Dyflexis will be borne by the Client.
  - C.3.3 Following inspection, Dyflexis will repair the Hardware at no cost, unless the inspection shows that the defects were incurred through the actions of the Client. In the latter case, Dyflexis is entitled to charge the costs for repair to the Client. Dyflexis will always notify the Client in advance of the costs. Dyflexis is also entitled to return refurbished hardware if repair is not possible.
  - C.3.4 After the second year as referred to in the first paragraph, the Client may make a request to Dyflexis for the repair of the Hardware. Dyflexis will notify the Client of the costs involved with the repair upon receipt of the Hardware. After approval, Dyflexis will repair the Hardware.
  - C.3.5 Dyflexis is not under any obligation to provide replacement or temporary replacement Hardware to the Client, unless agreed otherwise in writing.

## *MODULE D – SAAS-SERVICE*

If the Service also extends to providing services for the supply of software (as a service) or the installation, administration and maintenance of software (as a service), the provisions of this module also apply.

### **D.1. SOFTWARE (AS-A-SERVICE)**

- D.1.1 Dyflexis grants the non-exclusive, non-transferrable and restricted right to the Client to use the Service for the duration and under the terms of the Agreement
- D.1.2 User right as stated in the previous paragraph also includes all future Updates. Dyflexis has the right to charge additional costs for the installation of Upgrades.
- D.1.3 The Client is entitled to use the Service under the user right for the Client's company or organisation. The restrictions, which are also understood to include the number of employees and/or administrators and available functions are stated in the Agreement
- D.1.4 Unless agreed otherwise in writing, the Client is not permitted to sub-lease the Service or to make it available to a third party in any other manner. This is not understood to mean the employees of the Client's company or organisation.
- D.1.5 When purchasing the Service, the Client will ensure that it strictly complies with all applicable legal requirements.
- D.1.6 Dyflexis will send or issue the log-in details to the Service to the Client at around the start date. The Client is aware that losing the log-in details can lead to unauthorized access to the Service. Therefore, the Client will protect the log-in details from unauthorized persons.
- D.1.7 The Client is personally responsible for loading all data into the Service with the help of the upload function or one of the synchronisation functions which Dyflexis has

made available in the Service. Dyflexis is not liable for any inaccuracies following the loading or during the synchronization of the data, unless intentional acts or gross negligence are involved.

D.1.8 The Client will impose on end users at least the same terms as recorded in article D.5 for the use of the Service.

D.1.9 Dyflexis is entitled to use the Data in anonymised form and to use the Data for statistical analyses and/or benchmarking. Furthermore, Dyflexis is entitled to monitor usage of the Service and on this basis it will be able to provide recommendations to the Client.

## D.2 AVAILABILITY AND MAINTENANCE

D.2.1 If no SLA (Service Level Agreement) has been agreed between the parties, the following provisions apply.

D.2.2 Dyflexis will make every effort to keep the Service available, but does not guarantee uninterrupted availability.

D.2.3 Dyflexis actively maintains the Service. Maintenance can occur at any time, even if this may lead to a restriction in availability. However, Dyflexis will make every effort to perform the maintenance when the Service is being used the least. Maintenance will be announced in advance, wherever possible.

## D.3 GUARANTEES AND CHANGES

D.3.1 The Client accepts that the Service only contains the functionality and other characteristics that the Client encounters in the Service at the moment of delivery ("as is"), therefore with all visible and invisible faults and shortcomings.

D.3.2 Dyflexis will every effort to rectify problems/defects in the Service. However, Dyflexis does not offer any guarantees in this respect.

D.3.3 The Client should check the calculations performed or processing of the Data by the Service. Dyflexis does not guarantee that all calculations and/or processing will be free from errors at all times.

D.3.4 Dyflexis may alter the functionality of the Service from time to time. Feedback and suggestions from the Client are welcome in this regard, however Dyflexis has the right to not make the alterations if it has reasonable grounds for this. Dyflexis will aim, but is not under any obligation, to communicate the alterations that it intends to make at least two (2) Working Days in advance. The Client may not continue to use the old version of the Service under any circumstances.

## D.4 SUPPORT

D.4.1 Support consists of providing verbal (by telephone) and written (e-mail) advice concerning the use and operation of the Products and Services.

D.4.2 Dyflexis has the right to charge additional costs for Upgrades. Dyflexis will always inform the Client of the costs in advance.

## D.5 CODE OF CONDUCT

D.5.1 The Client is prohibited from violating Dutch or other laws or regulations that apply to the Client or Dyflexis or to breach the rights of others when using the Service.

- D.5.2 Dyflexis prohibits offering, storing or distributing materials (whether legally or otherwise) through the use of the Service which:
- i. are unmistakably and primarily intended to help others to violate the rights of third parties, such as websites exclusively or primarily with hacking tools or explanations on computer crime that are manifestly intended to enable the reader to carry out or have others carry out the criminal acts described and not to be able to defend themselves against these;
  - ii. are unmistakably defamatory, libellous, threatening, racist, discriminatory or incite hatred;
  - iii. contain child pornography or bestiality pornography or are clearly aimed at helping others to find such materials;
  - iv. violate the privacy of third parties, including in any case but not limited to disseminating the personal data of third parties without consent or need or the repeated harassment of third parties with this unwanted communication
  - v. contain hyperlinks, torrents or references to places where these materials can be found or that unmistakably breach copyrights, neighbouring rights or portrait rights;
  - vi. contain undesired commercial, charitable or non-commercial communication; or
  - vii. contain harmful content such as viruses or spyware.
- D.5.3 The Client will refrain from hindering other clients or internet users or causing damage to systems or networks belonging to Dyflexis or to other clients. The Client is forbidden from starting processes or programmes, whether on Dyflexis' systems or not, which the Client knows or reasonably may suspect could cause nuisance or damage to Dyflexis, its clients or internet users.
- D.5.4 If Dyflexis believes that nuisance, damage or any other risk is posed to the functioning of the computer systems or network belonging to Dyflexis or third parties and/or the service provision via the internet, in particular through sending excessive emails or other data, distributed denial of service attacks, poorly protected systems or activities of viruses, Trojans and similar software, Dyflexis is entitled to take all measures that it considers reasonably necessary to avert or prevent this risk. Dyflexis may retrieve the costs from the Client that are reasonably necessary and associated with these measures.

#### **D.1 NOTICE & TAKEDOWN (COMPLAINTS PROCEDURE)**

- D.6.1 If Dyflexis receives a complaint about a breach of the previous article by the Client, or identifies that this may be the case, Dyflexis will notify the Client as soon as possible about the complaint or breach. The Client will respond as soon as possible, after which Dyflexis will decide on a course of action.
- D.6.2 If Dyflexis believes that there has been a breach, it will block access to the respective data and/or files, however it will not permanently delete these (unless this is technically impossible, in which case Dyflexis will create a back-up). Dyflexis will make every effort to not affect any other data and/or files when doing this. Dyflexis will notify the Client as soon as possible about the measures taken.
- D.6.3 If Dyflexis is of the opinion that there has been a violation of the previous article (Code of Conduct) it is entitled - 24 hours after sending a notification - to limit all its services, for example by restricting access to the Service or temporarily suspend the

Service, without the Client being entitled to demand compensation for any damage that might arise as a result of this. Dyflexis is also entitled at any time to report crimes that have been established. Dyflexis is only obliged to hand over Client's data to a third party following a court order.

- D.6.4 Although Dyflexis strives to act as reasonably, carefully and adequately as possible after complaints about the Client, Dyflexis is never obliged to compensate damage as a result of measures as referred to in this article.
- D.6.5 In case of repeated complaints about the Client or the information stored by the Client, Dyflexis is entitled to terminate the Agreement.

## *ANNEX 1 – SERVICE LEVEL AGREEMENT*

### ARTICLE 1. DEFINITIONS

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

- 1.1. **Actual availability:** the actually achieved level of availability of the Service.
- 1.2. **Error:** the substantial failure to comply with the written functional specifications expressly agreed between the parties. There is only an Error if the Client can demonstrate this and this Error can be reproduced by Dyflexis.
- 1.3. **Desired Availability:** the degree of availability of the Service that Dyflexis strives for.
- 1.4. **Repair time:** the time between (i) the moment at which Dyflexis detects an Error or the Client has reported an Error and this has been confirmed by Dyflexis and (ii) the moment at which the Error is resolved, the Error in the Service has been replaced or a Workaround has been created, as determined by Dyflexis.
- 1.5. **Maintenance:** performance of repairs, taking precautionary measures and regular checks of the Service as well as planned maintenance.
- 1.6. **Support:** providing verbal advice by telephone and written advice and/or other support work concerning the use and operation of the Service.
- 1.7. **Response time:** the time between (i) the moment on which the Client has reported an Error and (ii) the moment on which Dyflexis sends a response to the Client that it has received the error report, as determined by Dyflexis.

- 1.8. **Working day:** from 9 am to 5 pm, Mondays to Fridays, excluding official public holidays observed in the Netherlands.
- 1.9. **Changes:** a structural change in the Service that was requested by the Client and recorded by Dyflexis.
- 1.10. **Workaround:** an action in which an Error can be circumvented, which may or may not be temporary.

## ARTICLE 2. NATURE OF THE AGREEMENT

- 2.1. This document comprises the SLA for the Services as provided by Dyflexis. The purpose of the SLA is to record the level of service. This is achieved by describing important features, recording performance standards and determining the consequences of any unexpected failure to meet these standards.
- 2.2. The SLA enters effect at the point of first delivery of the Service and is entered into for the same period as the Agreement under which the Service is supplied. The SLA terminates automatically on the date on which the Agreement ends. A termination of the Agreement will also count as a termination of this SLA.
- 2.3. This SLA refers exclusively to the following standard support activities from Dyflexis:
  - (a) providing periodic Maintenance;
  - (b) repairing Errors;
  - (c) implementing Changes;
  - (d) monitoring the Desired Availability; and
  - (e) providing Support.
- 2.4. In addition to these standard support activities, Dyflexis may also perform other work for the Client. This work will most likely be charged separately. Dyflexis will at all times consult with the Client in advance and state the costs.
- 2.5. The Standard Terms and Conditions apply to this SLA. In the event of any conflict between the provisions, the Standard Terms and Conditions shall prevail.

## ARTICLE 3. CONTACT DETAILS

- 3.1. The Client will use the following contact details to report Errors:

When	Email address	Number
During business hours	support@dyflexis.com	NL: 0880 111 567 BE: 038 083 695
Outside business hours	support@dyflexis.com	NL: 0880 111 567 BE: +31 880 111 599

- 3.2. The aforementioned email address can be used for contact purposes outside of Working Days if the Client believes that there is a Fault described under priority level 1. Should this not be the case in the view of Dyflexis and Dyflexis feels that the emergency number is being misused, then Dyflexis has the right to charge for the hours incurred.
- 3.3. Both the Client and certified employees of the Client may contact Dyflexis under this SLA.

#### ARTICLE 4: PRIORITY LEVELS AND ERROR HANDLING

- 4.1. The Client reports Errors to Dyflexis in accordance with the table in article 3 (Contact details). If Errors are reported to Dyflexis in another manner, for instance by using other telephone numbers or email addresses, correct handling cannot be guaranteed.

When reporting an Error, the following details should be communicated to Dyflexis:

- (a) name of the Client's organisation;
  - (b) the name of the Client's contact person for this Error;
  - (c) current contact details (mobile telephone number, email address) of this contact person;
  - (d) a description of the Error, which is as precise as possible;
  - (e) a description of the measures which the Client has already taken.
- 4.2. Provided that the Errors are subject to handling by Dyflexis, they will be classified according to the following levels of priority:

Level	Description	Comment
1	High	The Service is unavailable
2	Average	Partially interrupted / reduced availability of the Service
3	Low	Problems with limited consequences for the Client. The service is available but does not work completely

- 4.3. The column below shows the efforts required by Dyflexis when dealing with Errors, for each priority level:

Priority	During business hours		Outside business hours	
	Reaction time	Recovery Time	Reaction Time	Recovery Time
1	0,5 hour	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

Contrary to the chart shown above, Dyflexis is entitled to defer the Errors with priority level 3 to subsequent releases of the Service. Dyflexis will take account as far as possible with the consequences for the Client, but is not under any obligation to do so.

- 4.4. The support technician from Dyflexis will notify by email the Client's contact person about the specific Error within the Response Time regarding:
- (a) the Priority Level of the Error; and, if this is already known
  - (b) the cause and solution for the Error.



- 4.5. In order to provide feedback to the Client, Dyflexis needs to hold valid contact details for the Client. The Client is therefore responsible for providing correct and up-to-date contact details. If the contact details held by Dyflexis are not correct due to an action or omission by the Client, or if the non-timely feedback by Dyflexis about the Error is the result of circumstances which cannot be attributed to Dyflexis, then the attempt made by Dyflexis counts as the time of feedback.
- 4.6. The Client agrees to assist with the rectification of the Error to the best of its ability.
- 4.7. If the assistance referred to in the previous paragraph is not provided, through no action of Dyflexis, the Repair Time will only enter effect at the moment that the Client provides the required assistance.
- 4.8. Dyflexis uses an escalation procedure that is deployed when an Error cannot be resolved within a certain time (Repair Time). During this procedure, Dyflexis will deploy all reasonably available resources (including external technical engineers if these are deemed necessary), to expedite the resolution of the Error. In addition, specific arrangements may be made with the Client about the solution of the Error during the escalation procedure. During the escalation procedure, Dyflexis will inform the Client every working day of the progress of the solution for the Error.

#### ARTICLE 5. AVAILABILITY

- 5.1. Dyflexis makes every effort twenty-four (24) hours a day, seven (7) days a week, throughout the entire year to keep the Service available 99.8% of the time, designated as the Desired Availability.
- 5.2. Availability means that the Service can be accessed and used by the Client. Faults in the connection and/or equipment that are beyond the control of Dyflexis, such as the Client's connection and/or equipment, are not included.
- 5.3. Dyflexis calculates the Actual Availability each month as follows:

$$AA = \frac{DA - \sum G}{DA} * 100\%$$

"AA" = Percentage of Actual Availability;

"DA" = Desired Availability in minutes;

"G" = The number of minutes during which an Error occurs.

- 5.4. Non-availability due to force majeure, Maintenance or the Hardware and/or equipment supplied by Dyflexis over which Dyflexis has no influence, are not considered as an Error and do not have any influence on the calculation of the Actual Availability.

#### ARTICLE 6 MONITORING OF AVAILABILITY

- 6.1 For the purpose of determining whether the promised guarantees in article 5 (Availability) are being adhered to, Dyflexis will take a sample every five minutes of the relevant data. An average will be calculated on the basis of these samples. This average determines whether the stated standards are being exceeded, unless the Client provides proof to the contrary.
- 6.2 On request by the Client about suspected non-availability and following receipt of a notification of non-availability of the Service, Dyflexis will respond in accordance with the Response Times stated in article 4.3.

## **ARTICLE 7      MAINTENANCE**

- 7.1. Dyflexis may carry out maintenance on the Service from time to time when it deems this necessary. Dyflexis will try to perform any shutdowns outside of Working Days, wherever possible. Dyflexis will make every effort to notify the Client at least two (2) Working Days in advance of any such Maintenance, however it is not under any obligation to do so. Maintenance will not affect the guarantees in articles 4 (Priority Levels and Error Handling) and 5 (Availability).

## **ARTICLE 8      CHANGES**

- 8.1 The Client may submit a Change request by contacting Dyflexis using the contact details shown in article 3 (Contact details) Dyflexis will make every effort to handle the request as quickly as possible, but does not provide any guarantees in this regard.
- 8.2 Dyflexis will also make a proposal on its own initiative to the Client for a Change if this Change will resolve a structural Error. However, Dyflexis is not under any obligation to make any such proposal and may perform this Change without the consent of the Client if it deems this necessary. The Client also has no influence on the respective Change.
- 8.3 For every Change request, Dyflexis will make a proposal to the Client concerning the content, planning and costs of the Change.
- 8.4 Dyflexis will make every effort to carry out change requests, but until the content, planning and costs of the Change have been agreed, Dyflexis may decide to fully/partially cancel the Change if it deems the efforts required for this to be disproportionate.
- 8.5 If a requested Change will not be performed, Dyflexis will immediately notify the Client about this.

## **ARTICLE 9      BACK-UP**

- 9.1. Dyflexis backs up the Service every day. This back-up can only be accessed by Dyflexis. The Client may request Dyflexis to make the back-up available, but Dyflexis may decline such requests at any time.
- 9.2. Dyflexis has the right to charge reasonable costs to the Client for making the back-up available or restoring it. Dyflexis will always inform the Client of the costs in advance.
- 9.3. Dyflexis is not liable under any circumstances for the loss of Data as a result of the failure of the Service and/or the back-up or back-up software. The Client will remain responsible at all times for saving the Data stored through the Service.
- 9.4. The Client is personally responsible for securing the data stored through the Service. Dyflexis is not liable under any circumstances for the loss of data in any way, unless agreed otherwise in writing.

## **ARTICLE 10:    SUPPORT BY DYFLEXIS**

- 10.1. Dyflexis offer support when supplying the Service in the form of telephone support, creating a connection to third-party software and other work activities which in the view of Dyflexis are supportive and can be performed rapidly and simply. Dyflexis has the right to charge additional costs for the respective work. Dyflexis will at all times send a quotation to the Client before commencing the work.
- 10.2. Dyflexis is entitled to decline to provide support to non-certified users.
- 10.3. Dyflexis will at all times notify the Client in writing of the costs of the Support prior to commencing the work.

#### ARTICLE 11      PENALTY CLAUSE

- 11.1. If Dyflexis does not meet the response obligations, referred to as the Response and Repair Time, in accordance with article 4 (Priority Levels and Error Handling), Dyflexis will pay a penalty for each hour in which the response or repair is delayed, that is equal to one thirtieth of the monthly amount due for the respective Service.
- 11.2. If Dyflexis does not comply with one or more of the guarantee stipulations in article 5 (Availability), Dyflexis will pay a penalty for each hour in which the response or repair is delayed, that is equal to one thirtieth of the monthly amount due for the respective Service.
- 11.3. This penalty clause replaces any damage compensation that the Client may be able to claim for non compliance.
- 11.4. If the Client observes that a refund is due, it will notify Dyflexis of this in writing and this will be credited on the next invoice.
- 11.5. If the Client believes that a refund is due whereas this is not forthcoming from Dyflexis, the Client should send a written request to this effect and provide proof if requested.
- 11.6. Refunds to be paid will never exceed the total of the monthly amount in any month.

#### ARTICLE 12      CHANGE TO TERMS AND CONDITIONS

- 12.1. Dyflexis has the right to alter this SLA at any moment.
- 12.2. Dyflexis will announce the changes or additions in writing or via the Service at least thirty (30) days before they enter into effect so that the Client is aware of these.
- 12.3. If the Client does not wish to accept a change or addition to the SLA, it may cancel prior to the date that the respective changes or additions enter effect. Use of the Service after the date that the amendment or addition enters into effect counts as acceptance of the amendment or addition to the SLA.

## *ANNEX 2 – PROCESSOR’S AGREEMENT*

This annex forms an integral part of the Agreement. The Client is responsible (“the Party Responsible”) for Personal Data in the Agreement. Dyflexis is the processor (“the Processor”) of the Personal Data in the Agreement. The parties will now be referred to as the Party Responsible or the Processor.

### **whereas**

- the Party Responsible has control of the personal data of various persons concerned (hereinafter: the “Personal Data”);
- The Party Responsible wishes various types of processing to be performed by the Processor, for the purpose of performing the Agreement in order to use the various applications offered by the Processor;
- The Party Responsible refers to the purposes and resources and the terms and conditions described in this document apply;
- The Processor is prepared to perform changes and is also prepared to comply with the obligations concerning security and other aspects from General Data Protection Regulation.
- The Parties, wish to record their rights and duties, also in view of the GDPR, by means of this processor’s agreement (hereinafter: the “Processor’s Agreement”).
- This Processor Agreement is governed by the same legislation as the Agreement except insofar as mandatory Applicable Data Protection Law applies.

### **Have agreed as follows**

#### **ARTICLE 1. DEFINITIONS**

- 1.1. **Personal data:** all information about an identified or identifiable natural person as referred to in Article 4 paragraph 1 GDPR;

- 1.2. **Responsible for processing:** for the Processing of Personal Data Responsible within the meaning of Article 4 paragraph 7 GDPR; hereinafter Responsible;
- 1.3. **The person concerned:** natural person of whom the Personal Data are processed that are directly or indirectly traceable to this person as referred to in Article 4 paragraph 1 GDPR;
- 1.4. **Processing:** the Processing of Personal Data as referred to in Article 4 paragraph 2 GDPR;
- 1.5. **Processor:** the person who processes the Personal Data within the meaning of Article 4 paragraph 8 GDPR;
- 1.6. **Sub-processor:** a data processor that is called in by the Processor and who declares that he is willing to provide Personal Data of the Processor under the conditions of a written sub-processing agreement;
- 1.7. **Security measure:** the measures aimed at the protection of personal data against unintentional destruction or unintentional loss, modification, unauthorized disclosure or access, in particular where the processing involves the forwarding of data via a network, and against all other unlawful forms of processing.
- 1.8. **Audit:** is het controleren van een organisatie. Dit omvat het uitvoeren van: een onderzoek naar een proces/organisatie zoals een kwetsbaarheids- en controle rapport betreffende de Verwerking van persoonsgegevens.
- 1.9. **Agreement:** Every agreement between Dyflexis and the Client arises from an offer or quotation made by Dyflexis and the valid acceptance thereof by the Client.

## ARTICLE 2. PROCESSING OBJECTIVES

- 2.1. The Processor undertakes to process the Personal Data under the instructions of the Party Responsible under the terms and conditions of this Processor's Agreement. Processing will solely occur for the purpose of using the various applications offered by the Processor for the performance of the Agreement and the purposes which will be determined subject to later agreement.
- 2.2. The Processor will not use the Personal Data for purposes other than those determined by the Party Responsible. The Party Responsible will inform the Processor of the processing objective where these have not been already mentioned in the Processor's Agreement. However, the Processor may use the Personal Data for statistical and/or quality purposes and also for performing statistical research into the quality of its service. The Processor may also use the data in an aggregated and anonymised form for its own purposes.
- 2.3. The Personal Data to be processed under the instructions of the Party Responsible will remain the property of the Party Responsible and/or the respective persons responsible.
- 2.4. The Personal Data collected, processed and used by the Processor on behalf of the Responsible concern the following categories of personal data;
  - name and address details
  - Contract data (income data)
  - Personnel file
  - Personal schedule
  - Time registration
  - Balances (leave etc.)
  - If applicable: hash derived from unique characteristics finger (can not be reconstructed to a fingerprint)

### ARTICLE 3. OBLIGATIONS OF THE PROCESSOR

The Processor will

- 3.1. With regard to the processing referred to in article 2 (Processing Objectives), the Processor will ensure compliance with the applicable laws and regulations, including in all cases the laws and regulation in the area of data protection such as the General Data Protection Regulation. Processing will only take place in order to use (various) applications offered by Processor for the performance of the Agreement, and those purposes that are determined with further consent.
- 3.2. Processor follows all the instructions of the Responsible within a reasonable period. Instructions are generally given in writing, unless the urgency or other specific circumstances require a different (for example oral or electronic) form. Non-written instructions must be confirmed in writing by the Responsible immediately. Insofar as the execution of an instruction leads to costs for the Processor, the Responsible will first inform the Client of these costs. Only after the Responsible has confirmed that the costs for the execution of an instruction are for his account, the Processor will carry out that instruction.
- 3.3. Notify the information immediately if the Processor can not comply with instructions from the Responsible for any reason;
- 3.4. The processor takes all technical and organizational security measures that are required from it under the GDPR and in particular pursuant to Article 32 of the GDPR.
- 3.5. The Processor shall ensure that persons, not limited to employees, who participate in the Processing activities are bound by a confidentiality obligation with respect to the Personal Data.
- 3.6. Ensure that persons who have access to the Personal Data will Process Personal Data in accordance with the purposes of the Processing.
- 3.7. Assisting the Responsible with appropriate Technical and Organizational Measures, to the extent feasible, for compliance with the Responsible Party's obligation to respond to requests for the exercise of the data subjects' rights concerning information described in Article 8 of this Agreement of this Appendix.
- 3.8. Handle all questions from Responsible with regard to its Processing of the Personal Data to be processed (for example by enabling the Responsible to respond in a timely manner to complaints or requests from Parties) and comply with the advice of the Supervisory Authority regarding the Processing of the data transmitted ;
- 3.9. Assist the Responsible with a Data Protection Impact Assessment as required by Article 35 of the GDPR relating to the Services provided by the Processor to the Responsible and the Personal Data processed by the Processor on behalf of the Responsible;

### ARTICLE 4. TRANSFER OF PERSONAL DATA

- 4.1. The processor may Process the Personal Data in countries within the European Union. Personal data processed or intended to be processed after processing to a third country or international organization may only be transmitted if, without prejudice to the other provisions of this Regulation, the Responsible and the Processor comply with the conditions laid down in Chapter 5 of the GDPR conditions; this also applies to further transfers of personal data from the third country or an international organization to another third country or another international organization. All provisions of Chapter 5 of the GDPR are applied so that the level of protection guaranteed by natural persons for this natural person is not undermined.

**ARTICLE 5: ENGAGE SUBPROCESSORS**

- 5.1. The Responsible gives permission for the use of Subprocessor(s) that have been engaged by the Processor for the provision of the Services. The Responsible gives his approval for the Subprocessor(s) as specified on <https://www.dyflexis.com/terms-and-conditions/subprocessors>
- 5.2. In the event that Processor intends to enable new or more Sub Processors, Processor shall ensure that the on <https://www.dyflexis.com/terms-and-conditions/subprocessors> is updated. The Responsible provides periodic consultation of on <https://www.dyflexis.com/terms-and-conditions/subprocessors>  
If the Responsible Party has reasonable grounds to object to the use of new or more Sub Processors, the Responsible must immediately notify Processor in writing within 14 days of receipt of the notification. In the event that the Responsible objects to a new or different Sub-processor, and that objection is not unreasonable, the Processor will make reasonable efforts to make changes to the Services available to the Responsible or to recommend a commercially reasonable change in the configuration of the Responsible or the use by the Responsible Party of the Services for the Prevention of Processing of Personal Data by the new or other Subprocessor objected to, without unreasonably burdening the Responsible. If the Processor can not make this change available within a reasonable period, which period shall not exceed sixty (60) days, the Responsible may terminate the affected part of the Services Agreement, but only in respect of those Services that can not be processed by the Processor. are granted without the use of the new or other Sub-processor objected to by means of written notification to the Processor.
- 5.3. If no objection is outed, the Processor will ensure that the third party concerned concludes an agreement in which it at least complies with the same legal obligations and any additional obligations arising from this agreement as the Processor. If a subprocessor does not wish to accept the additional obligations from this agreement, the Responsible may decide to release the Processor from these additional obligations for the relevant processing operations so that the Processor can still conclude the subprocessing agreement.
- 5.4. Processor remains liable to the Responsible Party for compliance with the obligations of Subprocessor, in case Subprocessor does not fulfill its obligations. However, the Processor is not liable for damage and claims arising from instructions from the Responsible to Sub Processors.

**ARTICLE 6: SECURITY**

Processor will

- 6.1. Implement the Technical and Organizational Security Measures that meet the requirements of the GDPR before Processing the Personal Data and ensure that he provides the Responsible with sufficient guarantees regarding the Technical and Organizational Security Measures as described in Appendix 2.1.
- 6.2. Assist the Responsible with appropriate Technical and Organizational Measures, to the extent feasible, for compliance with the Responsible Party's obligation to respond to requests for exercising the rights of the Person concerned, insofar as such feasible Technical and Organizational Security Measures have been amended or changed In the Technical and Organizational Security Requirements, the Responsible will inform the Responsible of the costs of implementing these additional or changed Technical and Organizational Security Measures. As soon as the Responsible has confirmed that these costs are for his account, the Contractor will take these additional or changed Technical and Organizational Security Measures.

- 6.3. The information security takes place according to generally recognized standards, such as ISO 27001 or similar certification.

**ARTICLE 7: MANDATORY REPORTING**

- 7.1. The Processor will inform the Responsible as soon as possible - and at the latest within 24 hours after the first discovery - of all (suspected) security breaches and other incidents that must be reported to the supervisor or data subject pursuant to legislation, without prejudice to the obligation to undo or limit the consequences of such violations and incidents as quickly as possible. The Processor will furthermore, at the first request of the Responsible, provide all information that the Responsible considers necessary to assess the incident. In doing so, the Processor will in any case provide the information to the Responsible as described in appendix 2.2.
- 7.2. The Processor has a thorough plan of approach to dealing with breaches and will provide the Responsible with access to the plan at his request.
- 7.3. The Processor will leave reports to the Controller (s) to the Responsible.
- 7.4. The Processor will provide all necessary cooperation to provide additional information to the regulator (s) and / or party (ies) as necessary, in the shortest possible term. At the same time, the Processor provides the information, as described in appendix 2.2, to the Responsible.
- 7.5. The Processor keeps a detailed log of all (suspicions of) breaches of security, as well as the measures that have been taken in follow-up to such breaches containing at least the information as referred to in appendix 2.2, and gives access to the Responsible.

**ARTICLE 8: PERSON CONCERNED**

- 8.1 The controller shall provide the person concerned with all information to which the person concerned is entitled. Containing articles 13 up to and including 18 and 20 up to and including 22 of the GDPR. The Processor helps the Responsible where necessary. Insofar as the execution of assistance leads to costs for the Processor, the Responsible will first inform the Client of these costs.

**ARTICLE 9: NON-DISCLOSURE AND CONFIDENTIALITY**

- 9.1 Persons employed by or working for the Processor, as well as the Processor themselves, are obliged to maintain confidentiality with regard to the personal data of which they can take cognizance, except insofar as a provision prescribed by or pursuant to the law makes it obligatory. The employees of the Processor sign a confidentiality statement to this effect.
- 9.2 If the Processor is required to provide data on the basis of a legal obligation, the processor will verify the basis of the request and the identity of the applicant and the Processor will inform the Responsible immediately in advance of the provision. Unless legal provisions forbid this.

**ARTICLE 10: AUDIT**

- 10.1 The processor provides all information necessary to demonstrate that the obligations under this Processor Agreement and Article 28 of the GDPR have been and are being complied with.
- 10.2 The controller is entitled once a calendar year to have an audit carried out by an independent party.
- 10.3 Processor provides all necessary assistance to audits.
- 10.4 Such audit reports are made fully available to the Processor.



- 10.5 Costs for an audit lie with the responsible party. In addition, an audit requires a great deal of time and resources from the Processor, at the expense of the further development of the software. Therefore, the Responsible pays the Processor a reasonable fee for time and expenses incurred by the Processor for an audit.

**ARTICLE 11: LIABILITY**

- 11.1 All liability arising from or in connection with this processor's agreement follows, and is exclusively governed by, the liability provisions set forth in the General Terms and Conditions and / or the Agreement. Therefore, and to calculate liability limits and / or to determine the application of other limitations of liability, any liability arising under this Processor Agreement shall be deemed to arise under the relevant General Terms and Conditions and / or the agreement.

**ARTICLE 12: DURATION AND TERMINATION**

- 12.1 This Processor's Agreement is entered into for the duration stated in the Agreement and if not specified, the duration in all cases of the collaboration between the parties.
- 12.2 The Processor's Agreement cannot be terminated by the parties in the interim, unless stated otherwise in the Agreement.

**ARTICLE 13: ADDITIONAL**

- 13.1 Parties may only change this Processor Agreement by mutual consent.
- 13.2 If one or more provisions in this agreement are void or voidable, or if legislation or regulations or case law require otherwise to amend one or more provisions in this agreement, the other provisions of this agreement will remain fully applicable. In such a case, the parties will consult with each other in order to agree on new provisions to replace the relevant provisions, taking into account as much as possible the purpose and intent of the original provision.

**Appendix 2.1: Technical and organizational measures**

Description of the Technical and Organizational Security Measures implemented by the Processor in accordance with the Applicable Data Protection Act:

This Appendix describes the Technical and Organizational Security Measures and Procedures that at least the Processor must maintain to protect the security of personal data created, collected, received, or otherwise obtained.

**General:** Technical and Organizational Security Measures can be regarded as the state of the art at the time of concluding the Services Agreement. The Processor will evaluate Technical and Organizational Security measures over time, taking into account costs for transit, nature, scope, context and objectives of Processing, and the risk of differences in the degree of probability and severity for the rights and freedoms of natural persons. . Which measures are in any case aimed at the following:

1. Limiting the circle of employees who have access to certain personal data to those persons who need the data for the performance of their duties;
2. Granting access to these persons to only personal data that they need for the performance of their work;
3. Measures to protect the Personal Data against unintentional or unlawful destruction, loss, unintentional alteration, unauthorized or unlawful storage, access or disclosure in the event of exchange / transport of data;

4. Ability to ensure continued confidentiality, integrity, availability, and resilience of processing systems and services;
5. Measures aimed at timely recovery of the availability of and access to personal data in the event of a physical or technical incident.
6. A process for regularly testing, assessing and evaluating the effectiveness of Technical and Organizational Security measures to ensure the safety of the Processing; and
7. An appropriate information security policy for the Processing of Personal Data, confirmed with an ISO 27001 or similar certification.

The processor will evaluate and tighten, supplement or improve the information security measures taken by him insofar as the requirements or (technological) developments give rise to this.

#### Appendix 2.2: Information to assess incidents for the elaboration of art. 6 paragraphs 1 and 5

The Processor will provide all information that the Controller deems necessary to assess the incident. In doing so, the Processor provides the following information to the Controller:

- what the (alleged) cause of the infringement is;
- what the (as yet known and / or expected) result is;
- what the (proposed) solution is;
- contact details for the follow-up of the report;
- number of persons whose data are involved in the infringement (if no exact figures are known: the minimum and maximum number of persons whose data are involved in the infringement)
- a description of the group of persons whose data are involved in the infringement;
- the type or types of personal data involved in the infringement;
- the date on which the infringement took place (if no exact date is known: the period within which the infringement took place);
- the date and time at which the infringement became known to the Processor or to a third party or subcontractor engaged by it;
- whether the data is encrypted, hashed, or is otherwise incomprehensible or inaccessible to unauthorized persons;
- what measures have already been taken to terminate the infringement and to limit the effects of the infringement.