

# Terms and Conditions of Delivery

These terms and conditions of delivery apply to any offer or quotation of Service Provider concerning Services, and are an integral part of any Agreement between Service Provider and Client. Client regulations or conditions that contradict or do not appear in these Terms and Conditions are binding for Service Provider only and to the extent in which they have been accepted explicitly in Writ by Service Provider.

Terms written with a capital letter are defined solely as stated in the article below.

## Definitions of terms used

These terms and conditions use the following terms:

**Service Provider:** the Green Mini host B.V. company, located in Amsterdam and registered with the Chamber of Commerce with file number 61482005.

**Website:** the website of Service Provider, available via the domain names of greenmini.nl, greenminihost.com, greenmini.host and others.

**Subscription:** the Agreement in which one or more parties oblige themselves to continually achieve performances for the duration of a certain period of time (e.g. a 12-month hosting contract).

**Account:** the right of access to a user interface with which Client can manage and monitor (certain aspects of) the Services, as well as the configurations and the files stored for Client itself.

**Terms and Conditions:** the regulations of this document.

**Client:** the natural or legal person with whom Service Provider achieved an Agreement. This term also includes the person who negotiates with Service Provider on that, as well as his/her representatives, delegates, legal recipients and heirs.

**Consumer:** a Client who is a natural person

**Services:** the products and/or services provided by Service Provider to Client on the basis of an Agreement.

**Materials:** all works, like websites and (web) applications, software, house styles, logos, folders, brochures, leaflets, lettering, advertisements, marketing- and/or communication plans, concepts, images, texts, drafts, documentation, advice, reports and other products of the mind, as well as any preparatory material involved and data (coded or not), servers or data carriers that carry the Materials.

**Agreement:** any agreement between Service Provider and Client, on the basis of which Service Provider delivers Services to Client.

**In Writ:** in addition to paper, also email and fax communication, provided that the identity of the sender and the integrity of the message are sufficiently warranted.

**Applications with Increased Risk:** applications in which an error in Services can lead to death

or severe injury, severe environmental damage or loss of (personal) details resulting in extensive damage or harm. Examples include transportation systems in which an error may lead to derailed trains or plane crashes; medical systems in which an error may lead to patients not receiving treatment or receiving the wrong treatment; systems in which a substantial part of society is dependent on receiving proper governmental services (like DigiD); core financial systems; systems which store medical data or other special data concerning laws on the protection of personal data, or other highly sensitive data.

**Data Processing Agreement (DPA):** the agreement between Service Provider (as a Processor) and Client (as a Controller), based on GDPR regulations. The standard DPA is attached to these Terms, but can also be a separate or customised agreement.

## Article 1. Signing the contract

1.1 Client can request the Services directly from the Website. The Agreement comes into existence as soon as the (manually or automatically generated) email of Service Provider has been sent, including the confirmation and acceptance of the request. Client can also request a free quotation. The Agreement comes into existence as soon as the agreement of the quotation has been received, but only if this takes place before the end date mentioned in the quotation.

1.2 Accepted Agreements are final. If Client is a Consumer, the delivery of Services shall start immediately after ordering, but only if Client explicitly agrees.

1.3 The standard DPA is considered to be an integral part of these Terms and Conditions, and come into force at the same time. Client is obliged to inform Service Provider immediately in case any sensitive PII will be processed and/or when the standard DPA does not cover the intended purpose of the data processing Client is responsible for.

## Article 2. Execution of the Agreement

2.1 After creation of the Agreement, Service Provider shall perform the activities mentioned as well as it is able and while applying sufficient care and expertise.

2.2 Service Provider shall make efforts to realise high-quality and uninterrupted availability of Services and the systems and networks that requires, and to realise Client access to the data stored. However, Service Provider does not offer any guarantees concerning quality or availability, unless stated otherwise in the Agreement through an explicitly mentioned Service Level Agreement (SLA).

2.3 Terms of delivery provided by Service Provider are exclusively indicative, except when the applicable SLA mentions terms that cannot be interpreted in any other way than to be binding of results.

2.4 If and for as far as a good execution of the Agreement demands so, Service Provider has the right to have certain activities performed by third parties. These Terms and Conditions also apply to activities that third

parties perform in the light of the Agreement.

2.5 If this has been agreed, Service Provider shall grant Client access to an Account. The Account shall be accessible by entering a password and a user name. Every action that occurs through Client's Account or through an Account created by Client shall be expected to be the responsibility of Client and to have been created by Client. If Client expects or can reasonably be expected to expect or know that the Account is being or has been misused, Client shall make Service Provider aware of this as soon as possible, so that Service Provider can take measures.

2.6 Service Provider shall be available for a reasonable level of remote client support by email, during regular office hours, in as far as the applicable SLA does not determine otherwise.

2.7 All changes to the Agreement, either at the request of Client or as a result of the fact that, regardless of the cause, a different execution is required, are regarded as extra work when they include extra costs and as less work when they include fewer costs. These shall be invoiced to Client accordingly.

## Article 3. Obligations of Client

3.1 Client shall do and not do everything that is reasonably necessary and desirable in order to achieve a timely execution of the Agreement. In particular, Client shall provide Service Provider with all data of which Service Provider indicates that it requires them or of which Client should reasonably know that these are required to perform the Services. The term within which Service Provider should execute the Agreement shall not start before all required data has been received by Service Provider.

3.2 If Client knows or can expect that Service Provider shall have to take certain (extra) measures in order to meet its requirements, Client shall inform Service Provider immediately. This obligation shall apply, for example, if Client knows or should expect that an abnormal peak in system load of Service Provider may occur, that may result in inaccessibility of the Services. Upon receiving the warning, Service Provider shall do everything in its power to prevent inaccessibility of Services. Unless agreed otherwise explicitly in Writ, all reasonable extra costs this includes can be invoiced to Client.

3.3 Client shall not use the Services for Applications with Increased Risk, unless the Services have been made available explicitly for those applications. If none of the Services are available for those applications, Client can request a custom agreement with Service Provider.

3.4 If Client requires any permit or other legal or governmental consent for the intended use of the Services, Client shall arrange for those him/herself. Client guarantees Service Provider that all permits and/or consents required for the use of the Services are in the possession of Client.

3.5 Client is obliged to inform Service Provider of any changes in categories of data processing, especially when it comes to sensi-

tive PII.

#### **Article 4. Code of conducts and notice/takedown**

4.1 Client shall not violate Dutch or other (international) law or regulations applicable to Client and/or Service Provider or violate others' rights when using the Services.

4.2 When using the Services, Service Provider shall not offer or distribute Materials (regardless of whether it is legal or not) that:

- are unmistakably primarily intended to help others harm the rights of third parties, like websites with (exclusively or mainly) hacking tools or information on computer crime that seems to be intended to allow the reader to execute the criminal behaviour described, rather than defend him/herself against it;
- are unmistakably offensive, harmful, insulting, racist, discriminating or cause hatred;
- contain child pornography or bestiality pornography, or seem to be aimed at helping others find such material;
- constitute a violation of the personal living environment of third parties, including at least but not exclusively distributing private data of third parties without need or permission, or repeatedly harassing third parties with unwanted communication;
- contain hyperlinks, torrents or references to (locations of) material that unmistakably violates copyrights, related rights or image rights;
- contain malicious content like viruses or malware.

4.3 Distributing pornographic Materials through the Services is allowed, but only as long as this does not constitute any troubles or violation of these Terms and Conditions.

4.4 Client refrains from hindering other internet users or damage any systems or networks of Service Provider or other clients. Client shall not start up processes or programs, either through systems of Service Provider or not, of which Client knows or is reasonably expected to know that it hinders or damages Service Provider, its clients, or other internet users.

4.5 If Service Provider judges that hindrance, damage, or any other danger has arisen for the operation of computer systems, or the network of Service Provider or third parties and/or of the provision of services via internet, in particular by sending excessive emails or other data, denial-of-service attacks, ill-protected systems or activities of viruses, Trojans and comparable software, Service Provider has the right to take any measures that it reasonably deems necessary to avert or prevent this danger. Service Provider can hold Client responsible for the costs necessarily resulting from these measures, but only if Client can be reasonably held responsible for the cause.

4.6 If Service Provider receives a complaint concerning violation of this article by Client, or establishes that this seems to be the case, Service Provider shall inform Client of this as soon as possible. Client shall respond as soon as possible. Then Service Provider shall determine how to act.

4.7 If Service Provider judges that a

violation has taken place or is taking place, it shall block access to the Material concerning, but without permanently removing the Material (unless this proves technically impossible, in which case Service Provider shall make a backup). In this process, Service Provider shall make efforts to not affect any other Material. Service Provider shall notify Client of the measures taken as soon as possible.

4.8 Service Provider shall always have the right to report illegal or criminal activities. Service Provider has the right to provide the name, address and other identifying information of Client to a third party who has complained that Client violates his/her rights or these Terms and Conditions, but only of the accuracy of that complaint is reasonably sufficient and the third party clearly benefits from the provision of details.

4.9 Even though Service Provider strives to act as reasonably, carefully and adequately as possible upon complaints about Client, Service Provider is never liable for compensation of damage resulting from measures intended in this article.

4.10 Client can resell Services, but only in combination with or as a part of the own products or services of Client, and without making available the name of Service Provider as a supplier or subcontractor. Client shall protect Service Provider against any claims made by clients of Client. Service Provider is allowed to act in full also in the case of violation of these Terms and Conditions by those clients of Client.

4.11 Client is responsible for the insurance of his/her equipment placed by Service Provider concerning theft, damage, and liability concerning third parties.

4.12 Client shall be extremely careful in working in the data centre, in order not to damage the equipment and infrastructure of third parties. Client shall always adhere to the instructions of data centre personnel and (personnel of) Service Provider, as well as to the house rules.

4.13 Unless agreed upon otherwise explicitly, Client is responsible for making and monitoring reliable backups.

#### **Article 5. Application for domain names**

5.1 Applications, assignment and any use of a domain name depend on and are subject to the rules and procedures of the registering organisations concerned, like SIDN for .nl domain names. The organisation concerned determines whether a domain name should be granted. Service Provider shall only fulfil a mediating role with the application and does not guarantee that the application will be successful.

5.2 Client can only deduce that registration has been successful from the confirmation of Service Provider, which states that the requested domain name has been registered. An invoice for registration costs is not a confirmation of registration.

5.3 Client protects and indemnifies Service Provider from all damage connected to (the use of) a domain name in the name of or

by Client. Service Provider is not liable for Client losing his/her rights of a domain name or for the fact that a domain name is applied for by and/or provided to a third party in the interim period, except in the case of intent or conscious recklessness of Client.

5.4 Client shall conform to the rules of registration organisations concerning the application, assignment and/or use of a domain name.

5.5 Service Provider has the right to make the domain name inaccessible or unusable, and to transfer it to its own name if Client is proven to be lacking in fulfilment of the Agreement, but only for as long as Client is lacking and only after a reasonable term of fulfilment as stated in a serving notice in Writ has passed.

5.6 In case of dissolution of the Agreement due to defaults of Client, Service Provider has the right to cancel a domain name of Client, observing a waiting period of two months.

#### **Article 6. Storage and data limits**

6.1 Service Provider can set a data and/or storage limit per month that Client can actually use within the scope of the Services.

6.2 Should Client exceed the limits, Service Provider can charge an extra amount per data unit (e.g. MB or GB) to the extent of the excess, according to the price list applicable.

6.3 There is no liability for the consequences of not being able to send, receive, store or change data in case of exceeding of an arranged storage or data limit.

6.4 In the case of an excessive amount of data traffic being caused by an external factor (e.g. a denial of service attack), Service Provider has the right to charge any costs involved to Client according to reason.

#### **Article 7. Rights of intellectual property**

7.1 All rights of intellectual property on all Materials developed or provided by Service Provider within the scope of the Agreement lie exclusively with Service Provider and his/her license providers.

7.2 Client shall only obtain the user rights and authorities mentioned in this Agreement or which have been agreed otherwise explicitly in Writ. In all other cases, Client shall not make public or copy these Materials, except in the case of accidental omission of such an explicit agreement. Delivery of the source code of Materials, however, is only obligatory as long as it has been explicitly agreed upon.

7.3 Unless and in as far as agreed differently in Writ, Client is not permitted to remove or change any indication of copyrights, brands, trade names or other rights of intellectual property, including indications concerning the confidential nature and secrecy of the Materials.

7.4 Service Provider is permitted to take technical measures to protect his/her Materials. If Service Provider has applied technical measures to protect his/her Materials, Client is not permitted to remove or sidestep this protection, except and in as far as the law forcibly dictates otherwise.

## Article 8. Prices

8.1 Unless explicitly stated otherwise with an amount, all amounts stated by Service Provider exclude VAT and other legal or governmental taxes.

8.2 If the price is based on data provided by Client and these data turn out to be incorrect, Service Provider shall have the right to adapt his/her prices to this, even after the Agreement has already been signed.

8.3 If the Agreement concerns a Subscription, Service Provider has the right to alter the prices once per year for inflation according to the relevant price index of the CBS, plus 1 percentage point.

8.4 The same conditions and procedures apply to price changes as to changes of the Services and of these Terms and Conditions.

## Article 9. Payment conditions

9.1 Service Provider shall invoice the amounts owed by Client to Client. Service Provider can use electronic invoices for that. Service Provider has the right to invoice periodic amounts owed in advance of the delivery of the Services.

9.2 The payment term of an invoice is 14 days after the invoice date, unless agreed differently in Writ.

9.3 If Client has not paid an invoice (in part or in whole) after 14 days of the invoice date, Client is automatically in default without the requirement of a notice of default.

9.4 Client being in default has the following consequences:

- Legal interest is owed on the amount owed;
- In addition to the amount owed and the interest, Client shall pay a reimbursement for any extrajudicial and judicial recovery costs, including the costs of lawyers, jurists, bailiffs and recovery agencies;
- The Services hosted for Client and other Materials that have been made inaccessible until any owed amounts, interest and so forth have been paid.

9.5 Unless Client is a Consumer, Client is not allowed claims of postponement, settlement or deduction.

9.6 In the case of Client not meeting any obligation of the Agreement, Service Provider has the right to call back any goods delivered without notice of default, in addition to suspension of the Services, not affecting the right of Service Provider of reimbursement of damage, loss of profit and interest.

9.7 Service Provider is never obligated to credit any costs incurred for products that have a running time exceeding the term of notice (e.g. domain names).

## Article 10. Liability

10.1 Within the scope of the creation or execution of the Agreement, Service Provider is not liable for those cases stated below, and at most for the limits mentioned.

10.2 The complete liability of Service Provider for damage suffered by Client as a

result of shortcomings of fulfilment of his/her obligations stated in the Agreement imputable to Service Provider, also explicitly including any shortcomings of fulfilment of a guarantee obligation reached with Client, or through wrongful conduct of Service Provider, his/her employees or third parties hired by him/her, shall be limited to an amount per incident or chain of incidents equal to the entirety of reimbursements (excluding VAT) that Client owes according to the Agreement, or, in the case of the Agreement having a duration longer than three (3) months, an amount equal to the reimbursements that Client has paid during the past three (3) months. The total amount of reimbursement for direct damage shall never exceed ten thousand Euro (excluding VAT).

10.3 Service Provider is explicitly not liable for indirect damage, consequential damage, loss of profit, loss of conservation, damage as a result of data loss or damage as a result of business stagnation.

10.4 The liability of Service Provider due to imputable shortcomings of fulfilment of the Agreement only exists if Client gives Service Provider immediate and sound notice of default in Writ, in doing so applying a reasonable term to solve the default, and if Service Provider remains in default after that term. The notice of default shall give a description as detailed as possible of the default, so that Service Provider shall be able to respond adequately. The notice of default shall be received by Service Provider within 30 days of discovery of the damage.

10.5 The exclusions and limitations intended in this article shall be cancelled if and in as far as the damage is the result of malicious intent or conscious recklessness of the company management of Service Provider.

10.6 Client is liable to Service Provider for damage resulting from an imputable error or shortcoming. Client protects Service Provider from claims concerning non-adherence to the code of conduct intended in article 3 with the use of the Services by or with the permission of Client. This protection also applies to persons who are not employees of Client, but who use the Services with the permission of Client or for whom Client is responsible.

## Article 11. Force majeure

11.1 None of the parties can be held liable for fulfilling any duties in the case of an occurrence outside of the influence of either party, and that could not have been (reasonably) foreseen upon signing the Agreement, annulling any possibility of fulfilment.

11.2 Force majeure includes (but is not limited to) failures of public infrastructure normally available to Service Provider and on which the delivery of the Services depends, but for which Service Provider does not have any power or contractual fulfilment agreement, like the operation of the registers of IANA, RIPE or SIDN, and all networks in the internet with which Service Provider does not have a contract; failures of infrastructure and/or Services of Service Provider caused by computer crime, like (D)DoS attacks or attempts (either successful or not) to sidestep network security or system security; shortcomings of suppliers that Service

Provider could not have foreseen and for which Service Provider cannot be held responsible, for example due to force majeure on the part of the supplier; limitations of issues, equipment, software or other source material of which Client has prescribed the use; unavailability of staff (because of illness or otherwise); governmental intervention; general transportation problems; strikes; wars; terrorist attacks or national disturbances.

11.3 If a situation of force majeure exceeds three months in duration, both parties have the right to dissolve the Agreement in Writ. Whatever has already been fulfilled within the scope of the Agreement, shall be invoiced comparatively, without either party owing anything to the other.

## Article 12. Secrecy

12.1 Parties shall treat information that they provide to each other before, during or after the execution of the Agreement confidentially if this information is marked as confidential or if the receiving party knows or can reasonably be expected to know that the information is intended to be confidential. Parties shall also oblige their employees and any third parties they hired to do the same.

12.2 Service Provider shall not take notice of details that Client stores and/or distributes via the systems of Service Provider, unless this is necessary for a proper execution of the Agreement or if Service Provider is obliged to do so by a legal regulation or judicial order. In that case, Service Provider shall make efforts to limit taking notice as much as possible, for as far as this is within his/her ability.

12.3 The duty of secrecy remains in effect after termination of the Agreement for whatever reason, for as long as the providing party can reasonably be expected to lay claims on the confidential nature of the information.

## Article 13. Duration and termination

13.1 The duration of the Agreement is the time period that is required to deliver the Services. If the Agreement is a Subscription, the duration is a year, unless otherwise agreed.

13.2 If a fixed duration of the Subscription has been determined, no party can terminate the Agreement unilaterally before the duration has expired, unless special grounds for termination apply, as described below.

13.3 In case of default of timely termination, a Subscription shall be continued indefinitely after the first contract term has passed. In this case, it can be terminated at any time with a one-month term of notice.

13.4 Service Provider has the right to suspend or terminate the Agreement without term of notice if at least one of the following special grounds apply:

- a) Client is in default concerning an actual obligation;
- b) The bankruptcy of Client has been requested;
- c) Client has requested moratorium of payment;
- d) The activities of Client are being terminated or liquidated.

13.5 If Service Provider suspends the fulfilment of obligations, he/she shall remain his/her rights from the law and the Agreement, including the right to claim payment for the suspended Services.

13.6 If the Agreement is terminated or dissolved, the claims of Service Provider to Client are collectable instantly. In the case of dissolution of the Agreement, amounts already invoiced for services already performed shall remain owed, without any obligation of undoing. In the case of dissolution by Client, Client is allowed to dissolve only the part of the Agreement that has not yet been executed by Service Provider. If the dissolution can be imputed to Client, Service Provider shall have the right to be reimbursed for the direct and indirect damage resulting from that.

13.7 The right of suspension in the aforementioned cases applies to all Agreements reached with Client simultaneously, even if Client is in default with regard to only one Agreement, and not affecting the right of Service Provider for reimbursement of damage, loss of profit and interest.

#### **Article 14. Procedure upon termination**

14.1 Upon termination of the Agreement, as a result of either cancellation or dissolution, Service Provider can immediately delete Client's account and Service Provider shall erase any data of Client as soon as possible. In that case, Service Provider is not obliged to provide Client with a copy of these data.

14.2 Erasing of data stored for Client occurs without special care that ensures irreversibility of the erasure, but this can be requested and shall in that case occur for an extra fee with the aid of data shredder software or hardware.

#### **Article 15. Order and changes of conditions**

15.1 Service Provider has the right to change and add Services and these Terms and Conditions. Changes also apply to agreements already reached, but only when observing a term of notice of 30 days after announcement of the change.

15.2 Changes shall be made known to Client by email or another channel of which Service Provider can prove that the announcement has reached Client. Non-content-related changes of lesser importance can be implemented at any time and do not require any notice.

15.3 If Client does not wish to accept a change, Client shall announce this within two weeks after the announcement of the change in Writ, including a motivation, to Service Provider. Service Provider can then reconsider the change. If Service Provider does not revoke the change, Client can terminate the Agreement as from the date on which the change shall be effective, but only if the termination is announced before that date.

15.4 Regulations concerning specific Services shall override general regulations concerning all Services whenever they clash. Further agreements between Client and Service Pro-

vider shall prevail over these Terms and Conditions only if they are in Writ and if it has been stated explicitly, or if it was the unmistakable intention of both parties.

#### **Article 16. Miscellaneous regulations**

16.1 The Agreement is governed by Dutch law.

16.2 In as far as not prescribed otherwise by the rules of mandatory law, all disputes that might arise as a result of the Agreement shall be presented to the competent Dutch court of the arrondissement in which Service Provider is located.

16.3 Any clause of the Agreement that appears to be void does not affect the validity of the entire Agreement. Parties shall in that case reach new replacement regulations that come as close as legally possible to the intention of the original Agreement and the Terms and Conditions.

16.4 Information and notifications on the Website, including publishing of prices, are subject to the reservation of typographical errors and programming errors. In the case of inconsistency between the Website and the Agreement, the Agreement prevails.

16.5 The log files and other electronic or analogue administration of Service Provider form complete evidence of propositions of Service Provider and the received or stored version of some (electronic) communication by Service Provider counts as authentic, unless opposing evidence is provided by Client.

16.6 Parties shall always immediately notify each other in Writ of any changes of name, postal address, email address, telephone number, and, upon request, bank account number.

16.7 Every party only has the right to transfer its rights and duties of the Agreement to a third party with advance permission in Writ of the other party. This permission is not required in the case of company acquisition or acquisition of the larger part of the shares of the party concerned.

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## Attachment I Data Processing Agreement

This data processing agreement is applicable to all processing of personal data to be undertaken by Green Mini host BV, registered with the Chamber of Commerce under number 61482005, (hereinafter: Processor) for the benefit of another party to whom it provides services (hereinafter: Controller).

### Article 1. Purposes of processing

1.1. Processor hereby agrees under the terms of this Data Processing Agreement to process personal data on behalf of the Controller. Processing shall be done solely for the purpose of storing data on datacenter infrastructure for the benefit of Controller, and associated online services, execution of the principal Agreement and Service, and all purposes compatible therewith or as determined jointly.

1.2. The personal data to be processed by Processor for the purposes as set out in the previous clause and the categories of data subjects involved are set out in Appendix I to this Data Processing Agreement. Processor shall not process the personal data for any other purpose unless with Controller's consent. Controller shall inform Processor of any processing purposes to the extent not already mentioned in this Data Processing Agreement.

1.3. All personal data processed on behalf of Controller shall remain the property of Controller and/or the data subjects in question.

### Article 2. Processor obligations

2.1. Regarding the processing operations referred to in the previous clause, Processor shall comply with all applicable legislation, including at least all data processing legislation such as the Dutch Data Protection Act.

2.2. Upon first request Processor shall inform Controller about any measures taken to comply with its obligations under this Data Processing Agreement.

2.3. All obligations for Processor under this Data Processing Agreement shall apply equally to any persons processing personal data under the supervision of Processor, including but not limited to employees in the broadest sense of the term.

2.4. Processor shall inform Controller without delay if in its opinion an instruction of Controller would violate the legislation referred to in the first clause of this article.

2.5. Processor shall provide reasonable assistance to Controller in the context of any privacy impact assessments to be made by Controller.

### Article 3. Transfer of personal data

3.1. Processor may process the personal data in any country within the European Union.

3.2. In addition, Processor may transfer the personal data to a country outside the European Union, provided that country ensures

an adequate level of protection of personal data and complies with other obligations imposed on it under this Data Processing Agreement and the Dutch Data Protection Act, including the availability of appropriate safeguards and enforceable data subject rights and effective legal remedies for data subjects.

3.3. Processor shall report to Controller of the countries involved. Processor warrants that, considering the circumstances that apply to the transfer of personal data or any category of transfers, the country or countries outside the European Union have an adequate level of protection.

3.4. In particular Processor shall take into account the duration of the processing, the country of origin and the country of destination, the general and sector-based rules of law in the country of destination and the professional rules and security measures which are complied with in that country.

### Article 4. Allocation of responsibilities

4.1. Processor shall make available IT facilities to be used by Controller for the purposes mentioned above. Processor shall not itself perform processing operations unless separately agreed otherwise.

4.2. Processor is solely responsible for the processing of personal data under this Data Processing Agreement in accordance with the instructions of Controller and under the explicit supervision of Controller. For any other processing of personal data, including but not limited to any collection of personal data by Controller, processing for purposes not reported to Processor, processing by third parties and/or for other purposes, the Processor does not accept any responsibility.

4.3. Controller represents and warrants that the content, usage and instructions to process the personal data as meant in this Data Processing Agreement are lawful and do not violate any right of any third party.

### Article 5. Involvement of sub-processors

5.1. Processor shall involve third parties in the processing under this Data Processing Agreement on the condition that such parties are reported at first request to the Controller; Controller may object to a specific third party if its involvement would reasonably be unacceptable to it.

5.2. In any event, Processor shall ensure that any third parties are bound to at least the same obligations as agreed between Controller and Processor. Controller has the right to inspect the agreements containing such obligations.

5.3. Processor represents and warrants that these third parties shall comply with the obligations under this Data Processing Agreement and is liable for any damages caused by violations by these third parties as if it committed the violation itself.

### Article 6. Security

6.1. Processor shall use reasonable efforts to implement appropriate technical and organi-

sational measures to ensure a level of security appropriate to the risk for the processing operations involved, against loss or unlawful processing (in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to personal data transmitted, stored or otherwise processed).

6.2. Processor does not warrant that the security is effective under all circumstances. If any security measure explicitly agreed in this Data Processing Agreement is missing, then Processor shall use best efforts to ensure a level of security appropriate to the risk taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons.

6.3. Controller shall only provide personal data to Processor for processing if it has ensured that the required security measures have been taken. Controller is responsible for the parties' compliance with these security measures.

### Article 7. Notification and communication of data breaches

7.1. Controller is responsible at all times for notification of any security breaches and/or personal data breaches (which are understood as: a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed) to the competent supervisory authority, and for communication of the same to data subjects. In order to enable Controller to comply with this legal requirement, Processor shall notify Controller within a reasonable period after becoming aware of an actual or threatened security or personal data breach.

7.2. A notification under the previous clause shall be made only for actual or threatened breaches with severe impact.

7.3. The notification shall include at least the fact that a breach has occurred. In addition, the notification shall:

- describe the nature of the personal data breach including, where possible, the categories and approximate number of data subjects concerned and the categories and approximate number of personal data records concerned;
- describe the likely consequences of the personal data breach;
- describe the measures taken or proposed to be taken by the controller to address the personal data breach, including, where appropriate, measures to mitigate its possible adverse effects.

### Article 8. Processing requests from data subjects

8.1. In the event a data subject makes a request to exercise his or her legal rights under data protection legislation to Controller, Processor shall pass on such request to Controller, and Controller shall process the request. Processor may inform the data subject of this passing on.

## Article 9. Confidentiality obligations

9.1. All personal data that Processor receives from Controller and/or collects itself is subject to strict obligations of confidentiality towards third parties. Processor shall not use this information for any goals other than for which it was obtained, not even if the information has been converted into a form that is no longer related to an identified or identifiable natural person.

9.2. The confidentiality obligation shall not apply to the extent Controller has granted explicit permission to provide the information to third parties, the provision to third parties is reasonably necessary considering the nature of the assignment to Controller or the provision is legally required.

## Article 10. Audit and DPIA

10.1. Controller has the right to have audits or DPIAs performed on Processor by an independent third party bound by confidentiality obligations to verify compliance with the security requirements, compliance with data processing regulations, unauthorized use of personal data by Processor personnel, compliance with the Data Processing Agreement, and all issues reasonably connected thereto.

10.2. The audit may be performed only after Processor has provided Controller on first request with similar and recent audit reports of independent third parties, after which a reasonable and substantiated allegation of misuse of personal data or non-compliance to these terms still can be made or reasonable doubt exists.

10.3. Processor shall give its full cooperation to the audit and shall make available employees and all reasonably relevant information, including supporting data such as system logs.

10.4. The audit findings shall be assessed by Processor and implemented if and to the extent deemed reasonable by Processor.

10.5. The costs of the audit shall be borne by Controller.

## Article 11. Liability

11.1. The liability of parties for any damages as a result of a reputable failure to comply with this Data Processing Agreement, unlawful acts or otherwise, is excluded. To the extent such liability cannot be excluded, it is limited to direct damages per event (a sequence of successive events counting as one event), up to the amount received by the other Party for all activities under this Data Processing Agreement for the month prior to the event. Any liability of the parties for direct damages shall in any event never be more than € 5,000

11.2. Direct damages shall include only:

- damages to physical objects;
- reasonable and proven costs to cause the party in question to regain compliance with this Data Processing Agreement;
- reasonable costs to assess the cause and extent of the direct damage as meant in this article; and

- reasonable and proven costs that Controller has incurred to limit the direct damages as meant in this article.

11.3. Any liability for indirect damages by the Parties for indirect damages is excluded. Indirect damages are all damages that are not direct damages, and thus including but not limited to consequential damages, lost profits, missed savings, reductions in goodwill, standstill damages, failure to meet marketing requirements, damages as a result of using data prescribed by Controller, or loss, corruption or destruction of data.

11.4. No limitation of liability shall exist if and to the extent the damages are a result of intentional misconduct or gross negligence on the part of the party in question or its directors.

11.5. Unless a failure by the party in question is incapable of redress, any liability shall exist only if the other party puts the responsible party on notice of default, including a reasonable term for addressing the failure, and the responsible party fails to comply even after this term. The notice shall contain a detailed description of the failure to ensure that the responsible party has a reasonable opportunity to address the failure.

11.6. Any claim for damages either party to the other that is not specifically notified in detail shall be extinguished by the passage of twelve (12) months after the date its cause first arose.

## Article 12. Term and termination

12.1. This Data Processing Agreement enters into force upon signature by the parties and on the date of the last signature.

12.2. This Data Processing Agreement is entered into for the duration of the cooperation between the parties.

12.3. Upon termination of the Data Processing Agreement, regardless of reason or manner, Processor shall - at the choice of Controller - return in original format (when possible) or destroy all personal data available to it.

12.4. Processor is entitled to amend this Data Processing Agreement from time to time, taking into account the same procedure as for changes to the Terms and Conditions.

## Article 13. Applicable law and competent venue

13.1. This Data Processing Agreement and its execution are subject to Dutch law.

13.2. Any disputes that may arise between the parties in connection with this Data Processing Agreement shall be brought to the competent court for the place of business of Processor.

## Appendix I: Stipulation of personal data and data subjects

### Personal data

Processor shall process non-sensitive personal data under the supervision of Controller, as specified in article 1 of the Data Processing Agreement, such as:

- Names, addresses

- Email addresses
- IP-addresses
- Phone numbers
- Other categories of non-sensitive PII

This data will be of the following categories of data subjects:

- Controller's employees and its Affiliates
- Controller's customers and users of their services
- Leads and potential customers
- Website visitors
- Persons who make available their PII to Controller
- Other possible categories of data subjects who's PII will be processed using the Service

Controller represents and warrants that the description of personal data and categories of data subjects in this Appendix I is complete and accurate, and shall indemnify and hold harmless Processor for all faults and claims that may arise from a violation of this representation and warranty.