



# PROCESSOR'S AGREEMENT

This Processor's Agreement is applicable on all forms of processing personal data by Idiligo B.V. (registered under Chamber of Commerce number 34302927) (hereafter: Processor) for the counterparty (hereafter: Controller) using the Idiligo services.

## Article 1. Purposes of processing

- 1.1 The Processor undertakes to process the personal data under the terms of this Processor's Agreement on the instructions of the Controller. The processing will take place only in the context of storing the Controller's data in the cloud and related online services, plus those purposes that are reasonably related thereto or that are agreed at a later date.
- 1.2 The Processor will not process the personal data for any purpose other than that determined by the Controller. The Controller will notify the Processor of the processing purposes to the extent these have not already been cited in this Processor's Agreement.
- 1.3 The personal data to be processed on the instructions of the Controller will remain the property of the Controller and/or the relevant involved parties.
- 1.4 The Controller guarantees that the processing of personal data falls under one of the exemptions of the Personal Data Protection Act, and that as such no notification to the Dutch Data Protection Authority is required.

## Article 2. Obligations of the Processor

- 2.1 With regard to the processing referred to in Article 1, the Processor shall ensure compliance with applicable laws and regulations, including in any event the laws and regulations in the field of the protection of personal data, such as the General Data Protection Regulation.

- 2.2 The Processor will inform the Controller, at its first request, about the measures taken by it in relation to its obligations under this Processor's Agreement.
- 2.3 The obligations of the Processor arising from this Processor's Agreement also apply to those who process personal data under the authority of the Processor, including but not limited to employees, in the broadest sense of the word.

## Article 3. Transfer of personal

- 3.1 The Processor may process the personal data in countries within the European Union. Transfer to countries outside the European Union is prohibited.
- 3.2 The Processor shall notify the Controller of the country or countries involved.

## Article 4. Division of responsibility

- 4.1 The permitted processing operations shall be fully automated and performed under the control of the Processor.
- 4.2 The Processor is solely responsible for the processing of personal data under this Processor's Agreement, in accordance with the instructions of the Controller and under the express (final) responsibility of the Controller. The Processor is explicitly not responsible for any other processing operations involving personal data, including in any event, but not limited to, the gathering of personal data by the Controller, processing for purposes that the Controller has not reported to the Processor, processing by third parties and/or for other purposes.
- 4.3 The Controller guarantees that the content, use and assignment of the processing of personal data pursuant to this Processor's Agreement is not illegal and does not infringe any third party rights.

## **Article 5. Security measures**

- 5.1 The Processor will endeavour to take adequate technical and organisational measures against loss or any form of unlawful processing (such as unauthorised disclosure, deterioration, alteration or disclosure of personal data) in connection with the performance of the processing of personal data.
- 5.2 The Processor does not guarantee that the security is effective under all circumstances. If the Processor's Agreement does not include an explicit description of the security, the Processor will endeavour to ensure that the security is of a reasonable level, given the state of the art, the sensitivity of the personal data and the costs related to the security.
- 5.3 The Controller will only make the personal data available to the Processor for processing if it is assured that the necessary security measures have been taken. The Controller is responsible for ensuring compliance with the measures agreed by the Parties.

## **Article 6. Notification requirement**

- 6.1 Controller is at all times responsible for reporting a security leak and/or data leak (which means: a breach of security with respect to personal data, which leads to (potential) adverse consequences for the protection of personal data) to supervising authorities and/or the involved parties. In order to enable Controller to meet his legal obligations, Processor will notify Controller of the security leak and/or data leak within a reasonable period.
- 6.2 The notification requirement shall in any case entail the notification of the fact that there was a leak

## **Article 7. Handling of requests from data subjects**

- 7.1 In the event that a data subject submits a request to the Processor for inspection or correction, supplement, modification or protection of his/her data, the Processor shall forward the request to

the Controller and the Controller shall deal further with the request. The Processor may inform the involved party.

## **Article 8. Non-disclosure and confidentiality**

- 8.1 The parties have a duty to maintain the secrecy of all personal data received by the Processor from the Controller and/or that the Processor gathers itself in the context of this Processor's Agreement, with respect to third parties. The Processor will not use this information for any purpose other than that for which it was obtained, even when this information is changed into such a form that it cannot be traced back to the data subjects.
- 8.2 This duty of confidentiality does not apply insofar as the Controller has given explicit consent to provide the information to third parties, if the provision of the information to third parties is logically necessary given the nature of the assignment granted and the implementation of this Processor's Agreement, or if there is a legal obligation to provide the information to a third party.

## **Article 9. Auditing**

- 9.1 The Controller has the right to have audits performed by an independent third party bound by confidentiality to check abuse of personal data by employees of the Processor, and everything directly related to this.
- 9.2 This audit may take place if there is a specific, suspected abuse of personal data.
- 9.3 The Processor shall cooperate with the audit and provide all information reasonably relevant for the audit, including supporting data such as system logs, and employees, as promptly as possible.
- 9.4 The findings further to the audit conducted will be assessed by the Parties in mutual consultation and, following on from this, may or may not be implemented by one of the parties or by both Parties together.
- 9.5 The costs of the audit shall be borne by the Controller.

## **Article 10. Liability**

- 10.1 The liability of the Controller for damage as a consequence of a culpable failure in compliance with the Processor's Agreement, or of an unlawful act or otherwise, is excluded. To the extent that the aforementioned liability cannot be ruled out, this liability shall be limited per event (a series of consecutive events constitutes a single event) to compensation for direct loss, up to a maximum of the amount of the payments received by the Controller for the work under this Processor's Agreement for the month prior to the event that triggered the loss. The liability of the Controller for direct loss shall never exceed a total of EUR 2500.
- 10.2 Direct loss is understood to mean exclusively all loss comprising:
- 10.2.1 damage directly caused to physical items ("property damage");
  - 10.2.2 reasonable and demonstrable costs of ordering the Controller to properly fulfil or resume proper fulfilment of the Processor's Agreement;
  - 10.2.3 the reasonable costs incurred to determine the cause and the scope of the damage, insofar as relating to direct loss within the meaning of this article; and
  - 10.2.4 reasonable and demonstrable costs incurred by the Controller in preventing or limiting the direct loss within the meaning of this article.
- 10.3 The liability of the Controller for indirect loss is excluded. Indirect loss is understood to mean all damage that does not constitute a direct loss; therefore, it includes in any event, but is not limited to, consequential loss, lost profit, missed savings, diminished goodwill, damage due to business interruption, damage due to not specifying marketing purposes, damage connected with the use of data or databases stipulated by the Controller, or loss, alteration or destruction of data or databases.
- 10.4 The exclusions and limitations referred to in this article lapse if and as soon as the damage results from deliberate intent or recklessness on the part of the Controller or its business management.

- 10.5 Unless compliance by the Controller is permanently not possible, the liability of the Controller due to a culpable failure to comply with the Agreement shall only arise if the Processor has sent the Controller a written notice of default forthwith, stating a reasonable term within which to rectify the failure and if even on the expiry of this term the Controller continues to fail culpably to comply with its obligations. The notice of default must contain a description of the failure that is as complete and detailed as possible so that the Controller is able to make an adequate response.
- 10.6 Any claim for compensation by the Processor against the Controller that has not been itemised and explicitly notified becomes barred by the mere lapse of twelve (12) months after the claim has arisen.

## **Article 11. Term and termination**

- 11.1 This Processor's Agreement shall be concluded after signature by the parties or after ordering the service online.
- 11.2 This Processor's Agreement has been entered into for one year and after that period has elapsed shall be automatically and tacitly renewed for the same period, unless one of the parties has cancelled the Processor's Agreement. No notice period should be taken into account.
- 11.3 At such time as the Processor's Agreement is terminated, for whatever reason and in whatever manner, the Processor shall return all personal data it holds delete and/or destroy those data and any copies thereof.
- 11.4 The parties may amend this agreement only by mutual consent.

## **Article 12. Applicable law and dispute resolution**

- 12.1 The Processor's Agreement and the performance thereof are governed by the law of The Netherlands, without regard to any conflicts of law provisions.

12.2 All disputes which may arise between the parties in connection with the Processor's Agreement shall be submitted to the competent court in the district in which the Processor is established.

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