

# GENERAL TERMS AND CONDITIONS WONDERKIND

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## ARTICLE 1. DEFINITIONS

The terms used in these General Terms and Conditions, both in the singular and plural, shall be understood to mean the following:

- 1.1. **Agreement:** all agreements contracted between Wonderkind and the Client, of which these General Terms and Conditions form an integral part.
- 1.2. **Campaign:** the online advertising campaign by which the Agreement is executed.
- 1.3. **Client:** the person or entity with whom Wonderkind has entered into an Agreement. This also refers to those who enter into or are in negotiations with Wonderkind in this respect, as well as their representative(s), proxy (proxies), beneficiary (beneficiaries) and heirs.
- 1.4. **Client's Media Channels:** the Client's online media channels which may be used to provide the advertising services on behalf of the Client.
- 1.5. **Data Processing Agreement:** the agreement that governs the processing of personal data through the Service by Wonderkind as a data processor, which forms an integral part of each Agreement. The Data Processing Agreement is attached to the General Terms and Conditions as Appendix I.
- 1.6. **General Terms and Conditions:** the stipulations of this document.
- 1.7. **Intellectual Property Rights:** all intellectual property rights and related rights, including but not limited to copyrights, database rights, domain names, trade name rights, brand rights, model rights, neighbouring rights, patent rights and rights to know-how.
- 1.8. **Offer:** the (online) advertising campaign proposal generated by Wonderkind or any other offer or tender submitted by Wonderkind to Client.
- 1.9. **Party:** Wonderkind or the Client.
- 1.10. **Wonderkind:** the private company Wonderkind Global B.V. (hereinafter referred to as: "Wonderkind"), having its registered office at Zeemagazijnkade 3, 1018 LE Amsterdam, the Netherlands.
- 1.11. **Service:** the online advertising technology made available by Wonderkind to the Client and/or all other (advertising) services provided by Wonderkind.
- 1.12. **Website:** [www.wonderkind.com](http://www.wonderkind.com) and any other website of Wonderkind.

## ARTICLE 2. SCOPE AND PRIORITY

- 2.1. These General Terms and Conditions are applicable to all Orders, as well as all Offers of Wonderkind in relation to the Services, and form an integral part of every Agreement.
- 2.2. Stipulations or terms and conditions of the Client that differ from or do not appear in these General Terms and Conditions shall only be binding on Wonderkind if and insofar as they have been expressly accepted by Wonderkind in writing.
- 2.3. In case of conflict between stipulations of the Agreement, the General Terms and Conditions or any annexes thereto, the following order of priority shall apply:
  - I. the Agreement;
  - II. any annexes;
  - III. these General Terms and Conditions;
  - IV. the Data Processing Agreement.

## ARTICLE 3. INCEPTION OF THE AGREEMENT

- 3.1. An Agreement can be entered into on the basis of an Offer provided by Wonderkind and the approval of such Offer by the Client in the manner stipulated by Wonderkind. Offers are valid

for thirty (30) days, unless expressly stated otherwise. After the Client has been assigned its own account, Agreements may also be entered into with Wonderkind through the online environment, including the Website, by or on behalf of the Client using a method authorised by Wonderkind. In the online environment, the Client is required to fill in the necessary data, on the basis of which an Offer is generated. The Agreement is concluded once the Client has approved the Offer in the online environment of Wonderkind.

- 3.2. After conclusion of the Agreement, Wonderkind must be informed in a timely fashion and in writing of any changes desired by the Client. Such requested changes are only binding on Wonderkind if Wonderkind has confirmed these in writing. After commencement of a Campaign, the Client can no longer request changes in respect of the Campaign. The Client will bear the risk of correct or incorrect performance of any Agreements and/or any requested changes. The Client acknowledges and agrees that any requested changes may affect delivery times stated by Wonderkind in the original Offer. Therefore, this may not be invoked to Wonderkind's detriment.
- 3.3. Any changes to Campaigns, of any nature whatsoever, entailing higher costs than the costs that could be taken into account in the original Offer, will be for the Client's account.
- 3.4. Agreements may only be cancelled by the Client with written consent from Wonderkind. In such event, the Client is required to compensate Wonderkind for all costs incurred, including the costs that reasonably arose in connection with the performance of the Agreement, without prejudice to Wonderkind's right to claim compensation of lost profits or any other loss related to the cancelled Agreement.
- 3.5. To Agreements concluded or to be concluded between the Client and Wonderkind, the articles 6:227b paragraph 1 and article 6:227c of the Dutch Civil Code do not apply.
- 3.6. The Client represents that the e-mail address provided to Wonderkind (for example on the moment of concluding the Agreement) is correct and is authorised and supervised by the Client. Furthermore, the Client agrees to receive all relevant information relating to the Agreement on the provided e-mail address. The e-mail sent by Wonderkind shall be deemed to have been received at the time it reaches the server of the Client. The Client is solely responsible for the configuration of his (e-mail)server, including but not limited to spam or authorizations of the e-mail accounts.
- 3.7. Wonderkind is at all times entitled to refuse the Client and/or any Campaigns.

#### **ARTICLE 4. PERFORMANCE OF THE AGREEMENT BY WONDERKIND**

- 4.1. The provision of Services by Wonderkind comprises, amongst others, the performance of the Campaign by the placement of advertisements on various paid and unpaid media channels, by means of the software/artificial intelligence developed by Wonderkind. Wonderkind shall perform the Agreement to the best of its ability and with due care and expertise. In relation to the Services to be provided, Wonderkind shall only have an obligation to use reasonable endeavours and no obligation to achieve results. Statistics mentioned in the Services provided by Wonderkind are indicative only and form no commitment whatsoever. The Services, Campaigns as well as any Offers are subject to typographical and calculation errors.
- 4.2. The Client grants Wonderkind prior permission to implement any changes in generated Campaigns, either automatically or manually, on behalf of the Client if this serves the purpose of the instructions given by the Client (whether or not by means of Wonderkind's online environment) or the Campaign's intended objectives. In particular, Wonderkind is free to adjust the necessary settings, either automatically or manually, within an advertising campaign and the method of placement of the advertisements.
- 4.3. Delivery times stated by Wonderkind are always indicative, unless expressly stated in writing that they are deadlines. Wonderkind is only in default, even where a deadline has been agreed, after the Client has served notice upon it in writing.

- 4.4. Exceeding agreed upon delivery times, whatever the cause or reason, shall not result Wonderkind being in default and the Client has no entitlement to any compensation, such as damages caused by delay.
- 4.5. In the performance of the Agreement, Wonderkind will endeavour not to have the materials provided by the Client displayed on websites or other media channels that contain unlawful, disgraceful, obscene or pornographic content. If the Client notifies Wonderkind in writing that the materials provided are being displayed on channels of this type, Wonderkind will make reasonable endeavours to ensure removal of the same.
- 4.6. If Wonderkind provides Services through the Client's Media Channels, Wonderkind will endeavour not to have materials displayed on behalf of the Client that contain unlawful, disgraceful, obscene or pornographic content and that such materials do not violate any third party Intellectual Property Rights.
- 4.7. Wonderkind, at its sole discretion, is entitled to make use of third parties when performing the Agreement.

#### **ARTICLE 5. CLIENT'S OBLIGATIONS**

- 5.1. For the purpose of the performance of the Agreement, the Client must satisfy, at its own cost, the technical requirements and specifications indicated by Wonderkind, including, without limitation, the integration of software codes, tags and cookies on the Client's media channels (where applicable). If Wonderkind provides Services through the Client's Media Channels, the Client shall grant Wonderkind access to the Client's Media Channels. Such access shall only be granted for the purpose of performing the Agreement and Wonderkind shall use any information it receives to this end in accordance with Article 15 of these General Terms and Conditions.
- 5.2. The Client represents and warrants that the information and materials supplied to Wonderkind contain no viruses, Trojan horses, worms or any other programs that could in any way damage Wonderkind's computer systems, computer programs and/or websites. Furthermore, the Client represents and warrants that the information and materials supplied, transmitted or made available through the Service comply with applicable laws and regulations, are not slanderous, libellous, racist, or otherwise objectionable, and do not breach Intellectual Property Rights, privacy rights or any other rights of third parties. The Client also represents and warrants that, when supplying the relevant information and materials, no use will be made of any equipment and/or software that may disrupt the proper functioning of the Services, Wonderkind's computer systems, computer programs and/or websites, and that no data will be transmitted that disproportionately burden the infrastructure of Wonderkind's computer systems, computer programs and/or websites as a result of their size and/or other properties. The Client indemnifies Wonderkind for all third-party claims, on any grounds whatsoever, in respect of compensation for any damages in any way arising from and/or relating to the foregoing representations and warranties.
- 5.3. The Client shall at all times furnish Wonderkind in good time with all information and materials necessary for the performance of the Agreement. The Client undertakes to ensure that the information and materials are correct, complete and up to date.
- 5.4. The Client acknowledges and agrees that in the performance of the Agreement, Wonderkind may at its own discretion display the information and materials on the agreed media channels. In that regard, the Client cannot object when the information and materials provided are displayed on the relevant channels along with materials from direct or indirect competitors.
- 5.5. In the event that the data necessary for the performance of the Agreement are not at Wonderkind's disposal, or not in time or in accordance with the stipulations of these General Terms and Conditions, Wonderkind shall, without prejudice to its other rights, in any event be entitled to suspend the performance of the Agreement and/or the Service, or to wholly or partially dissolve the Agreement, without any (written) notice to that end or compensation of damage to the Client being required.

## **ARTICLE 6. USAGE OF THE SERVICE**

- 6.1. For the duration of the Agreement, Wonderkind grants to the Client a limited license to use the functionalities made available to the Client through the Service.
- 6.2. In using the Services, the Client will observe all applicable and relevant statutory provisions and regulations, as well as the rules of conduct that are generally accepted in the sector.
- 6.3. The Service, any parts or specific functionalities thereof may only be accessible after registration. In case registration is needed, the Client must secure access to its account using username and password against third parties. In particular, the Client must keep the password strictly confidential. Wonderkind may assume that all actions undertaken from the Client's account after logging in its username and password are authorized and supervised by the Client. This means the Client is solely liable for these actions. In the event of loss, abuse or involuntary disclosure of this information, the Client will immediately inform Wonderkind accordingly.

## **ARTICLE 7. AVAILABILITY & MAINTENANCE**

- 7.1. The Client accepts that the Service only contains the functionality and other characteristics made available to the Client at the moment of delivery ("as is"), including all visible and invisible errors and defects. Wonderkind does not guarantee that the Service will be free from disruptions or defects at all times.
- 7.2. Wonderkind reserves the right to temporarily suspend the Services for maintenance, modification or improvement of the Services and Wonderkind's web servers. Wonderkind will as far as possible endeavour for any such suspension to occur outside office hours and will inform the Client of the planned suspension in good time. Wonderkind will never be liable for any loss or damage vis-à-vis the Client due to such suspension of the Services.
- 7.3. Wonderkind has the right to modify the software of the Services from time to time in order to improve functionality and to correct errors. If a modification results in a significant change in functionality, Wonderkind will inform Partner accordingly by means of a newsletter or other electronic notification before the change takes place. Since the Services are supplied to several Clients, it is not possible to make a specific modification for the Client alone. Wonderkind is not obliged to pay any compensation for damages/losses arising from the modification of the Services.
- 7.4. If Wonderkind considers that there is a danger to the functioning of the Services and the API, Wonderkind will have the right to implement all measures it considers reasonably necessary to avert or prevent this danger.

## **ARTICLE 8. PRICES**

- 8.1. All prices are in Euros and are exclusive of VAT, unless explicitly stated otherwise.
- 8.2. All prices are subject to programming and typographical errors. For the consequences of such errors no liability shall be accepted.
- 8.3. If the Agreement is a continuing performance Agreement, Wonderkind shall be entitled to adjust the prices in its sole discretion. Wonderkind shall inform the Client of any price changes at least two (2) months before they become effective. In the event the Client does not wish to accept the price change, the Client may terminate the Agreement up to the date on which the new price takes effect.
- 8.4. Notwithstanding the previous paragraph, Wonderkind is entitled (but not obligated) to adjust the prices annually, with a percentage equal to the increase of the Dutch consumer price index (CPI) as calculated by Statistics Netherlands (CPI 2006=100) with a maximum of 4%, without the possibility for the Client to terminate the Agreement.

## **ARTICLE 9. PAYMENT**

- 9.1. Wonderkind shall invoice the Client for the amounts it owes. The Client shall pay Wonderkind within thirty (30) days after invoice date, unless Wonderkind has indicated a different term or when the Client has already paid the amounts via any of the available payment methods.
- 9.2. Disputed invoices should be notified in writing as soon as reasonably possible but no later than thirty (30) calendar days after the relevant invoice date, identifying clearly the disputed part of an invoice and the reasons why it is challenged. Thirty (30) calendar days after the relevant invoice date, invoices will be deemed as correct and form no basis for complaint.
- 9.3. Any appeals made by the Client to offsetting or suspension are excluded.
- 9.4. All payments made by the Client to Wonderkind shall be offset against any older outstanding invoices, regardless any indication to the contrary made by the Client.
- 9.5. In the event, it is agreed that Wonderkind shall provide the Services on the basis of a subsequent calculation, the then applicable prices of Wonderkind shall apply, unless the Parties agreed otherwise.
- 9.6. If an amount due is not paid within the payment term, the Client shall be legally in default, with no notification of default being required. The Client is obliged to fully compensate both the judicial and extrajudicial collection costs, including but not limited to lawyer's and bailiff's fees and the costs of collection agencies, in addition to the amount that is owed and the interest due in respect thereof. Additionally, statutory interest will be due on the outstanding invoice amount, without any further notification of default being required.
- 9.7. If an amount due is not paid within the payment term, Wonderkind shall have the right to either terminate or suspend performance of the Agreement, or any part thereof not yet performed, without notice of default or judicial intervention being required. The Client has no entitlement to any compensation, such as damages caused by delay. All amounts due up to the moment of suspension become immediately payable.

## **ARTICLE 10. DURATION AND TERMINATION**

- 10.1. The Agreement is entered into for the contract period as stated in the Agreement or for as long as necessary to perform the relevant Campaign. In the event no contract period has been stated in the Agreement, and the Agreement is a continuing performance agreement, it shall be deemed to have been entered into for a contract period of twelve (12) months.
- 10.2. Each Party is authorised to dissolve the Agreement, with immediate effect and without the intervention of a court being required, without any obligation to pay compensation, if the other Party requests suspension of payments, files for bankruptcy or has been declared bankrupt.
- 10.3. Wonderkind is entitled, without notice of default and without any obligation to pay compensation, to terminate the Agreement with immediate effect if the Client acts in breach with any of the obligations under the Agreement.
- 10.4. Amounts invoiced or to be invoiced by Wonderkind for Services provided prior to termination, remain fully due and shall become immediately claimable.
- 10.5. Immediately after termination of the Agreement, the Client shall instantly return all materials and other goods or documentation made available under this Agreement by Wonderkind to the Client.
- 10.6. Terms and conditions which by their nature are meant to remain in force after termination, shall remain fully in force, including, without limitation:
  - a. Article 11 Liability;
  - b. Article 12 Force majeure;
  - c. Article 13 Intellectual Property Rights;
  - d. Article 15 Confidentiality.

## **ARTICLE 11. LIABILITY**

- 11.1. The liability of Wonderkind for direct damages, whatever the cause, and in particular due to a culpable failure on the part of the management staff of Wonderkind to comply with its

obligations under the Agreement, or due to an unlawful act committed by the management staff of Wonderkind, or failure to comply with a guarantee obligation, is limited per damage-causing incident, whereby a series of connected incidents count as a single incident, to an amount equal the agreed upon price for the Service. If the event causing damages is associated with a specific Campaign, the above-mentioned shall only consist of the amount paid for that specific Campaign. The total sum payable for direct damages, however, can never exceed EUR 1.000 per event or EUR 5.000 per calendar year.

- 11.2. Direct damage is exclusively understood as the reasonable expenses incurred by the Client to repair or resolve the management staff of Wonderkind's shortcoming, to make the performance of Wonderkind conform to the Agreement, as well as reasonable costs incurred in the prevention or limitation of the damages and the reasonable costs made in determining the cause and extent thereof.
- 11.3. Wonderkind is not liable for damages other than direct damages, including but not limited to indirect damages resulting from consequential damage, loss of profit, loss of earnings, loss of savings, damages due to corporate stagnation and costs incurred to recover wholly or partly lost data.
- 11.4. Wonderkind is also not liable for damages caused by acts or omissions of third-parties engaged in connection with the performance of the Agreement.
- 11.5. The obligation for Wonderkind to pay compensation will only arise if the Client sends written notice to Wonderkind of this damage within four (4) weeks of the damage occurring.
- 11.6. The liability limitations referred to in this article will however lapse if and insofar as the damage is the result of intentional misconduct or deliberate recklessness on the part of Wonderkind.
- 11.7. With respect to the Client, Article 6:271 of the Dutch Civil Code is excluded.
- 11.8. The Client indemnifies Wonderkind for all third-party claims, on any grounds whatsoever, in respect of compensation for any damages in any way arising from and/or relating to the use of the Service and/or not, not properly or timely fulfilling its obligations under the Agreement and in particular to claims of or sanctions imposed by regulatory bodies.

#### **ARTICLE 12. FORCE MAJEURE**

- 12.1. Wonderkind is not bound to comply with any obligation to the Client if compliance is prevented by circumstances beyond Wonderkind's control.
- 12.2. In the event of such force majeure, which in any case includes failures in the internet or telecommunications infrastructure, civil unrest, mobilization, war, traffic jams, strikes, lockouts, import and export restrictions, business interruptions, stagnation in supply, fire, flood, and breach of contract by suppliers on which Wonderkind is dependent for the performance of the Agreement, the performance of the Agreement may be suspended, without any liability to pay damages arising as a result.
- 12.3. If the situation of force majeure prevents compliance for more than 10 working days, both Parties have the right to terminate the Agreement with immediate effect. Services already performed under the Agreement shall in that case be charged proportionately, but no other payment shall be due by one Party to the other.

#### **ARTICLE 13. INTELLECTUAL PROPERTY RIGHTS**

- 13.1. All Intellectual Property Rights related to the Service, its look-and-feel, the accompanying software as well as all information and images occurring within the Service and the Website are retained exclusively by Wonderkind, its licensors or third parties engaged on Wonderkind's behalf. Nothing in the Agreement, including but not limited to, those provisions in which a license is granted in respect of the Services, shall be construed to stipulate transfer of Intellectual Property Rights.
- 13.2. If and insofar Wonderkind has granted the Client a license in respect of the Wonderkind software, materials, and/or any applicable Service, the granted license shall be subject to the condition precedent of payment by the Client of all the amounts due under the Agreement. Said

license is for the duration of the Agreement, non-exclusive, non-transferable and limited to the purposes which may be logically deduced from the Agreement, unless expressly agreed otherwise in writing.

- 13.3. Data stored or made available by the Client or processed while using the Service is and remains the Client's property. Wonderkind receives an unlimited license for use of this data for providing the Service, any additional and prospective services and to use this data for statistical purposes. Wonderkind has the right to share these statistical data (anonymous data) with third parties.

#### **ARTICLE 14. PRIVACY**

- 14.1. By using the Services, Wonderkind will process personal data on behalf of the Client. The Client shall in relation to such processing, at all times and in all circumstances, be regarded as a controller within the meaning of the Dutch Data Protection Act or any other applicable laws and regulations. Wonderkind will only act as a processor within the meaning of the Dutch Data Protection Act or any other applicable laws and regulations.
- 14.2. Wonderkind shall only process personal data as instructed by the Client and in accordance with the Agreement and, more specifically, the Data Processing Agreement. All personal data processed in connection with the Service, shall be deemed to have been processed at the instructions of the Client.
- 14.3. More information regarding the processing of personal data can be found in the privacy statements available here:  
<https://wonderkind/privacy-statement>.  
<https://wonderkind.com/privacy-statement-technology>.

#### **ARTICLE 15. CONFIDENTIALITY**

- 15.1. With respect to the information disclosed by and between the Parties while using the Service, the Parties shall accept the duty to observe strict secrecy when the information is marked as confidential or when the receiving Party knows or should reasonably suspect that the information was intended to be confidential.
- 15.2. Wonderkind shall not examine data stored and/or distributed by you while using the Service, unless this is necessary for proper service provision of the Service or in the event Wonderkind is obliged to do so in pursuance of a statutory duty or required by court order.

#### **ARTICLE 16. AMENDMENTS**

- 16.1. Wonderkind reserves the right to alter or supplement the Services, these General Terms and Conditions, even with respect to existing Agreements. Such changes shall also apply to Agreements already in effect after a period of thirty (30) days after notification of the change on the Website or by electronic message. Changes of subsidiary importance can be made at any time.
- 16.2. If the said changes have a significant negative impact on the (use of) Services, the Client may serve notice to terminate the Agreement, provided such notification to that effect is received by Wonderkind before the date when the change takes effect. The Client has no entitlement to compensation for damages arising as a result. Use of the Service after the date of effect shall constitute the Client's acceptance of the changed or added-to terms and conditions.

#### **ARTICLE 17. MISCELLANEOUS**

- 17.1. The Agreement will be governed solely by the laws of the Netherlands. Any disputes arising from and/or in connection with the Agreement shall be referred to the competent court in Amsterdam.
- 17.2. 'Written/in writing' in these General Terms and Conditions also refers to e-mail communication, provided the identity of the sender and the integrity of the contents can be adequately established. The electronic communications do, however, not include direct messaging services such as Whatsapp, Facebook Messenger, iMessage, Slack, Skype, FaceTime, etc.

- 17.3. If any provision in the Agreement proves to be null and void, or otherwise unenforceable, this shall not affect the validity of the Agreement as a whole. The Parties shall use all reasonable endeavours to agree upon any lawful and reasonable variations to the term or condition which may be necessary in order to achieve, to the greatest extent permitted by law, the same commercial effect as would have been achieved by the provision(s) in question.
- 17.4. The reports and the version of communications or information received or stored by Wonderkind is deemed to be authentic, unless the Client provides convincing evidence to the contrary.
- 17.5. The Parties shall notify each other without delay, in writing, of any changes in their name, postal address, e-mail address, telephone number and, on request, bank or giro account number.
- 17.6. Wonderkind is entitled to transfer its rights and obligations under the Agreement to a third party who acquires the Service or the relevant business operations from it. The Client is only entitled to transfer its rights and obligations under the Agreement to a third party that acquires the service or the relevant business operations from it with the prior written consent of Wonderkind.



## APPENDIX I - DATA PROCESSING AGREEMENT

This Data Processing Agreement below forms an integral part of each agreement entered into by and between the Client, hereinafter referred to as: 'the Controller', and Wonderkind, hereinafter referred to as: 'the Processor'. This Data Processing Agreement governs the processing of personal data through the Services provided by Processor.

The parties shall hereinafter be jointly referred to as '**Parties**' and individually '**Party**'.

### WHEREAS:

- the Controller has access to the personal data of various clients and other data subjects (hereinafter: 'Data subjects');
- the Controller wants the Processor to execute certain types of processing in accordance with the Agreement concluded with the Processor, of which this Data Processing Agreement forms an integral part;
- the Controller has determined the purpose of and the means for the processing of certain types of personal data as governed by the terms and conditions referred to herein;
- the Controller's clients have determined the purpose of and the means for the processing of other types of personal data, as part of the services Controller offers to its clients;
- the Processor has undertaken efforts to comply with this Data Processing Agreement and to abide by the security obligations and all other aspects of the Dutch Personal Data Protection Act (hereinafter: the 'Wbp');
- the Controller (or Controller's clients) is (or are) hereby deemed to be the responsible Party (or Parties) within the meaning of article 1 (d) of the Wbp;
- the Processor is hereby deemed to be the processor (or sub-processor) within the meaning of article 1 (e) of the Wbp;
- where the provisions of this Data Processing Agreement refer to the Wbp, from the 25th of May 2018 onwards, the corresponding provisions shall instead refer to corresponding articles of the General Data Protection Regulation;
- the Parties, taking into account the provisions of article 14 (5) of the Wbp, wish to lay down their rights and duties in writing in this Data Processing Agreement,

### THE PARTIES HAVE AGREED AS FOLLOWS:

#### ARTICLE 1. PROCESSING OBJECTIVES

- 1.1. The Processor will process personal data on behalf of the Controller in accordance with the conditions laid down in this Data Processing Agreement. The processing will be executed exclusively within the framework of the Agreement, and for all purposes that Parties agree to subsequently.
- 1.2. The Controller and/or Controller's clients decide what (types of) personal data will be processed by the Processor. The personal data that will be processed may include, without limitation, names, information that provides a mechanism for contacting Data subjects, information about Data subjects' educational or professional career, as well as login credentials. On behalf of, and in accordance with the instructions of the Controller and/or its clients, the Processor may enrich the data set with data from external sources, including, without limitation, profile pictures of Data Subjects.

- 1.3. The Processor shall refrain from making use of the personal data for any purpose other than as specified by the Controller. The Controller will inform the Processor of any such purposes which are not contemplated by this Data Processing Agreement.
- 1.4. All personal data processed on behalf of the Controller shall remain the property of the Controller and/or the relevant Data subjects.
- 1.5. The Processor shall take no unilateral decisions regarding the processing of the personal data for other purposes, including decisions regarding the provision thereof to third parties and the storage duration of the data.

#### **ARTICLE 2. PROCESSOR'S OBLIGATIONS**

- 2.1. The Processor's obligations arising under the terms of this Data Processing Agreement apply also to whoever processes personal data under the Processor's instructions.
- 2.2. The Processor shall, on request, promptly supply the Controller with details regarding the measures it has adopted to comply with its obligations under this Data Processing Agreement and the Wbp.

#### **ARTICLE 3. TRANSMISSION OF PERSONAL DATA**

- 3.1. The Processor may process the personal data in countries within the European Union. In addition, the Processor may also transfer the personal data to a country outside the European Union provided that an adequate level of protection will be guaranteed and the other obligations applicable to it pursuant to this Data Processing Agreement and the Wbp will be satisfied.
- 3.2. Upon request, the Processor shall notify the Controller as to which country or countries the personal data will be processed in.

#### **ARTICLE 4. ALLOCATION OF RESPONSIBILITY**

- 4.1. The Processor shall only be responsible for processing the personal data under this Data Processing Agreement, in accordance with the Controller's instructions and under the (ultimate) responsibility of the Controller (or Controller's clients). The Processor is explicitly not responsible for other processing of personal data, including but not limited to processing for purposes that are not reported by the Controller to the Processor, and processing by third parties and/or for other purposes.
- 4.2. Controller represents and warrants that it has a legal basis to process the relevant personal data. Furthermore, the Controller represents and warrants that the contents are not unlawful and do not infringe on any rights of a third party. In this context, the Controller indemnifies the Processor of all claims and actions of third parties related to the processing of personal data without a legal basis under this Data Processing Agreement.

#### **ARTICLE 5. ENGAGING OF THIRD PARTIES OR SUBCONTRACTORS**

- 5.1. The Processor is authorised, within the framework of the Agreement, to engage third parties, without the prior approval of the Controller being required. Upon request of the Controller, the Processor shall inform the Controller about the third party/parties engaged.
- 5.2. The Processor shall in any event ensure that such third parties will be obliged to agree, in writing, to the same duties that are agreed to between the Controller and the Processor.

#### **ARTICLE 6. DUTY TO REPORT**

- 6.1. In the event of a security leak and/or the leaking of data, as referred to in article 34a of the Wbp, the Processor shall, to the best of its ability, notify the Controller thereof with undue delay, after which the Controller shall determine whether or not to inform its clients, the Data subjects and/or the relevant regulatory authority(ies). This duty to report applies irrespective of the

impact of the leak. The Processor will endeavour to ensure that the furnished information is complete, correct and accurate.

- 6.2. If required by law and/or regulation, the Processor shall cooperate in notifying the relevant authorities and/or Data subjects.
- 6.3. The duty to report includes in any event the duty to report the fact that a leak has occurred, including details regarding:
  - i) the (suspected) cause of the leak;
  - ii) the (currently known and/or anticipated) consequences thereof;
  - iii) the (proposed) solution;
  - iv) the measures that have already been taken.

#### **ARTICLE 7. SECURITY**

- 7.1. 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 processing personal data under this Data Processing Agreement.
- 7.2. The Processor does not guarantee that the security measures are effective under all circumstances. The Processor will endeavour to ensure that the security measures are of a reasonable level, having regard to the state of the art, the sensitivity of the personal data and the costs related to the security measures.
- 7.3. The Controller will only make the personal data available to the Processor if it is assured that the necessary security measures have been taken. The Controller is responsible for ensuring compliance with the measures agreed to between the Parties.

#### **ARTICLE 8. HANDLING REQUESTS FROM INVOLVED PARTIES**

- 8.1. If a Data subject submits a request to the Processor to inspect, as stipulated by article 35 Wbp, or to improve, add to, change or protect their personal data, as stipulated by article 36 Wbp, the Processor will forward the request to the Controller and the request will then be dealt with by the Controller. The Processor may notify the Data subject hereof.

#### **ARTICLE 9. NON-DISCLOSURE AND CONFIDENTIALITY**

- 9.1. All personal data received by the Processor from the Controller and/or compiled by the Processor within the framework of this Data Processing Agreement is subject to a duty of confidentiality vis-à-vis third parties.
- 9.2. This duty of confidentiality will not apply in the event that the Controller has expressly authorised the furnishing of such information to third parties, where the furnishing of the information to third parties is reasonably necessary with regard to the nature of the instructions and the implementation of this Data Processing Agreement, or if there is a legal obligation to make the information available to a third party.

#### **ARTICLE 10. AUDIT**

- 10.1. In order to confirm compliance with this Data Processing Agreement, the Controller shall be at liberty to conduct an audit by assigning an independent, registered EDP auditor who shall be obliged to observe confidentiality in this regard. Any such audit will follow the Processor's reasonable security requirements, and will not interfere unreasonably with the Processor's business activities.
- 10.2. The audit may only be undertaken when there are specific grounds for suspecting the misuse of personal data, and no earlier than two weeks after the Controller has provided written notice to the Processor.
- 10.3. The findings in respect to the performed audit will be discussed and evaluated by the Parties and, where applicable, implemented accordingly by one of the Parties or jointly by both Parties.

10.4. The costs of the audit will be borne by the Controller.

**ARTICLE 11. Duration and termination**

- 11.1. This Data Processing Agreement is entered into for the duration set out in the Agreement, and in the absence thereof, for the duration of the cooperation between the Parties.
- 11.2. The Data Processing Agreement may not be terminated in the interim.
- 11.3. This Data Processing Agreement may only be amended by the Parties subject to mutual consent.
- 11.4. The Processor shall provide its full cooperation in amending and adjusting this Data Processing Agreement in the event of new privacy legislation.

**ARTICLE 12. MISCELLANEOUS**

- 12.1. This Data Processing Agreement will be governed by Dutch law. Any disputes arising from and/or in connection with this Data Processing Agreement shall be referred to the competent court in Amsterdam.
- 12.2. Logs and measurements taken by the Processor shall be deemed to be authentic, unless the Controller supplies convincing proof to the contrary.