

# Bloomy BV

## Terms and Conditions of Use

## Article 1. **Definitions**

- 1.1 In the Agreement and these Terms and Conditions of Use, the following terms, in both singular and plural form and written with a capital letter, have the meaning given below:
- a. *Additional work:* The work or other activities performed or to be performed by Bloomy BV that are outside the scope of and/or constitute changes to the agreed work and/or activities, or for which a separate Agreement has been concluded
  - b. *Agreement:* The Agreement between Customer and Bloomy BV
  - c. *Bloomy BV:* The private limited company Bloomy BV, having its registered office at Prunus 12, 1424 LD De Kwakel, the Netherlands
  - d. *Tradenames* BloomyPro and BloomyEducation
  - e. *Corrective Maintenance:* Performing Maintenance for the Services to resolve Errors
  - f. *Customer:* The party with which Bloomy BV has concluded an Agreement
  - g. *Documentation:* The user and technical documentation related to the Services
  - h. *Errors:* Any case of substantial non-compliance with the functional specifications expressly agreed in writing between Parties; an Error shall only be deemed to exist if Customer can demonstrate it and if it can be reproduced
  - i. *Intellectual Property Rights:* All intellectual property rights and similar rights, including copyrights, brand rights, patent rights, model rights, tradename rights, database rights, and related rights, as well as domain names and rights to know-how
  - j. *Maintenance:* Corrective and structural maintenance included in the Service
  - k. *Materials:* Materials including but not limited to analyses, designs, documentation, reports, quotes, and other results of Services
  - l. *Parties:* Customer and Bloomy BV
  - m. *Response time:* The time between (i) the time at which Customer submits an Error report, and (ii) the time at which Bloomy BV starts resolving the Error, such to be determined by Bloomy BV
  - n. *Service:* The Service performed by Bloomy BV for Customer as described in the Agreement
  - o. *Structural Maintenance:* Performing maintenance for the Services offered by Bloomy BV, including launching upgrades (new releases) and/or updates
  - p. *Term:* The term of the Agreement, as defined in Article 20
  - q. *Terms and Conditions of Use:* The present Terms and Conditions for Use of the Services
  - r. *Time to Repair:* The time between (i) the time at which Bloomy BV identifies an Error or Customer submits an Error report, and (ii) the time at which the error is resolved, the relevant carrier is replaced, or a workaround has been implemented, such to be determined by Bloomy BV

## Article 2. **Applicability**

- 2.1 The Terms and Conditions of Use apply to the Agreement, use of the Services, performance of the Services, and all offers made by Bloomy BV. The Service is offered on [www.BloomyPro.com](http://www.BloomyPro.com) for professional users and on [www.Bloomyeducation.com](http://www.Bloomyeducation.com) for school/ teachers.
- 2.2 Deviations from and additions to these Terms and Conditions of Use and/or the Agreement shall only be valid if agreed in writing by both Parties.
- 2.3 If a provision in the Terms and Conditions of Use is found to conflict with provisions in the Agreement, the applicable provision in the Agreement shall prevail.
- 2.4 Bloomy BV expressly rejects any purchasing or other terms and conditions of Customer.
- 2.5 If any provision in the Terms and Conditions of Use are found to be void or are nullified, the remaining provisions of the Terms and Conditions of Use shall remain in full force and effect. Bloomy BV shall

replace the void or nullified provisions by new provisions, which shall as much as possible take into account the purpose and purport of the void or nullified provision.

- 2.6 If any provision of the Agreement is found to be void or is nullified, Parties shall enter into consultations in order to agree on new provisions to replace the void or nullified provisions, which shall as much as possible take into account the purpose and purport of the void or nullified provision.
- 2.7 The data held by Bloomy BV shall be leading, barring Customer's proof to the contrary.

### Article 3. **Customer obligations and performance of work**

- 3.1 Customer recognizes that the successful performance of the work under the Agreement, including but not limited to making the Services available and/or delivering the Services as defined in the Agreement, depends on adequate and timely cooperation. To enable proper execution of the Agreement by Bloomy BV, Customer shall, at all times, fully cooperate with Bloomy BV and provide it with all data and/or information that is useful or necessary, or that Bloomy BV considers appropriate.
- 3.2 Bloomy BV shall strive to deliver the Services with due care and professionalism.
- 3.3 If this is integral to the Service, Bloomy BV shall provide Customer with one or more administrator accounts as well as the user accounts defined in the Agreement. These accounts can be used by entering the appropriate username(s) and password(s). With this information, Customer can give its employees access to the Service.
- 3.4 Use of the account and the associated username and password is only allowed for the natural person linked to that account. Customer and its employees shall therefore restrict this information to their own personal use, and are not permitted to disclose these details to third parties. Customer shall pay all fees linked to the use of the Service through the use of the administrator and user accounts.
- 3.5 Any action carried out through Customer's username and password shall be deemed to take place under the responsibility and at the risk of Customer. Customer must report any suspicion of misuse of an administrator account and/or password to Bloomy BV as soon as possible to enable the latter to take action, regardless of its own obligation to take immediate measures to prevent (further) misuse.
- 3.6 If Customer deploys its own employees and/or auxiliary persons in order to cooperate with the execution of the Agreement, these employees and auxiliary persons shall have the required knowledge, expertise, and experience.
- 3.7 If Parties agree that Customer will provide hardware, software, materials, or data on data carriers to Bloomy BV, these shall meet the specifications required for the performance of the work. Customer guarantees that no third-party rights preclude such hardware, software, materials, or data being provided or used, and shall indemnify Bloomy BV against any action based on the allegation that such provision or use constitutes an infringement of any third-party right.
- 3.8 If Customer does not provide Bloomy BV with the data, documents, hardware, software, Materials or employees that are useful, necessary or deemed appropriate for the execution of the Agreement, or does not provide these in a timely manner or in accordance with Bloomy BV's needs, Bloomy BV shall be entitled to suspend execution of the Agreement in whole or in part, and it shall be entitled to charge the ensuing expenses in accordance with its usual rates, all of this without prejudice to Bloomy BV's right to exercise any other legal and/or agreed right.
- 3.9 In the event that employees of Bloomy BV perform work on Customer's premises, Customer shall provide – and ensure the availability of – the facilities reasonably required by those employees free of charge, including but not limited to a work area with computer, data and telecommunications facilities. The work area and facilities shall fulfil all applicable legal requirements regarding working conditions.
- 3.10 Customer is responsible for selecting appropriate computer, data or telecommunications facilities (including internet connectivity) and for their timely and full availability.

Customer guarantees compliance with the laws and regulations applicable to its use of the Services, including but not limited to laws and regulations concerning consumer privacy and protection (e.g. the ‘do not call’ register (*‘bel-me-niet-register’*) in the Netherlands).

- 3.11 Customer shall indemnify Bloomy BV and its suppliers against all third-party claims, proceedings and/or losses and/or direct and/or indirect damage incurred by third parties based on or ensuing from (i) the allegation that activities of Customer are unlawful in any way, including but not limited to activities that conflict with the Agreement and these Terms and Conditions of Use, and/or that result in infringement of Intellectual Property Rights, and/or (ii) unlawful and/or improper fulfilment of the Agreement by Customer, in particular the obligations pursuant to this article.
- 3.12 Bloomy BV can set a maximum volume of resources that Customer may use as part of the Service. In the event of this maximum being exceeded, Bloomy BV is entitled to charge an additional fee, in accordance with the amounts for additional resources listed on its website and/or in the Agreement, and/or to limit use of the Service by Customer. There is no liability for the impact of not being able to send, receive, save or edit data if an agreed limit has been reached. If Bloomy BV does not set a maximum resource volume that Customer can use each month as part of the Service, a “Fair Use Policy” applies. In that case, Parties shall adhere to a realistic resource volume – to be determined by Bloomy BV – Customer can use each month as part of the Service. If Customer exceeds this amount, it will be informed accordingly by Bloomy BV, and in the event of multiple exceedances, Bloomy BV will contact Customer to discuss an increase in the agreed resource volume, or Bloomy BV will restrict or suspend the Service or terminate the Agreement.

#### Article 4. **Payment**

- 4.1 For the Services, Customer shall pay Bloomy BV the fee specified in the Agreement.
- 4.2 Customer cannot force Bloomy BV to fulfill offers or prices that it could reasonably expect to be the result of a clear mistake or writing error.
- 4.3 All amounts are exclusive of Value Added Tax (VAT) and other government levies.
- 4.4 All prices are always stated in Euro. Customer must make all payments to Bloomy BV in euro.
- 4.5 All pre-calculations and budgets submitted by Bloomy BV are strictly informative in nature, unless Bloomy BV has explicitly stated otherwise in writing. An available budget submitted to Bloomy BV by Customer shall never be considered as a (fixed) price agreed between Parties for the activities to be performed by Bloomy BV. Bloomy BV shall only be obliged to inform Customer of an impending exceedance of a pre-calculation or budget if Parties have explicitly agreed this in writing.
- 4.6 With regard to the amounts paid and/or owed by Customer, the relevant documents and details from Bloomy BV's accounts shall be conclusive proof, without prejudice to Customer's right to submit proof to the contrary.
- 4.7 Bloomy BV can change the prices in the Agreement without prior notice. If Parties have agreed a periodic payment obligation, Bloomy BV shall be entitled to adjust the prices and tariffs, subject to three (3) months' written notice. If Customer does not agree to the price adjustment, it shall be entitled to terminate the Agreement in writing within thirty (30) days of the notice date, with effect from the date on which the adjustment would enter into force. Customer shall not be entitled to this termination right if Parties have agreed that the prices and/or tariffs are to be adjusted based on the Consumer Price Index or a different index or benchmark agreed between Parties.
- In any event, Bloomy BV shall be authorized to increase the agreed prices and/or tariffs at the start of each calendar year based on the Consumer Price Index.
- 4.8 All invoices shall be paid by Customer in accordance with the terms and conditions of payment stated in the Agreement and/or on the invoice. If no specific conditions are in place, Customer shall pay invoices within thirty (30) days of the invoice date.

- 4.9 Customer is not entitled to offset or suspend any payment or amounts owed for any reason.
- 4.10 If Customer fails to pay the amounts owed within the agreed term, Customer shall, without further notice, owe the statutory commercial interest as intended in Section 6:119a of the Netherlands Civil Code (BW). If, following a payment reminder or notice of default, Customer still fails to pay the amount owed, Bloomy BV may pass on the claim for collection, in which event the Client shall also be required to fully reimburse all extra-judicial and judicial costs, including all costs charged by lawyers and external experts, in addition to the amount owed.
- 4.11 If Customer's credit rating gives grounds to do so, Bloomy BV may require further security, failing which it can suspend execution of the Agreement.
- 4.12 Customer guarantees that the details submitted to Bloomy BV by or on behalf of it, and on which Bloomy BV bases its offer, are correct and complete. Customer shall ensure that the requirements Bloomy BV's Service is required to meet are correct and complete at all times.
- 4.13 Information in images, catalogues, websites, quotes, promotional materials, etc. is non-binding for Bloomy BV.

#### Article 5. **Additional work**

- 5.1 If Bloomy BV carries out Additional Work at the request or with prior consent of Customer, the latter shall pay for this Additional Work in accordance with Bloomy BV's usual rates. Bloomy BV shall not be bound to fulfil a request by Customer to carry out Additional Work, and may require that a separate written agreement be concluded for this purpose.
- 5.2 Customer accepts that Additional Work may affect – and/or result in modification of – the agreed and/or expected time of delivery of Services, the respective responsibilities of Customer and Bloomy BV, and, if applicable, the agreed fixed price.
- 5.3 Procurement of new software, licenses, hardware, etc. and third-party repairs are outside the standard tariffs, and are charged to Customer separately, possibly directly by this third party.

#### Article 6. **Intellectual Property Rights**

- 6.1 The Intellectual Property Rights on the Services (including source codes), results of the Services, Documentation, software, websites, data files, or Materials, as well as (other) preparatory material linked to it, are vested exclusively in Bloomy BV and/or its licensor(s). Through the Agreement, Customer is only given rights of use, unless explicitly agreed otherwise in a written document signed by Bloomy BV and Customer.
- 6.2 Unless agreed otherwise in writing, Customer's right of use and the obligation for Bloomy BV to provide the Services as part of the Service are restricted to the so-called object code of the Services. Customer's right of use does not extend to the source code of the Services.
- 6.3 Unless agreed otherwise in writing, Bloomy BV shall not be required to provide any software or any program or data libraries other than those agreed upon, not even if they are needed for the use and/or maintenance of the Services. If, notwithstanding the foregoing, Bloomy BV is required to provide software and/or program or data libraries other than those agreed upon, it may require that Customer sign a separate written agreement to that effect.
- 6.4 Unless agreed otherwise, Bloomy B.V.'s performance obligations shall not include the provision of support to the users of the Services. If, notwithstanding the foregoing, Bloomy B.V. is required to provide such support, it may require that Customer sign a separate written agreement to that effect.
- 6.5 Unless agreed otherwise, the right to use the Services shall, at all times during the term of the Agreement, be non-exclusive, non-transferable, and non-sub licensable. Bloomy BV only grants a limited right of use of the Services – (rights to) the Services are not sold to Customer.
- 6.6 Customer shall strictly comply with the agreed limitations of the right to use the Services. Customer is aware that non-compliance with an agreed usage limitation shall constitute both an attributable

shortcoming in its fulfillment of the Agreement and infringement on Bloomy B.V.'s Intellectual Property Rights.

- 6.7 Unless agreed otherwise in writing, Customer can only use the Services for the benefit of its own business or organization, and for their intended usage.
- 6.8 Customer shall not engage in activities that might infringe on the Intellectual Property Rights of Bloomy BV and/or its licensor's, including but not limited to disclosure and/or copying of the Services without permission, licensing or selling the Services to third parties, and registering domain names, brands or Google AdWords keywords that are similar or identical to any symbol in respect of which Bloomy BV and/or its licensor's may exercise Intellectual Property Rights.
- 6.9 It is expressly forbidden to download, copy, edit, publish or otherwise make available (parts from) the Services, information, files, data, programs and/or Materials or use them for direct or indirect commercial purposes or for any other purpose than those stated in the Agreement, unless Bloomy BV or the holder of the respective rights has given its permission to do so, or if overriding statutory rules apply.
- 6.10 Customer is expressly forbidden to sell, lease out, transfer, grant or otherwise make available (parts of) (the rights to) the Services to third parties. Customer shall not allow third parties access to the Services – remotely or otherwise – or offer the Services to third parties.
- 6.11 Customer is expressly forbidden to modify the Services, in whole or in part, without Bloomy B.V.'s prior permission. Bloomy B.V. shall be entitled, at all times, to refuse its permission, or to give permission subject to conditions, including conditions relating to the method and quality of the implementation of the modifications required by Customer. Customer shall bear the full risk of all modifications implemented by it or by third parties on its behalf – either with or without Bloomy B.V.'s permission.
- 6.12 Customer recognizes and accepts that any unauthorized use of the Services, Documentation, software, websites, data files or Materials that are subject to Intellectual Property Rights of Bloomy BV and/or its licensor's is a violation of the Terms and Conditions of Use and of applicable laws.
- 6.13 Customer is not permitted to remove (or have removed) from or modify (or have modified) in the Services, Documentation, software, websites, data files or Materials any reference concerning Intellectual Property Rights, including references concerning the confidential nature and non-disclosure of the Services, Documentation, software, websites, data files, or Materials.
- 6.14 Bloomy BV shall be entitled to take technological measures to protect the Services, Documentation, software, data files, websites, or Materials. If Bloomy BV has protected the Services, Documentation, software, data files, websites or Materials using technological measures, Customer is not permitted to remove or circumvent this protection (or to have it removed or circumvented).
- 6.15 Bloomy BV shall never be required to provide Customer with (a physical carrier with) the Services in source code or with other software or preparatory material used to develop the Services (in the form of source code or otherwise).
- 6.16 Bloomy BV may provide Customer with third-party software. Such software may be subject to the (license) conditions of those third parties, which may override any conflicting provisions in the Agreement and the Terms and Conditions of Use. Customer guarantees that it shall accept and strictly comply with these third-party conditions. If and to the extent that, for any reason whatsoever, such third-party conditions are deemed or ruled inapplicable in the relationship between Customer and Bloomy BV, the provisions in the Terms and Conditions of Use shall apply in full.
- 6.17 Bloomy BV indemnifies Customer against any legal claims from third parties based on the allegation that the software (including the Services), Documentation, software, websites, data files or Materials developed by Bloomy BV itself infringe on an Intellectual Property Right of that third party, provided that Customer informs Bloomy BV immediately in writing of the existence and content of the legal claim, and leaves the handling of the case, including but not limited to negotiating possible settlements, to Bloomy BV in its entirety. Customer will give Bloomy BV the necessary information, cooperation, and

powers of attorney to enable the latter to defend itself against such a legal claim, if applicable in the name of Customer. This obligation to indemnify shall cease to apply if the alleged infringement is related to (i) materials made available by Customer to Bloomy BV for use, modification, processing, or incorporation, or (ii) changes in the Services, Documentation, software, websites, data files or Materials that Customer has made – or has had made by a third party – without Bloomy BV's written permission. If it has been irrevocably established at law that the software (including the Services), Documentation, software, websites, data files or Materials developed by Bloomy BV itself infringes any Intellectual Property Right belonging to a third party, or if, in Bloomy B.V.'s judgment, there is a good chance that such an infringement will occur, Bloomy BV shall ensure, if possible, that Customer may continue to use the deliverable or functionally equivalent other software, websites, data files, or materials. If Bloomy BV, subject to its sole discretion, is unable to ensure that Customer can continue to use the Services without interruption, or is only able to do so in a way that would result in an unreasonable (financial) burden for Bloomy BV, it shall take back the deliverable in exchange for a refund of the acquisition costs, with deduction of a reasonable usage charge. Bloomy BV rejects any other or further obligation to indemnify.

- 6.18 Customer guarantees that rights of third parties do not conflict with it making software, materials intended for websites (such as images, text, music, domain names, and logos), data files, on-hold music or Materials and design material available for use, processing, installation, or incorporation in the Services and/or Documentation. Customer indemnifies Bloomy BV against any claim by a third party based on the allegation that such release, use, processing, installation, or incorporation infringes any right of that third party, including Intellectual Property Rights.
- 6.19 Bloomy BV reserves the right to (have a third party) verify that Customer uses the Services, Documentation, software, websites, data files or Materials, as well as any (other) preparatory material thereof, in accordance with the rights granted. Upon request, Customer shall immediately lend its full cooperation to any investigation, conducted by or on behalf of Bloomy BV, into Customer's compliance with the agreed usage limitations.
- Upon Bloomy B.V.'s first request, Customer shall grant Bloomy BV or its third-party delegate access to its premises and systems.

#### Article 7. **Timelines**

- 7.1 Bloomy BV has determined all timelines and service levels specified by it to the best of its knowledge based on the data available to it at the time the Agreement was concluded, and these shall be observed to the fullest extent possible. The timelines and service levels specified by Bloomy BV and/or agreed between Parties only concern target times, which shall be non-binding for Bloomy BV. These timeline are for information purposes only. Bloomy BV shall undertake all reasonable efforts to ensure timelines and service levels are observed to the fullest extent possible. Bloomy BV shall not be bound to a hard or soft deadline or service level it can no longer meet due to *force majeure* (see Article 18). Bloomy BV shall not be bound to a hard or soft deadline or service level if Parties have agreed on Additional Work or a change in approach of the execution of the Agreement.
- 7.2 A single exceedance of a hard or soft deadline or service level specified by Bloomy BV or agreed between Parties shall not constitute default by Bloomy BV. In all cases, Bloomy BV shall not be in default due to a missed deadline until Customer submits a written notice of default. The notice of default shall contain the fullest and most detailed description of the shortcoming possible, and shall state a reasonable resolution deadline.

#### Article 8. **Guarantees**

- 8.1 Customer accepts that the Services only offer the functionality and other properties as may be found in the Services during their use ("as is"), i.e., with all visible and invisible faults and defects, as long as they

- allow for practicable use of the product. Bloomy BV does not guarantee that the Services shall be available at all times, fully, and without interruptions or defects, unless agreed otherwise.
- 8.2 Bloomy BV does not guarantee that the Services will work without Errors, or that Errors will be rectified in all cases, unless agreed otherwise.
- 8.3 Bloomy BV shall endeavor, to the best of its ability, to resolve Errors in the Services within a reasonable term, provided it receives a detailed written Error description. Bloomy BV can only charge its usual rates for Error resolution if Errors are the result of user errors or injudicious use by Customer, or of other causes not attributable to it, or if the Errors could have been identified during the Acceptance Procedure.
- 8.4 The aforementioned obligation to resolve Errors shall cease to apply if Customer makes changes (or has changes made) to the Services without Bloomy BV's prior written permission.
- 8.5 Error resolution shall take place at a location of Bloomy BV's choice. Bloomy BV shall be entitled, at any time, to implement temporary solutions, or to program workarounds or problem-avoiding restrictions in the Services.
- 8.6 Bloomy BV shall not be required to resolve Errors unless Parties conclude a separate Maintenance Agreement that contains an obligation to that effect.

#### Article 9. **Maintenance**

- 9.1 Bloomy BV shall perform the Maintenance in accordance with the arrangements and procedures agreed in writing, if such an agreement between Parties is in place.
- 9.2 If the Maintenance pertains to software not supplied to Customer by Bloomy BV itself (which shall be qualified as Additional Work), Customer shall, if Bloomy BV considers this useful, necessary, or appropriate for performing Maintenance, make available the source code and the technical (development) documentation of that software (including data models, designs, change logs, etc.). Customer guarantees it has the right to make available the aforementioned materials, and that this will not conflict with the rights of any third parties. Customer gives Bloomy BV the right to use and modify the software, including the source code and technical (development) documentation, in the context of performing Maintenance. Customer shall indemnify Bloomy BV against all claims by third parties in respect of the materials made available and Bloomy BV's use of these materials in the context of performing Maintenance.
- 9.3 The Maintenance performed by Bloomy BV shall not affect Customer's own responsibility for managing the Services on its premises (including verification of settings), for use of the Services, for generating users, for maintenance of its own equipment and hardware, and for the way in which the results of using the Services are utilized. Customer is also responsible for instructing users about the Services and use made of the Services by users, regardless of whether these users are in a relationship of authority to Customer. If no specific arrangements are in place for this purpose, Customer shall install, configure, parameterize and tune software (tools), and, if necessary, shall adjust the equipment, other software and user environment used for this purpose and implement the interoperability required by Customer.
- 9.4 Bloomy BV shall be given prior notice of all changes – except those concerning functional management – implemented by Customer itself in its own environment (consisting of both the virtual environment and its own company premises) by means of a detailed written description. Customer shall not implement changes without Bloomy BV's prior permission, which shall not be withheld on unreasonable grounds. Any changes implemented by Customer are for Customer's own expense and risk, which means, among other things, that Bloomy BV shall not be responsible for the non-functioning or improper or incorrect functioning of the Service as a result of changes implemented by Customer.
- 9.5 Customer is not permitted to have a third party perform the Maintenance without Bloomy BV's prior written permission, which shall not be withheld on unreasonable grounds.

#### Article 10. **Maintenance – scope**



- 10.1 The Maintenance and the service levels stated in the Agreement concluded for that purpose shall not apply to the resolution of Errors, defects or shortcomings resulting from or related to:
- a. user errors or injudicious use of the Services, which shall be taken to include errors in materials owned by Customer.
  - b. modification of or additions to the Services other than those implemented by or on behalf of Bloomy BV.
  - c. usage of the Services that conflicts with the relevant terms and conditions or with the instructions in the documentation.
  - d. modifications to or errors in hardware or software other than that included in the Maintenance.
  - e. non-availability of the Services at Customer's own request and/or during requested work.
  - f. Customer's failure to provide (full or appropriate) assistance to Bloomy BV, for whatever reason, during the latter's attempts to identify or isolate the problem or failure.
  - g. power failure.
  - h. extreme weather conditions.
  - i. fire.
  - j. physical damage to the network caused by third parties.
  - k. theft.
  - l. unnecessary, incorrect or incomplete notifications.
  - m. other causes not attributable to Bloomy BV, including but not limited to *force majeure*.
- 10.2 If Bloomy BV performs Maintenance or other work in connection with the provisions of Article 10.1, it can charge the costs of that Maintenance or work according to its usual rates, without prejudice to any other Maintenance-related amounts owed by Customer.
- 10.3 Bloomy BV shall be entitled, at all times, to choose to refrain from resolving Errors and to replace the corresponding components of the Services with other components that are similar but not necessarily identical. In that event, Bloomy BV shall first ask for Customer's permission, which the latter shall not withhold on unreasonable grounds.
- 10.4 The provisions in the Agreement related to the performance of Maintenance shall also cease to apply during calamities, to be determined by Bloomy BV, and during predefined and agreed periods in which major changes are implemented in the Services.
- 10.5 Bloomy BV shall never be required to restore or reconstruct lost, corrupt or damaged data.

#### Article 11. **Corrective Maintenance**

- 11.1 Bloomy BV shall perform Corrective Maintenance in accordance with the Response Times and Times to Repair as defined in the Agreement.
- 11.2 If Bloomy BV wants to perform unscheduled Corrective Maintenance on the Services, it will give Customer prior notice of this. Critical updates may be performed sooner and without prior notice, at Bloomy B.V.'s discretion.

#### Article 12. **Structural Maintenance**

- 12.1 Customer can request Bloomy BV to perform Structural Maintenance. Bloomy BV is entitled to refuse such a request in situations including but not limited to instances in which the performance of Structural Maintenance could (adversely) impact other customers or the functionality of or compatibility with the Services, or is outside the scope of the Agreement.
- 12.2 If Structural Maintenance is performed at Customer's request, Bloomy BV may submit a quote to Customer. If Customer accepts the quote, the associated costs shall be invoiced to Customer in accordance with Article 4, with an itemization of the work performed.
- 12.3 Bloomy BV shall not be required to maintain, modify, or add certain properties or functionalities specifically for Customer.

- 12.4 If the Services are found to be incompatible after Structural Maintenance, Bloomy BV shall undertake all reasonable efforts to offer additional support on a post-calculation basis.
- 12.5 Bloomy BV may require Customer to adapt its hardware, software, IT infrastructure, etc. if this is necessary for the proper functioning of a new version of the Services.

**Article 13. Privacy**

- 13.1 If Bloomy BV considers this important for the execution of the Agreement, Customer shall provide Bloomy BV, upon the latter's request and without delay, with written information about the way in which Customer fulfills its duties under the Dutch Data Protection Act (WBP) and/or other applicable laws pertaining to the protection of personal data.
- 13.2 Bloomy BV will not process personal data other than those needed for providing the Service, including but not limited to optimizing the functioning of the Service and/or the Services and the creation of statistics.
- 13.3 Bloomy BV will not share with third parties personal data obtained from Customer unless Bloomy BV receives Customer's permission or is under legal obligation to do so.
- 13.4 Customer shall be solely responsible for the personal data that are processed using the Service. Customer guarantees that the content, use and/or processing of the personal data is not unlawful, and that it does not infringe any rights of third parties. Customer indemnifies Bloomy BV against any legal claim of third parties, regardless on what grounds, in connection with these personal data.
- 13.5 Customer indemnifies Bloomy BV against claims of individuals whose personal data are being processed by or on behalf of Customer, or for which Customer is otherwise legally responsible, unless Customer proves that the facts on which the claim is based should only be attributed to Bloomy BV.
- 13.6 If Bloomy BV is required, on the basis of this Agreement, to provide certain security measures, these measures shall meet the written specifications expressly agreed between Parties. Bloomy BV does not guarantee that these measures will be effective under all circumstances. If the Agreement does not contain specifications for or an explicit description of security measures, these shall meet a level that is not unreasonable in view of the technological state of the art, the sensitivity of the data, and the costs associated with them. Customer is responsible for maintaining protection measures, including firewalls, anti-virus software, and back-ups. Bloomy BV cannot be held liable for this.

**Article 14. Non-disclosure and publication**

- 14.1 Customer shall ensure that data received from Bloomy BV that it knows to be – or can reasonably be expected to know are – confidential in nature, are not disclosed in any way. Data are always confidential if Bloomy BV has designated them as such in writing. Customer is aware that the software and other materials made available to it, including preparatory material, may contain confidential information and trade secrets of Bloomy BV. Barring prior written permission from Bloomy BV, Customer will not make available to third parties information and data carriers available to it outside the context of what is permitted under the Agreement, and/or disclose such information to its staff and/or third parties insofar as this is not necessary for performing the activities agreed upon. Customer will only use the confidential data for the purposes for which they were provided.
- 14.2 Customer will require its staff to sign confidentiality agreements, and shall guarantee compliance with these agreements.
- 14.3 Parties:
- a. will consult with each other before publishing any press release or other publication or promotional communication related to the Agreement.
  - b. can, without prior permission from the other Party, issue a public communication related to the Agreement if they are under legal or judicial obligation to do so.

Article 15.       **Non-competition**

- 15.1   Barring written permission, Customer will refrain from employing employees of Bloomy BV who were involved in the execution of the Agreement during the previous six (6) months, from arranging for them to either directly or indirectly work for it in any other way, or from making attempts to do so. This proviso shall cease to apply if Bloomy BV is declared bankrupt or is granted suspension of payments.

Article 16.       **Penalty**

- 16.1   In the event of violation of Article 14 and/or 15, Customer shall inform Bloomy BV without delay by means of a written notification describing the violation, specifying when it occurred and all other information that may be relevant. Customer will take all reasonable measures to prevent further violations. Customer will provide all necessary assistance to Bloomy BV to defend the latter's rights, including but not limited to giving Bloomy BV the opportunity to take possible (other) (legal) steps to prevent further violations.
- 16.2   In the event of violation of Article 14, 15 or 16.1, Customer shall forfeit to Bloomy BV a penalty, payable immediately and without entitlement to any set-off, of EUR 50,000.00 (in words: fifty thousand Euro) per violation and EUR 5,000.00 (in words: five thousand Euro) for each day the violation continues. This provision is without prejudice to Bloomy B.V.'s right to exercise any other legal and/or agreed right, including but not limited to the right to claim (additional) damages (whether or not in combination with the aforementioned penalty).

Article 17.       **Liability**

- 17.1   Bloomy B.V.'s liability for damage resulting from an attributable shortcoming in its fulfilment of the Agreement or from an unlawful act or otherwise is excluded.
- 17.2   Insofar as Bloomy B.V.'s liability, as intended in the above clause, cannot be excluded, for each event (a sequence of events to be considered a single event) it shall be limited to compensation of direct damage, with a maximum equal to the amount of the fees paid in the month preceding the event resulting in damage. Bloomy B.V.'s liability for direct damage shall never exceed a total amount of EUR 100,000.00 (in words: one hundred thousand Euro). Direct damage is understood to mean all damage consisting of:
- a.damage caused directly to tangible objects ("property damage");
  - b.     reasonable costs for determining the cause and extent of the damage insofar as these are related to the direct damage as defined in this article.
  - c.reasonable and demonstrable costs incurred by Customer for preventing or minimizing direct damage as defined in this article.
- 17.3   Bloomy BV's liability for indirect damage is excluded. Indirect damage is understood to mean all damage that is not direct damage, including in any event, but not limited to, consequential damage, loss of profit, missed cost-savings, impaired goodwill, damage through interruption of business, damage due to not setting marketing objectives, damage resulting from claims of Customer's buyers, damage related to the use of data or data files prescribed by Customer, or loss, damage or destruction of data or data files.
- 17.4   The exclusions and restrictions set out in this article shall cease to apply if and insofar as the damage is the result of willful intent or deliberate recklessness of Bloomy BV or its executives.
- 17.5   Unless fulfillment by Bloomy BV is permanently impossible, Bloomy BV shall only be liable for an attributable shortcoming in its fulfillment of the Agreement if Customer serves Bloomy BV an immediate written notice of default stating a reasonable term for resolving the shortcoming and if Bloomy BV continues to imputable fall short in fulfilling its obligations after that term. The notice of default must contain the fullest and most detailed description of the shortcoming possible to enable Bloomy BV to respond adequately.

- 17.6 All claims for compensation of Customer against Bloomy BV that are not specified and explicitly reported by Customer shall expire by the mere lapse of a period of twelve (12) months following the onset of the shortcoming.

Article 18. ***Force majeure***

- 18.1 Bloomy BV shall not be bound to fulfill any obligation if prevented from doing so by *force majeure*.

*Force majeure* includes:

- a. *force majeure* at suppliers of Bloomy BV.
- b. inadequate fulfillment of obligations of suppliers that Customer requires Bloomy BV to do business with.
- c. faultiness of third-party objects, hardware, software or materials Customer requires Bloomy BV to use.
- d. government measures.
- e. power failures.
- f. disruptions in internet, computer network or telecommunications facilities.
- g. war.
- h. occupation of the workplace.
- i. strike.
- j. general transport problems.
- k. non-availability of one or more staff members.

- 18.2 If the *force majeure* situation lasts for more than ninety (90) days, each Party shall be entitled to terminate the Agreement in writing.

Article 19. **Third parties**

- 19.1 Bloomy BV can transfer rights and obligations resulting from the Agreement to third parties, and Customer hereby irrevocably consents to such transfers *nunc pro tunc*. In the event of such a transfer, Bloomy BV will inform Customer accordingly.
- 19.2 Customer is not entitled to sell and/or otherwise transfer the rights and/or obligations resulting from the Agreement between Customer and Bloomy BV to a third party without prior written permission from Bloomy BV. Bloomy BV shall not withhold such permission on unreasonable grounds.

Article 20. **Term and termination**

- 20.1 Unless expressly agreed otherwise, the Agreement shall be concluded for a term of one (1) year. The term of the Agreement shall subsequently be tacitly renewed for a term of one (1) year, unless Customer or Bloomy BV terminates the Agreement in writing, subject to three (3) months' notice.
- 20.2 Each Party shall be authorized to dissolve the Agreement on account of an attributable shortcoming in the fulfillment of the Agreement if the other Party, after receiving a notice of default containing the most detailed description of the shortcoming possible and stating a reasonable term for resolving the shortcoming, imputable fails to fulfill essential obligations under the Agreement. Customer's obligations as defined in Articles 3, 4, 6, 14 and 15 shall be considered essential obligations under the Agreement.
- 20.3 If, at the time of dissolution, Customer has already received deliverables in the execution of the Agreement, these deliverables and the associated payment obligation shall not be subject to cancellation. Amounts invoiced by Bloomy BV prior to the dissolution shall remain payable in full and shall fall due at the point of dissolution.
- 20.4 Bloomy BV shall be authorized to initiate full or partial termination, without notice of default, if Customer is granted (preliminary) suspension of payments, if Customer files for bankruptcy, if

Customer's company is liquidated or wound up (for reasons other than reconstruction or a merger of companies), or if the decisive control of Customer's company changes hands.

- 20.5 Bloomy BV shall never be required to refund received sums or to pay damages on account of termination, dissolution or other type of discontinuation of the Agreement. By operation of law, Customer's right to use and access the Services and/or the right to Maintenance shall lapse in the event of termination, dissolution or other type of discontinuation of the Agreement. In such an event, Customer shall return all instances of the Services in its possession to Bloomy BV.
- 20.6 Customer's failure to meet its obligations under the Agreement, or failure to meet these obligations fully or on time, in particular non-fulfillment of the provisions in Articles 3, 4, 6, 14 and 15 of these Terms and Conditions of Use, Bloomy BV shall be entitled to suspend execution of the Agreement in full or in part, without any reminder or notice of default being required. Bloomy BV also reserves the right to keep data, data files and/or results of the Services in its possession, even if an obligation is in place to release or transfer these, until Customer fulfils its obligations. This provision is without prejudice to Bloomy BV's right to exercise any other legal and/or agreed right.
- 20.7 The provisions intended to remain effective after termination, dissolution, or other type of discontinuation of the Agreement, including but not limited to Articles 2, 4.1, 4.8, 4.10, 6, 13-17, 20 and 21 of these Terms and Conditions of Use, shall not lapse in the event of termination, dissolution or other type of discontinuation of the Agreement.

**Article 21. Applicable law and jurisdiction selection**

- 21.1 The Agreement, Terms and Conditions of Use, use of the Services and performance of Services are subject to Dutch law. The United Nations Convention on Contracts for the International Sale of Goods (Vienna Convention) shall not apply.
- 21.2 All disputes that may arise between Bloomy BV and Customer shall be subject to mediation. If a dispute cannot be resolved through mediation, it shall be referred to the competent court in the district of Rotterdam.

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