

Data Processing Agreement for AflosEffect

This Data Processing Agreement (“the Agreement” or “DPA”) constitutes the obligations for

<naam>

<straat>

<postcode> <plaats>

<land>

VAT: <kvk>

(hereinafter “The Data Processor” or “Vendor”)

and

The client (hereinafter “The Data Controller”)

regarding data processing.

(The Data Controller and Data Processor will hereinafter also be referred to as “Party”, and together as “the Parties”).

This agreement is subject to the terms of the Terms of Service Agreement between the Parties for use of the Vendor’s Service.

1. DEFINITIONS AND INTERPRETATIONS

1.1. “Personal Data” shall mean any information relating to an identified or identifiable natural person. An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person. This is in accordance with the definition by the European Union’s General Data Protection Regulation (“GDPR”).

1.2. “Processing” shall mean any operation or set of operations which is performed on personal data, e.g. collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation. This is in accordance with the definition by the GDPR.

1.3. “The Data Controller” determines the purposes and means of the personal data processed in connection with this Agreement. This is in accordance with the definition by the GDPR and The Dutch Act on Processing of Personal Data.

1.4. “The Data Processor” processes data on behalf of the Data Controller. This is in accordance with the definition by the GDPR and The Dutch Act on Processing of Personal Data.

1.5. “The Data Subject” means the identified or identifiable person to whom Personal Data relates.

1.6. “GDPR” means the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/ EC (General Data Protection Regulation).

1.7. “Standard Contractual Clauses” mean the Commission Decision of 5 February 2010 on standard contractual clauses for the transfer of personal data to processors established in third countries under Directive 95/46/EC of the European Parliament and of the Council.

2. NATURE AND PURPOSE OF PROCESSING

2.1. The Data Controller is using the Data Processor’s Performance & Gamification Service (hereinafter “the Service”). The Service is used to visualize and process performance data collected from the Data Controller’s existing systems.

2.2. The Service may be used to process Personal Data for the Service’s administrators and users. The types of Personal Data processed includes, but is not limited to, full name, username, email address, phone number, location, employer and profile photograph along with performance activity collected from the Data Controller’s existing systems.

2.2.1. The Service makes it possible to deliver content and performance data across digital platforms per the Data Controller’s request.

2.2.4. As part of the operation of the Service, user accounts with associated profiles and roles may be provisioned and managed. Such user profiles include, may include, but is not limited to, Personal Data such as full name, e-mail address, login credentials and login IP address.

2.3. The service may be used to integrate and exchange Personal Data with third party platforms through integration features of the Service. Personal Data made available to the Data Processor by enabling such integration, falls under the categories listed above and is processed in accordance with the Agreement. The Data Controller must ensure ahead of enabling any integration that the third party platforms store and process Personal Data under the explicit directive of the Data Controller.

2.4. The Data Controller acknowledges that the Service is not intended or designed for the Processing of Sensitive Information such as the special categories of personal data covered by articles 8, 9 and 10 of the GDPR, and agrees not to host any Sensitive Information through the Service without prior agreement with the Data Processor.

3. OBLIGATIONS OF THE DATA PROCESSOR

3.1. The Data Processor undertakes to process personal data only on documented instructions from the Data Controller, including with regard to transfers of personal data to a third country or an international organization.

3.2. The Data Processor will not make any use of any Personal Data supplied to it by the Data Controller other than in connection with the provision of the Services to the Data Controller.

3.3. The Data Processor shall implement appropriate technical and organizational measures to secure all Personal Data accessed or processed by the Data Processor against accidental or unlawful loss; against destruction or damage; against any unauthorized access to and knowledge of the personal data and against any other processing of personal data in violation of this Agreement.

3.3.1. Confidentiality: The Data Processor shall ensure that its employees and subcontractors engaged in the Processing of Personal Data are informed of the confidential nature of the Personal Data. Personnel must have received appropriate training on their responsibilities and have executed written

confidentiality agreements. The Data Processor shall ensure that such confidentiality obligations survive the termination of the personnel engagement.

3.3.2. Reliability: The Data Processor shall take commercially reasonable steps to ensure the reliability of any personnel engaged in the Processing of Personal Data.

3.3.3. Encryption: All Personal Data is stored securely. The Service fully supports encryption of all content types when in transit by making use of the HTTPS protocol and freely available SSL/TLS certificates. This is industry standard and best practice.

3.3.4. Limitation of Access: The Data Processor shall ensure that The Data Processor's access to Personal Data is limited to personnel performing Services in accordance with the Agreement.

3.3.5. Data Privacy Responsible: The Data Processor has appointed a person responsible for data protection and data privacy. The appointed person may be reached at admin@afloseffect.nl.

3.4. Upon request by the Data Controller, the Data Processor will provide the Data Controller with a statement of assurance regarding the technical and organizational measures.

3.5. The Data Processor agrees that it shall maintain the personal data processed by the Data Processor on behalf of the Data Controller in confidence. In particular, the Data Processor agrees that, save with the prior written consent of the Data Controller, it shall not disclose any personal data supplied to the Data Processor by, for, or on behalf of the Data Controller to any third party unless required to do so by Union or Member State law to which the processor is subject. In such cases, the processor shall inform the controller of the legal requirement before processing, unless that law prohibits such information on important grounds of public interest.

3.6. Nothing in this Agreement shall prevent either Party from complying with any legal obligation imposed by a regulator or court. Both Parties shall however, where possible, discuss together the appropriate response to any request from a regulator or court for disclosure of information.

4. ADDITIONAL ASSISTANCE TO THE DATA CONTROLLER

4.1. The Data Processor will make available all information necessary to demonstrate compliance with the obligations laid down in the Agreement to the Data Controller and allow for and contribute to audits, including inspections, conducted by the Data Controller or another auditor mandated by the Data Controller.

4.2. The Data Processor shall immediately inform the Data Controller if, in the Data Processor's opinion, an instruction infringes the GDPR or the Dutch Act on Processing of Personal Data.

4.3. The Data Processor will assist the Data Controller by appropriate technical and organizational measures, insofar as this is possible, for the fulfilment of the Data Controller's obligation to respond to requests for exercising the Data Subject's rights.

4.3.1 The Data Processor shall immediately inform the Data Controller in any situation where a Data Subject directly makes contact with the Data Processor. The Data Processor shall not respond to any such communication unless required by law or authorized by the Data Controller.

4.4. The Data Processor will assist the Data Controller in ensuring compliance with the obligations with regard to security of processing; notification of a personal data breach to the supervisory authority; communication of a personal data breach to the Data Subject; and data protection impact assessment.

4.5. The Data Processor shall maintain a log of personal data accessed through the Service and upon request give the Data Controller a copy hereof.

4.6. The Data Processor shall be available to assist with any reasonable request from the Data Controller. The Data Processor is not entitled to compensation when providing reasonable assistance to the Data Controller in handling requests from Data Subjects or supervisory authorities. For other requests, the Data Processor's assistance will be done on time and material basis of standard hourly rates.

5. PERSONAL DATA BREACH MANAGEMENT AND NOTIFICATION

5.1. A Personal Data Breach means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data and should not include unsuccessful attempts or activities that do not compromise the security of Personal Data.

5.2. The Data Processor maintains security incident management policies and procedures and shall notify The Data Controller without undue delay after becoming aware of a Personal Data Breach.

5.3. The Data Processor shall make reasonable efforts to identify the cause of such Personal Data Breach and take those steps as The Data Processor deems necessary and reasonable in order to remediate the cause of such a Personal Data Breach to the extent the remediation is within The Data Processor's reasonable control.

5.4. In the case that the Personal Data Breach is caused by The Data Controller or The Data Controller's Users, The Data Processor will assist The Data Controller in remediating the cause of the Personal Data Breach on time and material on basis of standard hourly rates.

5.5. The Data Processor shall not notify any third party of a Data Incident affecting the Personal Data unless notification is required by law, or the Data Controller has consented to such notification.

6. OBLIGATIONS OF THE DATA CONTROLLER

6.1. The Data Controller has, in accordance with the GDPR, a general obligation to ensure that the technical and organizational measures are maintained which includes technical and organizational measures of the Data Processor (see section 3.3). The Data Controller is satisfied that the Data Processor has implemented appropriate measures.

6.2. The Data Controller shall, in its use of the Service, process Personal Data in accordance with the requirements of all relevant data protection laws and regulations. For the avoidance of doubt, The Data Controller's instructions for the processing of Personal Data shall comply with data protection Laws and regulations.

6.3. The Data Controller shall have sole responsibility for the accuracy, quality, and legality of Personal Data and the means by which The Data Controller acquired Personal Data. This includes for the Data Controller to be responsible for ensuring that the collection and processing of personal data in the Services has a lawful basis in the data protection legislation. The Data Controller is responsible for ensuring that the Data Subjects have received all information required to ensure transparency under the data protection legislation and to comply with any request from data subjects to exercise their rights under the data protection legislation.

6.3.1. The Data Controller is responsible for complying with any requests from the data subjects. Data deletion and other requests can be made by sending an email to admin@afloseffect.nl.

7. SUBPROCESSORS

7.1. The Data Processor shall not transfer or allow its Subprocessors to transfer Personal Data to a third country or international organisation without the Data Controller's prior consent, unless the Data Processor or its Subprocessors are required to do so under Union or Member State law to which the Data Processor is subject.

7.2. In order to ensure the availability of the Service, the Data Processor applies at the outset of this Agreement the Subprocessors identified at <https://www.afloseffect.nl/subprocessors>. This agreement constitutes general written consent of the Data Controller to this list of Subprocessors.

7.3. The Data Processor is authorized to replace and engage new Subprocessors. The Data Processor maintains an up-to-date list of its Subprocessors at

<https://www.afloseffect.nl/subprocessors>.

The Data Processor will provide at least thirty (30) days prior written notice of the addition or replacement of any Subprocessor including details on processing, its location and the categories of data processed.

7.4. If the Data Controller refuses to consent to the Data Processors' appointment of a Subprocessor on reasonable grounds relating to the protection of the Data, then either the Data Processor will not appoint the Subprocessor or the Data Controller may elect to suspend or terminate this Agreement (and any other agreement between the Parties relating to the provision of services by the Data Processor to the Data Controller) without penalty.

7.5. The Data Processor must enter into a written agreement with each Subprocessor to ensure the processing of Personal Data in accordance with the GDPR, which can include the use of Standard Contractual Clauses. These agreements shall impose on the Subprocessor similar GDPR compliance obligations as the Data Processor (including those under this Agreement).

7.6. The Data Processor shall provide, upon written request, all data processing agreements covered by section 7.2.

7.7. The Subprocessor only acts specifically in line with, and in relation to, the Instructions agreed with the Data Controller. Unless otherwise specifically agreed, all communications with the Subprocessor are handled by the Data Processor. Any changes or clarifications to the Instructions from the Data Controller shall be immediately passed onto by the Data Processor to the Subprocessor.

7.8. The Data Processor is directly responsible for ensuring the Subprocessor's processing of personal data in the same manner as if it were processed by the Data Processor itself.

8. TERMINATION AND LIABILITY

8.1. This Agreement shall continue in full force and effect for so long as the Data Processor is processing personal data on behalf of the Data Controller and shall automatically terminate with the expiry or termination of the Terms of Service Agreement between the Parties.

8.2. In case that the Processing or transfer of Personal Data under this Agreement is declared no longer lawful by a data protection authority or regulator, or by governing data protection law, the Parties shall undertake to cooperate to remediate the Processing in order to restore the lawfulness of such Processing or transfers. If the Data Processor is unable to remediate the Processing, then the Data Controller is entitled to terminate the Agreement without penalty

8.3. Following cancellation or termination of the Agreement, the Data Processor shall, at the written request of the Data Controller, (a) return all personal data passed to the Data Processor by the Data Controller for processing (including any Data transferred to a Subprocessor), or (b) on receipt of instructions from the Data Controller, destroy all such data. If no such instruction is received within 30 days of the termination of the Agreement the Data Processor is entitled to destroy the data. Notwithstanding the foregoing, the Data Processor may retain such data where required by applicable law or reasonably necessary to prevent liability.

8.4. The Data Processor's liability to the Data Controller shall be limited to the terms set out in the Terms of Service Agreement.

9. CHOICE OF VENUE AND LAW

9.1. The Agreement shall be governed by the laws of The Netherlands.

9.2. Any dispute arising out of or in connection with the Agreement, including any disputes regarding existence, validity or termination, shall be submitted to the Court in The Netherlands if the dispute cannot be solved by good faith negotiation between the Parties.