

Nota van Inlichtingen 2 - OPC

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Bijlage B1. Overeenkomst				
1.		New Article	State-of-the-art cloud-based LSP services may feature third-party data and information resources stored with, or accessible through, the SaaS Service. Can KB agree that the contractor shall have no liability for (i) the content or accuracy of such third-party data and information resources stored with, or accessible through, the SaaS Service and (ii) violation of copyright, privacy, database rights or trademark protection of any such third-party data or information resources, and that such third-party data is provided "as is"?	De KB gaat ermee akkoord dat de Opdrachtnemer niet aansprakelijk is (op het gebied van auteursrechten, schending van privacy of handelsrechten) voor eventuele content of data van derden die toegankelijk is via de Oplossing van Opdrachtnemer. Het is daarbij echter wel een voorwaarde dat deze content of data van derden enkel op verzoek van de KB toegankelijk is gemaakt via de Oplossing (bijvoorbeeld in het geval van Gelicentieerd en/of Open Access materiaal).
2.		New Article	Kindly add the following clause: In no event shall Contractor be liable for indirect, incidental, special, punitive or consequential damages or for cover or for loss of revenues or profits arising from or relating to this Agreement, even if Contractor has been advised of the possibility of such damages.	De KB is bereid om de volgende toevoeging op te nemen binnen de aansprakelijkheidsbeperking van de ARBIT (artikel 26). <i>Uitzonderingen op de aansprakelijkheid voor (indirecte) schade voor beide Partijen zijn: handelsverlies, gederfde winst, gemiste besparingen en/of schade door bedrijfsstagnatie.</i>
3.		New Article	Kindly add the following clause: In consideration of the payment of the annual subscription fee for the SaaS Service, , and subject to all the terms and conditions hereof, Contractor hereby grants to Client the right to access and use the functionality of the SaaS Service (including, without limitation, any limitation of use to specific locations and Named Users and other use and access restrictions as set forth in the Quotations), during the corresponding subscription period, as well as (i) related materials such as Documentation (as defined below) to the extent then available, and (ii) if applicable, Licensor Data that may be accessed via the SaaS Service. As between the parties, all rights, title and interest, including without limitation, patent rights, copyrights, trade secrets, trademarks, service marks and other intellectual property rights, and any goodwill associated therewith, in and to any Contractoe Service, related Documentation and all reproductions, derivatives, corrections, modifications, enhancements and improvements thereof, including anonymized statistical data derived from the usage of the Contractor Service, are and will remain at all times owned by Contractor. Other than the rights explicitly granted to Client hereunder, all rights are reserved to and shall remain solely and exclusively proprietary to Contractor	Akkoord, op voorwaarde dat de KB de SaaS-Oplossing kan gebruiken zoals omschreven in de Aanbestedingsdocumentatie. Overigens wil de KB Gegadigde er op wijzen dat de ARBIT 2022 reeds voorziet in het behoud van alle intellectueel eigendomsrechten; zie artikel 8.1 sub b. Dit zal, conform uw verzoek, nadrukkelijk opgenomen worden binnen de Overeenkomst.

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4.		New Article	Kindly add the following provisions: Client agrees not to (i) make any Contractor Service or Licensor Data available in any way for the use or benefit of any unauthorized party and shall use commercially reasonable efforts to prevent unauthorized access to or use of such Contractor Service or the Licensor Data, and shall notify Contractor as soon as possible after it becomes aware of any unauthorized access or use; (ii) copy, modify, create derivative works from or use an Contractor Service, Licensor Data, the Documentation or related materials or other proprietary information received from Contractor, in whole or in part, other than as expressly permitted by this Agreement, unless Contractor so consents in writing; (iii) reverse engineer, decompile or disassemble any Contractor Service or any components thereof except as expressly authorized by law; (iv) violate or abuse the password protections governing access to and use of the Contractor Service; (v) remove, deface, obscure, or alter Contractor' or any third party's copyright notices, trademarks or other proprietary rights notices affixed to or provided as part of the Contractor Service, the Licensor Data and/or the Documentation; (vi) use any robot, spider, scraper, or other automated means to access the Contractor Service or the Licensor Data for any purpose without Contractor' written consent; (vii) use or display logos differing from Contractor' own without Contractor' prior approval, which shall not be unreasonably withheld; (viii) store information or materials in an Contractor Service that violates a third party's rights or breaches applicable law; and/or (ix) use an Contractor Service, the Licensor Data or the Documentation in a way which would violate any applicable laws, rules and regulations. Client agrees to maintain the Contractor Service, any non-public Documentation and related materials confidential, and may disclose the Contractor Service and related materials to its employees, agents and users to the extent that such disclosure is necessary to Client's use of the Contractor Service, provided that Client takes reasonable steps to ensure that such information is not disclosed or distributed by such employees or agents in contravention of the provisions of this Agreement. Client agrees to abide by the access and use restrictions set forth in the Quotation and Documentation, and to refrain from any use of an Contractor Service that is not expressly permitted by this Agreement or the Documentation. Specifically, but without limitation, Client undertakes to refrain from performing penetration tests or using an	Akkoord, op voorwaarde dat de KB de SaaS-Oplossing kan gebruiken zoals omschreven in de Aanbestedingsdocumentatie.

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			Contractor Service in any manner other than in the ordinary course of Client's regular activities. To the extent that any third party brings a claim against Contractor alleging that information provided to the Contractor Service by or on behalf of Client violates a third party's rights or breaches applicable law, Client will defend the claim and pay any resulting judgment or negotiated settlement. The obligation set forth in this Section 8.4 shall be subject to Contractor (i) giving Client prompt notice of such claim; (ii) giving Client the sole authority to defend or settle such claim; and (iii) providing full cooperation in such defense or settlement at Client's expense and not taking any action that prejudices Client's defense or settlement of such claim. In order to allow for proper implementation and operation of the Contractor Service, Client shall meet and maintain the technical prerequisites set forth in the Documentation. Client shall be solely responsible for upgrading to the then-current minimum browser requirements as defined by Contractor from time to time. Contractor shall provide Client with no less than six months' prior written notice of any change in the minimum browser requirements.	
Bijlage C. Verwerkersovereenkomst				
5.	4	1.1	Would the Contracting Authority consider changing the definition of "Modelcontractbepalingen" to ensure flexibility in following the European Commission's up-to-date guidance regarding Standard Contractual Clauses for transfers to third countries?	Akkoord. Er zal doorlopend aangesloten worden bij de meest recente modelcontractbepalingen van de Europese Commissie.
6.	3-5	1.1	Could the Contracting Authority confirm whether it would consider referencing the GDPR in connection with the defined terms in section 1.1 of the Data Processing Agreement, in order to ensure clarity and alignment with commonly accepted standards, without affecting the substance of the agreement?	Akkoord. Na gunning van de opdracht zal uw verzoek opgenomen worden binnen de Nederlandse Verwerkersovereenkomst.
7.	5	1.3	Could the Contracting Authority confirm whether it would consider amending section 1.3 of the Data Processing Agreement as follows to ensure clarity? 1.3. The parties agree that in the event of a conflict between this Processing Agreement and the Agreement with respect to the processing of Personal Data, the terms and conditions of this Processing Agreement shall prevail. In the event of a conflict between one or more articles of this Processing Agreement and an Appendix to this Processing Agreement, the Processing Agreement will prevail.	Zie het antwoord op vraag 6.

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8.	5	3.2	Could the Contracting Authority please confirm whether it would consider amending section 3.2 of the Data Processing Agreement to clarify the Data Controller's responsibility for ensuring all necessary rights to collect and process personal data?	Zie het antwoord op vraag 6.
9.	5-6	3.3	Could the Contracting Authority please confirm whether it would consider amending section 3.3 of the Data Processing Agreement to allow the Supplier, as a commercial provider, to recover additional costs arising from amended instructions provided by the Data Controller, while maintaining alignment with the agreement and applicable laws?	Zie het antwoord op vraag 6.
10.	6	4.2	Could the Contracting Authority please confirm whether it would consider amending section 4.2 in the DPA to ensure operational consistency across all customers using the SaaS service, and to allow the Data Processor to provide additional assistance when the Data Controller cannot address a Data Subject request using the built-in tools all in accordance with the requirements of the GDPR?	Zie het antwoord op vraag 6.
11.	6	4.4	Could the Contracting Authority please confirm if it would consider amending section 4.4 of the DPA to align with standard industry practices for cloud and SaaS providers, allowing the Data Processors to recover reasonable costs for assistance requested in relation to GDPR compliance activities in compliance with Articles 32 to 36 GDPR and as previously agreed between the parties in connection with Contracting Authority's use of Supplier's other SaaS services?	Zie het antwoord op vraag 6.
12.	7	4.6	Could the Contracting Authority please confirm whether it would consider amending section 4.6 of the DPA to accommodate the uniform operational procedures that apply to all multitenant SaaS customers, while maintaining compliance with applicable data protection laws and ensuring alignment with industry standards?	Akkoord. Het moet daarbij voor de KB wél mogelijk zijn om de Opdrachtnemer te verzoeken om persoonsgegevens terug te geven, te verwijderen en/of vernietigen.
13.	8	5.1	Could the Contracting Authority please confirm whether it would consider amending section 5.1 of the DPA to align with the Supplier's uniform operational procedures, as required under Article 28(2) GDPR, while ensuring the Data Controller retains its rights of objection regarding the use of subprocessors, consistent with the approach	Zie het antwoord op vraag 6.

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			agreed for Customer's use of other multitenant SaaS solutions of Supplier?	
14.	8	5.4	Would the Contracting Authority please confirm whether it would be amenable to amending section 5.4 of the DPA to reflect the uniform set of practices and policies that Supplier must apply to all subprocessors involved in processing customer data hosted in Supplier's cloud in Europe, in order to ensure consistency across all customers of Supplier's multitenant SaaS services? Such an adjustment would align with what was previously agreed in Contracting Authority's use of Supplier's other SaaS services.	Zie het antwoord op vraag 6.
15.	9	7	Could the Contracting Authority please confirm whether it would be open to making changes to section 7 of the DPA, specifically to align section 7.1 with GDPR and the uniform policies for Supplier's multitenant SaaS services, adjust section 7.2 to reflect the uniform nature of the applicable policies and procedures in the context of a multitenant SaaS, and use the wording of the GDPR for the timeframe in section 7.3? Additionally, could section 7.4 be revised to maintain consistency with Supplier's established incident response practices, as detailed in Supplier's published Incident Response Policy and in alignment with what was agreed between the parties in connection with Contracting Authority's use of Supplier's other multitenant SaaS solutions?	Zie het antwoord op vraag 6.
16.	10	8.1-8.2	Could the Contracting Authority confirm whether it would be open to omitting section 8.1 of the DPA and revising the subsequent paragraph to accurately reflect the requirements of Article 28(3)h GDPR? The revisions would clarify that Supplier and its data center providers will conduct periodic security audits at their own expense. Any additional audits requested by customers would be subject to mutually agreed conditions and conducted at the customer's expense. Additionally, please note that penetration tests are not feasible within the context of a multitenant SaaS environment.	Akkoord, mits de KB informatie met betrekking tot uitgevoerde onafhankelijke audits van Opdrachtnemer ontvangt. De KB wil daarbij de ruimte behouden om eigen onafhankelijke audits te initiëren bij Opdrachtnemer.
17.	11	10.2.a	Would the Contracting Authority be open to omitting section 10.2.a of the DPA? As a multitenant supplier Supplier would work to protect the reasonable interests of all our customers including the Contracting Authority rather than that of any individual customer. Furthermore we	Zie het antwoord op vraag 6.

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			note that a legal investigation would most likely be conducted by a specialized outside legal counsel i.e. generate cost.	
18.	12	11	Would the Contracting Authority consider revising section 11 of the DPA to align the liability regime with the relevant provisions of the GDPR and to better reflect commonly accepted industry standards within the multitenant SaaS sector?	De KB is bereid om dit in lijn te brengen met de GDPR.
19.	12	12.2	Would the Contracting Authority consider omitting section 12.2 of the DPA, given that section 12.1 adequately covers termination and both parties would be disadvantaged if the SaaS services were provided without a valid DPA in place?	Zie het antwoord op vraag 6.
Bijlage D. ARBIT 2022				
20.	20	30.2	15 Working Days is quite short for a project of this scope. We suggest changing the term to 60 (calendar) days.	De KB is bereid om dit aan te passen naar 45 kalenderdagen.
21.	20	30.3	Supplier suggests removing the part "if control of its business operations undergoes a major change", as a major change in control of its business operations does not mean the contract cannot be upheld.	De KB is bereid om hierbij overeen te komen dat enkele van deze mogelijkheid gebruik gemaakt kan worden indien de ingrijpende wijziging aantoonbaar een gevaar vormt voor de continuïteit van de aangeboden Oplossing.
22.	20,21	30.06-30.08	Sections 30.6 - 30.8 allowing for termination for convenience. Section 3.1 of Appendix B1 states that the Contract will have an initial term of three years. Supplier suggest adding the wording that the termination for convenience will not be possible during the initial term of the contract.	Dat is correct. De Overeenkomst zal niet tussentijdsopgezegd worden, maar er zal aangesloten worden bij de looptijd en verleningsmogelijkheden zoals omschreven in de Overeenkomst.
23.	21	32	For a cloud-based service the exit requirements set forth in ARBIT article 32 are not customary. Can Contracting please confirm that for a cloud-based service the following is acceptable instead: Upon expiration or termination of a Subscription, Contractor will, upon Client's request, make the Client Data available to Client for download for the thirty (30) days following such expiration or termination?	Akkoord.