

FLXION – Terms of Use

DISCLAIMER: Flxion recommends that the User reads these Terms of Use carefully before using the Application (as defined below). By going to another page of this Website other than the homepage or by logging in, the User implicitly agrees to all the general Terms of Use. By clicking on the "I Agree to the Terms of Use" button, the User agrees that his/her use of the Application is governed by these Terms of Use. We encourage the User to keep and print a copy of these Terms of Use for future reference.

In order to use this Application and/or Services the User must first read and agree to our Privacy Policy. It is prohibited to use our Application and/or Services without first accepting our Privacy Policy.

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1. Definitions

The following definitions apply to these Terms of Use (when written with a capital letter):

- 1.1 “Access Rights”: shall mean all contractual rights to access, receive and use the Application and the Services by using the Login Credentials, according to the technical protocols and procedures established by the Company pursuant to the agreement between the Client and the Company;
- 1.2 “Account” shall mean the account, which can be accessed by an User through his/her personal Login Credentials that he/she has created through the registration process in order to make use of the he Application and Services;
- 1.3 “Additional Service(s)”: shall mean all features or functionalities the Client can order in addition to the Premium or Enterprise Version;

- 1.4 “Administrator”: shall mean the user appointed by the Client who is the primary authority and responsible for the Administrator Account;
- 1.5 “Administrator Account” shall mean the Account of the Client, which can solely be accessed and used by the Administrator and through which the Administrator shall be able to (i) use the Application and Services in accordance with the agreement between the Client and the Company, (ii) change the configuration settings (including but not limited to adding additional Services or features), (iii) create additional accounts for Users, and (iv) has access to the information that the Users make available on the Application.
- 1.6 “Application” shall mean the online software application through which the Services can be used, developed by Flxion NV, called “the Company” consisting of:
 - i. The Flxion Dashboard;
 - ii. The Flxion App; and
 - iii. The Flxion Platform;
- 1.7 “Business Day” shall mean a normal working day of the Company from 8.30 a.m. to 5.30 p.m. from Monday to Friday, excluding Belgian public holidays;
- 1.8 “Commercial Offer” shall mean the offer as agreed upon between the Client and the Company, as set out on the cover page, titled “Commercial Offer”;
- 1.9 “Communication” shall mean any Communication sent by the Company via email or by any other means at regular times concerning Services-related announcements, administrative e-mails and newsletters;
- 1.10 “Client” shall mean every natural person or legal entity, as well as anyone who orders the Services from the Company and/or enters into an agreement with the Company in the name of or on behalf of this legal entity for the use of the Application. Every natural person is considered to be at least 18 years old;
- 1.11 “Client Data” shall mean any and all content, information and data – including personal data – pertaining to prospects, business partners, clients and/or customers of the Client (non-limitative) entered and uploaded into the Application and/or Application by the Users by using the Services;
- 1.12 “Demo” shall mean the demo version of the Enterprise Version of the Application, which allows the Client, before entering into an agreement with the Company, to make use of the Application and Services during a term of X calendar days;
- 1.13 “Documentation” shall mean the documents relating to the use of the Application and Services made available by the Company, including any Documentation, tutorials or other available on the Website;
- 1.14 “Enterprise Version” shall mean the paying version of the Application for companies with the following functionalities: time & expense tracker, web & mobile, expense note camera capture, project follow-up, project time overview, personal time analysis, export options, prepare client, electronic invoicing, interface, project & budget follow-up, project & client analysis, push tasks & projects to collaborators, project post calculation, project & customer profitability analysis, WIP analysis, in real time, on operational data and premium support.
- 1.15 “Free Version” shall mean the non-paying version of the Application with the following functionalities: time & expense tracker, web & mobile, project follow-up, project time overview, personal time analysis and export options.
- 1.16 “Intellectual Property Rights” shall mean all currently known or later additional (a) copyrights, neighboring rights and moral rights; (b) trademark or service mark rights; (c) trade secret rights, know-how, expertise; (d) patents, patent rights and industrial property rights; layout design rights, design rights; supplementary protection certificates; (f) trade and company names,

domain names, database rights, rental rights and all other industrial and intellectual property rights or similar rights (whether registered or not); (g) all registrations, applications for registration, renewals, extensions, subdivisions, improvements or reissues relating to these rights and the right to apply, maintain and impose any of the foregoing, in any case and in any jurisdiction worldwide, for as long as this protection applies;

- 1.17 "Login Credentials" means the combination of the unique e-mail address and password;
- 1.18 "Premium Version" shall mean the paying version of the Application with the following functionalities: time & expense tracker, web & mobile, expense note camera capture, project follow-up, project time overview, work in teams, push tasks & projects to collaborators, personal time analysis, team analysis, export options, electronic invoicing, interface, project & budget follow-up, project & client analysis and premium support;
- 1.19 "Premium Plan" shall mean the payment plan for the Premium Version;
- 1.20 "Privacy Policy" shall mean the Privacy Policy of the Company as available on <LINK>;
- 1.21 "Services" shall mean the online services pertaining to the Application which facilitate timetracking, online management and cooperation, and consist among other things of a customer relationship management system, agenda, time and expense management quotation management, API, project planning module, invoicing module, ticketing and Voice-over-IP;
- 1.22 "Subscription Fee" shall mean the recurring monthly fee for using the payable version of the Application and Services, namely the Premium Version or the Enterprise Version;
- 1.23 "Term" shall mean the initial or renewed term – i.e. quarter or year – during which the Client can make use of the Application and Services, as selected by the Client when ordering the Services;
- 1.24 "Third parties" shall mean any natural or legal person or entity other than the Client or the Company;
- 1.25 "Trial" shall mean the trial version of the Premium Version, which is granted to every new User that registers for a Premium Version and lasts 10 days.
- 1.26 "User" shall mean any User of the Client, including the Administrator, for whom the Client has ordered a Account;
- 1.27 "Website" shall mean <LINK WEBSITE> and every Company website of the country in which the Company operates.

2. Scope

- 2.1. Flxion is an Application made for time and expense management, project management, reporting and analytics and invoicing, whereby integrations can be made with other tools. This Application, which is also available in the form of an Application for IOS and Android, offers an integration of various Services that contribute to a more efficient business administration for its Clients.
- 2.2. Every commercial relationship between the Company and the Client shall be governed by the Terms of Use as described in this document. These Terms of Use always prevail over the terms and conditions of the Client, even if they state that they are the only applicable terms and conditions.
- 2.3. By ordering the Services or entering into an agreement with the Company – including registration for the Demo – the Client acknowledges to have read these Terms of Use as well as the data processing agreement – which will be made available in the Administrator Account (cfr. Article 16) – and thereby to have accepted both.

- 2.4. The invalidity or unenforceability of one or more provisions of these Terms of Use or any part thereof shall not affect the validity and enforceability of the other clauses and/or the remainder of the provision in question. The invalid and unenforceable provision shall be deemed to have been amended so as to make it as valid and enforceable as possible to the fullest extent permitted by law.
- 2.5. These Terms of Use shall not affect the mandatory legal rights granted to the consumer-Client under the Belgian legislation relating to consumer protection.

3. License

- 3.1. The Services are licensed for use only under these Terms of Use. The Company reserves all rights not expressly granted to the Client, including title and exclusive ownership of the Services, the Application and any software, source code or updates thereto.
- 3.2. Upon registering for the Services, the Company gives the Client the right to use the Services by the total number of Users the Client has identified and authorized. The Company reserves the right at any time to request the Client to provide a list of the authorized Users.
- 3.3. The Client acknowledges that neither the Administrator nor any User may and shall rent, lease, lend, sell, redistribute or sublease the Services. These Terms of Use will govern any upgrades provided by the Company that replace and/or supplement the original Services. The Client, the User and the Administrator agree to use best efforts to protect the Services and upgrades from unauthorized use, reproduction, distribution, publication or alteration.

4. Demo

- 4.1. Each potential Client (legal person) will be given the opportunity to use the Demo of the Enterprise Version free of charge upon registration thereto via the Website. Upon such registration, the potential Client will receive an e-mail containing the Administrator Account and the activation password.
- 4.2. The use of the Demo shall automatically be disabled once 14 calendar days have passed since the online registration. However, the potential Client shall be able during the term of the Demo as well as upon its termination to enter into a (definitive) agreement with the Company regarding the Services in which case the conditions as described in Article 7 must be complied with.

5. Free Trial

- 5.1. Each potential Client will be given the opportunity to sign up for a Trial free of charge upon registration thereto via the Website. Upon such registration, the Client will receive an e-mail containing the Administrator Account and the activation password.
- 5.2. 10 days after the online registration, the trial period expires and the Client is automatically billed in accordance with his Premium Plan if the Client does not cancel his Premium Plan. For the avoidance of doubt, the Client will not be charged if the Client cancels his Premium Plan before the trial version expires.

6. Registration, acceptance and delivery

6.1. Free Version

The Client can order the Services via the Website by clicking the “register now”-button, provided the Client provides the following information:

- Name
- E-mail

Premium Version

The Client can order the Services via the Website by clicking the “order now”-button, provided the Client provides the following information:

- Name
- E-mail
- Company name
- Number of users

Enterprise Version

The Client can order the services by contacting the Company’s sales team via e-mail (sales@Flxion.com).

- 6.2. An agreement only becomes effective after an electronic confirmation of the order or when the Company makes the Services available to the Client or its Administrator and/or Users.
- 6.3. In any case, the Client declares and guarantees that (i) all entered (registration) information is complete, true and correct and that (ii) he will also ensure that such information remains correct.
- 6.4. The Company will at all times have the right to request additional information about the Client, his/her/its activities or his/her/its creditworthiness
- (i) Should such requested information not be provided;
 - (ii) should the Company doubt the identity of the Client; or
 - (iii) should there be indications that the Client intends to resell the Services itself,

Flxion shall have the right to refuse or suspend the execution of the order.

A refusal to provide the Services will never give the Client any right to claim any form of compensation or damages.

- 6.5. The delivery of the Administrator Account (cfr. **Article 8**) to the Client will be considered as the delivery of the Application and the Services. Upon delivery, the Client is expected to carry out an initial verification, including the following points: number of Users (where applicable), the Services (being the Free, Premium or Enterprise Version and/or Additional Services requested), quarterly or annual billing. The Client is obliged to inform the Company within 48 hours after delivery of any non-conformity via the helpdesk or by sending an e-mail to [E-MAIL SUPPORT].

If no complaints are made within this period of 48 hours, the Client is deemed to have approved and accepted the delivery.

7. Administrator Account/ Account

- 7.1. The Client shall be able to access the Application as well as make use of the Services through the Administrator Account and the additional Accounts. The Administrator shall be solely responsible for every use and activity of the Administrator Account.
- 7.2. The amount of Accounts corresponds with the number of Users of the Client. Each User has its own Account. The Administrator determines the extent of the rights of the Accounts and the Administrator shall always remain responsible for every use of the Accounts.

- 7.3. Each Account (including the Administrator Account) belongs to one person only and may therefore not be shared with other persons. The Administrator as well as every User is advised to create an unique Login Credentials (such as an unique password, to change it frequently, to use two-factor authentication, to keep the login information safe and secure and to log out of the Administration Account and Account at the end of each visit.)

Furthermore, it is strictly forbidden to:

- Exchange or disclose your Login Credentials with Third Parties
- Ask for the Login Credentials of other Users;
- Log in onto one other's Administration Account and Account;
- Use the Application and Services in a fraudulent manner (e.g. the use of a false account and/or providing false information is considered as fraudulent use);
- Pretend to be another (legal or natural) person when using the Application and Services without the necessary permission. Such action may lead to civil and criminal sanctions.

- 7.4. The Client must immediately (i) penalize or sanction any improper and unauthorized use and (ii) immediately inform the Company in writing of such use and of every suspicious activity.

A well-reasoned and founded notification may lead to temporary and/or perpetual suspension and/or removal of Administration Account and/or the Accounts. The Company reserves a wide margin of discretion to ensure best quality of the Services. In any event, the Company will not be liable for any loss or damage arising from Client's failure to comply with the above requirements.

8. No Right to Withdrawal

- 8.1. Pursuant to Book VI Market Practices & Consumer Protection of the Belgian Business Code ('WER'), every Client (in his capacity of a consumer) has a right of withdrawal with regard to products and/or services purchased through the Internet, by email or phone.
- 8.2. However, the delivery of the Services – being the delivery of digital content, which is not delivered on a tangible medium – is to be considered an exception to the right of withdrawal since the consumer-Client expressly (i) agrees that the delivery of the Services may commence as well as (ii) acknowledges that he shall no longer be entitled to use his right of withdrawal (art. VI.53 °13 WER). Consequently, the consumer-Client is no longer entitled to a right of withdrawal with regard to the Services ordered through the Demo.
- 8.3. Professional Clients shall under no circumstances have a right of withdrawal.

9. Price

- 9.1. The Company offers a free version of the Application with reduced functionalities. The Premium Version is offered by the Company at a fixed monthly price per User. If the Client opts for additional Users and/or for one or more Additional Services, an additional monthly price per Additional Service/User will be charged on top of the price of the Premium Version. The Enterprise Version is offered by the Company at a fixed monthly price depending on the size of the company, the Customizations and/or Additional Services.
- 9.2. The Premium Version, additional Users and Additional Services shall at all times be sold at the prices as listed on the Website or notified by e-mail at the time of purchase and as applicable for the country in which the Client is located. The price of such additional Users and features shall be calculated pro rata taking into account the remaining term of the selected invoicing term (monthly resp. annually).

The prices are expressed in euros and exclusive of VAT, unless when specifically determined otherwise.

- 9.3. Under no circumstances the Company guarantees that it will maintain its prices during a specific period, since this depends on the market structure nor that it will maintain the same prices in every country in which it is active. In so far as the prices are based on the then prevailing wage costs, costs of components/parts, social security contributions and government levies, insurance premiums, costs of materials, exchange rates and/or other costs, the Company shall, in the event of an increase of one or more of these price factors, be entitled to increase its prices accordingly in accordance with the legally permitted standards.

In the event of an increase of its prices, the Company undertakes to notify its existing Clients through the Company Communication at least one month prior to the application of the new prices.

- 9.4. Promotional gifts by the Company, in any form whatsoever (including, but not limited to price reductions and discounts), shall only be applicable in accordance with the guidelines and conditions expressly stated in this regard. The Client acknowledges that such promotional gifts are not cumulative and are personal by nature and can never entail an implied right thereto.

10. Payment

- 10.1. The Subscription Fee will become payable as set out in the Commercial Offer or payment plan. All payments of invoices correctly issued by the Company to the Client under these Terms of Use shall be final and non-refundable. Invoices are sent by email in PDF-format to the (electronic) address provided by the Client when ordering the Services. The Client may explicitly request the Company in written to send a copy of the invoices to a physical address, without prejudice to relevant legal requirements.
- 10.2. Client agrees to make all payments due to the Company under the provisions of these Terms of Use within thirty (30) days of the date of invoice, unless Parties have agreed otherwise in writing. Invoices of Users of the Premium Version will be automatically and fully collected by the Company via credit card on the invoice date, unless agreed otherwise in writing. Client may chose to pay the Subscription Fee in advance for periods of more than one month. If the Client choses the advance payment method and cancels his payment plan before the pre-paid period ends, the Company will reimburse the User pro rata for the outstanding time on the subscription. Client agrees to make every payment due to the Company under the provisions of these Terms of Use in EUR.
- 10.3. Every invoice made by the Company shall be deemed to have been definitively accepted by the Client if it is not disputed by registered letter sent to the Company wherein the reason for the dispute is explained, and this within ten (10) days after the invoice date of that specific invoice.
- 10.4. All fees payable to the Company under these Terms of Use shall be paid without the right to set off or counterclaim and free and clear of all deductions or withholdings whatsoever, unless the same are required by law, in which case the Client undertakes to pay the Company such additional amounts as are necessary in order that the net amounts received by the Company after all deductions and withholdings shall not be less than such payments would have been in the absence of such deductions or withholding. Sums stated to be payable under these Terms of Service do not include any applicable value added tax or other taxes, which shall be additionally charged to the Client. The Client is responsible for payment of all general, state or local import, usage, value added, withholding or other taxes associated with the supply or use of the Services. The Client shall promptly reimburse the Company for any such taxes or duties paid by the Company.

- 10.5. The amount of any invoice which has not been paid within thirty (30) days from the invoice date shall automatically be subject to a late payment interest equal to the legal interest rate of the Act of 2 August 2002 on late payment interests in commercial transactions, which interest shall be compounded daily as of the due date until receipt of full payment by the Company. In addition, Client shall pay all costs incurred by the Company as a result of the (extra)judicial enforcement of the Client's payment obligation under this article. If Client fails to pay any outstanding amounts within ten (10) days from receipt of a written default notice, the Company shall be entitled to suspend its obligations and the Client's rights hereunder until receipt of payment of such outstanding amounts.

11. Use of the Services

- 11.1. **General.** For as long as the agreement between the Company and the Client remains in effect, the Client can make use of the Application and the Services within the scope of the Access Rights of the Client, of which the scope is determined when ordering the Services. The scope of such Access Rights can be limited or extended during the Term of the agreement between the Company and the Client.

The Client acknowledges that only his Administrator and Users may use the Application and the Services and this for Client's internal business purposes solely and in compliance with all applicable laws, rules and regulations issued by governing authorities. Client agrees that compliance with this article is an essential basis of the agreement.

Use of and access to the Services by the Client presupposes an Internet connection and the use of a modern web browser. If an obsolete web browser is used, the Client may not be able to use all functions of the Services or these functions may not operate optimally.

The Client shall be fully responsible for compliance with these Terms of Use, as well as for the acts and omissions of all users who make use of the Application and Services through the Administrator Account and/or Account. The Client shall not authorize access to or permit use of the Application and Services nor the Documentation by persons other than the Administrator or the Users.

11.2. *Restrictions*

Client agrees not to misuse the Access Rights and shall thus not, and acknowledges that neither the Administrator nor any of its Users shall, without this list being exhaustive:

- Sell, resell, license, sublicense, rent, lease or distribute the Application, and any Services, or include any Services or any derivative works thereof in a service bureau or outsourcing offering to any third party;
- Copy, modify, adapt, alter, translate or make derivative works based upon the Services (other than any copies, modifications or derivative works made exclusively from the reports or overviews which are created solely for Client's internal business purposes);
- Engage in, nor authorize others to engage in, the reverse engineering, disassembly or the decompilation of the Application and/or Services.
- Use the Application, and Services for illegal or unlawful purposes or for the transmission of data which is illegal, defamatory, invasive of another's privacy, abusive, threatening, harmful or infringes on someone's intellectual property (non- exhaustive list).
- Use the Application, and Services to conduct or promote any illegal activities;

- Use the Application, and Services for the transfer of “junk mail”, “spam”, “chain mail”, “phishing” or other undesired mass circulation of e-mails;
- Use the Services to stalk, harass or harm another individual;
- Disturb the good operation of the Application and/or Website. This includes that Clients should refrain from the use of viruses, worms, Trojans or other software that may infringe the services and interests of both the Company and its Clients. Clients should also refrain from any content that may burden or disturb the websites infrastructure and its proper functioning;
- Add content that can be described as not-appropriate regarding the aim of the Application and/or Application. The Company reserves a large discretion and may notify Clients when touching boundaries;
- Circumvent the business-model of the Company;
- Use the Services – partly or integrally – nor the Application or Website in any manner that may give a false or misleading impression, attribution, or statement as to the Company, or any third party.

12. Intellectual property

12.1. **Intellectual property rights of the Company.** The Client explicitly acknowledges that the Company is and remains the sole owner of the Application and Services and/or other Intellectual Property Rights relating thereto. All such rights and goodwill are, and shall remain, vested with the Company. Consequently, the Access Rights granted to the Client solely imply the right to use the Application and Services and no implied licenses shall be granted under the agreement between the Client and the Company. Under no circumstances such right:

- Entails a transfer of ownership of the Application, Services and Documentation by the Company to the Client;
- Grants the Client any rights to or interests in the Application, Services, any trade names and/or or trademarks of the Company, and
- Grants the Client the right to request the Company to deliver a copy of any software or other products utilized by the Company to provide the Services.

The Client shall thus not use any trademark, tradename, or brand name of the Company (such as but not limited to the use thereof in metatags, keywords or hidden text), without the explicit written approval from the Company.

Without prejudice to the right of the Client or any third party to challenge the validity of any Intellectual Property Rights of the Company, the Client shall not perform or authorize any Third Party to perform any act which would or might invalidate or be inconsistent with any Intellectual Property Rights of the Company and shall not omit or authorize any Third Party to omit to do any act which, by its omission, would have that effect.

The Client undertakes to notify the Company of any actual, threatened or suspected infringement of any Intellectual Property Rights of the Company which comes to the Client’s notice, and of any claim by any Third Party due to use of the Application and Services.

12.2. **Documentation.** Subject to these Terms of Use, the Company hereby grants to the Client a non-exclusive, non-transferable license during the Term (cfr. **Article 15**) to reproduce copies of the Documentation solely for use by the Client in connection to his Access Rights. The Client acknowledges that:

- No right is granted to publish, modify, adapt, translate or create derivative works of the Documentation;
- The Documentation is part of the Company's Intellectual Property Rights and hereby agrees to accurately reproduce all proprietary notices, including any copyright notices, trademark notices or confidentiality notices, that are contained within any copies of the Documentation.

12.3. **Client's intellectual property rights.** Further, without conveying any right, title or interest, parties agree that the Company is allowed to make accurate informational references to Client's trade names, trademarks or service marks (collectively, the "**Marks**") in connection with its performance of the Services, for example through branding Client's landing page by means of the latter's Marks, subject to the condition that the Company shall promptly cease any use of any Mark owned by Client in connection with the performance of the Services upon (i) termination of this agreement or (ii) receipt of notice from the Client to discontinue such use.

13. Duration

13.1. Every agreement closed between the Company and the Client concerning the use of the Application and Services shall have a definite term of one quarter resp. one year, depending on the preference of the Client when ordering the Services.

13.2. The Term shall automatically be prolonged with one quarter resp. one year if the agreement is not terminated by the Client by the latest 15 calendar days before termination thereof, which shall entitle the Company to invoice the Client for the renewed Term.

14. Termination

14.1. **Termination by the Client.** The Client may terminate the Agreement by giving written notice to the Company by email (<E-MAIL>):

- At any time and for any reason, as long as such termination takes place at least 15 calendar days before expiration of the Term.

Every termination by the Client less than 15 calendar days before expiration of the Term shall be without object since the agreement shall automatically be prolonged (cfr. **Article 15**). Consequently, the Client shall be obliged to pay the invoice concerning the renewed Term, even if the Client has no intention to continue its use of the Application and the Services.

- In the event he cannot agree with one or more of the following circumstances (non-limitative) and such termination takes place within 30 calendar days after being notified thereof by the Company: **(i)** a change in the offer of the Services, which entails a significant disadvantage for the Client, **(ii)** a change of these Terms of Use by the Company (cfr. **Article 24**) or **(iii)** any announced price adjustment by the Company (cfr. **Article 10**). Under no circumstances, this entitles the Client to claim any sort of damages or compensation from the Company;

14.2. **Termination by the Company.** Without prejudice to any other right or remedy the Company may have against the Client, the Company can terminate the Agreement at any time and without legal intervention in the event the Client commits a Material Breach which makes it impossible to continue any professional cooperation between the Company and the Client.

The Client agrees that the following circumstances should be considered as Material Breaches:

- If the Company detects or has substantial reasons to assume that:

- The Client Data are false, misleading, inaccurate or obsolete;
 - The Client materially breaches any of the provisions of these Terms of Use and, notwithstanding a notification from the Company (i) to rectify the situation as well as (ii) to refrain from such a breach and, if possible, (iii) prevent such a breach or breaches from occurring in the future, fails to comply with such a request within 30 calendar days following receipt of such notification, without prejudice of the Company to claim from the Client an additional compensation as a result of this contractual breach;
 - The Client uses the Application and Services for unauthorized, illegal and/or inappropriate purposes;
 - The agreement with the Client is based on incorrect or false information of the Client; or
 - The Client ordered the Services for reasons that cannot be considered as objectively reasonable and acceptable.
- (ii) If the Client ceases its payments, files a declaration for bankruptcy, is declared bankrupt, enters into a liquidation or similar proceedings or is liquidated;
- (iii) If the Client commits an act of dishonesty, disloyalty or fraud with respect to the Company, its business or the Application and Services;

In the event of such termination by the Company, notified by email, the agreement will be automatically terminated without a period of notice or compensation and without prejudice to the right of compensation.

14.3. Consequences of termination. Upon termination of the agreement:

- By the Client, the Company undertakes within 2 working days – but in any event not before the ongoing Term expires – to deactivate the Client’s Administrator Account and Accounts and shall use its best efforts to inform the Client of such deactivation in advance;
- By the Company, the latter shall (i) deactivate the Client’s Administrator Account and Accounts and (ii) notify the Client that it has the possibility during a term, as mentioned in such notification, to export the Client Data through the available export tools;
- The Company is entitled to refuse any request from the Client to enter into a (new) agreement with regard to the use of the Application and Services.
- Each party will discontinue its use and will return the Confidential Information and proprietary materials of the other party.

If the Client fails to have exported its Client Data prior to terminating the agreement or within the term granted by the Company following its termination, the Company shall first delete the Client Data via ‘soft deletion’ and subsequently, once a term of (maximum) six (6) months has passed, anonymize the Client Data.

Articles 16, 17 and 20 shall survive and continue in full force and effect in accordance with their terms, notwithstanding the expiration or termination of the agreement for whatsoever reason.

The termination of the agreement, for whatever reason, shall not prejudice the rights acquired by each party.

15. Liability

- 15.1. All warranties, conditions and representations otherwise implied by applicable laws with respect to the Application are excluded to the fullest extent permitted by law and are rejected. In particular, the Company does not represent or warrant that the Application is error-free, free of viruses or other harmful components, or that defects will be corrected. The User must take his own precautions in this respect. To the maximum extent permitted by law, in no event shall the Company be liable for any loss or damage caused by a distributed denial of service attack, viruses or other technologically harmful material that may infect the User's computer equipment, computer programs, data or other proprietary material through the use of the Application and the Application Services.
- 15.2. To the fullest extent permitted by law, the Company assumes no liability for any failure to maintain the Application and/or to deliver the content or to deliver it in a timely manner.
- 15.3. The Client as well as any User agree that the Company can only be held liable on the basis of these Terms of Use to the extent that the damage suffered by the User can be directly attributed to the Company. For the avoidance of doubt, the Company shall not be liable for claims arising from:
- The inappropriate use of the Application by the User;
 - Modification of the Application (or parts thereof) by the User or Third Parties;
 - The User's failure to use the latest version of the Application made available to the User or the User's inability to integrate or install corrections made by the Company to the Application;
 - The User's use of the Application in combination with products or services that do not belong to the Company.
- 15.4. To the fullest extent permitted by applicable law, The Company shall not be liable to any Third Party for any special, indirect, exemplary, punitive, incidental or indirect damages of any kind, including, but not limited to, damages or costs resulting from loss of profits, data, revenues, goodwill, of the acquisition of replacement services or of damage to property arising from the Application that are subject to these Terms of Use, including, but not limited to miscalculations or use, misuse of the Application or inability to use the Application, regardless of the cause of the claim or the theory of liability - whether due to tort, contract or otherwise - even though the Company has been advised of the likelihood of such damage.
- 15.5. The Company shall neither be liable for:
- Defects that have been caused directly or indirectly by an act on the part of the Client or a Third Party, irrespective of whether they are caused by an error or negligence;
 - Damage caused by using the Application and Services for a different purpose than the purpose for which it has been developed or is intended by the Company;
 - Additional damage caused by continued use by the Client, Administrator and/or Users after a defect has been detected;
 - The loss or incorrect use of the Client Data, unless this is solely due to the Company's fault;
 - Damage caused by non-compliance with any advice and/or guidelines that may be given by the Company, which the latter always provides on a discretionary basis;
 - Damage caused by force majeure or hardship (cfr. Article 25).

- 15.6. The Application may contain inaccuracies and typographical errors. The Company does not warrant the accuracy or completeness of the content and services (including the Services) offered on the Application. In addition, the Company expressly reserves the right to correct any misinformation on the Application.
- 15.7. The Company shall not be liable in any way for any damages resulting from the User's acts or omissions to act on the basis of the content available on the Application. Similarly, the Company shall not be liable for any acts, errors, omissions, representations, warranties, violations or omissions of third party independent service providers.
- 15.8. Except as expressly provided in these Terms of Use and to the extent permitted by applicable law, the results are provided "as is". The hereby rejects all other warranties, promises, covenants or representations and conditions, whether written or not, oral, express or implied and without limitation, and all implied warranties regarding adequate quality, handling, trade use or practice, merchantability, usefulness, availability, title, non-infringement or fitness for a particular use or purpose, subject to the use, misuse or inability to use the products or services provided to the User by the Company.
- 15.9. The Company does not guarantee that:
- All errors can be corrected or access to or operation of the Application will always be uninterrupted, safe and error-free and/or bugs will be corrected (within a reasonable time);the Application and Services will be constantly available, free of viruses, in time and complete, or
 - the information provided by the Application and Services is complete, correct, accurate and non-misleading:
 - The information, including but not limited to the results, that is available on or through data is provided by the Application true, complete and accurate.
- 15.10. Furthermore, the Company does not warrant that the Application and/or Services will meet all of Client's requirements. Moreover, since the Client has the possibility to
- make use of the Demo or trial (cfr. **Article 5 & 6**) prior to becoming a paying Client and
 - request at all times further information from the Company in this respect. Hence, the Client declares to have been sufficiently informed about the content and the scope of the Application and Services.
- 15.11. The intended use of the Application and Services by the Client, Administrator and/or Users is determined under their full responsibility and at their own risk. The Company cannot be held liable in any way for any direct or indirect damage resulting from this intended use. Therefore, the Client, Administrator and/or User shall thus be solely responsible for any damage to its computer (programs), wireless devices and/or other equipment consequential to the Application and Services.
- 15.12. Subject to the maximum extent permitted by applicable law, the Company's liability under these Terms of Use in respect of each event (or series of connected events) shall not exceed:
- (i) For the Premium and Enterprise Version: all fees paid by Client to the Company under the present Terms of Use for a period of twelve (12) months applicable at the date of the event (or last of the series of connected events) giving rise to any claims of Client's customers or business relationships; or
 - (ii) for the Free Version: to an amount of 5.000 euros;

and this per cause of damage.

15.13. The Company shall not be held liable in any way, neither contractually nor extra-contractually, for discontinuing an older release of the Application.

15.14. Client shall at all times during and after the term of these Terms of Use indemnify, keep indemnified and hold the Company harmless against all claims, demands, actions, proceedings and all losses in relation to any breach of these Terms of Use by Client, Administrators or other Users, any negligent or wrongful acts or omissions of Client, Administrators or other Users under these Terms of Use, any failure to act or misrepresentation by the Client, Administrators or other Users and/or any faults and omissions in the performance of its obligations pursuant to these Terms of Use, resulting into claims of third parties.

15.15. Finally, it is the Client its responsibility to inform his Administrator and Users of the provisions of this Article (and the remaining of these Terms of Use).

16. Personal data and privacy

16.1. **The Company as controller.** The processing by the Company of personal data concerning the (potential) Client and/or its personnel/staff shall take place in accordance with the provisions of the Privacy Policy. In such event, the Company acts as controller.

16.2. **The Company as processor.** The Client acknowledges that – with regard to the processing of Client Data – it shall act as controller and the Company as processor. All arrangements made between parties in this respect shall be solely governed by the data processing agreement, as closed between parties and as made available within the Administrator Account.

Following the above, the Client acknowledges explicitly that by ordering the Services or entering into an agreement with the Company, the Client acknowledges to have read and accept the data processing agreement in its entirety.

17. Consent to use Client Data

17.1. Client agrees to enter Client Data including, but not limited to, telephone numbers, account numbers, turnover data, street addresses, surnames, URLs, email addresses, or other (personally identifiable) information of Client or of Client's employees into the Application and/or Application and that it is processed online by the Company. The Client Data that Client enters into the Application and/or Application will only be used by the Company for administrative and statistical purposes.

17.2. The Client agrees that the Company may collect and use technical data and User information as described in its Privacy Policy (link privacy policy), and, including, but not limited to, technical information about your device, system and application software, and peripherals, that is gathered periodically to facilitate the provision of customization, updates, and other services to the Client (if any) related to the Services. The Company may use this information, to improve the Services, Application and/or Application or to provide services or technologies to the Client.

18. Confidentiality

18.1. **Client Data.** Each Client is obliged to treat his Client Data confidential as well as to ensure that each Third Party, to whom he grants access to a Account, is bound by the same confidentiality obligations.

18.2. **General.** All information (including but not limited to all information of financial, commercial, legal, fiscal, social, technical and organizational nature, business and trade secrets, business partner, customer and supplier data, employee data, personal data, programs, source codes, computer programs, computer code, modules, scripts, algorithms, features and modes of operation, inventions (whether or not patentable), processes, schematics, testing procedures, software design and architecture, design and function specifications) exchanged between parties prior to entering into an agreement as well as during the agreement shall be considered Confidential Information. Confidential Information must be treated by each party with the utmost secrecy and thus more specifically the recipient shall:

- Solely use the Confidential Information for its own account;
- Not use, reproduce, or allocate the Confidential Information in any manner or for any other purpose than the (possible) cooperation between parties;
- Not divulge, disclose or make the Confidential Information, of which it has knowledge, available to any third party, without the express written consent of the disclosing party;
- Disclose such Confidential Information only to those employees who need to know such Confidential Information within the framework of the (possible) cooperation between parties, and the recipient certifies and warrants that these employees have previously agreed, as a condition to employment, to be bound by terms and conditions substantially similar to provisions applicable to the recipient under these terms of service.

The obligations, as determined in the previous paragraph, are not applicable to the following Information:

- Information, which is publicly available, publicly spread and/or known by the general public at the time of its communication;
- Information which is obtained in a lawful manner by the recipient on a non-confidential basis from any party other than the disclosing party, whereby such third party is at its turn not bound by any confidentiality agreement with the disclosing party;
- Information which disclosure/announcement is required by law or by a court or other government decision (of any kind). In such case the recipient shall, prior to any disclosure/announcement discuss the scope and manner of such disclosure/announcement with the disclosing party.

This confidentiality obligation applies during the course of the cooperation between parties and will continue to exist for a period of five (5) years starting from the termination of the cooperation for any reason whatsoever.

The disclosing party shall remain at any moment the sole owner of its Confidential Information. Except as expressly set forth herein, nothing in these Terms of Use or the relationship between parties shall grant to the recipient any rights to or interest in the Confidential Information, and no implied licenses are granted by these Terms of Use.

This confidentiality obligation shall, however, in no event imply that the Company shall not be entitled to use and/or commercialize any ideas, input, feedback received from the Client, which may serve to improve and/or expand the Application and Services.

Without prejudice to the foregoing, Client acknowledges that in the event a non-disclosure agreement is signed between parties, such non-disclosure agreement shall prevail.

19. **Support - Helpdesk**

- 19.1. In the event the Client is in need of assistance or has an enquiry with respect to the Application and Services, the Client is advised to first consult the Company's support page (<LINK NAAR SUPPORT PAGE>).
- 19.2. If the information provided on the Company's support page does not provide the required assistance, the Client may contact the Company helpdesk free of charge. The Company helpdesk shall be available via email (<E-MAIL INVOEGEN>) and telephone from Monday to Friday from 9 am to 5 pm (CET), excluding bank holidays or holidays in replacement of bank holidays during weekends.
- 19.3. Paying Users can make use of the Company's premium support which includes:
 - The Company helpdesk will do its best efforts to assist the Client as soon as reasonably possible following the requested support.

The Client will bear the costs made as a result of unjustified complaints and/or enquiries.

20. Availability, regular Maintenance and updates

- 20.1. The Company offers its Clients the possibility to check at all times, live and in real-time the availability of the Services through its Website. In the event of problems with the availability of its Services, the Company undertakes its best effort to solve such issue as soon as reasonably possible without giving any guarantee. In any case and where appropriate, the Company shall be free to determine on what is to be considered an adequate solution or compensation for its Clients in this respect. The Company warrants an uptime of 99,9 %.
- 20.2. The Company wishes to keep the quality of the Application and/or Services high by performing maintenance activities and implementing updates on a regular basis. The Company undertakes to minimize the impact of such maintenance activities and updates on the availability of the Application and Services but does not exclude any downtime in this respect. In any case the Company undertakes its best effort to inform the Client thereof in due time, unless this is impossible or not useful. These activities are not included in the calculation of the uptime.

The above gives no grounds for compensation to be born by the Company.

21. Miscellaneous

- 21.1. **No waiver.** The (repeated) failure by the Company to exercise any right may only be construed as a toleration of a particular situation and shall not give rise to a forfeiture of rights.
- 21.2. **The Company Communication.** At all times, the Client will be able to unsubscribe from the Company Communication. Since the Communication is considered to form an integral part of the Services, the Client can in no event hold the Company liable for changes of whatever nature of which the Client would normally have been informed through the Company Communication if he had not chosen to unsubscribe.
- 21.3. **Updates or changes of the Services and/or Terms of Use.** The Company reserves the right to make changes at any time, with or without reason and without prior notice to or liability to the Client:
 - i. amend, supplement or amend these Terms of Use;
 - ii. modify the Application. This also includes the removal or discontinuance, temporarily or permanently, of any service or other characteristic of the Application without any liability to the Client or any Third Parties; and/or

- iii. Reject or discontinue the use of and/or access to the Application for the Client in whole or in part, temporarily or permanently.
Any such changes, additions or modifications to the Terms of Use and/or the Application will take effect immediately as soon as we make them available on the Application or as soon as the Client are notified of them. By continuing to use the Application, the Client agree to the changes, additions or modifications made to the Terms of Use and/or the Application. The Client does not have the right to change, supplement or amend these Terms of Use in any way. With regard to changes, additions and/or amendments to our Privacy Policy, the Client will be notified separately in accordance with Article 1 of our Privacy Policy. We advise to consult the Terms of Use on a regular basis so that you are aware of the most recent Terms of Use that must respected.
- 21.4. **Force majeure/hardship.** The Company is not liable for any failure to meet its obligations if this failure is due to force majeure or hardship.
- 21.5. Usual events of force majeure or hardship include: all circumstances that at the time of the conclusion of the agreement were reasonably unforeseeable and unavoidable, and which prevent the Company from performing the agreement, or which would make the performance of the agreement more difficult, financially or otherwise, than would normally be the case (including but not limited to war, natural disasters, fire, seizure, delays with or bankruptcy of third parties engaged by the Company, shortage of staff, strikes, organizational circumstances and threat or acts of terrorism).
- 21.6. The aforementioned situations entitle the Company to review and/or suspend the agreement by simple written notice to the Client, without being liable to pay compensation. If the situation of force majeure and/or hardship lasts longer than 2 months, the Company will be entitled to terminate the agreement (cfr. Article 16).
- 21.7. **Compensation ('netting').** Parties agree that in their reciprocal relation, as from the start of the agreement between the Company and the Client, all currently existing as well as any future debts shall never be set off against each other and compensated, irrespective of their due date, their aim or the currency in which they have been expressed.
- 21.8. **Applicable law and jurisdiction.** All issues, questions and disputes concerning the validity, interpretation, enforcement, performance or termination of this agreement shall be governed by and construed in accordance with the Belgian law. Any dispute concerning the validity, interpretation, enforcement, performance or termination of this agreement shall be submitted to the exclusive jurisdiction of the courts and tribunals of Ghent, Belgium.
- 21.9. **Language.** Unless expressly agreed otherwise, the Client acknowledges that the language of these conditions will also be the working language in all commercial transactions with the Company. The original language of these conditions is English. Translations or documents drawn up in a different language will at all times be regarded as a bonus for the Client. In the event of any conflict, the English version will always prevail.