

## DATA PROCESSOR AGREEMENT 2018

### The undersigned:

1. **Netcode Cliënt**, hereinafter referred to as “Controller”,

And

2. **Netcode** (Dutch trade registry no. 506.775.00), a company, incorporated under the laws of the Netherlands, with its principal place of business at Galgenraklaan 7, 3544 TN Utrecht, the Netherlands, hereinafter referred to as: “Processor”,

Processor and Controller are hereinafter also referred to individually as “Party” or collectively as “Parties”

### Whereas:

- The Controller’s activities include to host websites and online services.
- The Processor provides hosting solutions to its clients and manages Linux web- and database servers.
- The Controller and the Processor concluded an agreement regarding the provision of specific services by the Processor of which this Processor’s Agreement is a part;
- Where the personal data processing is concerned, the Controller classifies as a controller within the meaning of Section 4(7) of the General Data Protection Regulation (*Algemene Verordening Gegevensbescherming*) (“GDPR”);
- Where the personal data processing is concerned, the Processor qualifies as a processor within the meaning of Section 4(8) GDPR;
- The Parties - partly in implementation of the provisions of Section 28(3) GDPR- wish to document a number of conditions in the present processor’s agreement which apply to their relationship in the context of the aforesaid activities on the instructions and for the benefit of the Controller.

### Declare that they have agreed as follows:

#### Article 1. Definitions

1.1 In this Processor’s Agreement, capitalized words and expressions, whether in single or plural, have the meaning specified as set out below:

<i>Annex:</i>	appendix to this Processor’s Agreement which forms an integral part of it;
<i>Agreement:</i>	the agreement concluded between the Controller and the Processor in respect of the provision of specific services by the Processor to the Controller;
<i>Personal Data:</i>	all information relating to an identified or identifiable natural person as referred to in Section 4(1) GDPR;

*Process:* as well as conjugations of this verb: the processing of Personal Data as referred to in Section 4(2) GDPR;

*Processor's Agreement:* the present agreement;

*Sub Processor:* the sub-contractor hired by Processor, that Processes Personal Data in the context of this Processor's Agreement on behalf of the Controller, as referred to in Section 28(4) GDPR.

1.2 The provisions of the Agreement apply in full to this Processor's Agreement. In case provisions with regard to the Processing of Personal Data are included in the Agreement, the provisions of this Processor's Agreement prevail.

## **Article 2. Purpose of the Personal Data Processing**

2.1. The Controller and the Processor have concluded the present Processing Agreement for the Processing of Personal Data in the context of the Agreement. An overview of the type of Personal Data, categories of data subjects and the purposes of Processing, is included in Annex 1.

2.2. The Controller is responsible and liable for the processing of Personal Data in relation to the Agreement and guarantees that Processing is in compliance with all applicable legislation. Controller will indemnify and hold harmless Processor against any and all claims of third parties, those of the data protection authority in particular, resulting in any way from not complying with this guarantee.

2.3. The Processor undertakes to Process Personal Data only for the purpose of the activities referred to in this Processor's Agreement. The Processor guarantees that it will not use the Personal Data which it Processes in the context of this Processor's Agreement for its own or third-party purposes without the Controller's express written consent, unless a legal provision requires the Processor to do so. In such case, the Processor shall immediately inform the Controller of that legal requirement before Processing, unless that law prohibits such information on import grounds of public interest.

## **Article 3. Technical and organizational provisions**

3.1. The Processor will, taking into account the nature of the Processing and insofar as this is reasonable possible, assist the Controller in ensuring compliance with the obligations pursuant to the GDPR to take appropriate technical and organizational measures to ensure a level of security appropriate to the risk. These measures will guarantee an appropriate level of security, taking into account the state of the art and the costs of implementation, in view of the risks entailed by Personal Data Processing and the nature of the data to be protected. The Processor will in any case take measures to protect Personal Data against accidental or unlawful destruction, accidental or deliberate loss, forgery, unauthorized distribution or access, or any other form of unlawful Processing.

3.2. Processor will provide a document which describes the appropriate technical and organizational measures to be taken by the Processor. This document will be attached to this Processor's Agreement as Annex 2.

#### **Article 4. Confidentiality**

4.1. The Processor will require the employees that are involved in the execution of the Agreement to sign a confidentiality statement – whether or not included in the employment agreement with those employees – which in any case states that these employees must keep strict confidentiality regarding the Personal Data.

#### **Article 5. Personal Data Processing outside Europe**

5.1. The Processor will only be permitted to transfer Personal Data outside the European Economic Area if this is done in compliance with the applicable statutory obligations.

#### **Article 6. Sub-processors**

6.1. The Processor is entitled to outsource the implementation of the Processing on the Controller's instructions to Sub-processors, either wholly or in part, which parties (outside parties like Datacenters and Network which are not included in Annex 3) are described in Annex 3. In case the Processor wishes to enable Sub-processors, the Processor will inform Controller of any intended changes concerning the addition or replacement of other processors. The Controller will object to such changes within 30 working days. The Processor will respond to the objection within 30 working days.

6.2. Processor obligates each Sub-processors to comply with the confidentiality obligations, notification obligations and security measures relating to the Processing of Personal Data, which obligations and measures must at least comply with the provisions of this Processor's Agreement.

#### **Article 7. Liability**

7.1. With regard to the liability and indemnification obligations of Processor under this Processor's Agreement the stipulation in the Agreement regarding the limitation of liability applies.

7.2. Without prejudice to article 7.1 of this Processor's Agreement, Processor is solely liable for damages suffered by Controller and/or third party claims as a result of any Processing, in the event the specific obligations of Processor under the GDPR are not complied with or in case the Processor acted in violence of the legitimate instructions of the Controller.

7.3. Processor can not be held liable for data loss or hacks in applications, websites, databases or any other business logic supplied by Controller through Processors infrastructure.

## **Article 8. Personal Data Breach**

8.1. In the event the Processor becomes aware of any incident that may have a (significant) impact on the protection of Personal Data, i) it will notify the Controller without undue delay and ii) will take all reasonable measures to prevent or limit (further) violation of the GDPR.

8.2. The Processor will, insofar as reasonable, provide all reasonable cooperation requested by the Controller in order for Controller to comply with its legal obligations relating to the identified incident.

8.3. The Processor will, insofar as reasonable, assist the Controller with the Controller's notification obligation relating to the Personal Data to the Data Protection Authority and/or Initials Controller: Page 4/8 Initials Processor: the data subject, as meant in Section 33(3) and 34(1) GDPR. Processor is never held to report a personal data breach with the Data Protection Authority and/or the data subject.

8.4. Processor will not be responsible and/or liable for the (timely and correctly) notification obligation to the relevant supervisor and/or data subjects, as meant in Section 33 and 34 GDPR.

## **Article 9. Cooperation**

9.1. The Processor will, insofar as reasonably possible, provide all reasonable cooperation to the Controller in fulfilling its obligation pursuant to the GDPR to respond to requests for exercising rights of data subjects, in particular the right of access (Section 15 GDPR), rectification (Section 16 GDPR), erasure (Section 17 GDPR), restriction (Section 18 GDPR), data portability (Section 20 GDPR) and the right to object (Section 21 and 22 GDPR). The Processor will forward a complaint or request from a data subject with regard to the Processing of Personal Data to the Controller as soon as possible, as the Controller is responsible for handling the request. The Processor is entitled to charge 5€ per such request, associated with the cooperation with the Controller.

9.2. The Processor will, insofar as reasonably possible, provide all reasonable cooperation to the Controller in fulfilling its obligation pursuant to the GDPR to carry out a data protection impact assessment (Section 35 and 36 GDPR). The Processor can charge a 4% increase on its billing fee from June 1, 2018 and the Processor is entitled to charge any other related costs associated with the cooperation with the Controller.

9.3. The Processor will provide the Controller with all the information reasonably necessary to demonstrate that the Processor fulfills its obligations under the GDPR. Furthermore, the Processor will – at the request of the Controller – enable and contribute to audits, including inspections by the Controller or an auditor that is authorized by the Controller. In case the Processor is of the opinion that an instruction relating to the provisions of this paragraph

infringes the GDPR or other applicable data protection legislation, the Processor will inform the Controller immediately. The Processor is entitled to charge any related costs to the Controller.

#### **Article 10. Termination**

10.1. With regard to the termination under this Processor's Agreement the specific provisions of the Agreement apply. Without prejudice to the specific provisions of the Agreement, the Processor will, at the first request of the Controller, delete or return all the Personal Data, and delete all existing copies, unless the Processor is legally required to store (part of) the Personal Data.

10.2. The Controller will adequately inform the Processor about the (statutory) retention periods that apply to the Processing of Personal Data by the Processor.

#### **Article 11. Miscellaneous**

11.1. The obligations laid down in this Processor's Agreement which, by their nature, are designed to continue after termination will remain in force also after the termination of this Processor's Agreement.

11.2. The choice of law and competent court comply with the applicable provisions of the Agreement.

**As of 25th of May 2018 all clients automatically confirm to accept this data processing agreement.**

A signed copy can be sent to you upon your request.

For Processor

For Controller

## **ANNEX 1 OVERVIEW PERSONAL DATA**

This Annex contains the categories of Personal Data that may be processed by Processor on Controller's behalf under the Agreement.

Processor will Process Personal Data as necessary to perform the Services pursuant to the Agreement and as further instructed by Controller in its use of the Services (including the Platform).

Upon the conclusion of this Processor's Agreement, Controller shall Process the following categories of Personal Data.

### **For website hosting Services**

*Personal Data collected:*

IP address of the visitor - Timestamp of the visit – (potentially) referrer and user-agent of the visitor.

Data is collected for billing and security reasons.

Data is stored on a local filesystem within hardware offered by TransIP and rotated with a maximum retention of 5 days.

Data is stored on a remote disk for back-up purposes offered by TransIP and Data is stored for a maximum period of two years, after which records are automatically deleted.

### **For e-mail Services**

*Personal Data collected:*

Sender e-mail address – Receiver e-mail address – Subject of the email – Timestamp of usage – E-mail BODY and potential attachments.

Data is collected as service, for fraud prevention and for customer care reasons.

Data is stored at a local filesystem within hardware offered by TransIP.

Data is stored on a remote disk for back-up purposes offered by TransIP and Data is stored for a maximum period of two years, after which records are automatically deleted.

### **For domains registration Services**

*Personal Data collected:*

Contact information; e.g. name, e-mail, address, phone.

Data is collected for registration, for fraud prevention and for customer care reasons.

Data is stored at a Server Cluster of our Provider for Domainname registrations Realtime Register as with local domain authorities.

Data is stored for a maximum period of two years, after which records are automatically deleted.

## **ANNEX 2 SPECIFICATION OF THE SECURITY MEASURES**

- Access to services is restricted to authorized users
- Users need to login using an https or SSH connection, only TLS 1.2 is supported no older protocols
- Direct server access is restricted by firewalls
- Only SSH access is allowed, so all data sent to and from servers is encrypted
- Database connections should be made over an SSH tunnel, so data sent to and from a server is encrypted
- Automated scheduled security updates to the operating systems of the servers are run
- Passwords are regularly changed and unique per device.

## **ANNEX 3 OVERVIEW SUB PROCESSORS**

TRANS IP HOSTING

REALTIME REGISTER DOMAINNAME REGISTRATION