kyano

General terms and conditions

Version 01-02-2023

General Terms and Conditions of Kyano B.V.

These are the General Terms and Conditions of Kyano B.V (Named: "Kyano"), located at Moermanskweg 2-22 in Groningen (9723 HM), registered at the Chamber of Commerce under registration number 85103233 and can be visited online at: www.kyano.app.

These General Terms and Conditions apply to every agreement entered into between Kyano and the legal persons who purchase services and products (named: "the User").

Kyano and the user are hereinafter referred to collectively as "parties" and individually as "party."

Other data Kyano:
E-mail address: hello@kyano.app
VAT number: 863510164

General Terms and Conditions

Article 1. Definitions

All capitalized terms in these General Conditions, whether singular or plural, shall have the meanings ascribed to them in this Article.

1.1. Subscription: the Agreement between the Parties for the periodic delivery of a Product or Service and the use thereof, in exchange for payment by the User.

1.2. Account: any user interface that allows the User to manage Subscriptions, Products and Services after entering their login details.

1.3. General Terms and Conditions: the terms and conditions contained in this document.

1.4. Service: all work to be performed by Kyano for the User.

1.5. Defect: failure to comply with the Specifications.

1.6. Intellectual Property Rights: all rights of intellectual property and related rights, including but not limited to copyrights, database rights, rights to domain names, trade name rights, trademark rights, design rights, neighboring rights, patent rights, as well as rights to know-how.

1.7. User: the (end) client who purchases the Product/Service provided by Kyano for the User and has registered as a subscriber on the Platform offered by Kyano. This also refers to the person who is negotiating with Kyano.

1.8. User Data: all data stored by the User on the Platform through or with the use of the Products and Services or data otherwise provided by the User to Kyano.

1.9. Kyano: Kyano BV, located at Moermanskweg 2-22 in Groningen and also supplier of the Products and Services on the Platform.

1.10 Materials: all work completed by Kyano.

1.11. Agreement: the contractually recorded Written agreements between Parties regarding the delivery of Products and Services by Kyano. These General Terms and Conditions and any appendices form an integral part of the Agreement.

1.12. Force Majeure: a shortcoming that cannot be attributed to the debtor if it is not due to his fault, nor for his account by virtue of law, legal act or generally accepted practice.

1.13. Products: the Products offered on the Platform and the Website, namely "Kyano Sites", "Kyano Forms", "Kyano Service Desk" and "Kyano Jobs".

1.14. Platform: electronic system consisting of various web applications (web apps) for each Product that can be used by the User for the management of the purchased Products and Services and for communication between the Parties regarding the performance of the Agreement, advice and support questions.

1.15. Results: the Results of the work Kyano performs under the Agreement.

1.16. Written: in these General Conditions Written also includes the content of electronically sent messages, such as e-mail messages, provided that the identity of the sender and the integrity of the message have been sufficiently established.

1.17. Service Level Agreement (SLA): further agreement with written arrangements between Parties which is attached to the Agreement and in which arrangements are made between both Parties concerning the level of service and quality aspects of the Services and Products purchased by the User, which are linked to concrete and measurable key performance indicators.

1.18. Specifications: the functional and technical description of the various Products and Services as laid down in the Agreement.

1.19. Processor Agreement: any further agreement concluded between Parties in which arrangements are made regarding the handling of personal data and the security thereof.

1.20. Working Days: the days from Monday through Friday, with the exception of official Dutch holidays and other days Kyano has previously indicated to be closed.

1.21. Working Hours: the opening hours of Kyano on Working Days, as indicated on the Web site.

1.22. Website: the website of Kyano, accessible via the domain mentioned in the opening words (page 2) of these General Conditions.

Article 2. Applicability

2.1. These General Terms and Conditions apply to all offers relating to Products and Services of Kyano and form an integral part of each Agreement for the delivery of Products and/or Services.

2.2. Provisions or conditions of the User that differ from, or are not included in, these General Terms and Conditions are only binding for Kyano if and insofar as Kyano has expressly accepted them In Writing.

2.3. Specific provisions take precedence over general provisions that apply to all Products and Services in the event of contradictions.

2.4. Products and/or Services of third parties may be part of the Services of Kyano. If that is the case, the (general) terms and conditions of the relevant third party shall additionally apply to (the use of) those Products and/or Services, overriding the deviating terms and conditions in these General Conditions.

2.5. In the event that contradictions arise between the applicable (further) agreements and conditions, the following order of precedence shall apply:
a. Agreement;
b. Service Level Agreement (SLA);
c. Additional terms and conditions;
d. General Terms and Conditions;
e. Processor Agreement.

2.6. These General Terms and Conditions replace all previously agreed (general) terms and conditions between the Parties.

Article 3. Realization of Agreement

3.1 The User can apply for the Products and Services directly on the Kyano Website. The Agreement will be formed at the moment of sending the confirmation email containing the acceptance of the application by Kyano. The moment of sending the confirmation email also counts as the effective date of the Agreement, unless the parties agree otherwise In Writing.

3.2. Kyano is entitled in appropriate cases to accept the application of the User. Grounds for refusal include, but are not limited to:
a. an error in the offer made by Kyano;
b. legal incapacity of the User;
c. the lack of necessary information and documents for entering into the Agreement.

3.3. If Kyano decides to refuse the User's application, as described in Article 3.2 of these General Terms and Conditions, Kyano shall inform the User thereof In Writing within fourteen (14) Working Days after receipt of the application.

3.4. A refusal, as described in article 3.2 of these General Conditions, shall never lead to liability for any damage that may arise.

3.5. If Customer is a Consumer, Customer has the option of dissolving the Agreement in writing and free of charge for a period of fourteen (14) days from the moment the Agreement was concluded. The Customer can exercise the right of withdrawal by sending Kyano an unambiguous statement to this effect within the cooling-off period.

3.6. The right of withdrawal does not apply to Agreements to provide Services, after performance of the Agreement, if:
a. performance has begun with the express prior consent of the Customer; and
b. Customer has declared to waive his right of rescission once Kyano has fulfilled the Agreement.

Article 4. Products and Services

4.1. After the establishment of the Agreement, Kyano shall deliver the purchased Products and Services as soon as possible in accordance with the current description of the purchased and ordered Products and Services at the time of the order.

4.2. Kyano endeavors to perform the Agreement to the best of its ability under the application of sufficient care and craftsmanship. The User is also obliged to enable timely and correct performance of the Agreement. In particular, the User shall ensure that all data, which Kyano indicates are necessary or which the User should reasonably understand are necessary for the performance of the Agreement, are provided to Kyano in a timely manner. The necessary commitment of the User must be provided with sufficient quality and timeliness.

4.3. Kyano may change its Products and Services and associated Specifications insofar as this is reasonably acceptable to the User taking into account the interests of the User and Kyano.

4.4. To the extent necessary and reasonable, the User shall cooperate in the event of a change due to, for example, a re-entry of access data or adjustments to its systems.

4.5. If it is necessary for the execution of the Agreement, Kyano is entitled to engage third parties to perform certain work. Any additional costs are only for the account of the User if further Written agreements have been made about this by Parties. Subject to the provisions of Article 2.5, these General Terms and Conditions also apply to the work performed by these third parties.

Article 5. Account

5.1. Kyano will provide the User with an Account after registration on the Website by giving the User the opportunity to generate his own login data (username and password).

5.2. The login details belonging to the Accounts are strictly confidential and may therefore not be shared with third parties.

5.3. All actions that take place on the Platform through the User's Account are deemed to be carried out under the responsibility and at the risk of the User. In the event that the login details of a User's Account have been lost or are lost in any other way, the User must immediately take all possible measures to prevent any misuse of the Account.

5.4. If what is described under article 5.3 occurs, the User must immediately inform Kyano of this so that, if necessary, additional measures can be taken.

Article 6. Intellectual Property

6.1. All intellectual property rights to all Products developed or made available under the Project belong exclusively to Kyano or its licensors.

6.2. The User only acquires the rights of use and powers expressly granted in these General Terms and Conditions, the Agreement or otherwise In Writing, and the User shall not otherwise reproduce, sell to third parties or disclose the software, Services or other Products. These rights of use are limited to the term of the Agreement. The User shall not use copies of the software, Services or Products made available after termination of the Agreement and shall delete them.

6.3. Unless and to the extent agreed otherwise in writing, the User shall not be permitted to remove or alter any indication concerning copyright, trademarks, trade names or other intellectual property rights from the Products, including indications concerning the confidential nature and secrecy of the Products.

6.4. Kyano is permitted to take technical measures, such as passwords or encryption, to protect the Products. If Kyano has secured the Products by means of technical protection, the User is not permitted to remove or evade this security.

6.5. Any use, reproduction or disclosure of the Products outside the scope of the Agreement or granted rights of use constitutes an infringement of the Intellectual Property of Kyano or its licensors.

6.6. The User shall pay Kyano an immediately due and payable fine of 5,000 Euros per infringing act and 25,000 Euros per intentionally infringing act, without prejudice to Kyano's right to be compensated for its damage caused by the infringement or to take other legal action in order to have the infringement terminated and/or to recover damages. After the expiry of one working day after Kyano has notified the User of an infringement, the User shall also owe a penalty of €5,000 per day that the infringement has not been terminated.

6.7. In case of violations of provisions of this article, Kyano is entitled to block the use of the Services and Products until the legality of the use by the User has been demonstrated.

Article 7. Obligations of the User

7.1. The User is obliged, to state the necessary data completely and correctly and to immediately communicate changes to Kyano. This applies in particular to address details, bank details and the e-mail address of the User.

7.2. The User is obliged to change assigned passwords immediately. In addition, the User is obligated to choose only strong passwords. The User is solely responsible for the choice of secure passwords and their use.

7.3. The User ensures that his domain(s) and offered content do not infringe any legal regulations or rights of third parties. Furthermore, the User undertakes not to offer domains or content, which are of an extremist nature or which display pornographic, commercially erotic, violent, violence-glorifying, racist, discriminatory, inflammatory or content harmful to minors, nor call for the commission of criminal offenses or acts. This also applies if and insofar as such content is made accessible through hyperlinks or other connections, which the User places on third-party websites.

7.4. The use of the Services and Products of Kyano for the distribution of harmful programs or improperly functioning botnets, for sending spam messages or for phishing, for violations of trademark and copyrights, or piracy, for fraudulent or deceptive practices, product counterfeiting or any other conduct in violation of applicable law is prohibited.

7.5. The User is only permitted to distribute (unsolicited) commercial, charitable or idealistic communication (direct marketing) using the Products and Services in compliance with the applicable laws and regulations.

7.6. If, in the opinion of Kyano, a nuisance, damage or other danger arises for the functioning of the computer systems or network of Kyano or third parties and/or the provision of services via the Internet, in particular by excessive sending of email or other data, denial of service attacks, poorly secured systems or activities of viruses, Trojans and similar software, Kyano is entitled to take all measures that it reasonably deems necessary to avert or prevent this danger. Kyano may recover the costs reasonably necessary associated with these measures from the User, if and insofar as the User can be blamed for the cause.

7.7. The User is responsible for keeping his own applications, services and infrastructure up-to-date for interoperability with the Products and Services of Kyano. This in connection with possible links. The Products may not work properly if this is not the case. Kyano is not liable for the unusability of the Products and services if the unusability is caused by the User not timely migrating - whether or not on instruction of Kyano - to current standards or using standards that are no longer supported in the industry. A standard introduced 24 months ago is no longer considered current by Kyano. This exclusion of liability also applies if the User works with a version of an Internet browser of which the use and support is no longer obvious due to the appearance of a new version of that Internet browser.

7.8 The use of Kyano is only permitted for persons 18 years and older. If it appears that a minor has entered into an agreement with Kyano, it will be terminated immediately.

Article 8. Notice and takedown

8.1. If it appears that through the use of the Services and/or Products content is stored or distributed that infringes the rights and freedoms of third parties or otherwise violates laws and regulations, Kyano shall notify the User as soon as possible. This determination can be made by either Kyano or a third party.

8.2. If there is a case as described in article 8.1, Kyano will offer the User the opportunity to respond to the notification within a reasonable period and, if necessary, to take measures to stop the violation. If the User fails to take action or to do so in a timely manner, Kyano itself may take action to stop the violation. This may result in access to the Products and Services being (temporarily) blocked or certain data being removed or made inaccessible by Kyano. In urgent cases Kyano can take measures itself without informing the User first. In the case of the establishment of the commission of criminal offences by the User, Kyano can also file a report.

8.3. Kyano is not liable for any damage incurred by the User, its customers or end users as a result of a shutdown of the Services and/or Products or removal of data as described in Article 8.2.

8.4. The User shall indemnify Kyano for any claims originating from third parties who claim that the data stored or distributed with the use of the Services and/or Products of Kyano infringe their rights or are otherwise unlawful.

Article 9. Installation and configuration

9.1. The User is, unless agreed otherwise in writing, responsible for the installation and configuration of the purchased Products and/or Services. Kyano can – after consultation and written agreement of the User – charge any costs to the User in case support is necessary.

Article 10. Additional work

10.1. The User may at any time request Kyano to perform work that falls outside the initial Agreement. Such work shall be regarded as Additional Work.

10.2. Kyano is not obliged to comply with a request for Additional Work.

10.3. In the case of Additional Work, Kyano shall inform the User in advance of the associated (estimated) costs and shall only perform the associated work after agreement by the User.

10.4. Kyano will base the performance of Additional Work on the already agreed rates. Kyano is also entitled to conclude an additional agreement in which the Additional Work and the associated rates are described.

Article 11. Duration, termination and dissolution

11.1. The duration of the Agreement between the Parties is one (1) month or one (1) year depending on the chosen package, unless otherwise agreed in Writing. The User may terminate the subscription on a monthly basis, whereby the discontinuation applies to the next term.

11.2. The Agreement shall be automatically and tacitly renewed for additional periods equal to the initial term each time after the expiration of the term, unless a Party is notified in writing by the other Party at least one (1) month before expiration of its desire not to renew the Agreement.

11.3. Delivery periods stated by Kyano are always indicative in nature.
Kyano is, also in the case of an agreed deadline, only in default after the User has given him a written notice of default, except for the situations prescribed by mandatory law in which default occurs by operation of law.

11.4. If the User fails to perform any of his obligations under the Agreement, Kyano is entitled to suspend the performance of all Agreements entered into with the User concerned without notice of default or judicial intervention being required and without prejudice to Kyano's right to compensation for damage, lost profit and interest, unless the non-performance in question is of minor significance.

11.5. Kyano is entitled to dissolve or suspend all or part of the Agreement with immediate effect, without judicial intervention, In Writing and without any obligation to pay damages or compensation, if:
  1. User does not, not fully or not in a timely manner comply with the obligations under the Agreement;
  2. after the conclusion of the Agreement Kyano learns of circumstances that give good reason to fear that the User will not comply with his obligations;
  3. at the conclusion of the Agreement the User was requested to provide security for the fulfilment of his obligations under the Agreement and this security is not provided or is insufficient;
  4. because of the delay on the part of the User, Kyano can no longer be required to perform the Agreement against the original agreed conditions;
  5. The User applies for a moratorium or files for bankruptcy;
  6. the bankruptcy of the User is granted;
  7. the User's activities are discontinued or liquidated;
  8. circumstances arise of such a nature that performance of the Agreement becomes impossible or Kyano cannot reasonably be required to maintain the Agreement unchanged.

11.6. The possibility of suspension under the cases stated in the previous article applies to all Agreements entered into with the User, even if the User is only in default with regard to one Agreement.

11.7. After termination of the Agreement, Kyano will deactivate the User's account and remove associated User data. If the User wishes to continue using certain (parts of) the Products and Services after termination of the Agreement, Kyano may charge costs for keeping the Services and Products available.

11.8. In the event of dissolution of the Agreement, amounts already invoiced remain due, without any obligation to undo them.

11.9. If the Agreement is terminated, Kyano's claims on the User are immediately due and payable. If Kyano suspends the performance of its obligations, it retains its claims under the law and the Agreement.

11.10. If the dissolution is attributable to the User, Kyano is entitled to compensation for the damage caused directly and indirectly as a result.

11.11. If the Customer is a Consumer, the Agreement is converted into an Agreement for an indefinite period of time after the expiration of the initial term. The Customer may in that case terminate the Contract for an indefinite period of time at any time in writing after conversion, subject to a period of one (1) month.

11.12. If Kyano suspends the performance of its obligations, it retains its claims under the law and the Agreement, including the claim to payment for the Services that have been suspended. This does not apply if the Customer is a Consumer. In that case, the statutory rights of suspension apply.

Article 12. Prices

12.1. Prices are exclusive of sales tax (VAT) and other government levies.

12.2. If a price in an offer is based on data provided by the User and these data prove to be incorrect, Kyano is entitled to adjust the prices to the prices reasonably associated with the correct data, even after the Agreement has been effected.

12.3. Kyano is entitled to increase the prices used in the Agreement annually, by a maximum percentage of 5% or on the basis of the relevant CBS price index, without this resulting in a possibility for the User to terminate the Agreement. In addition, Kyano may at all times increase prices in the interim if the rates of suppliers, such as, but not limited to, suppliers of electricity, electronic communication services, domain name registrations, IP addresses, data centers, software and (public) cloud solutions increase, without this resulting in an opportunity for the User to terminate the Agreement.

12.4. All prices mentioned in Kyano's offer are subject to type and calculation errors.

12.5. Contrary to the preceding paragraphs of this article, the Customer, if he is a Consumer, is entitled to terminate the Agreement if prices are increased within three months of the conclusion of the Agreement.

Article 13. Terms of payment

13.1. Kyano will send an invoice to the User for the amount owed by the User. The payment term of an invoice is 14 days after the date of the invoice, unless otherwise agreed in writing between Kyano and the User.

13.2. If the User does not pay in full on time, he is legally in default from 30 days after the payment term, without notice of default being required. If an amount due is not paid within the payment term, a contractual interest of 2% per month and €15,– administration costs will be due over the outstanding amount without further notice of default by Kyano.

kyano

13.3. If the User is in default, the Websites and other Materials hosted by the User will be made inaccessible by Kyano without further warning until the outstanding amounts and interest have been paid.

13.4. In the event of late payment, the User is obliged to pay in full both extrajudicial and judicial collection costs, including the costs of lawyers, bailiffs and collection agencies, in addition to the amount due and the interest accrued thereon.

13.5. The claim for payment is immediately due and payable in the event that the User is declared bankrupt, applies for a suspension of payments, the User dies and furthermore, if the User goes into liquidation, is dissolved or if the bankruptcy is granted.

13.6. In the above cases Kyano is furthermore entitled to terminate or suspend execution of the Contract or any part thereof not yet performed without notice of default or judicial intervention, without the User thereby acquiring a right to compensation.

13.7. The provisions included in Article 13.4 to Article 13.6 do not apply if and insofar as Customer is a Consumer.

Article 14. Liability

14.1. Kyano's liability for direct damage suffered by the User as a result of an attributable shortcoming in the performance by Kyano of its obligations under the Agreement, explicitly also including any shortcoming in the performance of a guarantee obligation agreed with the User.
Kyano, its employees or third parties engaged by it, shall be limited per event or a series of related events to an amount equal to the fees payable by the User under this Agreement per year (excluding VAT). In no event, however, shall the total compensation for direct damage exceed 25,000 euros (excluding VAT).

14.2 Kyano's total liability for damage due to death or bodily injury or for material damage to property shall in no case exceed 50,000 Euro per damaging event, whereby a series of related events counts as one event.

14.3. Kyano's liability for indirect damages, including consequential damages, lost profits, missed savings, mutilation or loss of (business) data and damage due to business interruption, is excluded.

14.4. Apart from the cases mentioned in paragraphs 1 and 2 of this article, Kyano shall not be liable for damage, regardless of the ground on which an action for damages would be based. The exclusions and limitations referred to in this article lapse if and insofar as the damage is the result of intent or deliberate recklessness of Kyano's management.

14.5. Kyano's liability for attributable failure in the performance of the Agreement shall only arise if the User immediately gives Kyano Written notice of default, setting a reasonable term for rectifying the failure, and Kyano continues to fail attributably in the performance of its obligations even after that period. The notice of default must contain as detailed a description as possible of the failure, so that Kyano is able to respond adequately.

14.6. A condition for the existence of any right to compensation is always that the User reports the damage In Writing to Kyano within 30 days after it arises.

14.7. The User indemnifies Kyano for all claims of third parties for liability as a result of a Defect in the Project/Service delivered by the User to a third party, which partly consisted of goods, Products or results delivered by Kyano, except if and insofar as the User proves that the damage was caused by those goods, Products or results. The User also indemnifies Kyano against claims relating to non-compliance with licenses by the User and/or third parties (including Users) that fall under the User's responsibility.

14.8. Liability of Kyano for shortcomings in Products and Services of third parties, including software and software, is excluded.

14.9. Any limitation of liability included in these General Terms and Conditions does not apply in relation to Consumers. Towards Consumers the provisions regarding liability in the law apply.

Article 15. Faults and force majeure

15.1. Neither Party can be held to fulfil any obligation if a circumstance beyond the control of the Parties, which could not or should not already have been foreseen at the time the Contract was concluded, nullifies any reasonable possibility of fulfilment. The Parties may only invoke Force Majeure vis-à-vis each other if the Party concerned notifies the other Party In Writing of such invocation of Force Majeure as soon as possible after the failure has occurred, submitting the necessary documentary evidence.

15.2. The circumstances referred to in paragraph 1 of this article shall in any case mean:
1. (power) failures of Internet or other telecommunication facilities;
2. failures by parties Kyano depends on for the provision of the Services and Products (suppliers);
3. defectiveness of goods, equipment, software or Products the use of which the User has prescribed for Kyano;
4. unavailability of one or more staff members (due to illness);
5. government measures; and
6. natural disasters, network attacks, war, terrorist attacks and general transport problems.

15.3. In the event of Force Majeure, the performance of the relevant obligation(s) and the related obligation(s) shall be suspended in full or in part for the duration of such Force Majeure, without the parties being mutually obliged to pay any compensation in the matter. The parties may only invoke Force Majeure vis-à-vis each other if the party concerned notifies the other party In Writing of such invocation of Force Majeure as soon as possible after the failure has occurred, submitting documentary evidence.

15.4. In the event of Force Majeure, the party invoking Force Majeure shall make every effort to have the shortcoming, which is remediated by the Force Majeure, be of the shortest possible duration.

15.5. If a Force Majeure situation has lasted thirty (30) days, or as soon as it is established that the
Force Majeure situation will last longer than three months, each of the parties shall be entitled to terminate the Agreement In Writing, unless the nature or extent of the failure does not justify premature termination. What has already been performed under the Agreement shall in that case be settled proportionately, without the parties owing each other anything else.

Article 16. Storage and data limit

16.1. Kyano may set a maximum to the amount of storage space or data traffic per month that the User may use in connection with the Services. This maximum depends on the Subscription purchased and is described in the Specifications to the relevant Subscription. User shall not exceed the limits unless the Agreement expressly regulates the consequences thereof. If this maximum is exceeded, Kyano is entitled to charge an additional amount in accordance with the amounts for additional data traffic stated in the Agreement. If no storage and/or data limits are agreed upon, Kyano's fair use policy applies.

Article 17. Availability, maintenance and support.

17.1. All Kyano services are performed on the basis of an obligation to perform to the best of one's ability, unless and insofar as Kyano has explicitly promised a result in the Written Agreement and the result concerned has also been described with sufficient certainty.

17.2. The electronic transmission of data from the User in connection with the Services and Products, in whatever manner, shall take place at the risk and expense of the User.

17.3. Kyano is never obliged to deliver the applications made available remotely to the User also on a physical data carrier (e.g. CD or USB stick).

17.4. If the Services are (partly) provided via Services and/or networks of Kyano, Kyano shall make an effort to minimize downtime.

17.5. Kyano offers no guarantees regarding the exact amount of uptime, unless otherwise agreed in the quotation by means of an SLA designated as such. Unless otherwise provided in an applicable SLA, this article shall apply.

17.6. Barring evidence to the contrary, the availability and service level measured by Kyano shall count as full proof.

17.7. Kyano shall make every effort to ensure that the User can use the networks that are directly or indirectly connected to Kyano's network. However, Kyano cannot guarantee that these networks are available at any time. The use of third party networks may be subject to legal and contractual conditions. Kyano will make every effort to inform the User about this in a timely manner.

17.8. If in Kyano's opinion a danger arises for the functioning of the Services or the network of Kyano or third parties and/or of the service provided via a network, in particular by excessive sending of e-mail or other data, poorly secured Services or activities of viruses, trojans and similar software, Kyano is entitled to take all measures it reasonably considers necessary to prevent this.

17.9. Kyano is entitled to take the Services or parts thereof out of use temporarily for the purpose of maintenance, modification or improvement thereof. Kyano will try to have such taking out of service take place as much as possible outside office hours and will make an effort to inform the User in a timely manner of the planned taking out of service. Kyano is, however, never obliged to compensate damage caused in connection with such taking out of service, unless explicitly agreed otherwise in Writing, for example in an SLA.

17.10. Unless the Agreement provides otherwise, Kyano is not obliged to make backups of data stored by the User on Kyano Services. Any backups made may be destroyed at any time after termination of the Agreement.

Article 18. User Data

18.1. All rights regarding User Data belong to the User. This also applies to the Intellectual Property rights on User Data.

18.2. The User grants Kyano a limited right of use of the User Data during the term of the Agreement, if and insofar as this is necessary for the delivery of the Products and Services.

18.3. If and insofar as the User Data consists of personal data, the agreements of the General Data Protection Regulation (AVG) apply.

18.4 Upon termination of the Agreement, Kyano shall destroy or remove the processed User Data as soon as possible in accordance with that which is stipulated in article 25 of these terms and conditions.

Article 19. Processing personal data

19.1. If Kyano in the performance of the Services will process personal data for which User is the responsible party, the General Data Protection Regulation ("AVG") obliges Kyano and the User to enter into commitments with respect to the processing performed by Kyano, which provide guarantees with respect to the technical and organizational security measures with respect to the processing to be performed. In the absence of a further, separately agreed 'processing agreement', the provisions in this article shall apply as the commitments referred to in the AVG.

19.2. Kyano shall ensure an appropriate security level in view of the risks involved in the processing and the nature of the personal data.

19.3. Kyano also warrants that anyone acting under the authority of Kyano, insofar as they have access to personal data for which the User is the responsible party, shall only process them on the instructions of the User, subject to differing legal obligations.

19.4. The User guarantees that he will only enter or otherwise make personal data available to Kyano in an entirely lawful manner.

19.5. If, within the framework of a legal obligation, for example under the AVG, the User must change, remove or surrender data stored in Kyano's systems, Kyano shall assist as much as possible. The costs of the work involved may be invoiced separately.

19.6 Kyano has prepared a privacy statement describing how Kyano handles the data of the User and other data subjects. This privacy statement is published on Kyano's website.

Article 20. Secrecy

20.1. Parties will keep confidential any information they provide to each other before, during or after the execution of the Agreement if this information is marked as confidential or if the receiving party knows or should reasonably suspect that the information was intended to be confidential. The parties shall also impose this obligation on their employees as well as on third parties engaged by them for the performance of the Agreement.

20.2. Kyano shall not take cognizance of data that the User stores and/or distributes via the Services of Kyano, unless this is necessary for the proper performance of the Agreement or the quality of the Services and Products, or Kyano is obliged to do so pursuant to a statutory provision or court order. In that case Kyano shall make every effort to limit knowledge of the data as much as possible, insofar as this is within its power.

20.3 This obligation continues to exist even after termination of the Agreement for whatever reason, and for as long as the providing party can reasonably claim the confidential nature of the information.

Article 21. Amendments to General Terms and Conditions

21.1. Kyano may amend these General Terms and Conditions with reasonable notice, taking into account the legitimate interests of the User. If the User does not object to the relevant change within the period set by Kyano, the change is deemed to be accepted by the User. In the event of such a modification, Kyano will inform the User accordingly by means of a modification notice. This possibility of modification is limited to modifications that do not substantially change the relationship between performance and consideration. This provision explicitly does not apply to price increases.

21.2 Modifications shall also apply with respect to already concluded Contracts subject to a period of 30 days after publication of the modification on Kyano's Website or by electronic notification. Changes of minor importance may be made at any time.

21.3. If the User does not wish to accept a change in these General Terms and Conditions, he may, until the date on which the new General Terms and Conditions take effect, terminate the Agreement by this date or on the date of receipt of the notice of termination if this is after the effective date of the change.

Article 22. Dispute resolution

22.1. The Agreement, as well as any agreements and other legal acts resulting from or related to it, shall be governed exclusively by Dutch law.

Article 23. Indemnification

23.1 The User indemnifies Kyano from all legal claims of third parties with regard to the use of the Services by the User. Kyano is not responsible for the data/Services/software invoked by means of a link.

23.2. If Kyano, on the basis of an authorized order from a government authority or in connection with a legal obligation, has to perform work with regard to data of the User or his employees, all related costs will be charged to the User.

Article 24. Changes to Services and Products.

24.1. Kyano is entitled to modify the Products made available during the term of the Agreement at its own discretion. If an adaptation leads to a significant change in functionality, Kyano shall make an effort to inform the User thereof. Only if this is technically possible and would not require a disproportionate effort by Kyano, the User may continue to use an older version of the application upon request. Kyano may charge additional costs for providing that possibility.

Article 25. Procedure after termination

25.1 Kyano shall ensure that upon termination of the Agreement the User will be offered a reasonable opportunity to transfer the data of the User stored in the systems of Kyano back to its own systems or to the systems of another supplier. For this purpose Kyano will make every effort to be able to offer the data in a current file format. Any associated costs are the full responsibility of the User.

25.2 Kyano shall in no case bear the responsibility for the migration of the offered Products and Services and associated Materials to a new supplier. This remains the responsibility of the User.

25.3. The destruction and erasure of the User Data and other data of the User by Kyano is done with special precautions to make the destruction, as much as reasonably possible, irreversible.

25.4. The Parties are mutually obliged to return to the possession of the other Party any property of which the other Party is the owner or rightful owner and which is in the possession of one Party without delay after the termination of the Agreement. Certain property, such as data (media), may also be erased or destroyed instead of returned, if the Party entitled thereto has given its consent In Writing.

25.5. All data provided or entered by Kyano remain the property of Kyano at all times. The User only receives a non-exclusive, transferable license that is necessary for the performance of the Agreement.

25.6. The data stored by the User in Kyano's systems will be retained by Kyano for a period of 30 days from the day on which the Agreement is terminated by the User. After this period, the data of the User will be permanently deleted by Kyano.

Article 26. Final provisions

26.1. If any provision of this Agreement proves to be void, this shall not affect the validity of the entire Agreement. Parties shall in that case determine (a) new provision(s) to replace it, by which the intention of the original Agreement and General Conditions is given shape as much as legally possible.

26.2. Any disputes arising from the Agreement will be submitted to the competent court in Groningen.

26.3. The use of the available offer of Kyano is possible for persons who are at least 18 years old.

26.4. Information and statements, including price indications, on the Kyano Website are subject to programming and typing errors. In case of any inconsistency between the Website and the Agreement, the Agreement shall prevail.

26.5. The version of any communication received or stored by Kyano is authentic (including log files), subject to evidence to the contrary to be provided by the User.

26.6. In order to promote its services, Kyano is entitled to show third parties which Projects it provides to the User, unless the reasonable interests of the User make this unacceptable or it has been agreed otherwise in writing.

26.7. Kyano is at all times entitled to involve third parties in the performance of the Agreement.

26.8. Kyano and the User may transfer their rights and obligations under the Agreement to third parties, provided that the other party consents In Writing prior to the transfer.

26.9. All legal claims of the User under the Agreement shall – except for provisions of mandatory law – expire after one year, calculated from the day on which performance of obligations under the Agreement existing between the Parties has become due and payable. This provision does not affect the regular limitation period of Kyano's claims.

26.10. If the Customer is a Consumer he also enjoys the protection of the mandatory provisions of the law applicable where the Consumer is domiciled.

26.11. The log files and other records, electronic or otherwise, of Kyano constitute full evidence of Kyano's statements and the version of any (electronic) communication received or stored by Kyano is authentic, subject to evidence to the contrary to be provided by the Customer. This provision does not apply if the Customer is a Consumer.

kyano

Processor Agreement

Appendix 1

Chapter 1: Standard clauses for processing.

The provisions included in this Annex "Standard Clauses for Processing" are, in addition to the general provisions in these General Terms and Conditions, applicable if Kyano in the context of the performance of the agreement processes personal data on behalf of the controller as a (sub)processor as referred to in the legislation on the protection of personal data. These Standard Clauses for processing together with the practical arrangements in
Chapter 2 of this Appendix form a processor agreement as referred to in article 28 paragraph 3 of the General Data Protection Regulation (AVG).

Article 1. General

1.1 Kyano processes personal data on behalf of the User in accordance with the written instructions of the User agreed with Kyano.

1.2 User is the processing controller in the sense of the General Data Protection Regulation (AVG). User has control over the processing of the personal data and has determined the purpose of and the means for processing the personal data.

1.3 Kyano is a processor in the sense of the AVG and therefore has no control over the purpose of and the means for processing the personal data and therefore does not make decisions about, among other things, the use of the personal data.

1.4 Kyano implements the AVG as laid down in this Appendix. It is up to the User to assess, on the basis of this information, whether Kyano provides sufficient guarantees with respect to the application of appropriate technical and organizational measures, so that the processing meets the requirements of the AVG and the protection of the rights of data subjects are sufficiently guaranteed.

1.5 User warrants to Kyano that it acts in accordance with the AVG, that it adequately secures its systems and infrastructure at all times and that the content, use and/or processing of the personal data are not unlawful and do not infringe any right of a third party.

1.6 User is not entitled to recover from Kyano any fine imposed on him by the supervisor on any legal basis whatsoever. In this Annex 'supervisor' means a supervisory authority as referred to in the AVG.

Article 2. Security

2.1 Kyano takes technical and organizational security measures, as described in Chapter 2 of this Annex. In taking the technical and organizational measures, Kyano has taken into account the state of the art, the implementation costs of the measures, the nature, scope and context of the processing, the nature of its products and services, the processing risks and the risks to the rights and freedoms of data subjects that vary in terms of probability and severity, which Kyano could expect in view of its intended use of its products and services.

2.2 Unless explicitly stated otherwise in the agreement, Kyano's product or service is not designed to process special categories of personal data or data relating to criminal convictions or criminal offenses.

2.3 Kyano strives to ensure that the security measures to be taken by it are appropriate for Kyano's intended use of the product or service.

2.4 The security measures described offer, in the judgment of the User, taking into account the factors mentioned in Article 2.1 of this Appendix, a level of security appropriate to the risk of processing the personal data used or provided by the User.

2.5 Kyano may make changes to the security measures in place if, in its judgment, such changes are necessary to continue to provide an appropriate level of security. Kyano will record significant changes and will notify User of such changes where relevant

2.6 User may request Kyano to take further security measures. The User is not obliged to make changes to its security measures upon such request. Kyano can charge the costs related to the changes made at the request of the User to the User. Only after the modified security measures desired by the User have been agreed in writing by the parties, Kyano has the obligation to actually implement these security measures.

Article 3. Personal data breaches.

3.1 Kyano does not warrant that the security measures are effective under all circumstances. If Kyano discovers a Personal Data breach (as referred to in Article 4 sub 12 AVG), it will inform User without unreasonable delay. Chapter 2 of this Appendix (under data breach protocol) sets out the manner in which Kyano informs User about breaches in connection with Personal Data.

3.2 It is up to the controller (User) to assess whether the Personal Data breach Kyano has informed about must be reported to the Personal Data Authority or data subject. The notification of breaches related to Personal Data, which under Articles 33 and 34 AVG must be reported to the Personal Data Authority or data subject, remains at all times the responsibility of the controller (User). Kyano is not obliged to report breaches related to personal data to the Personal Data Authority or data subject.

3.3 Kyano will provide further information about the personal data breach if necessary and will cooperate in providing necessary information to User for the purpose of a notification to the supervisory authority or data subject.

3.4 Kyano may charge the reasonable costs it incurs in this context to the User at its then current rates.

Article 4 Confidentiality

4.1 Kyano guarantees that the persons who process personal data under its responsibility have a duty of confidentiality.

4.2 Kyano is entitled to provide personal data to third parties, if and to the extent that provision is necessary pursuant to a court order, a statutory regulation, on the basis of an authorized order issued by a government authority or for the proper performance of the agreement.

Article 5. Obligations in the event of termination

5.1 Kyano shall, in the event of termination of a processing agreement, remove all personal data in its possession and received from the User within the period included in the agreement in such a way that it can no longer be used and is no longer accessible, or, if agreed, return it to the User in a machine readable format

5.2 Kyano may charge the User for any costs incurred in connection with the provisions of the previous paragraph. Further arrangements may be laid down in the agreement.

5.3 The provisions of Article 5.1 of this Appendix do not apply if a legal regulation prevents Kyano from wholly or partially deleting or returning the personal data. In such a case, Kyano shall continue to process the personal data only to the extent necessary pursuant to its legal obligations. The provisions of Article 5.1 of this Annex are also not applicable if Kyano is a processing controller in the sense of the AVG with respect to the personal data.

Article 6. Data subjects' rights, Data Protection Impact Assessment (DPIA) and audit rights

6.1 Kyano shall, where possible, cooperate with reasonable requests from the Customer related to Data Subject rights invoked with the Customer by Data Subjects. If Kyano is approached directly by a Data Subject, it will refer the Data Subject to the Client whenever possible.

6.2 If the Customer is obliged to do so, Kyano shall, following a reasonable request to that effect, cooperate with a Data Protection Impact Assessment (DPIA) or subsequent prior consultation as referred to in Articles 35 and 36 AVG.

6.3 Kyano shall cooperate with requests by the Customer to delete personal data to the extent that the Customer cannot carry this out itself.

6.4 If required, Kyano can demonstrate compliance with its obligations under the processing agreement by means of a valid Data Pro Certificate or a certificate or audit report (Third Party Memorandum) of an independent, expert at least equivalent thereto, if it has such a certificate or audit report.

6.5 Kyano shall in addition, at the request of the Customer, make available all further information reasonably required to demonstrate compliance with the agreements made in this processing agreement. If the Customer nevertheless has reason to believe that the processing of Personal Data does not take place in accordance with the processing agreement, he may have an audit conducted by an independent, certified, external expert who can demonstrate experience with the type of processing carried out on the basis of the Agreement, at the expense of the Customer. The audit will be limited to checking compliance with the agreements regarding processing of the Personal Data as laid down in this Processor Agreement. The expert shall have a duty of confidentiality with respect to what he finds and shall only report to the Customer that constitutes a failure to comply with Kyano's obligations under this Processing Agreement. The expert shall provide a copy of his report to Kyano. Kyano may refuse an audit or instruction from the expert if, in its opinion, it violates the AVG or other legislation or constitutes an unacceptable breach of the security measures it has taken.

6.6 The parties will consult as soon as possible about the findings in the report. Parties will follow the proposed remedial measures laid down in the report to the extent that this can reasonably be expected of them. Kyano will implement the proposed improvement measures insofar as, in its judgment

Article 7. Subprocessors

7.1 Kyano has stated in the agreement whether, and if so which third parties (sub-processors) Kyano engages in the processing of personal data.

7.2 User gives permission to Kyano to engage other sub-processors for the performance of its obligations under this agreement.

7.3 Kyano will inform User about a change in the third parties engaged by Kyano. User has the right to object to the aforementioned change by Kyano.

Chapter 2: Specific agreements regarding the processing of personal data

1. Intended use.
Kyano is designed and set up to process the following types of data with it:
- Name data user
- User login data
- User contact information
- Payment data user

The services and products offered by Kyano do not include the processing of special personal data, or data relating to criminal convictions and offenses or government-issued personal numbers.

2. Processing Agreement
Kyano uses the Standard Clauses for processing, which can be found as an annex to the Agreement.

3. Subprocessors
Kyano uses the following sub-processors:
- Virtio ICT BV (Netherlands)
- Stripe (The Netherlands)

4. Processing outside the European Economic Area (EEA).
Kyano processes the personal data of its clients within the EU/EEA.

5. After termination of the Agreement
Upon termination of the Agreement with the User, Kyano will return all personal data it processes for the Client. Kyano will then delete all available User Data immediately.

6. Security Policy

Kyano secures the application server by using, among other things, an IPS (Intrusion Prevention System) and a firewall. These systems help detect and block suspicious traffic on the Web server, such as attacks on the server or attempts to gain unauthorized access. Furthermore, restrictive and controlling configurations are present, such as:

- HTTP Strict Transport Security (HSTS)
- Content Security Policy (CSP).
- X-XSS-Protection
- X-Frame-Options
- Referrer-Policy
- Permissions-Policy

Furthermore, all Kyano apps are secured with a variation of the OAuth-2 industry standard protocol. Generated access tokens are valid for 5 minutes. Access tokens and Refresh tokens are stored in the User's Cookies. Also, these access tokens can only be used for by a User with the same User Agent header used to request the token. Passwords are stored hashed in the database. Only the required data is stored in the database.

For Kyano Service Desk, (access)(refresh) tokens are used for JWT. For Kyano Service Desk, the (access)(refresh) tokens are stored encrypted in the database based on the appsecret.