

## DATA PROCESSING AGREEMENT

### THE UNDERSIGNED:

1. \_\_\_\_\_, having its registered office in \_\_\_\_\_, legally represented by \_\_\_\_\_, in its capacity of \_\_\_\_\_, hereinafter referred to as the “**Controller**”,

and,

2. Frisse Blikken ondernemen met talent B.V. (*besloten vennootschap met beperkte aansprakelijkheid*), having its registered office in Utrecht, 3527 VX, Grebbeberglaan 15, legally represented by [NAME], in its capacity of [TITLE], hereinafter referred to as the “**Processor**”,

each individually referred to as a “**Party**” and collectively the “**Parties**”;

### WHEREAS:

- (A) under the Agreement, the Controller has appointed the Processor to provide access to its software regarding digital interactive games for relevant organizational topics and questions to the Controller. In performing its services, the Processor will Process Personal Data on behalf of the Controller. This Data Processing Agreement forms an integral part of the Agreement;
- (B) the Parties agree that the Controller qualifies as a “controller” and that the Processor qualifies as a “processor” pursuant to the General Data Protection Regulation (“**GDPR**”);
- (C) the Personal Data is made available by the Controller to the Processor to Process this on behalf of Controller; and
- (D) taking into account article 28 of the GDPR, the Controller and the Processor wish to set detailed arrangements in this Data Processing Agreement regarding the Processing of Personal Data by the Processor on behalf of the Controller;

### AGREE AS FOLLOWS:

#### 1. Definitions

The following terms are used in this Data Processing Agreement:

**Data Subject** the person to whom the Personal Data concerns, as further indicated in **Annex 1**;

**Data Processing Agreement or DPA:** this data processing agreement;

**Data Breach:** a breach of security, within the meaning of section article 4(12) of the GDPR leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise processed;

**Personal Data:** the personal data within the meaning of the GDPR that Processor Processes on behalf of Controller in accordance with the Agreement, as further indicated in **Annex 1**;

<b>Process or Processing:</b>	any operation or any set of operations concerning Personal Data, including in any case the collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of Personal Data.
<b>Sub-processor:</b>	a processor engaged by Processor to Process Personal Data;
<b>Agreement:</b>	the agreement between the Parties whereby the Controller has engaged the Processor to provide e-HRM-services. A previously agreed data processing agreement is considered to be part of the Agreement.

## 2. Processing

- 2.1 The Processor will Process Personal Data on behalf of the Controller in accordance with the provisions of this Data Processing Agreement.
- 2.2 The Processing by Processor of Personal Data shall comply with all applicable legislation and regulations regarding the protection of Personal Data.
- 2.3 The Processor shall only Process Personal Data in accordance with the Controller's written instructions or in accordance with the obligations arising from the Agreement or this Data Processing Agreement, which includes the use of (aggregated and anonymized) data for invoicing purposes and for statistical research of (the quality of) its service. The Processor may not Process any Personal Data for any other reason.
- 2.4 The Processor shall immediately inform the Controller if, in its opinion, an instruction infringes the GDPR or other applicable GDPR implementation laws.
- 2.5 The Processor shall Process Personal Data from the European Economic Area ("**EEA**") within the EEA in accordance with the GDPR. The Processor shall ensure that a transfer of Personal Data to a third country or an international organization, is a country as described in art. 45 GDPR or has appropriate safeguards as described in art. 46 GDPR and that such transfers and safeguards are documented in accordance with art. 30 (2) GDPR. In the event that Personal Data is Processed outside the EEA based on a model contract for the transfer of personal data (as referred to in art. 46 (2) or (3) GDPR), the Controller authorizes Processor to conclude these clauses on its behalf.

## 3. Co-operation Processor

The Processor will assist the Controller in ensuring its compliance with the obligations pursuant to articles 32 to 36 of the GDPR taking into account the nature of Processing and the information available to the Processor. If this assistance goes beyond what is legally or may reasonably be expected from the Processor, the Parties will determine in advance and in writing (including by e-mail) what (hourly) rate the Processor will apply when providing this assistance.

#### 4. **Sub-processors**

- 4.1 The Processor shall not engage any Sub-processor other than (i) as permitted pursuant to this Data Processing Agreement or the Agreement or (ii) with the Controller's specific written approval. An overview of the Sub-processors engaged by Processor is available at <https://frisseblikken.com/nl/privacy-security-game-studio/> . The Controller agrees with the use of the Sub-processors that are mentioned in this overview at the time of signing this DPA.
- 4.2 Notwithstanding clause 4.1, the Controller gives its general consent that the Processor uses Sub-processors for the services listed in **Annex 1**. The Processor shall inform the Controller of any intended changes concerning the addition or replacement of other Sub-processors in such a timely fashion that the Controller has the possibility to object to the change. Within 4 weeks of the receipt of a notice of the Processor, the Controller may object to the addition or change on reasonable grounds. The following circumstances are considered to be reasonable grounds:
- a. the intended new Sub-processor is established outside of the EEA, is neither bound by binding corporate rules, nor certified under the EU-U.S. Privacy Shield, and is not willing to enter into a model contract for the transfer of personal data to third countries with the Controller;
  - b. the intended new Sub-processor will unlikely be able to comply with the obligations imposed on the Processor in accordance with this DPA, as evidenced by the Controller; or
  - c. the addition or replacement of a Sub-processor likely introduces an unreasonable risk to the protection of Personal Data, as evidenced by the Controller.

Where the Controller timely objects to the addition or replacement of a Sub-processor on reasonable grounds, the Processor may propose an alternative manner as to proceed with the relevant services within a reasonable term. If such proposal is reasonably unacceptable for the Controller, or where the Processor will not make a proposal, the Controller may terminate (*opzeggen*) the part of the services which cannot be provided without the addition or replacement of the relevant Sub-processor.

- 4.3 The Processor is responsible and liable for the Sub-processors he engages in the performance of his obligations under this Processing of Personal Data. In any event, the Processor will impose on the Sub-processors equivalent obligations as set out in this Data Processing Agreement.

#### 5. **Requests from Data Subjects and competent Authorities**

- 5.1 At the request of the Controller, the Processor will immediately give the Controller access to the Personal Data. Furthermore, at the request of the Controller, the Processor shall within two (2) weeks, (i) provide a copy to the Controller of all Personal Data and all Personal Data relating to a certain individual in the Processor's possession as well as a copy of all documents containing these Personal Data and an overview of all systems in which these Personal Data are Processed and all other Processing of this Personal Data by Processor in a format Controller reasonably requests, unless such information is already available to the Controller (ii) delete, block or correct certain Personal Data in accordance with the Controller's instructions, or (iii) document that certain requests for removal, blocking or correction are not executed and the reasons thereof.

5.2 If the Processor receives any requests (such as requests for access, rectification, data erasure or restriction of Processing) from a Data Subject, Processor will forward it to the Controller without delay. Not later than two (2) weeks after receipt of the request for access to Personal Data, Processor will provide Controller a copy of all Personal Data relating this Data Subject which Processor has in his possession as well as a copy of all documents and an overview of all systems in which these Personal Data are Processed and all other Processing of this Personal Data by Processor, insofar as the Controller does not already have such information available.

5.3 The Processor shall immediately inform the Controller if a competent authority has made a legally binding request for the disclosure of the Personal Data unless the Processor is not allowed to inform the Controller for important reasons of public interest, as in the case of a criminal order to preserve the confidentiality of a law enforcement investigation.

## 6. Confidentiality, security and right to audit

6.1 The Processor will implement appropriate technical and organizational measures in accordance with article 32 GDPR to protect the Personal Data from destruction, loss or unauthorized disclosure or other unlawful Processing, including unnecessary collection and further Processing of Personal Data. The Processor has further specified its security measures at <https://frisseblikken.com/nl/privacy-security-game-studio/> . The Processor reserves the right to replace its security measures by other adequate and generally accepted measures that the Processor deems appropriate.

6.2 The Processor will ensure that only its authorized personnel that needs access to Process the Personal Data will have access to the Personal Data. The (categories of) personnel that have access to the Personal Data are listed in **Annex 1**. The Processor will adequately instruct these persons and ensure that they respect the confidentiality of the Personal Data and are aware of the responsibilities and obligations under the GDPR.

6.3 The Controller has the right to perform audits in accordance with arrangement specified in this DPA. Upon the request of the Controller in accordance with this clause, the Processor will submit at least its facilities where the Personal Data are Processed for audit of the Processing relating to that Controller. Such audit shall be carried out by an inspection body composed of independent members and in possession of the required professional qualifications bound by a duty of confidentiality, selected by the Controller in consultation with the Processor. This independent party shall be qualified as an (IT-) auditor and will at least accredited as a Certified Public Controller (*Register Controller*), Certified Public Accountant (*Register Accountant*) or a Certified Public EDP-auditor (*Register EDP-auditor*). The (internal and external) costs of the audit will be borne by the Controller, unless the results of the audit show any substantial non-compliance with this DPA. Before the commencement of the audit, the Controller and the Processor shall mutually agree upon the scope, planning and the duration of the audit, together with a reasonable hourly rate for support provided by the Processor and its external Sub-processors. The Controller will not be entitled to request onsite audits where the Processor will submit a recent internal or external audit report to the Controller, covering the applicable facilities, unless the Controller can demonstrate that such internal or external audit report is insufficient to comply with the GDPR.

## 7. Data Breach

7.1 In case of a Data Breach regarding the Personal Data Processed by the Processor or its Sub-processors, the Processor shall notify the Controller without unreasonable delay,

and at least 36 hours after becoming aware of the Data Breach. The Processor will provide the Controller with all reasonably required information, including at least the information referred to in article 33(3) of the GDPR, to enable the Controller to notify - if required by article 33 and 34 of the GDPR - the Dutch Data Protection Authority and the relevant Data Subject(s).

7.2 When providing the information as referred to in clause 7.1 the Processor will provide the information in the way such information is requested by the Dutch Data Protection Authority throughout its standard, model forms. Furthermore, the Processor's data protection officer will be available for any follow-up questions that the Controller may have.

7.3 The Processor will notify the Controller if any new, relevant developments occur after the notification to the Controller as referred to in article 7.1, including about the measures the Processor (and its Sub-processors) undertake to limit the consequences of the Data Breach.

7.4 If Personal Data have been damaged or have otherwise become unusable due to a Data Breach, the Processor will attempt to repair it without delay and free of charge based on its applicable backup and / or disaster recovery procedures.

## 8. **Liability**

8.1 The Processor is liable to the Controller as a result of or in relation to this Data Processing Agreement insofar and to the extent as agreed upon in the Agreement. The limitation of liability as agreed upon in the Agreement also applies to the obligations in this Data Processing Agreement, provided, however, that the Processor shall not be liable more than once in respect of the same claim.

8.2 Without prejudice to art. 8.1, the limitation of liability as agreed upon in the Agreement does not apply in the event of damages suffered by a Data Subject for which Processor is liable in accordance with art. 82 GDPR.

## 9. **Force Majeure (*overmacht*)**

The Processor shall notify the Controller without undue delay in the event that Processor is unable to fulfill its obligations pursuant to this Data Processing Agreement in whole or in part as a result of force majeure.

## 10. **Duration**

This Data Processing Agreement shall enter into force on the date of signature by both Parties and will remain in force for the duration of the Agreement.

## 11. **Additions and alterations of this Data Processing Agreement**

Additions and alterations to this Data Processing Agreement and the corresponding appendices shall only be valid if they have been explicitly agreed upon in writing by the Parties. This means, for the avoidance of doubt, that handwritten changes to this Data Processing Agreement will only be valid if they are initialed by both Parties.

## 12. **Assignment**

A Party is not permitted to assign its rights and/or obligations under this Data Processing Agreement to a third party, without the other Party's prior written consent.

13. **Return / destruction of Personal Data**

After the termination of this Data Processing Agreement, the Processor shall transfer all Personal Data to the Controller within a reasonable period of time and/or shall, upon the Controller's request, destroy or delete all Personal Data, including all (copies of) electronically recorded Personal Data, and confirm in writing to the Controller that all Personal Data has been returned, destroyed or deleted. If the Processor is required by law to keep Processing certain Personal Data, it will fulfill the Controller's request insofar as legally permitted. At the request and expense of the Controller, the Processor shall provide this written conformation with a certified statement from a certified public IT-auditor.

14. **Final provisions**

14.1 This Data Processing Agreement shall be governed by the laws of the Netherlands. All disputes shall be submitted to the competent court in Amsterdam, the Netherlands.

14.2 If any of the provisions of this Data Processing Agreement is null and void (*nietig*) or is declared null and void (*vernietigd*), this shall be without prejudice to the legal effect of the other provisions.

14.3 The rights and duties in this Data Processing Agreement which by their nature and content are intended to remain in effect, shall remain in full effect after the termination thereof.

14.4 In case of conflict between the provisions of this Data Processing Agreement and the Agreement, the provisions of this Data Processing Agreement shall prevail.

**AGREED AND SIGNED:**

\_\_\_\_\_  
(Controller)

**Frisse Blikken ondernemen met talent B.V.**  
(Processor)

\_\_\_\_\_

\_\_\_\_\_

name :

name :

title :

title :

date :

date :

**Annex 1 - List of types of Personal Data, categories of Data Subject(s) and Sub-processors**

When performing the services as indicated in the Agreement, the Processor Processes Personal Data. Depending on the provided services, the following (type) of Personal Data may be Processed:

Type of Personal Data
E-mail addresses

Depending on the provided services, the following (category) of personnel may have access to Personal Data:

- Project Manager
- Developer
- Q&A tester

Depending on the provided services, the following categories of Data Subject(s) can be Processed:

- Personnel of Controller

List of activities performed by Sub-processors for which the Controller gives its general consent:

- Hosting & storage (currently: Cloudways: managed hosting party using Google Cloud Platforms which are located in Amsterdam, Netherlands.
- Game Development and maintenance activities (currently: Born Digital PT. PMA: development team Frisse Blikken. Full subsidiary (dochteronderneming) off Frisse Blikken OMT B.V.)
- authentication party for sending e-mails within the game application. (currently: Mailjet)