

Cyberfusion

TOS (Terms of Service)

Version: 1.2
July 2024

These Terms of Service apply to every offer or quotation from Cyberfusion regarding Services and form an integral part of every Agreement between Cyberfusion and the Customer. Provisions or conditions set by the Customer that deviate from, or do not appear in, these Terms of Service apply Cyberfusion is only binding if and insofar as these have been expressly accepted in Writing by Cyberfusion. Capitalised terms have the meaning stated in the first article.

Article 1 Definitions

In these conditions the following definitions apply:

- 1.1 Subscription**
The Agreement under which one or more of the parties undertakes to perform continuously or repeatedly for a certain period of time (e.g. a hosting contract of 1 month that is automatically extended each time).
- 1.2 Platform**
The right of access to a user interface with which the Customer can manage and configure (certain aspects of) the Services, as well as the configuration(s) and the files themselves stored for the Customer.
- 1.3 Terms of Service**
The provisions of this document.
- 1.4 Certificate**
A digitally signed electronic data file issued by a certificate authority (CA) to a (legal) person, who aims to carry out (business) activities via a communications network that may contain: a copy of the public key, a serial number, a validity period during which the electronic data file may be used and a digital signature issued by the CA. With a higher validation degree than domain validation (DV), the certificate also contains the identity of the (legal) person authorised to use the certificate.
- 1.5 Certificate Authority**
The issuer and manager of Certificates.
- 1.6 Cyberfusion**
The company Cyberfusion, located in Eindhoven and registered with the Chamber of Commerce under file number 94182787.
- 1.7 Cyberfusion Website**
The Cyberfusion website, accessible via the domain <https://cyberfusion.io>.

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- 1.8 Services**
The products and/or services that Cyberfusion will provide to the Customer under an Agreement.
- 1.9 Customer**
The natural person or legal entity with whom Cyberfusion has concluded an Agreement. This also includes the person who enters into or is negotiating with Cyberfusion, as well as his representative(s), authorised representative(s), legal successor (s) and heirs.
- 1.10 Customer data**
All (personal) data stored by the Customer or its end users on the systems used for the provision of the Service.
- 1.11 Materials**
All works, such as websites and (web) applications, software, corporate identities, logos, folders, brochures, leaflets, lettering, advertisements, marketing and/or communication plans, concepts, images, texts, sketches, documentation, advice, reports and others products of the mind, as well as preparatory material thereof and files or data carriers (encrypted or not) on which the Materials are located.
- 1.12 Agreement**
Any agreement between Cyberfusion and Customer on the basis of which Cyberfusion provides Services to Customer.
- 1.13 Written**
In addition to paper writings, also e-mail and communication by fax, provided that the identity of the sender and the integrity of the message are sufficiently established.
- 1.14 Applications with Increased Risk**
Applications where an error in the Services can lead to death or serious injury, serious environmental damage or loss of (personal) data with very high consequential damage. Examples of Applications with Increased Risk are: transport systems where an error can result in trains derailing or aircrafts crashing; medical systems where an error can result in a patient not being able to receive treatment or receiving the wrong treatment; systems on which a substantial part of the population depends for the provision of crucial government services, such as DigiD; systems in which (many) medical data or other special data within the meaning of the General Data Protection Regulation, or otherwise very sensitive data, are stored.

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Article 2 Contact concluding

- 2.1** Customer can request the Services directly from the Cyberfusion Website. It is also possible to submit a request for the delivery of Services by e-mail. The Agreement comes into existence at the time of sending the (automatically generated or otherwise) email from Cyberfusion containing the confirmation and acceptance of the application.
- 2.2** Agreements concluded are final and cannot be terminated prematurely by the Customer. Cyberfusion does not enter into agreements with consumers.

Article 3 Execution of the Agreement

- 3.1** After the Agreement has been concluded, Cyberfusion will fulfil it to the best of its ability and with sufficient care and craftsmanship.
- 3.2** Cyberfusion will make every effort to achieve high-quality and uninterrupted availability of Services and associated systems and networks, and to provide access to data stored by the Customer. However, Cyberfusion offers no guarantees about quality or availability, unless otherwise agreed in a Service Level Agreement (SLA) designated as such.
- 3.3** Delivery terms stated by Cyberfusion are always indicative, except where the applicable SLA sets terms that cannot be interpreted other than as an obligation to achieve results.
- 3.4** If and to the extent that this is required for the proper execution of the Agreement, Cyberfusion has the right to have certain work carried out by third parties. Any unexpected additional costs related to this will be borne by the Customer, unless otherwise agreed. These Terms of Service also apply to the work performed by third parties in the context of the Agreement.
- 3.5** If this has been agreed, Cyberfusion will provide the Customer with access to a Platform. The Platform will be accessible by entering a password and username. Cyberfusion advises Customer to enable 2FA (2-factor authentication) in cases where this option is offered by Cyberfusion. Every action that takes place through the Customer's Platform is deemed to have taken place under the responsibility and risk of the Customer. If the Customer suspects or should reasonably suspect or know that misuse of the Platform is taking place, the Customer must report this to Cyberfusion as soon as possible so that it can take measures.
- 3.6** Cyberfusion will remain available to provide a reasonable level of remote customer support by telephone and email during regular business hours, unless otherwise provided by the applicable SLA.
- 3.7** All changes to the Agreement, either at the request of the Customer or as a result of the fact that a different execution is necessary due to any circumstances, will be regarded as additional work if additional costs are involved and will be invoiced to the Customer accordingly.

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- 3.8** Cyberfusion will make every effort to keep the software it uses up to date. However, Cyberfusion is or may be dependent on its supplier(s). Cyberfusion is entitled not to install certain updates or patches if, in its opinion, this will not benefit the correct delivery of the Service or if, in its opinion, failure to install this will not be detrimental to the delivery of the Service.

Article 4 Customer obligations

- 4.1** The Customer is obliged to do everything that is reasonably necessary and desirable to enable timely and correct execution of the Agreement. In particular, the Customer shall ensure that all information that Cyberfusion indicates is necessary or of which the Customer should reasonably understand that it is necessary for the performance of the Services, is provided to Cyberfusion in a timely manner. The period within which Cyberfusion must execute the Agreement will not commence until all requested and necessary data have been received by Cyberfusion.
- 4.2** If the Customer knows or suspects that Cyberfusion will have to take certain (additional) measures to meet its obligations, the Customer will immediately inform Cyberfusion of this. This obligation applies, for example, if the Customer knows or should foresee that there will be an extraordinary peak in load on Cyberfusion's systems, which could in some likelihood cause unavailability of the Services. This is especially true if the Customer knows that Services are also provided to others via the same systems that Cyberfusion uses to provide Services to the Customer. After warning, Cyberfusion will do everything it can to prevent unavailability of the Services. Unless expressly agreed otherwise in Writing, all reasonable additional costs incurred may be charged to the Customer.
- 4.3** Customer may use the Services for High Risk Applications, unless a specific Service has been identified as not suitable for such applications.
- 4.4** If the Customer requires any permit or other permission from government agencies or third parties for the specific use that it gives or intends to give to the Services, the Customer must arrange for this to be obtained. Customer guarantees to Cyberfusion that it has all permits and/or permissions necessary for Customer's use of the Services.

Article 5 Rules of conduct and notice/takedown

- 5.1** The Customer is prohibited from violating Dutch or other laws or regulations applicable to Customer or Cyberfusion or from infringing the rights of others by using the Services.
- 5.2** You are prohibited (whether legal or not) from offering or distributing Materials using the Services that:
- are unmistakably primarily intended to assist others in violating the rights of third parties, such as websites with (exclusively or mainly) hacking tools or explanations about computer crime that are apparently intended to enable the reader to commit the described criminal behavior. commit and not to be able to defend oneself against it;
 - be unmistakably libelous, defamatory, insulting, racist, discriminatory or hateful;

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- child pornography or bestiality pornography or are apparently intended to help others find such materials;
- a violation of the privacy of third parties, including in any case but not limited to the distribution of personal data of third parties without permission or necessity or repeatedly harassing third parties with unwanted communications from them;
- hyperlinks, torrents or references with (locations of) material that clearly infringes copyrights, neighboring rights or portrait rights;
- unsolicited commercial, charitable or idealistic communications, except in cases where this is legally permitted;
- malicious content such as viruses or spyware.

5.3 Distributing pornographic Materials through the Services is permitted provided this does not constitute a nuisance or other violation of these Terms of Service.

5.4 The Customer shall refrain from hindering other customers or internet users or causing damage to systems or networks of Cyberfusion or other customers. The Customer is prohibited from starting processes or programs, whether or not via Cyberfusion's systems, which the Customer knows or can reasonably suspect will hinder or cause damage to Cyberfusion, its customers or internet users. If, in the opinion of Cyberfusion, nuisance, damage or other danger arises for the functioning of the computer systems or the network of Cyberfusion or third parties and/or of the services provided via the internet, in particular due to excessive sending of e-mail or other data, denial-of-service attacks, poorly secured systems or activities of viruses, Trojans and similar software, Cyberfusion is entitled to take all measures it reasonably deems necessary to avert or prevent this danger. Cyberfusion may recover the costs that are reasonably necessary associated with these measures from the Customer, if the Customer can be blamed for the cause.

5.5 If Cyberfusion receives a complaint about a violation of this article by the Customer, or finds that this appears to be the case, Cyberfusion will inform the Customer of the complaint or violation as soon as possible. Customer will respond as soon as possible, after which Cyberfusion will decide how to act. In exceptional cases where, in Cyberfusion's opinion, the complainant has requested that the complaint not be forwarded, or Cyberfusion believes that the violation is undeniable, Cyberfusion is not required to forward the complaint.

5.6 If Cyberfusion believes that a violation has occurred, it will block access to the Material in question. Cyberfusion will make every effort not to touch any other Materials. Cyberfusion will inform the Customer as soon as possible of measures taken.

5.7 Cyberfusion is at all times entitled to report any (suspected) criminal offences.

5.8 Although Cyberfusion strives to act as reasonably, carefully and adequately as possible after complaints about the Customer, Cyberfusion is never obliged to compensate damage as a result of measures as referred to in this article.

5.9 The Customer is permitted to supply (resell) the Services, but only in combination with or as part of the Customer's own products or services. Customer must indemnify Cyberfusion against all claims by relevant customers. Cyberfusion may also take full action in the event of violations of these Terms of Service by those customers.

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Article 6 Request for domain names

- 6.1** The application, allocation and possible use of a domain name depend on and are subject to the applicable rules and procedures of the relevant registration authorities, such as the Stichting Internet Domeinregistratie Nederland (SIDN) for .nl domain names. The relevant authority decides on the allocation of a domain name. Cyberfusion only fulfils an intermediary role in the application and does not guarantee that an application will be honoured.
- 6.2** The Customer provides Cyberfusion with sufficient power of attorney, with the right of substitution, to perform the necessary (legal) acts on its behalf (for example the act of accepting the Terms of Service used by a registration authority and/or registrar), all this for as necessary when applying for and granting a domain name.
- 6.3** The Customer can only learn the fact of registration from Cyberfusion's confirmation, which states that the requested domain name has been registered. An invoice for registration costs is not confirmation of registration.
- 6.4** Customer indemnifies and holds Cyberfusion harmless for all damage related to (the use of) a domain name on behalf of or by Customer. Cyberfusion is not liable for the Customer losing his right(s) to a domain name or for the fact that the domain name is requested and/or obtained in the meantime by a third party, except in the event of intent or deliberate recklessness on the part of Cyberfusion.
- 6.5** The Customer must comply with the rules that registering authorities set for the application, allocation or use of a domain name. Cyberfusion will refer to these rules during the registration procedure or, failing this, Cyberfusion will make them available to the Customer upon request.
- 6.6** Cyberfusion has the right to make the domain name inaccessible or unusable, or to place it in its own name if the Customer demonstrably fails to comply with the Agreement, but only for the duration that the Customer is in default and only after expiry of a reasonable period for compliance set in a written notice of default.
- 6.7** In the event of termination of the Agreement due to non-performance by the Customer, Cyberfusion is entitled to cancel a domain name of the Customer with immediate effect.

Article 7 Request for Certificates

- 7.1** When the Customer requests a Certificate from Cyberfusion, Cyberfusion will forward the request for the provision of a Certificate to (a partner of) the Certificate Authority. In this context, Cyberfusion must meet certain requirements imposed by the relevant Certificate Authority. Cyberfusion is, among other things, obliged to request certain information from the Customer. This information, such as the name of the applicant, may be reflected in the Certificate issued by the Certificate Authority.

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- 7.2** The Customer provides Cyberfusion with sufficient power of attorney, with the right of substitution, to perform the necessary (legal) acts on its behalf (for example the act of accepting the Terms of Service used by a Certificate Authority or its partner) to the extent necessary for the application and awarding a Certificate.
- 7.3** The Customer must check all data provided in this context before Cyberfusion forwards the request for the issuance of a Certificate to the Certificate Authority. Cyberfusion is not obliged to the Customer to verify whether the information provided by the Customer is complete and correct. The Certificate Authority creates the Certificate based on the data provided by Customer to Cyberfusion.
- 7.4** The Customer realises and agrees that the (partners of the) Certificate Authorities with which Cyberfusion collaborates can make the final unilateral decision to grant, adjust or revoke Certificates. Cyberfusion will make every effort to support and inform the Customer as best as possible in the process of granting, adjusting or revoking Certificates.
- 7.5** Upon issuance of a Certificate, Certificate Authority provides Customer with a revocable, non-exclusive, non-transferable license to the issued Certificate for the duration and scope as stated therein.
- 7.6** If any inaccuracies are discovered in a Certificate or the request for one, the Customer will immediately inform Cyberfusion.
- 7.7** Customer will immediately discontinue use of the Certificate or instruct it to do so and immediately request Cyberfusion to revoke the relevant Certificate if,
(a) information in the Certificate is (or has become) incorrect; (b) there is a suspicion or actual misuse or theft of the private key that forms the key pair with the public key in the requested Certificate.
- 7.8** Cyberfusion is entitled to immediately withdraw the Certificate, without being liable for any damage that may result from this, if:
a. it appears that the Certificate contains incorrect information;
b. Customer has not paid the amount due for the Certificate or has not paid it on time;
c. the reliability of the Certificate, in the opinion of Cyberfusion, has been compromised;
d. Customer fails to fulfil its obligations under the Agreement and does not remedy this shortcoming within 14 days after notice of default by Cyberfusion;
e. Cyberfusion discovers that the Certificate is being used in criminal activities, such as fraud, distribution of malware or phishing or is otherwise misused; or
f. the Terms of Service used by the Certificate Authority give reason to do so.
- 7.9** Customer will immediately cease use of the Certificate and the associated private key if the Certificate has been revoked. Customer will follow the instructions of Cyberfusion or the Certificate Authority in relation to a stolen private key as soon as possible after notification and at most within the period set by Cyberfusion or the Certificate Authority in the notification.

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- 7.10** If a Certificate is revoked, the Customer is not entitled to a replacement Certificate or to a refund of (part of) the fee for the Certificate, unless the revocation is due to the fact that Cyberfusion is at fault and Cyberfusion has not resolved this defect within a period of time. repaired within a reasonable period of time. In such a case, Cyberfusion will only be obliged to supply a new Certificate as a replacement for the remaining validity of the original Certificate.
- 7.11** To the extent relevant, Cyberfusion makes every effort to warn the Customer before the Certificate expires that the Certificate will need to be renewed. However, it always remains the Customer's own responsibility to renew Certificates in a timely manner.
- 7.12** Unless otherwise stated, Cyberfusion is not responsible for the (correct) implementation of Certificates within the Customer's infrastructure.

Article 8 Hosting

Hosting

- 8.1** If the Services (also) consist of hosting, the capacity and storage space of the hardware made available by Cyberfusion to the Customer is shared with other customers of Cyberfusion. Articles 8.5 - 8.7 apply mutatis mutandis.
- 8.2** Due to the shared infrastructure, the Customer must avoid unnecessary peak loads on the Services and must refrain from using the Services in such a way that it causes inconvenience to other customers who use the hardware.
- 8.3** In the event of an excessive load on the hardware by the Customer, Cyberfusion may temporarily block the Services in whole or in part in order to ensure the quality of service for other customers, without being liable for any resulting damage. In such a case, Cyberfusion will inform the Customer as soon as possible and enter into discussions with the Customer about a suitable sustainable solution.

Cluster

- 8.4** If the Services (partly) consist of a (dedicated) cluster, Cyberfusion will make virtually subdivided hardware available to the Customer and the Customer will have its own capacity and storage space. This may involve multiple servers that serve the same application and may or may not be spread across multiple data centers.
- 8.5** Customer may at any time request Cyberfusion to upgrade the purchased capacity and storage space for these Services. Cyberfusion strives to implement the requested upgrade as quickly as possible.
- 8.6** Downgrading these Services is only possible at the end of the agreed contract period, unless otherwise agreed. Customer must submit a request for the downgrade to Cyberfusion at least one (1) month before the end of the contract period. Cyberfusion will implement the downgrade on the start date of the new contract period.
- 8.7** The request for upgrading or downgrading these Services can only be submitted by the Customer via the procedure used by Cyberfusion.

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Article 9 Usage limits

- 9.1** Cyberfusion may set a maximum on the amount of storage space, data traffic, RAM, CPU and I/O or other elements that the Customer may or may not use per period or can actually use in the context of the Services.
- 9.2** The total amount of usable storage capacity for the Services purchased by Customer may differ from the specified capacity as space may be reserved for the operating system, system file(s) and other supporting file(s).
- 9.3** If the Customer exceeds the applicable limits, Cyberfusion may charge costs according to the amounts applicable in the price list after sending at least one warning message to the Customer regarding the excess.
- 9.4** There is no liability for the consequences of not being able to send, receive, store, change or access data if an agreed limit has been exceeded.
- 9.5** If an excessive amount of data traffic is caused by an external cause (such as a denial-of-service attack), Cyberfusion is entitled to reasonably charge the costs to the Customer.

Article 10 Email and related services

- 10.1** If purchased as a Service, Cyberfusion will facilitate the sending, storing and receiving of e-mail for the Customer.
- 10.2** Cyberfusion is entitled to use spam filters and configure them at its own discretion. Cyberfusion is not liable for e-mail that is not received or sent as a result of the filter used.
- 10.3** When using e-mail-related Services, such as the option to send e-mail via a Cyberfusion SMTP relay server, the Customer and its end users must at all times comply with the restrictions that Cyberfusion applies. Such restrictions may be adjusted or introduced from time to time, unless explicitly agreed otherwise. Cyberfusion is entitled to immediately discontinue these Services if the Customer does not comply with the restrictions.

Article 11 Backup and recovery

- 11.1** Only if this has been explicitly agreed in the Agreement or SLA will Cyberfusion make backup copies of the Customer Data stored on Cyberfusion's systems and make these available to the Customer upon request, for a fee. Work in the context of repairing damaged Customer data or restoring backups is not included in the agreed fee and can be carried out on the basis of a separate quotation.
- 11.2** Cyberfusion makes every effort to ensure that the backups it makes are technically sufficient to ensure complete recovery in the event of loss or damage, but offers no guarantees in this context unless this has been explicitly promised.

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- 11.3** Backup copies may be destroyed by Cyberfusion at any time after termination or dissolution of the Agreement. It is the Customer's responsibility to request a backup copy of the Customer Data upon termination or dissolution in accordance with Article 20.

Article 12 Intellectual property rights

- 12.1** All intellectual property rights to all Materials developed or made available by Cyberfusion in the context of the Agreement rest exclusively with Cyberfusion or its licensors.
- 12.2** The Customer only obtains the user rights and powers that are explicitly granted in Writing in these Terms of Service, the Agreement or otherwise and otherwise the Customer will not reproduce or make public these Materials. The aforementioned is an exception if it has clearly been inadvertently failed to provide the Customer with such a right in an express manner. However, release of source code of Materials is at all times only mandatory if explicitly agreed.
- 12.3** Unless and insofar as otherwise agreed in Writing, the Customer is not permitted to remove or change any indication regarding copyrights, trademarks, trade names or other intellectual property rights from these Materials, including indications regarding the confidential nature and secrecy of the Materials.
- 12.4** Cyberfusion is permitted to take technical measures to protect its Materials. If Cyberfusion has secured these Materials by means of technical protection, the Customer is not permitted to remove or circumvent this protection, except if and to the extent that the law stipulates the contrary.

Article 13 Prices

- 13.1** Unless expressly stated otherwise for an amount, all prices quoted by Cyberfusion are exclusive of sales tax and other levies imposed by the government.
- 13.2** If a price is based on information provided by the Customer and this information turns out to be incorrect, Cyberfusion has the right to adjust the prices accordingly, even after the Agreement has already been concluded.
- 13.3** If the Agreement concerns a Subscription, Cyberfusion is entitled to change the rates charged at any time.
- 13.4** The same conditions and procedures apply to price changes as to changes to the Services and these Terms of Service.

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Article 14 **Terms of payment**

- 14.1** Cyberfusion will invoice the amounts owed by the Customer to the Customer. Cyberfusion may issue electronic invoices. Cyberfusion has the right to periodically charge amounts due prior to the delivery of the Services.
- 14.2** The payment term for an invoice is 21 days, unless otherwise agreed in Writing.
- 14.3** If the Customer has not paid in full after 14 days after the payment term, he is automatically in default without notice of default being required.
- 14.4** If the Customer is in default, this will have the following consequences:
- a. statutory interest is due on the outstanding amount;
 - b. Customer owes the maximum statutory collection costs;
 - c. in addition to the amount owed and the interest due, the Customer is obliged to fully reimburse both extrajudicial and judicial collection costs, including the costs for lawyers, bailiffs and collection agencies;
 - d. the Services provided to the Customer (for example the websites and other Materials hosted for the Customer) may be made inaccessible without further notice until the outstanding amounts, interest and the like have been paid.
- 14.5** The right to suspension, settlement or deduction is excluded with regards to the Customer.
- 14.6** In the event that the Customer fails to comply with any obligation under the Agreement, Cyberfusion is entitled to take back goods delivered without any notice of default, in addition to suspension of Services, without prejudice to Cyberfusion's right to compensation for damage, lost profits and interest.

Article 15 **Liability**

- 15.1** Cyberfusion is not liable in the context of the conclusion or execution of the Agreement, except in the cases mentioned below, and up to the limits stated therein.
- 15.2** The total liability of Cyberfusion for damage suffered by the Customer as a result of an attributable shortcoming in the fulfilment by Cyberfusion of its obligations under the Agreement, which expressly also includes any shortcoming in the fulfilment of a warranty obligation agreed with the Customer, or due to an unlawful act of Cyberfusion, its employees or third parties engaged by them, is limited per event or a series of related events to an amount equal to the total of the fees (excluding VAT) that the Customer has paid under the Agreement up to the time when the damage has been arise, or, if the Agreement has a duration of more than three (3) months, an amount equal to the fees paid by the Customer in the last three (3) months. However, under no circumstances will the total compensation for direct damage exceed one thousand (1,000) euros.

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- 15.3** Cyberfusion is expressly not liable for:
- a. any damage suffered as a result of measures that Cyberfusion has taken in good faith, but which have nevertheless proven to have been wrongly imposed;
 - b. damage resulting from unavailability of the Services, lost data and breach of technical or organisational security measures, and
 - c. indirect damage, consequential damage, lost profits, missed savings and damage due to business stagnation.
- 15.4** Cyberfusion's liability due to attributable shortcomings in the performance of the Agreement only arises if the Customer immediately and properly gives notice of default to Cyberfusion in Writing, setting a reasonable period to remedy the shortcoming, and Cyberfusion can also be held responsible for the fulfilment of its obligations after that period. continues to fall short. The notice of default must contain as detailed a description as possible of the shortcoming, so that Cyberfusion is able to respond adequately. The notice of default must be received by Cyberfusion within 14 days after discovery of the damage.
- 15.5** The exclusions and limitations referred to in this article will lapse if and insofar as the damage is the result of intent or deliberate recklessness on the part of Cyberfusion's management.
- 15.6** Customer is liable to Cyberfusion for damage caused by an error or shortcoming attributable to him. The Customer indemnifies Cyberfusion against claims regarding failure to comply with the rules of conduct in these Terms of Service when using the Services by or with the Customer's permission. This indemnification also applies to persons who are not employees of the Customer, but have nevertheless used the Services under the responsibility or with the permission of the Customer.

Article 16 Force majeure

- 16.1** Neither party can be held to fulfil any obligation if a circumstance beyond the control of the parties and which could not or should not have been foreseen at the time of concluding the Agreement, nullifies any reasonable possibility of compliance.
- 16.2** Force majeure also includes (but is not limited to): disruptions to public infrastructure that is normally available to Cyberfusion, and on which the provision of the Services depends, but over which Cyberfusion cannot exercise actual power or contractual performance obligation, such as the operation of the registers of IANA, RIPE or SIDN, and all networks in the internet with which Cyberfusion has not concluded a contract; disruptions to Cyberfusion's infrastructure and/or Services that are caused by computer crime, for example (D)DoS attacks or successful or unsuccessful attempts to circumvent network security or system security; shortcomings of Cyberfusion's suppliers, which Cyberfusion could not have foreseen and for which Cyberfusion cannot hold its supplier liable, for example because the supplier in question was (also) subject to force majeure; defectiveness of goods, equipment, software or other source material the use of which Customer has prescribed; government measures; strikes; wars; terrorist attacks and civil unrest.

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- 16.3** If a force majeure situation lasts longer than three (3) months, each party has the right to terminate the Agreement In Writing. In that case, what has already been performed under the Agreement will be settled proportionately, without the parties owing each other anything.

Article 17 Confidentiality

- 17.1** The parties will treat information that they provide to each other before, during or after the execution of the Agreement as confidential when this information is marked as confidential or when the receiving party knows or should reasonably suspect that the information was intended as confidential. The parties also impose this obligation on their employees as well as on third parties engaged by them for the implementation of the Agreement.
- 17.2** Cyberfusion will not take note of data that the Customer stores and/or distributes via Cyberfusion's systems, unless this is necessary for the proper execution of the Agreement or Cyberfusion is obliged to do so under a legal provision or court order. In that case, Cyberfusion will make every effort to limit access to the data as much as possible, to the extent that this is within its power.
- 17.3** The obligation of confidentiality also continues after termination of the Agreement for any reason, for as long as the providing party can reasonably claim the confidential nature of the information.

Article 18 Privacy

- 18.1** To the extent that the Agreement aims to have Cyberfusion carry out certain processing of personal data on behalf of the Customer, Cyberfusion acts as a processor within the meaning of the General Data Protection Regulation (GDPR).
- 18.2** The parties declare that the processing agreement used by Cyberfusion applies to the processing referred to in the previous paragraph. This processing agreement can be consulted on the Website (via <https://cyberfusion.io/legal>) and will also be sent electronically by Cyberfusion at the request of the Customer.
- 18.3** To the extent that Cyberfusion acts as a controller, Cyberfusion's privacy statement applies to those processing operations. This can also be consulted on the Website.

Article 19 Duration and termination

- 19.1** The duration of the Agreement is the period of time necessary to provide the Services.
- 19.2** If the Agreement concerns a Subscription, it is entered into for an indefinite period, unless a fixed term has been agreed for the Subscription.

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- 19.3** If a fixed term has been agreed for the Subscription, neither party may unilaterally terminate the Agreement before the term has expired, unless there is a special reason for termination, as further described below.
- 19.4** A Subscription for which a fixed term has been agreed will be automatically renewed at the end of the term for periods equal to the initial term, unless otherwise agreed. Extension can be prevented by cancelling the Subscription towards the end of the term, taking into account the agreed notice period, or failing that, a notice period of at least 1 day.
- 19.5** Either party may terminate an Agreement that has been entered into or extended for an indefinite period, subject to a notice period of at least 1 day.
- 19.6** Cyberfusion may immediately suspend or terminate the Agreement in Writing if at least one of the following special grounds applies:
- a. Customer is in default with regards to a material obligation;
 - b. The Customer's bankruptcy has been filed for or declared;
 - c. Customer has applied for suspension of payment;
 - d. The Customer's activities are terminated or liquidated.
- 19.7** If Cyberfusion suspends the fulfilment 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.
- 19.8** If the Agreement is terminated or dissolved, Cyberfusion's claims on the Customer are immediately due and payable. In the event of termination of the Agreement, amounts already invoiced for services performed remain due, without any obligation to cancel. In the event of termination by the Customer, the Customer may only terminate that part of the Agreement that has not yet been executed by Cyberfusion. If the termination is attributable to the Customer, Cyberfusion is entitled to compensation for the damage that arises directly and indirectly as a result.
- 19.9** The right to suspension in the above cases applies to all Agreements concluded with the Customer simultaneously, even if the Customer is only in default with regards to one Agreement, and without prejudice to Cyberfusion's right to compensation for damage, lost profits and interest.

Article 20 **Exit**

- 20.1** In the event of a legally valid termination of the Agreement at the request of the Customer, the request of which must have been submitted before or at the time of termination, Cyberfusion will make every effort to cooperate to enable transfer to another service provider. The foregoing only applies if the Customer has fulfilled all its obligations under the Agreement.
- 20.2** For the cooperation referred to in the previous paragraph, Cyberfusion will apply its then applicable hourly rate for the Customer. All costs of the transfer to another service provider will be borne by the Customer.

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- 20.3** Subject to the foregoing, Cyberfusion makes every effort to keep all data stored for the Customer available for a maximum of one week after the termination of the Agreement, so that the Customer can download and delete the data himself. However, Cyberfusion does not guarantee that all data will be available during this period, unless agreed in an SLA. After this period, all Customer data will be deleted, regardless of whether Customer has downloaded it or not. Cyberfusion is entitled to immediately delete the Customer Data upon termination of the Agreement. It is the responsibility of the Customer to realise the transfer of Customer data to its own systems in a timely manner before the end of the Agreement, insofar as the Services offer these options to the Customer. The deletion of data stored for the Customer always takes place without special precautions to make the deletion irreversible. This means that, for example, 'delete' is pressed in a (standard) operating system. Any backups created for the Customer can be kept for longer at the Customer's request for a fee. Cyberfusion is not obliged to comply with such requests.

Article 1 Modification and ranking

- 1.1** Cyberfusion reserves the right to change or supplement the Services and these Terms of Service. Changes also apply to Agreements already concluded, subject to a period of at least 30 days after notification of the change to the Customer.
- 1.2** Changes will be announced by e-mail to the Customer or by means of a notification within his Account, or another channel through which Cyberfusion can demonstrate that the announcement has reached the Customer. Non-substantive changes of minor importance can be made at any time and do not require notification.
- 1.3** If the Customer does not wish to accept a change, the Customer must inform Cyberfusion in writing, stating the reasons, within two weeks after notification. Cyberfusion may then reconsider the change. If Cyberfusion does not withdraw the change, the Customer may terminate the Agreement on that date until the date on which the new conditions come into effect.
- 1.4** Provisions relating to specific Services, if applicable, take precedence over general provisions relating to all Services. Further agreements between Cyberfusion and the Customer will only prevail over these Terms of Service if they are in Writing and if this has been expressly determined or if this was unmistakably the intention of both parties.

Article 2 Other provisions

- 2.1** Dutch law applies to the Agreement.
- 2.2** Unless otherwise prescribed by mandatory law, all disputes that may arise as a result of the Agreement will be submitted to the competent Dutch court for the district in which Cyberfusion is located.

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- 2.3** If any provision of the Agreement proves to be void, this will not affect the validity of the entire Agreement. In that case, the parties will establish a new provision(s) to replace it, which will reflect the intention of the original Agreement and Terms of Service as much as legally possible.
- 2.4** Information and communications, including price indications, on the Cyberfusion Website or its quotations and other offers are subject to programming and typographical errors.
- 2.5** Cyberfusion's log files and other electronic or non-electronic administration constitute full proof of Cyberfusion's statements and the version of any (electronic) communication received or stored by Cyberfusion is considered authentic, unless the Customer provides proof to the contrary.
- 2.6** The parties will always inform each other immediately in Writing of any changes in name, contact person (salutation, first name, last name), postal address, e-mail address, telephone number, company details (Chamber of Commerce number, VAT number) and, if requested, bank or giro number.
- 2.7** Customer is only entitled to transfer its rights and obligations under the Agreement to a third party with the prior Written permission of Cyberfusion.
- 2.8** Customer gives Cyberfusion the right in advance, without requiring the Customer's express permission, to transfer the Agreement concluded between the parties in whole or parts thereof to parent, sister and/or subsidiary companies or a third party in the event of a merger or acquisition. Cyberfusion will notify the Customer if such a transfer has taken place.