

# General Terms and Conditions of IXLY BV.

version 1-09-2014

## Applicability

These general terms and conditions apply to all agreements and offers for services and products, including subscriptions, between commercial clients and Ixly BV, established in Utrecht Ch. of Comm. Utrecht: 30204571, VAT no.: 8145.04.255.B.01.

## Rates

The rates are excluding VAT. The payment term is 14 days. In the event of exceeding of the payment term, statutory interest can be charged. In the event of late payment we will have the right to deactivate the service without any right to refund.

Ixly BV retains the right to adjust the rates for tests and subscriptions in the interim. These rate changes will be notified at least one month in advance.

You can order online credits for an occasional subscription. These will be immediately made available following which you will receive an invoice. The use of tests and the subscription will be invoiced monthly in arrears for the other types of subscriptions (frequent and intensive subscriptions). In some cases Ixly BV may require that credits be made available only after payment has been received, by means of online payment, or after payment of the invoice.

Invoicing takes place automatically, on a monthly basis on the first working day of the month, whereby the use of tests during the previous month and the licences for the next month will be charged. You are, as the client/awarder of the contract, responsible for keeping the correct invoice data updated in the system.

## Agreement

An agreement will come into effect by registration through one of our websites where these terms and conditions can be read, or by signing an offer. The minimum contract period is 12 months, following which the contract can be cancelled monthly, with a notice period of one month. There is no right of refund of unused credits when cancelling the subscription.

Both parties can at any time terminate the agreement for any reason whatsoever. The original contract term and the notice period must be observed thereby. Refunds will not be issued.

You are not permitted to transfer advantages or obligations ensuing from the agreement in any manner whatsoever to third parties without prior permission in writing from Ixly BV.

If this agreement is terminated in conformity with the terms and conditions, neither Ixly BV nor you can be held liable for damage or loss suffered by the other party.

Ixly BV retains the right to refuse a request for an agreement without stating reasons.

The standard processor's agreement forms part of the general terms and conditions and has been included as an appendix.

## Intellectual property

You acknowledge and will unconditionally take note of the fact that services, content, source codes and information on the website are protected by Ixly BV's copyright, trademarks, service marks, or other property rights and laws. Neither the agreement nor the use of Ixly BV products will give you any right to copyright or trademark, and this will not affect in any manner whatsoever Ixly BV's exclusive property rights to the copyright and trademark. You agree that you will not in any manner whatsoever change, copy, reproduce, rent out, give in loan, sell or redesign the content of the website. This applies also to the tests, the code and the software.

## Guarantee provided by commercial users

If you use the website as a professional and use the product to advise other parties you will guarantee that:

You are competent, qualified, licensed, or authorised to use psychological tests for the various fields in which you are employed, such as assessment, coaching, providing training and Human Resource Management. All this is in accordance with the applicable legislation and regulations (in your country).

You will act and make use of the product in accordance with national and international professional standards and professional ethics.

You will act and make use of the product in accordance with the national and international legislation and regulations, instructions and guidelines and all other applicable government rules or rules of semi-public institutions.

Ixly BV can for specific services or products test your reliability and knowledge as a professional prior to providing you with access to this service. Ixly BV retains the right to refuse you access without stating reasons.

## Privacy and information security

The protection of your privacy is of the utmost importance to us. We apply the following rules when dealing with your information:

We do not pass on any personal information to third parties.

All information is saved and processed in a secure environment.

At the expiry of your account all personal information will be removed from our database.

Your test results and other personal information will only be used in an anonymous form for statistical analysis.

The reports will be automatically removed after two years. A shorter period is possible if you deem this to be desirable.

Ixly BV retains the right to use the information related to professionals and their clients in a complete and anonymous form for the further development of the tests and its services. This applies - but is not limited – to research, for example for the development of norm groups and the conducting of statistical analysis. Ixly BV will never make direct contact in writing or in another manner with you or your clients, unless you have expressly requested this to ensure the correct provision of service.

Ixly BV has implemented an extensive information management system to safeguard information security. This management system describes all measures that have been taken to safeguard the confidentiality, the data integrity and availability of your details. This management system is annually assessed by an independent party.

## Liability

Any liability with regard to the use of the product, or with regard to the termination of the agreement, in particular related to the interpretation and conclusion of test results and the loss of data, is excluded. The product contains information that can be used and can assist in making a decision, but can never be relied on as a sole source of information. Ixly BV cannot be held liable for misuse of your personal password or your candidates' passwords.

Although Ixly BV spends a lot of time on ensuring the quality and availability of its online services we do offer our service on an "as it is" basis. This means inter alia that we do not provide any guarantee that our services and the content of the website will be available in an uninterrupted and timely manner, secure or free of errors. The current state of affairs on the internet and the speed and reliability of connections prevent the provision of guarantees. Over the past years we have achieved an availability of 99.5% or higher, however no rights can be derived from that.

## System requirements

It is important that users meet the system requirements, such as having Flash installed. The current system requirements are listed below:

- Internet Explorer (IE 8 or higher) or a recent version of Chrome, Firefox or Safari \*. With IE8 the layout is sometimes not optimal because it does not support a number of layout functions.
- Java script enabled and Flash (8 or higher) installed.
- Sufficiently fast internet connection. As a guideline 2 Mbps for normal use and 4 Mbps for webcam tests.
- A minimum of 512 MB of RAM memory and sufficient free disk space. A minimum of 1024mb for webcam tests.
- Screen resolution of at least 1024×768 pixels.
- We only officially support an open internet connection. In practice it is usually only necessary that port 80, 443 and 1935 are open (for webcam tests).
- The system requirements can change for new releases.

## Additional terms and conditions for API users.

The Test Toolkit offers the option to request tests through an API through other software systems and to integrate these in HR processes. It is conditional for this that tests will always be made available on an individual basis after login codes and will not be available to the public. The client must provide access in advance to the application within which the test will be conducted. Ixly BV can provide permission for making (specific) tests available through the API. Ixly BV has the right to monitor the use in accordance with the arrangements made and will be entitled to terminate the cooperation if the application is not in accordance with the arrangements made.

The party that requests tests through the API must have sufficiently competent IT personnel available and must have a sufficiently stable system available in order to be able to set up the API properly. Ixly BV exclusively offers for the provision of service through an API a helpdesk for those who are responsible for the proper functioning of the system and not directly to (end) users and candidates.

## Helpdesk

The helpdesk is available for questions from 08:30 hours until 18:00 hours, preferably by email: [helpdesk@ixly.nl](mailto:helpdesk@ixly.nl). We will contact you within half an hour to answer questions and to start to resolve any problems.

## Complaints

No complaint whatsoever will be officially regarded as submitted unless the complaint is made in writing or by email to Ixly BV, within two weeks after you discovered the shortcoming or error, or reasonably could have discovered this, together with a specification of all details that are related to the subject and the nature of the complaint. Complaints can only be submitted in Dutch or English.

This agreement will be governed and interpreted in accordance with Dutch law. The Utrecht (the Netherlands) District Court has exclusive jurisdiction concerning claims ensuing from this agreement.

Ixly BV

1-09-2014

# Processing Agreement

This processing agreement forms part of all agreements concluded by Ixly BV with its clients and will be valid unless a separate agreement is concluded on the request from the Client.

## **WHEREAS:**

Insofar as Ixly BV processes Personal Data for the benefit of the Client in the context of the Agreement, the Client will be classified pursuant to article 4, part 7 and part 8, of the Regulation as the controller for the Processing of Personal Data and Ixly BV as the processor;

Parties to this Processing Agreement, as referred to in article 28, third subclause, of the Regulation, wish to record their arrangements regarding the Processing of Personal Data by Ixly BV.

## **AGREE TO THE FOLLOWING:**

### **Article 1. Definitions**

The following concepts are taken to mean in this Processing Agreement:

- 1.1 Data Subject: the party the Personal Data relates to.
- 1.2 Breach related to Personal Data: a breach of the security that accidentally or unlawfully results in the destruction, the loss, the change, or the unauthorised provision of, or the unauthorised access to, forwarded, saved or otherwise processed data.
- 1.3 Agreement: the agreement between the Client and Ixly BV and the accompanying appendices.
- 1.4 Personal Data: all information regarding an identified or identifiable natural person, which Ixly BV processes in the context of the Agreement for the benefit of the Client.
- 1.5 Regulation: - Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).
- 1.6 Processing Agreement: this agreement.
- 1.7 Processing: the processing or the entirety of processing in the context of the Agreement with regard to Personal Data, or an entirety of Personal Data, whether or not executed via computerised processes, such as the collating, recording, organising, structuring, saving, updating or changing, requesting, consulting, using, providing by means

of forwarding, disseminating, or making available in another manner, aligning or combining, blocking, deleting or destroying.

## **Article 2. The subject of this Processing Agreement**

2.1 This Processing Agreement arranges the Processing of Personal Data by Ixly BV in the context of the Agreement.

2.2 The nature and the objective of the Processing, the type of Personal Data and the categories of Data Subjects are described in Appendix 1.

2.3 Ixly BV guarantees the application of suitable technical and organisational measures, in order for the Processing to comply with the requirements of the Regulation, and to safeguard the protection of the rights of the Data Subjects.

2.4 Ixly BV guarantees compliance with the requirements of the applicable legislation and regulations concerning the processing of Personal Data.

## **Article 3. Entering into effect and duration**

3.1 This Processing Agreement will enter into effect at the time when the main agreement is entered into by Parties.

3.2 This Processing Agreement will terminate after the termination of the main agreement and insofar as Ixly BV has deleted or returned all Personal Data in accordance with article 10.

3.3 None of the Parties can terminate this Processing Agreement in the interim, with the exception of necessary amendments pursuant to legislation or case law.

## **Article 4. Extent of the Processing Authority of Ixly BV**

4.1 Ixly BV exclusively processes the Personal Data on the assignment from and on the basis of the instructions in writing from the Client, with the exception of derogating statutory regulations that apply to Ixly BV.

4.2 If any instruction as referred to in the first subclause is, in the opinion of Ixly BV, in conflict with a statutory regulation concerning data protection, Ixly BV will inform the Client of this prior to the processing, unless a statutory regulation prohibits this notification.

4.3 If Ixly BV, on the basis of a statutory obligation, must provide Personal Data, Ixly BV will immediately inform the Client, and if possible will do so prior to this provision.

## **Article 5. Security of the Processing**

5.1 Ixly BV will take technical and organisational security measures as described in Appendix 2.

5.2 Parties acknowledge that the safeguarding of a suitable security level can continuously require taking additional security measures. Ixly BV safeguards a security level that is coordinated with the risk.

5.3 Ixly BV does not process Personal Data outside the European Union, unless express permission in writing is acquired from the Client for this purpose and with the exception of derogating statutory obligations.

5.4 Ixly BV will inform the Client without unreasonable delay as soon as Ixly BV becomes aware of unlawful Processing of Personal Data, or breaches of the security measures as referred to in the first and second subclause.

5.6 Ixly BV will provide assistance to the Client during the fulfilment of the obligations on the basis of articles 32 up to and including 36 of the Regulation.

#### **Article 6. Confidentiality maintained by the Personnel of Ixly BV**

6.1 The Personal Data is of a confidential nature and falls under the obligation of confidentiality. Ixly BV has bound its Personnel to maintain confidentiality. Ixly BV will on request provide the Information Security Policy, which forms part of the employment contracts of Ixly BV and agreements with the relevant suppliers.

#### **Article 7. Sub-processor**

7.1 If Ixly BV engages another processor for the execution of processing work for the benefit of the Client, the same obligations concerning data protection will be imposed on this other processor, by means of an agreement, as those that are included in this Processing Agreement.

#### **Article 8. Assistance due to the rights of the Data Subject**

8.1 Ixly BV will provide the Client with assistance during the fulfilment of the Client's duty to answer the requests for exercising the rights of the Data Subject as recorded in chapter III of the Regulation.

#### **Article 9. Breach related to Personal Data**

9.1 Ixly BV will inform the Client without unreasonable delay, as soon as Ixly BV becomes aware of any Breach related to the Personal Data, in accordance with the arrangements as recorded in Appendix 3.

9.2 Ixly BV will also inform the Client after a report on the basis of the first subclause regarding developments concerning the Breach related to Personal Data.

9.3 The costs to be incurred by Parties themselves related to the reporting to the competent supervisory authority and the Data Subject will be borne by Parties.

## **Article 10. Return of Personal Data**

10.1 After the end of the Agreement Ixly BV will ensure, in accordance with the choice made by the Client, the return of all Personal Data to the Client or the deleting of all Personal Data. Ixly BV will remove copies, with the exception of derogating statutory regulations.

10.2 The Personal Data will be returned as a data set in a generally applicable file format.

## **Article 11. Obligation to provide information and audit**

11.1 Ixly BV will make all information available that is necessary to demonstrate that the obligations under this Processing Agreement have been and will be fulfilled.

11.2 Ixly BV will provide all required cooperation to the audits.

11.3 Ixly BV will provide the Client, with a frequency of once per year, with a statement of an independent external expert in which this expert gives an opinion regarding the compliance referred to.

This Processing Agreement, as part of the general terms and conditions, applies to all agreements between Ixly BV and clients. If required, the clients can receive a signed and dated agreement upon request.

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## **Appendix 1. The Processing of Personal Data**

1. The subject/nature and objective of the Processing:

The subject/nature and objective of the Processing is on the part of the Client. The objective is generally providing advice to the Data Subjects during their career, assistance during career decisions, assisting information during selection decisions, personal and competence development. In addition, log in data is recorded.

2. The type of Personal Data

This principally concerns the usual Personal Data such as name and address details. In some questionnaires health details are requested for advice during rehabilitation. If this is the case extra permission will be requested and the efficiency will be explained.

3. Description of the Personal Data categories

Name, date of birth, email, gender, level of education, answers to the questions of and results of tests and questionnaires.

4. Description of the Data Subjects categories

- a) The Data Subjects are employees of organisations or clients of the Client
- b) Job applicants, candidates or participants in organisations or clients.

5. Description of the categories of recipients of Personal Data

- a) The adviser of the Client (psychologist, recruiter, coach, and trainer) can individually view this data of the Data Subject. The adviser will consult with and will request permission from the Data Subject for sharing Personal Data with his/her clients.
  - b) Following permission from the Client, the Customer Support of Ixly BV can view the data of the Data Subjects for support purposes.
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## **Appendix 2. Suitable technical and organisational measures**

Ixly BV is ISO27001 certified and has taken many data protection measures. The most important thereof are:

- Encryption and security certificates
- Password policy with individual traceable log in
- Traceability of changes
- Back-up with retention
- Application of firewalls
- Anonymising of Personal Data
- Frequent workplace management for updates and patches
- Monitoring and recording
- Information security policy
- Annual external audit of data security

A document is available to clients upon request containing a full description of the technical and organisational measures.

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## **Appendix 3: Arrangements concerning Breaches related to Personal Data**

The arrangements regarding how Ixly BV will inform the Client of Breaches related to Personal Data are further specified in this Appendix.

1. The report will be made promptly but no later than within 24 hours after the discovery of the security incident and/or the data leak.
2. The Security Officer of the Controller is the (first) contact person for reporting to.
3. The 'Notification Form for data leaks and/or security incidents' will be used for reporting, in conformity with the report to the Dutch Data Protection Authority. As soon as the Processor has more information regarding the leak and/or incident, the Processor will immediately share this additional information with the Controller.

4. The Notification Form for data leaks and/or security incidents will be forwarded to the contact person of the Client with as the subject "data leak".

**Information that will be provided by Ixly BV**

- The nature of the Breach related to Personal Data
- The Personal Data and the Data Subject
- Probable consequences of the Breach related to Personal Data
- Measure proposed or taken by Ixly BV for dealing with the Breach related to Personal Data including, as and when necessary, the measures for the limitation of any disadvantageous consequences thereof.