WORCADE Terms of Service

Last updated: 13 July 2018

In our terms of service, we explain as clearly as possible what you can expect from us and what we expect from you when using our services.

Do you have questions or comments about our terms of service? You can always email us at hello@worcade.com or fill in our contact form.

1.   What can you expect from us?

1.1 Correct handling of your personal data

We endorse the importance of privacy. The Worcade Privacy Statement describes our data processing, including the types of information we receive from you and how we use and share this information. We do not sell your data and we process it carefully. We will at all times endeavour to comply with applicable laws and regulations. You can find our Privacy Statement at https://www.worcade.com/privacy/

1.2 Security of your data

We do our utmost to keep your data safe, for example we have implemented the OWASP security criteria and all our connections have been encrypted. More information about our architecture and procedures can be found at https://www.worcade.com/security/

1.3 Safeguarding your intellectual property rights

Worcade does not claim to be the owner of the information you provide for your Worcade account or through our services. You remain the owner of the information you provide and can always ask us for a digital copy (download).
We grant you a limited, revocable, non-exclusive and non-transferable license to use our services, in accordance with our Terms. No licenses or rights are granted implicitly.

1.4 Availability and termination of our services

We do our utmost to ensure optimal availability. You can request information about the availability we achieved in the previous year.

Our services can be interrupted, for example for maintenance, repairs and upgrades. In addition, events that are beyond our control may affect our services, such as natural events or other situations of force majeure.

If you violate our Terms or if you harm other users, we may change, suspend or terminate your access to the use of our services.

Our services are not intended for distribution or use in a country where this would be contrary to local legislation or when this would subject us to regulations from a country other than the Netherlands. We reserve the right to restrict our services in any particular country.

2.   What do we expect from you?

To keep our services safe and reliable, we also ask a thing or two of our users. This section describes a number of things we expect from you when using our services.

2.1 Your account

Users must register for our Services using correct data. In addition, it is necessary to have certain devices, software and data connections to use our Services.

Of course, we do our very best to keep your account safe, for example we have implemented the OWASP security criteria. However, you are jointly responsible for keeping your Worcade account safe. If you suspect unauthorized use or violation of your account or our Services, please inform us as soon as possible so that our Services can remain secure. Send an email to hello@worcade.com or use our contact form on https://www.worcade.com/contact/

In addition, we ask that you review our Terms of Service and our Privacy Statement so that you know what terms apply to your use of Worcade. If you cannot accept our terms, we will be happy to consult with you in order to arrive at a reasonable solution. Because these documents can be updated, we ask you to consult them occasionally. We will not make unreasonable changes to our terms.

2.2 Permissible use of our services

Obviously, our Services must be provided for legitimate and permissible purposes. It is not allowed to use our Services in any way:
- That violates or steals the rights of us, our users or others;
- In case of erroneous information or misleading statements;
- Where you pretend to be someone else; or
- That is unlawful, defamatory, harassing, hurtful or racist;
- That initiates unlawful or otherwise inappropriate behaviour; or
- Violates applicable law.

Nor is it permitted to use our services in a manner that burdens, hinders or damages our services, systems, users or others. This means that, among other things, the following is not allowed, in person or through automation:
- Making derivative works from our services;
- Extracting code from our services;
- Obtaining (or attempting to obtain) unlawful access to our services or systems;
- Disrupting or interrupting the integrity or performance of our services;
- Creating accounts using unauthorized resources for our services;
- Collecting information from or about our users in an unauthorized or inadmissible manner;
- Selling, renting or otherwise charging for our services; or
- Distribute or make available via a network where our services can be used by anyone who is not authorized to use our services.

2.3 Safeguarding our intellectual property rights

We are the owner of all intellectual property rights associated with our Services. As part of our Services, you authorize Worcade to process the information that you upload, submit, store, send or receive via our Services. The rights you grant with this permission are for the limited purpose of the exploitation and provision of our Services.

If third parties approach you claiming that we are violating their intellectual property rights through our Services, we must be notified as soon as possible.

3.   General provisions

3.1 Disclaimer and liability

Although we do our utmost to organize our services as well as possible, something can of course go wrong. In order to guarantee the continuity of our services, we ask for your understanding for the following provisions.

- We do not guarantee that our services are free of errors or that our services will function without malfunctions, delays or imperfections.
- We have no control over and are not responsible for the way our users use our services.
- We are not obliged to regulate the actions or information of our users or third parties.
- Our total liability in connection with us or our services does not exceed the amount you have paid us in the last twelve (12) months.
- We are not liable to you for any indirect damage, such as loss of profits and consequential loss, which is linked to our services. That Worcade is informed about the possibility of such damage does not detract from this.
- We are only liable if you have given us notice of default. This means that we must have had the chance to prevent or repair any damage.
- The aforementioned liability provisions apply to the maximum extent permitted by applicable law.
- You agree to indemnify and hold harmless Worcade against all forms of liability, damage and losses (including reasonable legal fees and costs) that are somewhat related to your use of our services or any misrepresentations that you have made.

3.2 Dispute resolution

Our services are exclusively governed by Dutch law. In the unlikely event that disputes arise between Worcade and you, these disputes will only be submitted to the competent court in The Hague.

3.3 Our conditions

If a provision in these conditions is declared null and void or cannot be enforced in any other way, the provisions will be met as much as possible. This provision will not affect the validity of remaining provisions.

If we do not actively enforce certain aspects of these Terms and Conditions, this does not mean we waive our rights. The provisions that by their nature are intended to continue after termination of the agreement remain in full force.

Addendum Data Processing Agreement.

Our data processing agreement applies automatically to Worcade users who are a part of a Worcade Company. Please note: if you do not have a company page yet, this data processing agreement does not apply.

Chapter 1. Agreement

Article 1. Definitions

All definitions, even if not specifically mentioned herein, have the same meaning they have in the General Data Protection Regulation (Regulation 2016/679 EC) ('**GDPR**').

1.1   **Agreement:** The agreement between Controller and Processor relating to the Service(s) provided by Processor to Controller.

1.2   **Controller:** means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of Personal Data; where the purposes and means of such processing are determined by Union or Member State law, the Controller or the specific criteria for its nomination may be provided for by Union or Member State law.

1.3   **Data**: all other Data than Personal Data.

1.4   **Data Processing Agreement**: this agreement between Controller and Processor as referred to in Article 28(3) GDPR ('**DPA**').

1.5   **Parties:** meaning both Controller and Processor.

1.6   **Personal Data:** means any information relating to an identified or identifiable natural person ('**Data Subject**'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location Data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

1.7   **Personal Data Breach:** means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed (Article 4(12) GDPR).

1.8   **Processor:** means a natural or legal person, public authority, agency or other body which processes Personal Data.

1.9   **Services:** meaning services as detailed in the underlying Agreement between Controller and Processor.

Article 2. Object and Purpose

2.1   This DPA is entered into with the purpose of ensuring compliance with the GDPR and other current or future applicable Data protection legislation as reasonably concluded by the Processor. Any processing of Personal Data must comply with the provisions of these acts.

2.2   The processing by Processor is for the purpose of providing the Services to Controller according to the Agreement (the **Purpose**).

2.3   Processor will only use the received Personal Data for the delivery and improvement of Services to Controller and only insofar as the processing of that Data is reasonably necessary.

Article 3. General provisions

3.1   All copyright and/or other Database rights with regard to the delivered (Personal) Data by Controller will at all times remain with Controller.

3.2   As far as this DPA does not provide for legal requirements as set out in the GDPR and other applicable relevant Data protection Legislation, Parties agree to act in accordance with applicable

laws and regulations regarding the protection of Personal Data. If a provision is contradictory or missing, Parties will jointly substitute or add a provision.

3.3   The Parties agree that, in the event that one or more of the provisions of this Agreement is found to be unlawful, invalid or otherwise unenforceable, that / those provisions shall be deemed severed from the remainder of this Agreement. The remainder of this Agreement shall be valid and enforceable.

3.4   As far as Parties have already entered into an Agreement with regard to the Services, this DPA will supplement those provisions.

Article 4. Duration and Termination

4.1   The duration of this DPA shall be equal to the duration of the Agreement as concluded between the Parties. In the event that the Service provided by Processor continues post termination of the Agreement, the obligations of this DPA shall also continue to apply.

4.2   Upon termination of the Agreement and/or after termination of the Services by Controller, Processor is obligated to return the (Personal) Data to Controller within 30 days (or give Controller the opportunity to retrieve the Data digitally) after a written request by an authorized representative of Controller. Any remaining (copies of) (Personal) Data and/or backups shall, after termination, be destroyed by Processor within 180 days.

Article 5. Processor warranties, obligations and acknowledgements.

The Processor;

5.1   shall process Personal Data only on documented instructions from the Controller, insofar as within the remit of Services procured and unless otherwise required by law;

5.2   warrants that, taking into account the state of the art, the costs of implementation and the nature, scope, context and Purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, the Processor shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk;

5.3   offers a system that is properly protected in technical terms. It is up to Controller to use the system in a correct and appropriate manner;

5.4   will not transfer or permit the transfer of the Personal Data to any territory outside the European Economic Area without the prior written consent of the Controller;

5.5   will take no steps to attempt to identify Data Subject(s) from the Personal Data or aggregate Data by any Data matching or other exercise except where required by the Purpose or law.

Article 6. Controller warranties, obligations and acknowledgements.

The Controller;

6.1   continuously warrants (for the duration of the Agreement and at least onehundredeigthy (180) calendar days post the termination of the Agreement) that it has received all necessary Consents, in accordance with GDPR provisions, from Data Subjects as to the Purpose as well as extent of processing of Personal Data;

6.2   continuously warrants (for the duration of the Agreement and at least onehundredeigthy (180) calendar days post the termination of the Agreement) that all Personal Data made available to the Data Processor for Processing has been obtained, collected, Processed and supplied in accordance with all of its obligations under the GDPR;

6.3   warrants, acknowledges and shall notify the Data Subjects that the Data Processor may, at its absolute discretion, engage further Data Processors for the Processing of Personal Data, provided that the processor complies with the obligation described in Article 11.1. The Data Processor shall inform the Data Controller of any intended changes concerning the addition or replacement of other Data Processors, giving the Data Controller the opportunity to object to such changes insofar the change affects the Data Controller; and such objection shall be served in writing to the Data Processor within ten (10) Business Days of the Data Controller being notified by the Data Processor of a change in Data Processors. If no such objection is raised within the specified time period, the Data Controller shall be taken to have agreed to the change in Data Processor.

6.4 acknowledges that the Data Processor may Cross-Border Process Personal Data obtained from and/or supplied by the Data Controller for the Purpose.

6.5 shall hold, excluding clause 6.3, the Data Processor harmless and indemnify the Data Processor n full without limitation for any damages or losses (including but not limited to loss of profit, loss of reputation, loss of goodwill, loss arising from business interruptions, expenses including legal and other professional charges and expenses) and charges whether arising under statute, contract or at common law, or in connection with judgments, proceedings, internal costs or demands or howsoever otherwise arising under or in connection with the breach of the warranties in this DPA committed by an act, omission, negligence, default and or any other action by the Data Controller.

Article 7. Auditing

7.1 Processor shall make all information necessary to demonstrate compliance with the obligations laid down in the GDPR available to the Controller and shall allow for and contribute to audits, including inspections, conducted by the Controller or another auditor mandated by the Controller subject to the following provisions.

7.2 If Controller considers it reasonably necessary to perform an audit, it may insofar as that Processor may attach further conditions to such an audit (for example as part of the monitoring of its safety procedures). Each audit shall be performed by a certified and independent auditor. The cost of an audit by Controller will be at Controllers own expense.

Article 8. Personal Data Breach

8.1 For the understanding of this Article 8, the obligations described herein contain the obligations in relation to Article 33 'Notification of a personal data breach to the supervisory authority' GDPR.

8.2 The Processor shall, following the discovery of a Personal Data Breach, inform the Controller of such breach as soon as possible, with as much detail as appropriate and reasonably available to the Processor at the time of notification.

8.3 Any (suspected) Personal Data Breach will be reported as soon as possible to the other party to discuss the follow-up steps. Such a (suspected) Breach should not only be reported by Processor to Controller, but also as soon as possible by Controller to Processor. This is in the interest of preventing or ceasing a (potential) Breach.

8.4 The Data Processor shall, following a Personal Data Breach, take all such steps reasonably necessary to ensure the security of the Personal Data Processed and shall notify the actions taking pursuant to this clause within a reasonable period of time considering the severity of the breach.

Article 9. Confidentiality

9.1 Processor ensures that persons authorised to process the Personal Data have committed themselves to confidentiality as to the Personal Data.

9.2 The provided Personal Data will not be made available without prior consent of Controller to third parties unless Processor is required to do so under any provision of law or other regulations.

9.3 If Processor receives any request in regard to Data or Personal Data, either by but not limited to a third party, a government or regulatory bodies, Processor will then inform Controller without undue delay. When handling a request, Processor shall observe all reasonable instructions from Controller and provide such cooperation as reasonably required. In case of a regulation, direction or order of a regulatory body to maintain the confidentiality of a request or order, Processor shall endeavour to act in the interests of Controller to the best of their abilities, having regard to the limitations imposed by a relevant regulation, direction or order.

Article 10. Third parties

10.1 If and when Processor involves a third party in the delivery of the Services, the same obligations will be imposed on that party as the obligations imposed upon Processor under this DPA.

10.2 Controller warrants, acknowledges and shall notify the Data Subject(s) that the Processor may, at its absolute discretion, engage further Data Processors for the processing of Personal Data. The Processor shall inform the Controller of any intended changes concerning the addition or replacement of other Data Processors insofar that change affects the Controller, giving the Controller the opportunity to object to such changes.

10.3 Such objection, as prescribe in the previous section, shall be served in writing to the Processor within ten (10) Business Days of the Controller being notified by the Processor informing of a change in Data Processors. If no such objection is raised within the specified time period, the Controller shall be taken to have agreed to the change in Data Processor.

Article 11. Data Subject rights

11.1 Processor shall act according to all reasonable instructions of Controller with regard to a request from a Data Subject concerning that Data Subjects Personal Data.

11.2 The Processor shall take all such steps reasonably necessary to allow the Controller to respond to Data Subjects requests of information, particularly in relation to the transparency, intelligibly and accessibility of the information provided. The Controller shall submit a written request to the Processor for the supply of all information about the Data Subject Processed by the Processor.

11.3 The Processor shall take all such steps reasonably necessary to allow the Controller to respond to Data Subjects requests of their Personal Data to be erased or request to restrict and/or rectify Processing. The Processor shall respond to a written request for erasure, rectification and/or restriction of Processing from the Controller without undue delay unless otherwise prohibited by law.

11.4 The Processor shall take all such steps reasonably necessary to allow the Controller to respond to Data Subjects objection to Processing. The Processor shall respond to a written objection of Processing from the Controller without undue delay unless otherwise prohibited by law.

11.5 The Controller shall be required to communicate any request for erasure, restriction or rectification of Processing to the Processor without undue delay and, in any event, as soon as possible. The Controller shall also be required to communicate an objection to the Processing of Personal Data received by Data Subjects without undue delay and, in any event, as soon as possible, unless otherwise required or prohibited by law.

11.6 The Data Processor shall provide Personal Data in a structured, commonly used and machine-readable format and transmitted without hindrance to the Controller.

11.7 Processor provides means by which the controller himself is able to meet the herein described request(s). If these means prove inadequate, the parties will consult in order to find a solution by which the obligations described here will be met.

Article 12. Liability

12.1 Processor is liable for damages resulting from non-compliance with this DPA, regulations by or pursuant to laws and regulations on the protection of Personal Data, insofar as the damage or harm is caused by acts or omissions performed in the capacity of Processor. Damages caused other than by an act or omission of Processor can never be attributed to Processor.

12.2 In regard to the limitation of liability, this DPA is, as far is legally allowed, subject to the limitations of liability agreed upon in the Terms of Service.

12.3 The liability of Processor for indirect damage, consequential damage, lost profits, lost savings, loss of goodwill, damage through business interruptions, damage ensuing from claims by customers of Controller, corruption or loss of Data, damage relating to the use of matters prescribed Controller to Processor, third party materials or software, damage relating to involvement of Processors prescribed by Controller to Processor and all other forms of indirect damage are excluded.

12.4 The restrictions of this Article 12 will lapse if and insofar as the damage is caused intentionally or due to gross negligence of Processor.

12.5 The liability of Processor in the context of this Article arises in all cases only if Controller gives Processor an immediate and proper notice of default, setting a reasonable time period to remedy the failure, and Processor continues to fall short after that deadline in the fulfilment of its obligations. The notice must contain a complete and detailed description of the shortcoming, so Processor will be

able to react properly. Any claim to damages against Processor shall expire by the lapse of 24 months after the claim arises.

12.6   This Article also applies to the benefit of all (legal) persons of whom Processor makes use of for the execution of the DPA.

Article 13. Disputes

13.1   In case a dispute arises, Parties agree to go into consultation. If consultation does not lead to an acceptable solution to both Parties, Parties will seek out a solution with help of an independent mediator. If the dispute can only be resolved by going to court, the court responsible will be the court of the district of The Hague in the Netherlands. This DPA is governed exclusively by Dutch and European law.

Chapter 2. Privacy Statement, Security Measures and Third parties

This chapter describes the services provided by Processor:
- Privacy Statement
- Security Measures.
- Third parties involved in the delivery of the Services.

Privacy Statement
The Processor's Privacy Statement is published at https://www.worcade.com/privacy/

Security Measures
The Processor's Security Measures are published at https://www.worcade.com/security/

Third parties involved in the delivery of the Services
You consent to our appointment of subprocessors for the purpose of providing our services. Data processing agreements are in place with all third parties. American organisations we work with all joined Privacy Shield or future European Union approved terms.