

Focus Feedback B.V. is a research agency specialising in NPS, eNPS research and the collection of experiences for quality improvement in the broadest sense of the word and develops modern software solutions for this purpose. We stand for quality, convenience, and valuable insights. We map customer experiences and work experience through targeted research and provide you with insight into the possibilities of improving the performance of your organization.

If you work with us, you obviously want to know where you stand; that is why we have short and straightforward terms and conditions.

Do you have any questions about the services of Focus Feedback B.V. or about specific research such as Feedback4Sports or about those conditions? Feel free to ask your questions by e-mailing us at [info@focusfeedback.nl](mailto:info@focusfeedback.nl).

## **1. Parties**

'We / us': Focus Feedback BV, registered with the Chamber of Commerce under number 74440837, located at Ericssonstraat 2, (5121 ML) Rijen in the Netherlands.

'You / your': The client of Focus Feedback B.V.

## **2. Applicability**

These terms and conditions apply to all offers/quotations we provide and all agreements we enter into with you.

## **3. Offers and conclusion of agreements with us**

The agreements you make with us are made by placing an order online, or by accepting an offer made by us.

## **4. Pricing and payment**

All prices quoted by us (on the website or in our quotes) do not include VAT and other levies.

When the agreement between you and us is made, you have the obligation to pay for the service you have purchased from us. In general, one-off services and the (recurring) use of our software must be paid for. The costs of the one-off services are invoiced directly at the time of entering into the agreement. Licence costs are invoiced once a year or monthly, depending on what the parties have agreed, and these costs are always charged in advance.

It is possible to increase your subscription during the term of the agreement. You then pay the changed price per month from the moment the change takes effect.

Each year we are entitled to adjust the agreed amount based on the inflation correction (consumer index Central Bureau of Statistics).

## **5. Late payment(s)**

If you do not pay within the period agreed between us, we can charge 1.5% interest per month and extrajudicial collection costs. The extrajudicial debt collection costs shall be set at 15% of the outstanding amount. In addition, we have the right to dissolve the agreement and terminate the services or to suspend our services until you have paid, without first having to send you a message (notice of default). In that case, we will not be liable for any damage you suffer because you no longer have access to your data, or because the data has been deleted.

## **6. Intellectual property rights**

All intellectual property rights of the software and all related documents made available to you by us are vested solely in us. In other words: we are and remain the owner of the software. You have the right to use this software for as long as the agreement lasts. This right of use is further described in the following article.

The data that you enter in our applications or that are required for our services is and will always

remain your property.

We do have the right to use the research results for benchmarking purposes. The results collected by you when conducting research will be included in a benchmark, where we ensure that no directly traceable results can be found by parties working with this benchmark.

## **7. Terms of use and access to our services.**

By entering into an agreement with us, you are entitled to use our software. This right is non-exclusive and non-transferable. This means that you are not the only party who may use this software from us based on an agreement entered into with us. In addition, you may not transfer the right you receive to a third party without our consent.

You are also not permitted to copy, reproduce, or publicly distribute the software or any parts of the software.

You are responsible for the use of the purchased service and for the actions performed under your user account. This means that you are also responsible for any misuse of your account. If this misuse is caused by someone else using your password or by you providing your account to others, we will not accept liability and we will not be liable for any damages resulting from this misuse.

## **8. Duration and cancellation**

The agreements you enter into with us are concluded for a minimum period of 1 year. This is not the case if we agree on a different term in the agreement or quote. The agreement will always be renewed for 1 year after the expiration of the period of one year or the agreed deviating period for 1 year or renewed for the agreed deviating period.

Do you want to terminate the agreement with us and thereby terminate the services provided by us? This is possible, but make sure to provide notice on time. The notice period is 2 months and can be given up to 2 months before the agreement is automatically extended.

Terminating too late? Then you pay for the full extension of the agreement.

## **9. Termination**

If you terminate, our agreement will be terminated with effect from the end date of the agreement. From that date, the right to use our service will be terminated and you will no longer have access to your data. In addition, the data in our system is deleted. Therefore, before you cancel, we recommend that you export the data (or have it exported) and save it somewhere else.

Possible publications of data will be stopped at the end of the agreement and links with other systems such as for the purpose of invitations will be removed.

We have the right to terminate an agreement with you if you go bankrupt, apply for a suspension of payments or your company is liquidated. This does not release you from your payment obligation and we are in no way liable for damages if we choose to do so.

## **10. Terms**

We try to ensure that you can make use of the purchased service within 7 working days after entering into an agreement with us. Of course we always try to meet this deadline, but delivery dates stated shall not be of the essence. This means that you must always give us the opportunity to ensure that you can still use the service you have purchased if we fail to meet this deadline.

## **11. Services provided by us**

We do our best to ensure that the service you have purchased always works properly and is constantly improving. Sometimes we need help from third parties, and we do call them in.

However, we cannot guarantee that all services, products, or applications are always and fully available and work without interruptions. Nor can we guarantee that the applications can be used on every operating system, every browser, tablet or every (mobile) device.

In addition, we can sometimes temporarily decommission the applications to perform maintenance, adjust, or improve operation. We try to do this at night or on the weekend, to minimize your inconvenience.

We are free to modify, expand, delete, or change parts of the applications. This may mean that certain functionalities are no longer available at a certain time, or that the applications no longer work on certain operating systems or (mobile) devices.

Do you use the API? Then we only influence the functioning of the API. We have no influence on the software you use or on the software that the API communicates with. If there is a malfunction in that software, we are not responsible or liable for that.

## 12. Force Majeure

Is there force majeure that prevents us from providing our services? In that case, we are not obligated to offer the applications or perform any other duties under this agreement.

By this we mean, among other things, force majeure that has arisen:

- because one of our suppliers has failed to fulfil its obligations;
- because there were disturbances in the power and/or internet facilities with us, our suppliers or others.

## 13. Liability

When you hold us liable for damage, this damage is limited to the amount paid by our liability insurer. If our insurer does not pay out anything for whatever reason, our liability is limited to half of the remaining value of the contract.

In any case, we are never liable for:

- Indirect damages suffered by you as a result of using our services or software, including consequential damages, lost profits, lost savings, reduced goodwill or damage due to business interruption;
- Damage resulting from errors in our system, if you could have prevented that damage by checking information, reports or input;
- Damage you suffer because you did not make an external copy of your data;
- Damage you suffer because you have provided us with incorrect or incomplete data.

The above limitations do not apply if the damage you suffered is the result of our fault or deliberate recklessness. If another party sues us for damages caused by your failure to comply with the agreement and provisions of these general terms and conditions? You indemnify us for that damage.

## 14. Complaints

If you have any complaints about the work performed by us and / or services provided, you can report them to us in writing within 8 days after the work has been performed / the service has been performed or 8 days after the defect has been discovered. Failure to do so will void your right to complain and any resulting legal rights you may have.

## 15. Privacy: the personal information of your respondents

You can upload personal data from third parties, such as your customers, employees, or suppliers, into our applications. This could include e-mail addresses, information for sending a personal invitation (e.g. surname) or profile data necessary for analysis or research purposes. From a legal point of view, you are designated as responsible for the processing of the said personal data. We ourselves are regarded as the processor. For this reason, the provisions attached as Annex 1 to these terms and conditions form part of these general terms and conditions and therefore of the agreement that we conclude with you.

In this way, we both comply with the obligations to enter into a processor contract, which we must enter into with each other pursuant to the General Data Protection Regulation (GDPR). You are, whether through an API, responsible for providing the personal data to us. In doing so, you must comply with the legal requirements that apply. Do you not comply with these requirements and are we held liable by others for damage caused by this? Then you indemnify us and indemnify us against that liability.

## 16. Disputes

If we have a dispute, we will do our best to come to a solution with you. Please let us know as soon as possible if you are not satisfied with something. If we are unable to find a solution together, we submit our dispute to the competent court. Dutch law applies to our agreement.

## 17. Use of AI and Fair-Use Policy

To use the AI functionality, as a customer, you need to digitally agree to additional terms and conditions for accessing this functionality. The terms for use are as follows:

- Fair-Use Policy
  - The use of AI is subject to a fair-use policy. In cases of misuse or very extensive use of the AI technology, Focus Feedback reserves the right to limit access to the AI or to negotiate an additional agreement. Focus Feedback also reserves the right to temporarily disable the module without consultation (but of course, with informing the customer). This may occur if the AI provider makes unreasonable changes to the agreement, encounters security incidents, or if situations arise that could be harmful to Focus Feedback, the client, or the end-user.
- Processing Outside the EU
  - Processing by a sub-processor (AI provider) located outside the EU. In principle, the processing does not contain personal data, but it cannot be technically excluded (if the end-user enters personal data in the free text field) that these might still be included in the automatic processing. To cover this risk, we have:
    - Concluded a data processing agreement with the AI party;
    - Implemented Standard Contractual Clauses (SCC) to have the data processing legally regulated in the USA;
    - Made an agreement with the suppliers for the use of a secure API;
    - Ensured that the AI provider has at least a SOC2 certificate;
    - Ensured that the AI provider complies with the GDPR;
    - Additionally, established that the AI party may not use the received data for any other purposes than analyzing the text and converting it into labels, after which the data will be deleted within 30 days.
    - A data breach protocol that aligns with the AI provider in case personal data is unexpectedly processed.

## Annex 1: provisions regarding the processing of personal data.

### 1 General

The following articles apply to every agreement between you and us and form part of the agreements we make with each other, unless otherwise agreed in writing. For the purposes of this article, we will call you the *Data Controller* and we are the *Processor*.

#### 1.1 Subject

Data Controller and Processor have entered into an Agreement for the use of the Feedback management service, hereinafter referred to as the Service. In this Processing Agreement, we establish mutual rights and obligations.

#### 1.2 Definitions

The following terms are used in this Processing Agreement:

**Data Controller**

The Client who determines the purpose and means for the processing of personal data.

**Processor**

Focus Feedback, the supplier of the Feedback management service, with which personal data are processed on behalf of the Data Controller.

**Sub-Processor**

Another processor who is used by the Processor to perform specific processing activities for the Data Controller.

**Employees**

Persons who work for the Data Controller or the Processor, either in employment or temporarily hired.

**Third Parties**

Other than Data Controller and Processor and our Employees.

**Data Subject**

The person to whom Personal Data relates.

**Personal Data**

All information about an identifiable natural person (the Data

Subject). In light of the Feedback management service, this

mainly concerns name and address details, telephone number,

email address and construction number.

**Personal data of a sensitive nature**

Personal data in which loss or unlawful processing can lead to (among other things) stigmatisation or exclusion of the Data Subject, damage to his or her health, financial damage or to (identity) fraud.

These categories of personal data must in any case include:

- Special personal data
  - Information about the Data Subject's financial or economic situation (Other) data that may lead to stigmatisation or exclusion of the Data Subject
- Usernames, passwords and other log-in credentials
- Data that can be misused for (identity) fraud

**Special personal data**

Special personal data include religion or belief, race, political preference, health, sexual orientation, union membership, criminal record, Citizen Service Number (BSN).

### Data Breach

Breach in connection with personal data: a breach of security that accidentally or unlawfully leads to the destruction, loss, alteration, or unauthorised disclosure of or unauthorised access to transmitted, stored or otherwise processed data.

### Duty to Report Data Breaches

The obligation to report Data Breaches to the Dutch Data Protection Authority and (in some cases) to the Data Subject(s).

### Process/Processing

An operation or set of operations which is performed upon personal data or sets of personal data, whether or not by automatic means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, aligning, or combining, blocking, erasing or destroying data in any way.

### Force Majeure

Situation because of which performance of the service cannot reasonably be required. This applies, among other things, but not exclusively, in the event of disruption or failure of the Internet, the telecommunications infrastructure, network attacks, DDoS attacks, power failures, domestic disturbances, mobilisation, war, traffic congestion, strike, fire, flooding and in the event that Focus Feedback is not able to be delivered by its own suppliers, regardless of the reason.

### GDPR

The applicable laws and regulations for the protection of personal data, including the General Data Protection Regulation - Regulation (EU) 2016/679 of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC - (the "GDPR") and related applicable implementing regulations.

## 1.3 Relationship

This Processing Agreement is inextricably linked to:

- the Agreement between us (Focus Feedback) and you (Client);
- our General Terms and Conditions;
- the Service Level Agreement between the parties (if concluded).

## 1.4 Overview of processing operations

The Processing does/can relate specifically to personal data of website visitors and customers of the Data Controller, (hereinafter referred to as data subjects) within the meaning of article 4 subsection 1 of the GDPR. The processing relates to the following categories of Personal Data:

- Personal Info (name, address, place of residence, telephone number, e-mail address)
- Sex

In addition, the processing relates to the following categories of data subjects:

- Employees of the customer
- Customers of the customer
- Website visitors

If the Data Controller believes that one of the aforementioned categories is not part of the Processing that Processor carries out on its behalf or believes that the aforementioned list must be extended, it is the Data Controller's responsibility to make this known to the Processor.

## 1.5 Formation, duration, and termination of this Processing Agreement

The Processing Agreement goes into effect when the Agreement between the Client and Focus

Feedback is signed. This Processing Agreement is part of the Agreement and shall apply for the duration of the Agreement.

If the Agreement ends, this Processing Agreement ends automatically; the Processing Agreement cannot be cancelled separately. After termination of this Processing Agreement, the current obligations for the Processor, such as reporting

Data breaches and the duty of confidentiality shall persist.

## **2 Processing of Personal data**

Processor processes Personal Data as instructed in Article 1.4. on behalf of Data Controller. The Processing implies that the personal data is stored in the Service and are accessible for Processing by the Data Controller's authorised Employees.

The Processing takes place under the responsibility of the Data Controller.

Data Controller must ensure that the purpose and means of Processing the Personal Data has been clearly established. Processor has no control over the purpose and method of the Processing and makes no decisions on matters such as the use of Personal Data, the provision of Personal Data to Third Parties and the storage period of the Personal Data processed for the Data Controller.

Data Controller is required by law to comply with the applicable privacy laws and regulations. In particular, the Data Controller must determine whether there is a legitimate basis for Processing the Personal Data. Processor shall ensure that it complies with the regulations applicable to Processor in respect of the Processing of Personal Data and the agreements made in this Agreement.

Processor ensures that only its own employees have access to the Personal Data. The exception to this is included in Article 5. Processor limits access to Employees for whom access is necessary for their work, whereby access is limited to Personal Data that these Employees need for their work. Processor also ensures that the Employees who have access to the Personal Data have received correct and complete instructions on how to handle Personal Data and that they are familiar with their responsibilities and legal obligations.

## **3 Assistance in exercising privacy rights**

To the extent necessary and possible, the Processor assists the Data Controller in fulfilling its obligations to deal with requests for the exercise of rights of Data Subjects. If the Processor receives (direct) requests from the Data Subject(s) to exercise their rights (for example, access, change or deletion of Personal Data), the Processor will forward these requests to an email address to be provided by the Data Controller.

Processor informs the Data Subject(s) about this. The Data Controller will handle these requests itself, whereby the Processor can of course assist if the Processor has access to these Personal Data in the context of the Underlying Assignment. Processor may charge a fee for this.

Processor does not process personal data for any purpose other than as determined by the Data Controller. However, the Processor may use the personal data for quality purposes, such as analysing the use of the Service or statistical research. The personal data to be processed on behalf of the Data Controller shall remain the property of the Data Controller and/or the relevant data subjects.

## **4 Confidentiality obligations**

The Processor is obliged to maintain the confidentiality of the Personal Data that is provided to the Processor by the Data Controller. Processor ensures that anyone who acts under the authority of the Processor is obliged to maintain the confidentiality of the Personal Data that he/she is aware of.

## **5 Sub-processors**

Processor is entitled to use the services of a Sub-processor within the European Economic Area under this Processing Agreement. If the Sub-processor is located in a country outside the European Economic Area, only with the prior express consent of the Processing Agent, which consent the Processing Agent



shall not withhold on unreasonable grounds.

Processor requires the engaged Sub-processors to conclude a Processing Agreement that is in accordance with the relevant regulations and this Processing Agreement. The Processor will have the sub-Processors take all necessary measures to ensure the confidentiality of the Personal Data in the context of the execution of the Agreement.

Upon its first request, Processor shall inform Data Processor of the identity and location of the Sub-processor(s) already engaged by it relevant for the provision of the Service.

## **6 Transfer to third parties**

This confidentiality obligation does not apply if the Processing Agent has given the Processor explicit permission to provide the information to Third Parties, if the provision of the information to Third Parties is logically necessary in view of the nature of the information provided

order and the execution of this Processing Agreement, or if there is a legal obligation to provide the information to a Third Party.

The Personal Data is stored within the European Union. Without taking sufficient legal/contractual measures, the Processor is not permitted to process personal data or have such processed in a country outside the European Union.

## **7 Security Measures**

The technical and organisational security measures have been implemented considering the risks to be mitigated, the state of the art and the cost of security measures. Processor has taken the following security measures, among others:

- There are logically separated systems for Development, Testing and/or Acceptance and Production (OTAP).
- Measures have been taken for detection, prevention, and recovery to protect against malware (viruses, trojans, spam, etc.) in the infrastructure.
- Appropriate and tested data backup processes.
- Access control, using passwords.
- Limited access to production database(s).
- Encryption (encoding) of passwords.
- Secure communication with the server (HTTPS/SSL).
- Regular vulnerability scans and penetration tests.
- Hosting with a hosting provider that has a ISO27001 & ISO9001 certification.

Data Controller is well informed about the security measures that Processor has taken and believes that these measures have a level of security appropriate to the nature of the Personal Data and the scope, context, purposes, and risks of the Processing. Processor informs Data Controller if one of the security measures changes substantially.

## **8 Data breaches**

If there is a Data Breach the Processor will inform the Data Controller of this. Processor aims to do this within 36 hours after the Data Breach has been discovered, or as soon as possible after Processor has been informed by the Sub-processors.

In the event of a security breach and/or a data breach, we will inform the Data Controller by e-mail and subsequent telephone contact of the fact that there has been a breach, including:

- the (alleged) cause of the breach
- the (as yet known and/or expected) consequence



- the (proposed) solution

The Processor keeps the Data Controller responsible for the progress of the measures taken by the Processor or the Sub-processors in response to the Data Breach. Reporting data breaches to the Authority for Personal Data and (possibly) the Data Subject(s) involved is always the responsibility of the Data Controller. Keeping a register of Data breaches is the responsibility of the Data Controller.

### **9 Destroying Personal Data after Termination**

Upon termination of this Agreement, the Processor will carefully and securely destroy any Personal Data that remains. Processor only keeps a copy of the Personal Data if Processor is obliged to do so by law or regulation.

At the request of the Data Controller, Processor shall declare in writing to Data Controller that the Processor no longer has the Personal Data after the destruction of the Personal Data. The costs of collecting and transferring Personal Data at the end of the Agreement, if desired, shall be borne by the Data Controller. If Data Controller so requests, Processor will provide a cost estimate in advance.

### **10 Accountability**

Processor will answer any additional questions about the method of operation so that Data Controller can form an opinion about compliance with this Processing Agreement. If Data Controller wishes to have the manner in which Processor complies with this Processing Agreement inspected (an 'audit'), Data Controller may make a request to this effect to Processor. The parties will make joint arrangements in this respect. The costs of an inspection are borne by the Data Controller. Data Controller makes a copy of the inspection report available to Processor.

### **11 Liability**

In the event of damage caused by Processor's failure to comply with the agreements in this Processing Agreement, the legal rules, and regulations for the protection of personal data or the security policy, Processor shall be liable for such damage. Technical force majeure is excluded.

Processor is not liable for damage that is the result of the Data Controller not complying with the GDPR or other applicable laws or regulations.

Data Controller shall also indemnify Processor against claims by Third Parties on the grounds of such damage. The indemnification applies not only to damages suffered by Third Parties (material as well as immaterial), but also to the costs that Processor has to incur in connection therewith, e.g. in any legal proceedings, and the costs of any fines that may be imposed on Processor as a result of its actions.

An administrative fine imposed on the Controller by the competent supervisor (in the Netherlands: the Dutch Data Protection Authority) can never be recovered from the Controller if the competent supervisor has taken into account the degree of culpability of both parties when imposing the administrative fine and has imposed the fine(s) on (one of) the parties in accordance with the fine(s).

### **12 Additions and modification to the Processing Agreement**

A change in the Personal Data processed or in the security requirements, reliability requirements, privacy regulations or requirements of the Data Controller may give cause to supplement or amend this Processing Agreement. Data Controller shall be deemed to have accepted any change to the Processing Agreement if Data Controller has not objected in writing after notification of the changes within 5 working days.