Sub-processing Agreement – TransIP

The Parties:

- **The Liberators Improve Your Team BV**, with its registered office at Parelmoervlinder 8 in Utrecht (nl), registered with the Chamber of Commerce under number 85647314 and legally represented in the present matter by Christiaan Verwijsd (hereinafter referred to as: "**the Processor**");
- **TransIP B.V.**, with its registered office at Vondellaan 47, 2332 AA in Leiden, registered with the Chamber of Commerce under number 24345899 (hereinafter referred to as: "**the Sub-processor**");

hereinafter referred to jointly as 'the Parties' and individually as 'the Party';

Whereas:

- The Processor has access to the personal data of various data subjects on behalf of the Controller(s);
- The Sub-processor processes personal data of various data subjects on behalf of the Processor in connection with its services;
- The Sub-processor is also willing to comply with obligations concerning security and other aspects of the General Data Protection Regulation (hereinafter referred to as: 'the GDPR');
- Personal data refers to data within the meaning of Article 4(1) of the GDPR;
- The Processor may be considered a processor within the meaning of Article 4(8) of the GDPR;
- The Parties, partly in view of the requirements under Article 28(1) of the GDPR, wish to lay down their rights and obligations in writing by means of this Sub-processing Agreement (hereinafter referred to as: 'the Sub-processing Agreement');

have agreed as follows:

Article 1. Purposes of processing

1.1 The Sub-processor undertakes to process personal data on behalf of the Processor subject to the conditions of this Sub-processing Agreement. The processing relates to one or more of the services stated in Appendix 1A. Processing will only take place for one or more purposes as described in Appendix 1B. This Sub-processing Agreement applies solely to the processing of personal data by the Sub-processor for the Processor, and not to activities that do not involve the processing of personal data.

1.2 The types of personal data that are (or will be) processed by the Sub-processor are set out in Appendix 1C, the categories of data subjects are mentioned in Appendix 1D. The Sub-processor will not process the personal data for any purpose other than that determined by the Processor. The Processor will inform the Sub-processor of the purposes of the processing insofar as these are not already stated in this Sub-processing Agreement.

1.3 The personal data to be processed on the instructions of the Processor remain the property of the Controller and/or the relevant data subjects.

1.4 The Sub-processor will keep a record of all processing of personal data under this Sub-processing Agreement.

Article 2. Obligations of Sub-processor

2.1 The Sub-processor will ensure compliance with the conditions imposed on it by law when processing personal data for the Processor.

2.2 The Sub-processor will inform the Processor of measures that it has taken with regard to its obligations under this Sub-processor Agreement as well as the relevant privacy laws and regulations. These are described in Appendix 2.

2.3 The Sub-processor’s obligations arising from this Sub-processing Agreement also apply to any party processing personal data under the authority of the Sub-processor including, but not confined to, employees in the broadest sense.

2.4 The Sub-processor will provide any assistance that may be required should a data protection impact assessment, or a prior consultation of the supervisory authority, be necessary in the context of the processing.

Article 3. Transfer of personal data

3.1 The Sub-processor may process the personal data in countries within the European Union. The Sub-processor is also allowed to process the personal data in countries outside the European Union, provided that the legal requirements for doing so are met.

Article 4. Division of responsibility

4.1 The permitted processing operations will be carried out within an automated or semi-automated environment controlled by the Sub-processor.

4.2 The Sub-processor is only responsible for the processing of the personal data under this Sub-processing Agreement, in accordance with the instructions of the Processor and subject to the express final responsibility of the Processor. The Sub-processor is expressly not responsible for any other processing operations involving personal data, including in any event but not confined to the gathering of personal data by the Processor, processing for purposes that the Processor has not reported to the Sub-processor and processing by third parties and/or for other purposes.

Article 5. Engagement of third parties or sub-contractors

5.1 The Processor hereby gives the Sub-processor permission to engage sub-contractors in the processing of the personal data pursuant to this Sub-processing Agreement, with due observance of the applicable privacy legislation.

5.2 The Sub-processor will ensure that these sub-contractors assume the same obligations in writing as those agreed between the Processor and the Sub-processor. The Sub-processor will make every effort to ensure that these sub-contractors duly comply with these obligations.

Article 6. Obligation to notify

6.1 In the event of the detection of a data leak (a breach of the security of personal data that leads to a significant risk of serious adverse effects, or that has serious adverse effects, for the protection of personal data), the Sub-processor will inform the Processor thereof without delay, on the basis of which information the Processor will decide whether or not it will inform the Controller. A data leak is defined as follows: a breach of security that accidentally or unlawfully leads to the destruction, loss, alteration or unauthorised provision of, or unauthorised access to, forwarded, stored or otherwise processed data; unless the personal data breach is unlikely to result in a risk to the rights and freedoms of natural persons. The Sub-processor's obligation to notify applies only if a data leak has actually occurred.

6.2 The obligation to notify shall always include reporting of the fact that a leak has occurred, as well as, insofar as known to the Sub-processor:

- the cause or suspected of the leak;
- the currently known and/or expected consequences;
- the solution or proposed solution;
- contact details for following up on the report;
- the number of people whose personal data were leaked (in the event that the exact number is unknown: the minimum and maximum numbers of people whose data were leaked);
- a description of the group of persons whose data were leaked,
- the type or types of personal data that were leaked;
- the date on which the leak occurred (or, if the exact date is not known, the period within which the leak occurred);
- the date and the time at which the Processor, or a third party/sub-contractor engaged by the Processor, became aware of the leak;
- whether the data were encrypted, hashed or otherwise rendered incomprehensible or inaccessible to unauthorised parties;
- what measures are intended to be implemented and/or have already have been implemented in order to close the leak and limit the consequences of the leak.

6.3 The Processor will ensure compliance with any statutory obligations to notify. Where necessary in order to comply with relevant legal and/or regulatory requirements, the Sub-processor will cooperate in informing the relevant authorities and/or data subjects.

Article 7. Security

7.1 The Sub-processor will take appropriate technical and organisational measures against loss or any form of unlawful processing (such as unauthorised disclosure, interference, alteration or provision of personal data) in connection with the processing of personal data to be performed. To that end, the Sub-processor has taken the security measures stated in Appendix 2.

7.2 In the event of an impending or actual breach of these security measures, the Sub-processor will do everything that is reasonably possible to prevent or minimise the loss of personal data.

Article 8. Handling requests from data subjects

8.1 In the event that a data subject wishes to exercise one of its statutory rights with regard to its personal data and submits a request to that effect to the Sub-processor, the Sub-processor will forward this request to the Processor. The Processor will then ensure that the request is processed. The Sub-processor may inform the data subject about this.

8.2 In the event that a data subject submits a request to exercise one of its statutory rights with regard to personal data, the Sub-processor will provide the Processor with technical support in implementing the request, to the extent possible and insofar as is reasonable. The Sub-processor may charge reasonable costs to the Processor for this.

Article 9. Secrecy and confidentiality

9.1 All personal data that the Sub-processor receives from the Processor and/or collects itself within the context of this Sub-processing Agreement is subject to an obligation of confidentiality towards third parties. In addition, only those persons for whom this is necessary in connection with their duties and to the extent that this is necessary for their duties will have access to personal data within the organisation of the Sub-processor. The results of the audit as described in Article 10 (Audit) are subject to an obligation of confidentiality towards third parties for the Sub-processor.

9.2 This obligation of confidentiality towards third parties does not apply insofar as the Processor has expressly granted consent in writing in advance to provide the information to third parties, if providing the information to third parties is logically required given the nature of the work assigned and the performance of this Sub-processing Agreement, or if there is a legal obligation to provide the information to a third party. If the Sub-processor is legally obliged to provide information to a third party, the Sub-processor will inform the Processor about this without delay, to the extent that this is permissible under the law.

Article 10. Audit

10.1 The Processor is entitled to have an audit performed by an independent expert third party agreed upon by both Parties in writing who is bound to secrecy, in order to verify compliance with this Sub-processing Agreement.

10.2 This audit will take place only where there is a specific suspicion of misuse of personal data by the Sub-processor, substantiated in writing. The audit initiated by the Processor will take place fourteen (14) calendar days after its prior written announcement by the Processor.

10.3 The Sub-processor will cooperate with the audit and will make available all information that can reasonably be considered relevant to the audit, within a reasonable period, which is deemed to be a period of fourteen (14) calendar days.

10.4 The Parties will jointly assess the findings of the audit that has been conducted and, if necessary, the findings will be implemented by one of the Parties or by both Parties jointly.

10.5 The costs of the audit will be borne by the Processor, unless there is deemed to be an attributable failure in the performance of the Sub-processing Agreement by the Sub-processor. In that case, the costs of the audit will be borne by the Sub-processor.

Article 11. Liability

11.1 The liability of the Sub-processor for damage as a result of a culpable non-performance of the Data Processing Agreement is limited to the compensation of direct damage per occurrence (a series of related occurrences is considered one occurrence). The Sub-processor's liability for indirect damage is excluded. Article 13 paragraphs 1 through 13 of the General Terms and Conditions of the Sub-processor apply accordingly, on the understanding that the price for the agreement stipulated in Article 13 paragraph 4a is set at the total of the compensations (excl. VAT) agreed for two years and that the amount mentioned in Article 13, paragraph 4b is € 250,000 for the liability arising from this Data Processing Agreement. The total liability of the Sub-processor arising from this agreement towards the Processor and Third Parties together for damage as a result of a(series of) related occurrences is limited to the amounts to be paid out by the Insurer, whereby all compensation to be paid out to the Processor and Third Parties together will never exceed the total amount of € 2,500,000 to be paid out by the Insurer.

11.2 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 of the Sub-processor or its management.

11.3 Unless performance by the Sub-processor is permanently impossible, the liability of the Sub-processor due to culpable non-performance of the Data Processing Agreement only arises if the Processor sends the Sub-processor promptly, in any case within 48 hours, a written notice of default, whereby the Parties agree in writing a reasonable term to remedy the breach and the Sub-processor continues in breach after that term. The notice of default must give as complete and detailed a description as possible of the breach, so that the Sub-processor is given the opportunity to respond adequately.

11.4 Any claim for damages by the Processor against the Sub-processor that has not been specified and explicitly reported, expires by the mere lapse of six (6) months after the claim has arisen.

11.5 The Processor shall purchase and maintain throughout the term of the Agreement a liability insurance covering the risks referred to in this article.

Article 12. Duration and termination

12.1 This Sub-processing Agreement will enter into effect once signed by the Parties, on the date of the second signature.

12.2 This Sub-processing Agreement has been entered into for the duration for which the Sub-processor processes personal data on behalf of and on the instruction of the Processor for the purposes described in this Sub-processing Agreement.

12.3 This Sub-processing Agreement can be amended if both parties have agreed to the amendments in writing.

12.4 Following termination of the Sub-processing Agreement, the Sub-processor will destroy all personal data that it holds, unless the Parties agree otherwise in writing, unless the Sub-processor is required by law to keep the data for a longer period.

12.5 If any provision in the Sub-processing Agreement proves to be void or is nullified, the other provisions will remain in force in full. In that case, the Parties shall consult each other in order to agree upon a new provision with regard to the void or nullified provision, taking into account the purport and intent of the void or nullified provision to the greatest extent possible.

12.6 The Parties will cooperate fully in modifying this Sub-processing Agreement and adapting it to any new or amended privacy legislation.

Article 13. Applicable law and settlement of disputes

13.1 The Sub-processing Agreement and its implementation are governed by Dutch law.

13.2 Any disputes that may arise between the Parties in connection with the Sub-processing Agreement will be submitted to the competent court in the district where the Sub-processor is established.

13.3 In the event of any conflict between this Sub-processing Agreement and the Agreement and/or the applicable general terms and conditions, the Sub-processing Agreement shall prevail.

Appendix 1: Specification of personal data

All possibilities are listed in the following appendices. Only the possibilities that relate to your specific situation, apply.

1A Services

Sub-processor processes personal data in connection with **(one or more of)** the following services:

- Web hosting
- BladeVPS/off-site back-up/back-up
- Collocation
- Domain name registration
- Online cloud storage/back-up option
- Email
- Load balancing/failover
- SSL certificates
- Billing
- Transfer of data of defaulters to various institutions
- Private Network

1B Purposes

Sub-processor processes personal data in connection with **(one or more of)** the following purposes:

- Hosting, cloud storage
- Provision of VPS
- Security
- Setting up network
- To meet the requirements of the WHOIS database
- Customer information for billing

1C Categories

Sub-processor processes **(one or more of)** the following categories of personal data on behalf of the Processor:

- Name and address details
- Contact details
- Identification number
- Customer number
- Payment details
- CV
- Date of birth
- Sex
- Nationality
- Login details
- Financial data and payment details
- IP address

- Social media accounts
- Data on click and surf behaviour
- Data on orders and use of services/products
- Content of emails, contact forms, chat messages and other communication
- Registration number
- Location details
- Passport photographs
- Camera images
- Personnel file
- Biometric data
- Citizen service number (burgerservicenummer, BSN)
- Genetic data
- Copy of ID
- Personal beliefs or faith
- Race
- Sexual orientation
- Membership of a trade union
- Data concerning health/medical data
- Criminal record or data on unlawful/objectionable behaviour
- Other data stored via the services of the Processor or to be processed otherwise

1D Data Subjects

(One or more of) the following categories of data subjects apply:

- Customers
- Website visitors
- Employees
- Job applicants
- Account holders
- Potential customers
- Suppliers
- Other categories of persons whose personal data are processed via the services of the Processor

The Processor guarantees that the descriptions of the types of personal data and categories provided in this Appendix 1 are complete and correct, and indemnifies the Sub-processor from any shortcomings and claims that may result from an incorrect representation by the Processor.

Appendix 2: Security measures

The Sub-processor has taken the following security measures:

- Logical access control, making use of strong passwords
- Automatic logging of all actions concerning personal data
- Physical measures for access protection
- Encryption of sending and storing digital files with personal data
- Monitoring of security measures applied
- Organisational measures for access protection
- Random checks of compliance with security policy
- Purpose-specific access restrictions
- Control of granted powers