



# XPERT SUITE LICENCE TERMS AND CONDITIONS

OTHERSIDE AT WORK 2023

VERSION 3.2

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CLASSIFICATION Public

1. **Definitions**
  - 1.1 **Means of Authentication:** the (combination of) data and/or means with which the Customer can authenticate itself to Otherside, such as the combination of user name/password.
  - 1.2 **Consultancy Services:** the work directed at, among other things, the design, configuration, training and project management of the Software.
  - 1.3 **Content:** This is taken to mean any information, data, text, illustrations, videos, audio files, documents, methods, models and/or work processes which the Customer has uploaded, developed, used and stored in the Software. This explicitly does not include the Software source code and/or information, data, text, illustrations, videos, audio files, documents, methods, models and/or work processes developed by Otherside.
  - 1.4 **Third Party/Third Parties:** Parties engaged by Otherside to supply additional software functionalities. Third Parties explicitly do not include software components and/or tools for the proper functioning of the Software of Otherside, but only the functionalities defined as separate modules within the Software. If Third Parties are covered by the scope of the Supply Agreement, this will be explicitly mentioned in the Supply Agreement.
  - 1.5 **Services:** the services related to and included in the Software, as described in the SLA, including Support and Maintenance.
  - 1.6 **Documentation:** the (user) manuals and instructions provided by Otherside regarding the Software and Services.
  - 1.7 **Customer:** The entity that uses the Software and can authorise users (natural persons) to use the Software.
  - 1.8 **Escrow:** Arrangement with an independent third party to guarantee the continuity of the Software.
  - 1.9 **Functional Administrator:** Specialised user, who is supervised by the Customer and has extensive rights in the Software to adjust functionalities and user authorisations.
  - 1.10 **Fault:** non-compliance of the Software or a Service with the Documentation.
  - 1.11 **End User:** Users (natural persons) authorised by the Customer to use the Software.
  - 1.12 **Supply Agreement:** The agreement between the Customer and Otherside, or the Reseller and the Customer, in which the supply of the Software and/or (a) Third Party/Parties, or (Consultancy) Services has been agreed. If the Software is supplied to the Customer without a Reseller, the Agreement for Use of the Software forms an integral part of the Supply Agreement.
  - 1.13 **Licence Terms and Conditions:** these Xpert Suite Licence Terms and Conditions and any accompanying annexes. Software from a Third Party/Parties which is supplied as such and specified as such in the Supply Agreement is not covered by the scope of these Xpert Suite Licence Terms and Conditions.
  - 1.14 **Maintenance:** the rectification of Faults in the Software and the making available of any new versions of the Software.
  - 1.15 **Support:** the Service supplied by Otherside to the Customer and consisting of making available a helpdesk for user questions and breakdown notifications and – depending on the type of service agreement – rectifying breakdowns and/or Faults and conducting Maintenance, such as described in the SLA.
  - 1.16 **Otherside:** the private company Otherside at Work B.V.
  - 1.17 **In writing/written:** by letter or by email.
  - 1.18 **SLA (Service Level Agreement):** the separate agreement detailing the maintenance and support services, including the availability, service levels and rectification times of the Software.
  - 1.19 **Software:** the modular SaaS Software of Otherside as specified in the Supply Agreement.
  - 1.20 **Agreement for Use of the Software:** the agreement between Otherside and the Customer in which the Data Processing Agreement, SLA and Licence Terms and Conditions have been agreed. If the Software is supplied to the Customer without a Reseller, the Agreement for Use of the Software forms an integral part of the Supply Agreement.
  - 1.21 **Data Processing Agreement:** the data processing agreement between Otherside and the Customer.
  - 1.22 **Reseller:** the Third Party with which Otherside made agreements for the supply of the Software.
2. **Basis of the services**
  - 2.1 The Customer realises that, for the performance of the Agreement for Use of the Software, Otherside depends on products and/or services of third parties and the proper performance of these products and services, and/or on the co-operation of the Customer.
    - A In this connection, Otherside may be expected to take responsibility for matters it can exercise decisive control over. For example, Otherside warrants the quality of the Software and the (Consultancy) Services it makes available and supplies as well as compliance of the Software and (Consultancy) Services with agreements in the Supply Agreement and/or the Agreement for Use of the Software and/or the SLA, but it cannot take far-reaching responsibility for parts of the services it cannot exercise control over, such as an operational point-to-point connection. The term operational point-to-point connection means that several parties are involved and that each of those parties is responsible for the operational point-to-point connection insofar as said party can have an effect thereon.
    - B In view of the partnership idea, Otherside expects the Customer to take responsibility for the performance of its own obligations. This means, among other things, that the Customer is responsible for: (a) its own technical network infrastructure and the security of this infrastructure, which will continue to comply with the reasonable requirements set and/or adjusted by Otherside; (b) rendering all cooperation in time that is reasonably required for the performance of the (Consultancy) Services and obligations by Otherside.

2.2 Default can occur in all ways that are provided for by the law. In any event, default by Otherside can exist once the Customer has given Otherside a realistic last chance, by means of a Written notice of default, of curing the default within a reasonable period and Otherside remains in attributable default after that period. The notice of default must include as complete and detailed a description of the default as possible to enable Otherside to respond adequately.

### **3. Software to be made available**

- 3.1 Otherside will make the Software mentioned in the Agreement for Use of the Software available to the Customer and End Users subject to the conditions set out in the Agreement for Use of the Software, these Licence Terms and Conditions.
- 3.2 The Customer will use the Software exclusively for its own purposes. The Customer may give third parties access to the Software. The Customer is entitled to charge third parties a commercial rate which is reasonable and/or in line with market for access to the Software. Reselling the Software to third parties is not permitted.
- 3.3 The Customer at all times has final responsibility for the use by the End Users authorised by it in the Software. The Licence Terms and Conditions also apply to End Users.
- 3.4 Otherside will provide the Customer with Means of Authentication to give the Customer access to the Software and its Content.
- 3.5 The Customer is responsible for using and administering the Means of Authentication with due care. Otherside may assume that a user accessing the Software and Content using the Means of Authentication is an authorised user.
- 3.6 The Customer is responsible for the (functional) administration of the Software and will to that end appoint a Functional Administrator.
- 3.7 The Customer is at all times responsible for its use of the Software and Services and all other types of processing of (personal) data, whether or not contained in the Software, conducted by it or on its instruction. The Customer must ensure that it or its employees do not process unlawful data or otherwise breach the rights of third parties when using the Software.
- 3.8 Otherside is not liable for the incorrectness, incompleteness or unlawfulness of (the content of) the information and/or (personal) data stored using the Software, nor for a correct and unimpaired data transmission using the Software, changes or additions to and/or the use or other processing of (personal) data and/or available information, insofar as Otherside does not have any reasonable control thereof and insofar as attributable to the Customer. The Customer indemnifies Otherside against claims from third parties based on the alleged unlawfulness of the data stored in the Software by the Customer and/or its employees or the changes

or additions to and/or the use or other processing of (personal) data and other information by the Customer and/or its employees, insofar as Otherside does not have any reasonable control thereof and insofar as attributable to the Customer. The above is subject to the condition that Otherside immediately informs the Customer in writing of the existence and substance of the claim and leaves the handling of the case, including the effectuation of a settlement, entirely to the Customer. To that end Otherside will grant the Customer the necessary authorities, information and cooperation so that the Customer can defend itself against these claims.

- 3.9 If Otherside is notified of the unlawfulness of any information the Customer and/or its employees stored and/or shared using the Software, Otherside will notify the Customer to that effect in writing and as quickly and completely as possible, unless statutory supervisory bodies impose restrictions in this regard on Otherside. In doing so, Otherside will grant the Customer a reasonable deadline i) to clarify why the information is unlawful or ii) to delete the information from the Software. Only if the Customer fails to fulfil its obligations under i) or ii) will Otherside be entitled to delete the information or make it impossible to access it. Otherside is not liable for loss or damage insofar as the unlawful information has been carefully deleted, or access to it has been carefully rendered impossible and insofar as this does not affect any other lawful use of the Software and/or Services by the Customer. In this connection, the Customer indemnifies Otherside against all claims from its employees and/or Third Parties, including claims for damages made vis-à-vis Otherside.
- 3.10 Otherside reserves the right to decommission the Software temporarily if it considers this necessary for maintaining the security and integrity of the Software, conducting necessary (preventative) maintenance, rectifying Faults and breakdowns or adjusting and improving the Software of Otherside, or if the Customer breaches the law. Naturally, Otherside will decommission the Software outside office hours to the extent possible and notify the Customer of the intended decommissioning as soon as possible. Because the aforementioned decommissioning is in the Customer's interest, Otherside will never be obliged to comply, compensate, or pay damages vis-à-vis the Customer unless the cause of the decommissioning is a failure which can be attributed to Otherside, or if Otherside could have taken measures which are less drastic than decommissioning and wrongly failed to take them. In this connection, the Customer will accept any adjustments and changes and comply with Otherside's instructions regarding their implementation to maintain or improve the quality of the Software and Services.

### **4. Guarantees, Maintenance and Support**

- 4.1 Otherside offers Support to the Customer and will conduct Maintenance of the Software in accordance with the SLA.

- 4.2 Testing and acceptance tasks and/or testing and acceptance environments are not subject to the Software.
  - 4.3 Otherside is entitled to adjust the SLA. Adjustments of the SLA may not result in a reduction of the service level. The most recent version of the SLA is applicable.
  - 4.4 Otherside guarantees that specific legislation for which the Software was initially purchased and set up can be supported in the Software. The Customer is responsible for (permanently) assessing whether the legislation applicable to it is being fully complied with.
  - 4.5 The Customer acknowledges that the uninterrupted operation of the Software depends on external (physical) factors such as internal and external networks, geographical location and buildings. In view of this, Otherside cannot guarantee that the Software will at all times operate free from errors, Faults and breakdowns. Otherside offers an SLA in the context of its services. Otherside ensures that this Software realises the availability percentage (uptime) referred to in the SLA – in addition to any other guarantees contained in the SLA. In addition, Otherside makes a back-up copy of the Software, Content and log files of the Customer on a remote server on a daily basis and has a disaster recovery location available. The further specifications of these obligations have been laid down in the SLA.
  - 4.6 The Customer can participate in an Escrow arrangement free of charge to guarantee the continuity of the Software in the event Otherside is no longer capable of offering the Software. The further specifications of this guarantee have been laid down in the SLA.
  - 4.7 Otherside ensures that the Documentation contains a correct description of the features and functionalities of the Software to enable a Functional Administrator to make effective use of the Software. If necessary, the Support offered by Otherside can be used.
  - 4.8 Otherside will not make separate charges for necessary adjustments of the Software and databases in response to changes in legislation, as included in the Maintenance, unless the relevant adjustments constitute major adjustments or have major consequences for the design of the Software and database that the related costs cannot reasonably remain (entirely) payable by Otherside. In such situations, Otherside will consult with the Client about the details of the changes and the corresponding costs. If the Parties cannot reach agreement with regard to sharing the costs, the Customer will be entitled to terminate the Agreement in writing through cancellation on the date on which the change comes into effect, unless Otherside indicates that it will pay the costs of the changes.
5. **Term, termination and consequences of termination**
    - 5.1 Once it has received notice of termination of the Supply Agreement, Otherside will render all necessary cooperation in the smooth transition of the Customer to a new system, consisting of making all the Customer's Content available to the Customer or a Third Party designated by the Customer. Otherside will store all the Content of the Customer and keep them available for a maximum of 60 days following termination or dissolution of the Supply Agreement to enable the Customer (or a Third Party designated by the Customer) to request or destroy its Content. After expiry of that period, Otherside will delete the Content, unless the Customer requests Otherside in writing to keep the Content for an additional period of time, the duration of which is to be determined by the Customer. After expiry of the above-mentioned additional period of time, Otherside will destroy the Content. During the additional period of time the Content will be kept under the exclusive responsibility of the Customer.
    - 5.2 From the date of termination of the Supply Agreement with the Customer and/or the Agreement between Otherside and the Reseller for any reason whatsoever, Otherside has the right to cease and/or terminate the supply of the Software to the Customer.
    - 5.3 If the Software is supplied through a Reseller and the Customer wishes to continue the supply of the Software, Otherside will make every effort to guarantee continuation of the supply through another Reseller and/or direct supply. This requires, however, the conclusion of a new Supply Agreement with the Customer.
  6. **Liability**
    - 6.1 Otherside's total liability for loss suffered by the Customer in relation to the Software as a consequence of non-performance of the Agreement for Use of the Software by Otherside, or a person for which it is liable pursuant to the law or on any other account, is limited to compensation of loss up to the maximum amount of 2x the agreed rate for the Software per year per event and 4x the annual rate for all events per calendar year, together up to a maximum of € 500,000.
    - 6.2 The liability limitations of this article do not apply if the loss suffered by the Customer was caused by intent or gross negligence on the part of Otherside.
    - 6.3 On each occasion, any entitlement to damages requires that Otherside is in default in accordance with Article 2.2 and that the Customer notifies Otherside of the loss as soon as possible and at least within twelve (12) months after the loss was discovered.
  7. **Force Majeure**
    - 7.1 To the extent that it does not arise from the law, a party is not liable for any loss or obliged to fulfil any obligation if the loss or non-performance was caused by force majeure. Force majeure in this connection includes any circumstance that is outside the control of the party concerned and for which that party is not liable on any other grounds under Article 6:75 of the Dutch Civil Code.

## 8. Intellectual property and indemnity

- 8.1 All intellectual property rights relating to the Software made available or developed by Otherside for the Customer as well as the (Consultancy) Services and Documentation are vested exclusively in Otherside. The Customer will receive a non-exclusive and non-transferable user right in accordance with these Licence Terms and Conditions, exclusively for the term of the Supply Agreement
- 8.2 Unless agreed otherwise in the Agreement for Use of the Software, the Customer may use the Software made available only for its own organisation and business operations. Within the framework of its operations the Customer is entitled to allow third parties access to the Software and to charge those third parties a reasonable commercial rate which is also in line with the market.
- 8.3 Otherside indemnifies the Customer against all legal actions brought by Third Parties based on the alleged infringement by Otherside's Software of an intellectual property right, subject to the condition that the Customer (a) notifies Otherside immediately of the existence and substance of the legal action in writing; and (b) leaves the handling of the case, including the effectuation of a settlement, to Otherside. The Customer will provide Otherside with the necessary authorisations, information and cooperation to defend itself against such legal actions, if necessary in the Customer's name. This indemnity obligation is cancelled if the alleged infringement relates to adjustments the Customer made, or caused to be made, to the Software. If it is irrevocably established in court that Otherside's Software infringes any intellectual property right of a third party or if Otherside is of the opinion that such an infringement is likely to occur, Otherside will ensure, if possible, that the Customer continues to have uninterrupted use of the Software supplied or Software with similar functionalities, for example by adjusting the infringing elements or acquiring a user right for the benefit of the Customer. If Otherside, at its sole discretion, is unable to ensure uninterrupted use by the Customer of the supplied products or is only able to ensure uninterrupted use by the Customer of the supplied products in a manner that is unreasonably burdensome (financially), Otherside will take back the supplied products and refund the purchase costs after deduction of a reasonable user rate. Otherside will consult the Customer before making its decision in this respect.
- 8.4 All Content developed, made, uploaded, or otherwise provided in the Software by the Customer will continue to be owned by the Customer.
- 8.5 The Customer reserves all intellectual property rights with regard to the Content which it develops and supplies in the Software including, but not limited to, copyrights, brand rights and other related intellectual property rights.
- 8.6 Otherside acknowledges and agrees that it does not have any right to ownership of the Content developed or provided in the Software by the Customer.

- 8.7 Unless agreed otherwise in writing, Otherside will not publish, produce, distribute, amend, or use the Content for purposes other than those specifically required for the performance of the agreed services, without the Customer's prior written permission.
- 8.8 In the case that the Agreement between the Customer and Otherside is terminated, Otherside will delete all Content owned by the Customer from its systems and destroy all copies thereof.
- 8.9 If the Customer processes Content in the Software Content which is subject to the copyright, brand rights, patents, or other intellectual property rights and/or royalties of third parties, the Customer must agree the same with these parties, unless agreed otherwise.
- 8.10 The Customer indemnifies Otherside against all claims, legal proceedings, costs, damages, losses, or other liabilities which result from the Customer using the Content in a way which is contrary to the intellectual property rights of third parties, or the payment of royalties.

## 9. Non-disclosure

- 9.1 The Parties are obliged to maintain confidentiality with regard to all confidential information (agreed rates, software lists, documentation, benchmark tests, specifications, object codes, source codes and machine readable copies of the software, including means of authentication) of the Parties acquired by them in the context of the Agreement for Use of the Software or from any other source. Information is considered confidential if the parties have communicated this, or if this follows from the nature of the information.
- 9.2 Either party will agree the same duty of confidentiality with its employees and/or third parties working for it and having actual access to the information previously referred to in this paragraph, will warrant compliance with this duty of confidentiality by its employees and/or third parties to the other party, and will indemnify the other party against all losses suffered by it as a consequence of any unlikely breaches of this duty of confidentiality.

## 10. Personal data processing

- 10.1 In the performance of the Agreement for Use of the Software (special) personal data are processed. In that context and pursuant to applicable privacy legislation (such as the General Data Protection Regulation) the Customer will be considered to be a controller and Otherside will be considered to be a processor.
- 10.2 The Customer hereby instructs Otherside to process these (special) personal data on its behalf for the performance of the Agreement for Use of the Software. Otherside will only process the personal data in accordance with a processing agreement to be concluded separately.
- 10.3 Otherside will host this Software and the Customer's Content in data centres of Otherside's specialised hosting partner or

- partners. The Software and Content are to be hosted and processed within the EEA.
- 10.4 Otherside will put appropriate security measures in place, as stipulated in greater detail in the Processing Agreement, and will provide a secure connection on the basis of an SSL certificate.
- 10.5 If no separate Processing Agreement is concluded between the parties, Otherside will: (a) process the relevant (special) personal data only in the context of the assignment ensuing from the Agreement for Use of the Software and, for that matter, process all personal data in accordance with applicable legislation. Without prejudice to the Customer's obligation to put adequate security measures in place, Otherside will (b) take appropriate technical and organisational measures to protect the processing of personal data. The Customer is (c) aware of, and consents in advance to, the fact that Otherside uses (storage) services of third parties for the performance of the Agreement for Use of the Software. To the extent that Otherside (d) instructs one or more third parties to process personal data, Otherside will conclude processing agreements with such third party or parties and impose on them the obligations in these Licence Terms and Conditions. The Customer may (e) monitor, or instruct others to monitor, compliance with these obligations by Otherside. Any costs incurred in this respect will be for the Customer's account. If no separate Processing Agreement is concluded, Otherside will be liable for the Customer only in accordance with Article 6.
- 10.6 The Customer warrants to Otherside that the content, use and/or processing of the data takes place in accordance with applicable legislation, is not unlawful and does not constitute an infringement of any right of a Third Party. The Customer will indemnify Otherside completely against all legal actions instituted by a Third Party/Third Parties, on any account whatsoever, in connection with this personal data processing.
- 10.7 In the (unlikely) event that an infringement of security measures occurs at Otherside, it will notify the Customer as soon as possible and no later than within 24 hours, without prejudice to Otherside's obligations to take effective measures to reverse the adverse consequences resulting from the incident and reduce any further adverse consequences to the extent possible. Otherside will keep a log of the incidents referred to in the previous paragraph and of the measures taken in response to such incidents and it will make this log available for inspection at the Customer's request. In so far as the Customer deems it necessary to notify the data subjects of one or more incidents as referred to in the previous articles, Otherside will render all reasonable cooperation. In doing so the Parties will each pay the costs they themselves incur.
- 11.1 All agreements and any ensuing or relating obligations are exclusively governed by Dutch law.
- 11.2 All disputes arising from or relating to the Agreement and these Licence Terms and Conditions that cannot be resolved by consultation will be resolved by the competent Dutch judge of the Court of 's-Hertogenbosch, unless the parties agree on mediation or arbitration of a specific dispute.

## 11. Applicable law, competent court