



## **General Terms and Conditions of GPSI International B.V., domiciled in Curaçao**

### **Article 1 - Definitions**

In these General Terms and Conditions, the following, capitalized, words, either in singular or in plural, have the following meanings:

- 1.1 **Agreement:** the assignment agreement(s) between Customer and GPSI relating to the purchase by Customer of certain services to be obtained through the GPSI Website. An Agreement is reached by Customer signing a written offer/proposal of GPSI for acceptance.
- 1.2 **Company:** an identified natural person, legal entity, or specific administrative unit for which salary records are kept within the GPSI Web Application.
- 1.3 **Customer:** a natural person or legal entity with which GPSI enters into an Agreement for the purpose of purchasing services through the GPSI website.
- 1.4 **DPAC:** The Data Protection Act Curaçao, including any implementation acts or amendments of this Act.
- 1.5 **Employee:** a natural person working under an employment agreement who receives a salary payment within a specific Company in a specific period.
- 1.6 **Environment:** an environment within the GPSI Web Application belonging to one Customer, to which only such Customer's User(s) has/have access.
- 1.7 **General Terms and Conditions:** these General Terms and Conditions, which provide the conditions for use of the services offered by GPSI through its website.
- 1.8 **GPSI:** the closed corporation GPS International B.V., domiciled at the address E-Commerce Park Vredenberg in Curaçao, recorded in the Trade Register of the Chamber of Commerce of Curaçao under number 134210 (0).
- 1.9 **GPSI Web Application:** the online web application named Celery®, developed, maintained, and provided by GPSI for the purpose of keeping salary records, including any related HRM functionalities as specified on the GPSI website.
- 1.10 **GPSI Website:** [www.celerypayroll.com](http://www.celerypayroll.com)
- 1.11 **Personal data:** any information relating to an identified or identifiable natural person that is processed in the context of the Agreement as referred to in article 1, sub a of the DPAC; 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.

- 1.12 Processor Agreement: Agreement between GPSI and Customer containing the rights and obligations of GPSI and Customer in connection with the processing of Personal data by GPSI, as meant in article 14, section 2 of the DPAC.
- 1.9 Servers: interrelated computers managed by or on behalf of GPSI, and any related hardware, containing web server software, supporting software, or database software used to run the GPSI Web Application on the internet.
- 1.10 Standard Price: the price currently applicable to each salaried employee in accordance with the currently valid price list on the GPSI website at the time the Agreement is entered into.
- 1.11 User: a natural person with administration rights who has been appointed by the Customer as administrator of the Customer's Environment.

## **Article 2 - Applicability / Order of Precedence**

- 2.1 All offers of GPSI, made in whatever form, are completely without obligations, unless expressly stated otherwise. GPSI may withdraw or change an offer in whole or in part at any time.
- 2.2 Any amendments to the Agreement, including any reduction or expansion of work already agreed on, will become effective as soon as GPSI and Customer have confirmed them in writing. Offers are based on the data provided by the Customer and known to GPSI at the time the offer is made. The consequences of any differences between the data provided by the Customer and included in the offer, on the one hand, and reality, on the other hand, are for the account and risk of the Customer.
- 2.3 All offers and all agreements entered into by GPSI with a Customer are exclusively subject to the General Terms and Conditions. The General Terms and Conditions may only be departed from if and to the extent such departure is agreed on in writing, and only for the agreement for which the varying provisions are made.
- 2.4 GPSI expressly precludes applicability of the Customer's general terms and conditions. The General Terms and Conditions will also apply if the Customer's general terms and conditions contain a prevalence provision. If any provision in the General Terms and Conditions is null and void for whatever reason, the parties will, by mutual agreement, adopt a new provision as close as possible to the original provision.

## **Article 3 - Access to the GPSI Web Application**

- 3.1 During the term of the Agreement, GPSI will provide the Customer with access to the GPSI Web Application and keep the GPSI Web Application operational in accordance with the service level stated on the GPSI Website. To this end, GPSI will provide the Customer with the URL of the GPSI Web Application and a password, after the signing of the Agreement. This URL and this password will allow the Customer to configure and manage the Environment.
- 3.2 GPSI will make every effort to provide the services carefully. All GPSI services are provided under a best-efforts obligation.
- 3.3 The Customer shall use the GPSI Web Application for its own Company and/or the Companies of its own customers.

- 3.4 Use of the GPSI Web Application will be billed based on the Standard Price. The Customer will be billed monthly, afterwards, and automatically for the number of salaried employees in the preceding month.
- 3.5 GPSI has the right to adjust the offered functionality of the GPSI Web Application from time to time in order to improve or amend such functionality and to correct mistakes. GPSI will make maximum efforts to correct any mistakes in the GPSI Web Application, but GPSI cannot guarantee that all mistakes will be corrected. In the event an adjustment leads to a change in functionality, GPSI will notify this to the Customer by means of an overview in the GPSI Web Application. The GPSI Web Application is provided in identical form to many Customers, because of which it is impossible to refrain from making a specific adjustment or to implement a specific adjustment for just one specific Customer.

#### **Article 4 - Use of the GPSI Web Application**

- 4.1 The Customer determines which (financial) information will be stored and/or exchanged by means of the GPSI Web Application. GPSI has no knowledge of such information. Consequently, the Customer is responsible for making sure that such information is lawful and does not violate the rights of third parties. GPSI accepts no liability whatsoever for any information stored and/or exchanged by means of the GPSI Web Application. The Customer shall indemnify GPSI for any claims of third parties which are based on the allegation that the information stored and/or exchanged by the Customer or Users by means of the GPSI Web Application is unlawful.
- 4.2 GPSI is not responsible for the financial accuracy of the data nor for the application by Users of any salary processing rules in effect with the Customer. GPSI will make maximum efforts to guarantee the correct processing of salaries and validation of financial transactions performed. However, any information erroneously provided by Users, which may in itself be valid from a point of view of salary accounting, can never be recognized as such by the GPSI Web Application and will consequently be stored or processed incorrectly as intended.
- 4.3 Should GPSI discover that any information stored and/or exchanged by Users by means of the GPSI Web Application is unlawful, GPSI will act promptly to remove such information or make access to such information impossible. In no event will GPSI be liable for any damage that may arise from such actions.
- 4.4 GPSI, the Customer, and the Users have an obligation to keep the passwords provided by GPSI or created by Users secret. GPSI will not be liable for any misuse or loss of passwords by the Customer or Users, and may assume that Users logging in with the password are actually Users authorized by the Customer. As soon as the Customer knows or has a reason to suspect that passwords have ended up in the hands of unauthorized persons, GPSI must be notified accordingly both in writing and by phone without delay.
- 4.5 Each User may change his/her own password. Users are recommended to change their passwords periodically.
- 4.6 Users have an obligation to carefully comply with GPSI's operating instructions and are bound by prevailing customs of normal use of a web application such as the GPSI Web Application.
- 4.7 Neither GPSI nor the Customer may assign the rights and obligations arising from the Agreement to a third party without the prior written permission of the other party. Such permission shall not be denied without reasonable grounds; however, GPSI may make the granting of its permission subject to conditions.

- 4.8 GPSI applies no fixed limit on the amount of data and/or master files the Customer may process (or cause to be processed) in keeping salary records. This does not mean, however, that GPSI allows unlimited processing of such data. In case of a higher than average use per month in relation to the number of paying Users per Environment, GPSI will notify the Customer accordingly. In case the Customer does not wish to reduce such use, GPSI reserves the right to charge a higher fee. If the Customer does not wish to pay such higher fee, the Customer will have the right to terminate the Agreement, effective immediately, free of charge within 30 (thirty) days.

#### **Article 5 - Support, Training & Advice**

- 5.1 The Customer is entitled to online support, as described on the GPSI website, with regard to the functionality of the GPSI Web Application. GPSI can only provide such support if the Customer uses operating systems and browsers which are supported by the producer of the operating systems at the time the support is provided. First-line support is provided through an online helpdesk function within the GPSI Web Application. GPSI will make an effort to answer questions promptly and adequately. Answers may be provided both by e-mail and by phone. GPSI cannot warrant the accuracy and/or completeness of answers. Internal questions about processing procedures or aspects related to employment conditions within the Customer's organization will not be dealt with.
- 5.2 The Customer may sign up Users to get training on using the GPSI Web Application. If, in the opinion of GPSI, the number of sign-ups for such training so justifies, GPSI may combine the training with one or more other training courses or have the training take place on a later date or at a later time. GPSI does not give any sort of warranty or conformity with regard to (the substance of) the training, and the Customer accepts that the training will be provided by GPSI to the best of its ability, as it will be received by the Customer at the time of participation (on an "as is" basis). GPSI may always demand payment of the fee due for the training prior to the start of such training. The consequences of cancelation of participation in the training are as follows: (i) in the event of cancelation up to five (5) workdays in advance, the Customer will be entitled to reimbursement of 85% of the fee, or to get the training later; (ii) in the event of cancelation up to two (2) workdays in advance, the Customer will not be entitled to reimbursement of the fee, but the Customer may choose to get the training later, and (iii) in the event of cancelation less than 2 (two) workdays in advance, the Customer will not be entitled to reimbursement of the fee, and, if the Customer should decide to get the training later, the full price then due will have to be paid again.
- 5.3 In order to allow GPSI to properly perform its work, the Customer shall provide all relevant information, data, and records. If necessary, the Customer shall grant GPSI all powers of attorney required to perform the Agreement.

#### **Article 6 - Confidentiality**

- 6.1 Both GPSI and the Customer shall treat as confidential any data and information about the business matters of the other party (parties) that may be obtained during the performance of the Agreement. In particular, GPSI will treat as confidential any data and information stored and/or exchanged by means of the GPSI Web Application, to the extent GPSI is aware of such data and information.
- 6.2 Each of the GPSI employees who have access to the GPSI Web Application or Servers has signed a confidentiality agreement with GPSI with regard to such stored data.

#### **Article 7 - Privacy and Security**

- 7.1 Use of the GPSI Web Application may imply processing Personal data, in which processing GPSI will act as an independent intermediary. In such capacity, GPSI will comply with all legal obligations

to which it is subject. The Customer will be considered the Personal data controller as defined in article 1, sub d of the DPAC. GPSI and Customer will enter into a Processor Agreement relating to the processing by GPSI of Personal data on the instruction of Customer..

- 7.2 All employees acting under the authority of GPSI and having access to personal data shall likewise treat as confidential any personal data that may come to their knowledge, unless a statutory provision requires them to disclose such data.
- 7.3 GPSI will, to the maximum of its ability, take measures to secure the information stored on the Servers. Such measures shall be appropriate, having regard to the state of technological development and the costs involved. In particular, GPSI will take extreme care to prevent unauthorized persons from gaining unauthorized access to data of the Customer. Users are supposed to use the common security systems that are reasonably supposed to be installed on a computer, such as an anti-virus, anti-spam, anti-spyware, anti-malware, anti-phishing, and firewall solution, as well as any security devices made available by GPSI.

## **Article 8 - Fee and Payment**

- 8.1 The Customer will owe GPSI a monthly fee for using the GPSI Web Application. The amount of such fee will be determined in accordance with Article 3. An additional fee may apply for the use of specific functions which are charged based on their use. All charges referred to will be in USD and do not include turnover tax (OB), unless expressly stated otherwise.
- 8.2 In addition, the Customer will owe all amounts agreed on in advance for consultancy services, including the deployment of GPSI employees on behalf of the Customer or for purposes of training, courses, and instruction.
- 8.3 GPSI will invoice the Customer for the use of the GPSI Web Application monthly. The Customer shall pay the amounts charged not later than 14 (fourteen) days after the invoice date. If the Customer fails to do so, the Customer will receive a reminder. If the Customer still fails to pay following such reminder, GPSI reserves the right to charge all (extrajudicial and litigation) costs plus legal interest and/or assign the claim to a third party. All related costs will be charged to the Customer. Extrajudicial collection charges will in any case be 15% of the amount due, with a minimum of ANG 100.00.
- 8.4 If a payment has not been made in due time, the Customer will automatically be in default. GPSI will then be authorized to temporarily block access to the GPSI Web Application, until the payment obligations have been met by the Customer.
- 8.5 GPSI may read out, by means of automation or otherwise, the data entered into the user administration, and use such data for the purposes of correct calculation and correct billing of the Customer.
- 8.6 GPSI has the right to increase its standard prices once a year by a percentage equal to the increase in the CBS consumer price index and to round up such prices to amounts in whole ANGs.
- 8.7 The fee for services provided by GPSI may also be changed at the start of a new calendar year in cases other than the case referred to in paragraph 6 of this article. GPSI will notify the Customer in writing of any price changes GPSI may implement, not later than three months before renewal of the Agreement. The changed fee will then apply as of the effective date of the annual renewal.
- 8.8 Any authority of the Customer to offset, on whatever grounds and for whatever reason, is expressly precluded.

## **Article 9 - Agreement, Term and Termination**

- 9.1 The Agreement will enter into effect at the time the Customer has been provided with a password as referred to in Article 3.1, giving the Customer access to the GPSI Web Application.
- 9.2 The Agreement is entered into for an indefinite period of time, unless otherwise agreed. Subject to one (1) month's notice, the Agreement may be terminated by the Customer by the end of a calendar month, and subject to two (2) months' notice, the Agreement may be terminated by GPSI by the end of a calendar year. Notice to terminate the Agreement shall be given in writing.
- 9.3 Both GPSI and the Customer may, without incurring any obligation to pay damages, dissolve all or part of the Agreement in writing with immediate effect or demand dissolution of the Agreement in court if: a) the other party has culpably breached 1 (one) or more of its obligations after having been granted in writing a reasonable period of 30 (thirty) days to cure the breach of such obligation(s); b) the other party has been granted a moratorium on payments, or files for a moratorium on payments or for bankruptcy; c) the other party is declared bankrupt; or d) the other party's business is liquidated.
- 9.4 Following termination of the Agreement for whatever reason, the Customer will immediately lose the right to use the GPSI Web Application, and GPSI will no longer have an obligation to grant the Customer and/or Users access to the GPSI Web Application. The Customer shall immediately destroy any passwords provided to the Customer. Any amounts invoiced by GPSI prior to the termination in connection with anything GPSI has already properly done or delivered in fulfillment of the Agreement will remain owing in their entirety and will become forthwith due and payable at the time of termination. At the Customer's request, GPSI will make any data entered or provided by Users by means of the GPSI Web Application up to termination of the Agreement available to the Customer in a generally accessible file format, provided the Customer files such request with GPSI in writing and within 1 (one) month after termination of the Agreement. The Customer accepts that such data contain the characteristics as found by the Customer at the time of their receipt, and that any liability of GPSI for such data is precluded. Further, GPSI will have no obligation whatsoever to convert the data made available or otherwise make them suitable to be used by the Customer.

## **Article 10 - Liability**

- 10.1 GPSI 's total liability for culpable breach of the Agreement and/or by virtue of unlawful acts will be limited to compensation for direct damage suffered by the Customer up to the amount (not including turnover tax (OB)) which the Customer has paid to GPSI for use of the GPSI Web Application during 12 (twelve) months prior to the time at which the damage-causing event occurred. Direct damage only includes: a) any costs incurred by the Customer by virtue of being forced to keep its old system or systems and any related facilities operational for a longer time due to GPSI 's failure to perform by a date which is binding on GPSI, less any savings that may have resulted from such delayed performance; b) reasonable costs incurred to determine the cause and the extent of the damage, to the extent such determination is related to direct damage within the meaning of this article; c) reasonable costs incurred to prevent or reduce damage, to the extent the Customer proves that such costs have actually reduced direct damage within the meaning of this article.
- 10.2 GPSI will not be liable for any damage other than the direct damage described above, including, without limitation: indirect damage, including consequential damage, lost profits, fines or additional assessments, missed savings, and damage due to business stagnation. Likewise, GPSI will not be liable for any damage to or loss of stored data, including data related to salary records, regardless of whether such data represent a monetary value.
- 10.3 If a damage event occurs and has been identified, the Customer shall notify this to GPSI by certified mail without delay, but not later than within 10 (ten) workdays. If this does not happen, any

entitlement to damages will be lost. However, GPSI will make equal efforts to try and solve the problem.

- 10.4 Except in the cases referred to in Articles 10.1 and 10.2, GPSI will have no liability whatsoever to pay damages, regardless of the grounds on which an action for damages may be based. The limitations of liability stated in this article will not apply if the damage is the result of demonstrable intent or conscious recklessness of GPSI.
- 10.5 If a specific action of the Customer or Users is shown to compromise the general functioning of the Web service, GPSI will be authorized, without any further announcement or warning, to deny access to the GPSI Web Application and make such access impossible for a specific period.

#### **Article 11 - Force Majeure**

- 11.1 There will be no culpable breach by GPSI in the event of *force majeure*. *Force majeure* includes, without limitation, non-culpable breach by suppliers of GPSI, government measures or regulations, strikes, interruptions in power supply, internet connections and/or the telephone network, and any other circumstances in which GPSI cannot (or can no longer) within reason be required to meet its obligations toward the Customer.
- 11.2 If, due to *force majeure*, GPSI is unable to comply with any obligation arising from the Agreement, GPSI will have no obligation to comply as long as such *force majeure* persists.
- 11.3 When the situation of *force majeure* has lasted more than 7 (seven) workdays, the Customer will have the right to dissolve the Agreement by means of a written notice sent to GPSI by certified mail. Any obligations already performed will then be settled proportionately.

#### **Article 12 - Intellectual Property Rights**

- 12.1 All intellectual or industrial property rights on Celery® are the exclusive property of General Payroll Services B.V. (GPS). Neither the entry into the Agreement nor the use of Celery® or any other transfer of information from GPS or GPSI to the Customer will imply the transfer of any copyright or any other intellectual or industrial property right on Celery®. Any data entered or supplied by Users are the property of the Customer. All (rights on) the database set-up or the procedures for storing the Customer's data are the property of GPS or GPSI.
- 12.2 The actual use (including, without limitation, the password and/or name of the GPSI Environment) is nontransferable without the prior written permission of GPSI.
- 12.3 By entering into the Agreement, the Customer will only obtain the right to use the GPSI Web Application during the term of the Agreement.
- 12.4 GPSI reserves all rights on products of the mind which GPSI uses or has used in the performance of the Agreement with the Customer, to the extent any rights may exist or be established on such products in a legal sense.
- 12.5 The Customer is expressly prohibited from reproducing, publishing, or exploiting, whether or not with the help of third parties, such products, including software, system designs, procedures, advice, (model) contracts, and other products of the mind.
- 12.6 The Customer is not allowed to hand such products over to third parties for any purpose other than securing an expert opinion on GPSI's work.

### **Article 13 - Miscellaneous**

- 13.1 These General Terms and Conditions and any disputes arising from or related to these General Terms and Conditions will be subject to Curaçao law. Any dispute between the Customer and GPSI in connection with the Agreement shall be submitted to the court in Curaçao having jurisdiction.
- 13.2 The Customer acknowledges that the knowledge and experience of the GPSI employees are of great value to GPSI and are hard to replace. Therefore, the Customer accepts that during the term of the Agreement, as well as 24 (twenty-four) months after such term, Customer will not, neither directly nor indirectly, solicit or otherwise attempt to convince any officer, employee or consultant of GPSI to contract with Customer by means of any employment agreement, management agreement, consultancy service, or otherwise.
- 13.3 The Customer accepts that GPSI may use the Customer's name and logo in press releases or product brochures for the purpose of stating in such brochures that the Customer is a customer of GPSI.
- 13.4 GPSI may not use the data from the Customer's Environment or records in any way other than for the purpose of providing services to the Customer. GPSI may, however, use anonymized data for purposes of statistics. GPSI may use a copy of the Environment for internal use in order to monitor the proper functioning of the Customer's Environment or to test the functioning of a newer version of the GPSI Web Application.
- 13.5 GPSI has the right to change the General Terms and Conditions. GPSI will notify any such change to the Customer in writing (including by electronic means). Following such notification, such change will apply to the Agreement between GPSI and the Customer as of the date stated by GPSI. In the event the Customer does not wish to accept a change, the Customer will have the right to give notice, within 30 (thirty) days after such notification, to terminate the Agreement free of charge by the date on which the change becomes effective.
- 13.6 Without prejudice to its own responsibility, GPSI may call in third parties to perform the Agreement, without the need for prior permission of the Customer. Likewise, GPSI may transfer its legal relationship under the Agreement to a third party without further cooperation, or change such legal relationship, provided such transfer occurs as part of the transfer of (a substantial) part of GPSI's business.
- 13.7 Any departures from the Agreement will only be valid if agreed on in writing. Any notifications under the Agreement shall be given in writing, unless otherwise agreed.
- 13.8 These General Terms and Conditions are available in the Dutch and English language. In case of any discrepancy between the Dutch and the English version, the Dutch version will prevail.

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