

# End User License Agreement

Addendum to the agreement concluded between the Principal and ArboNed B.V. in the context of the provision of health and safety services

In the execution of the services provided by ArboNed to its Principals, data is exchanged. To ensure a careful exchange of data, ArboNed and its Principals make use of the IT infrastructure and software (hereinafter: **"Software"**) of IT&Care B.V. (hereinafter: **"IT&Care"**). In that, IT&Care acts as the independent manager of the Software, as well as data processor of the data processed through that Software. For that purpose, you make use of the Employer Portal, which is only accessible for you, in which you process data of your employees.

ArboNed has obtained a license from IT&Care to make the Employer Portal available to its Principals. In this End User License Agreement and the associated Employer Portal Module, ArboNed and the Principal make arrangements about the conditions under which the license is granted and under which the Principal is granted access to the Employer Portal. This End User License Agreement and the associated Module are fully applicable between the parties in respect of the software application provided to the Principal by ArboNed, unless expressly agreed otherwise in writing.

## Article 1. Definitions

In the present End User License Agreement the following definitions are used:

- 1.1. Documentation: description provided by ArboNed of the functionality and possibilities for use of the Software, whether or not contained in that Software or in separate manuals and/or data carriers.
- 1.2. User(s): the natural (legal) person(s) who has/have acquired the right to use the Software.
- 1.3. End User License Agreement: this End User License Agreement, including the Module between ArboNed and the Principal.
- 1.4. Data: all data accessible via the Software.
- 1.5. Employee(s): the natural person(s) who has/have an employment contract with the Principal (regardless of the number of hours per week) or who is/are flex worker(s) (including on-call and holiday workers).
- 1.6. Module: appendix to the End User License Agreement, which contains special conditions for the use of and access to the Employer Portal referred to therein.
- 1.7. Principal: the legal person that has entered into a service agreement with ArboNed.
- 1.8. Software: the Employer Portal developed by IT&Care and licensed to ArboNed and the software application that is part thereof as mentioned in the Module, as well as the database and infrastructure required for that, which is managed by IT&Care.
- 1.9. SaaS-(Services): Software as a Service, namely use of the Software whereby access is provided to the Software by means of an internet connection and whereby the required functionalities of the Software as a service are made available and accepted.
- 1.10. Access Code: the code that is made available by ArboNed to the Principal and/or the code that is made available to the User by the Principal, with which access is gained to the Software.
- 1.11. Employer Portal: Portal accessible only to the Principal, in which data of employees of the Principal, including Personal Data of those employees, are processed. The Employer Portal may contain several software applications, depending on the services agreed between the Principal and ArboNed.

## Article 2. Object of the End User License Agreement: Right of Use and SaaS Services

2.1. For the duration of the End User License Agreement, ArboNed grants the Principal the non-exclusive and non-transferable right to use the Software and

the Documentation made available to it by means of SaaS Services, subject to the provisions of the End User License Agreement and the associated Module.

2.2. ArboNed shall determine whether and if so when new versions of the Software and Documentation will be issued and/or adjustments and/or changes of the functionality of the Software and Documentation will be implemented. The right of use made available to the Principal exclusively regards the most recent version and functionalities of the Software and Documentation.

2.3. If changes in legislation or other regulations imposed by the government or regulatory branch authorities result in new obligations for the parties, these new obligations shall be deemed to be part of the End User License Agreement. In that case, the parties will enter into consultation with each other regarding the costs arising from this for the parties.

## Article 3. Access to the Software

3.1. The Principal and ArboNed shall take all reasonable precautions to prevent unauthorized parties from taking knowledge of the Access Codes provided to the Principal and managed by ArboNed, and/or the Access Codes managed internally by the Principal and provided to Users.

3.2. The responsibility for the use of the Access Codes by Users lies solely with the Principal. The Principal shall handle the Access Codes with all due care and in such a way that they will only be known to the Users authorized by it.

3.3. If ArboNed discovers or reasonably suspects that unauthorized persons are using or can make use of the Software, ArboNed reserves the right to block access to the Software. ArboNed will as then inform the Principal thereof as soon as possible and will, if possible after the blocking, make replacement Access Codes available.

3.4. If the unauthorized use of the Software has to be attributed to the Principal, the Principal must compensate ArboNed for the actual technical and administrative costs associated with the blocking and replacement.

## Article 4. Processing of Personal Data

4.1. Insofar as parties in the context of the End User License Agreement process data in the Employer Portal that can be designated as Personal Data within the meaning of Article 4 paragraph 1 of the General Data Protection Regulation 2016/679 (hereinafter referred to as **"GDPR"**), the provisions of this Article shall apply.

4.2. The Parties shall comply with the privacy and information security requirements laid down in GDPR and with all other applicable laws and regulations relating to the protection of Personal Data.

4.3. The parties are of the opinion that the Principal can be regarded as the "controller" of the Personal Data that it enters into the Employer Portal. The Software and the Personal Data processed within it will be managed by IT&Care. IT&Care can be designated as the "data processor" of the Personal Data. IT&Care and the Principal have in this context entered into a Data Processing Agreement. The Data Processing Agreement provides how the careful processing of Personal Data in the Employer Portal is guaranteed and secured.

4.4. ArboNed shall have no access to the Personal Data included in the Employer Portal. ArboNed may only receive Personal Data from the Software if there is a legal basis for that. There will be a legal basis as from the moment that ArboNed starts providing health care to the employees of the Principal.

4.5. If ArboNed on the basis of the legal basis described in Article 4.4 is allowed to receive specific Personal Data, IT&Care shall make that Personal Data available to ArboNed. This shall be subject to strict conditions, which have been specified in the Data Processing Agreement between ArboNed and IT&Care, as well as in the privacy regulations of ArboNed and IT&Care, which can be consulted via [www.arboned.nl](http://www.arboned.nl) and [www.itandcare.nl](http://www.itandcare.nl).

## Article 5. Obligations of the Principal

5.1. The Principal shall be responsible for any use, including unauthorized and careless use, made on its behalf of the Software and the Access Codes.

5.2. The Principal must comply with the (technical) regulations, conditions and procedures provided by or on behalf of ArboNed with regard to the use of the Software. If possible, ArboNed will inform the Principal of any changes in a timely manner in advance.

5.3. The Principal shall take care of and is responsible for the purchase, management and maintenance of the necessary hardware and software, connections, and a suitable internet browser, as required for the use of the Software.

5.4. The Principal shall be prohibited from carrying out any actions of which it knows or can reasonably suspect that this may hinder or inflict damage to the infrastructure, the Software, the Data, ArboNed, ArboNed's Principals and/or other internet users.

5.5. The Principal will not use the Software for any actions and/or conduct that are in conflict with any applicable statutory provisions or the End User License Agreement.

5.6. If the parties for the implementation of the End User License Agreement process electronic (Personal) Data by means of file exchange, they shall each be responsible for the careful processing of the relevant Data by means of a secured connection and/or environment. ArboNed shall take appropriate technical and organizational (security) measures concerning the Software. If the Principal does not fulfil his obligations in this context, ArboNed shall never be liable for any damage arising therefrom.

5.7. If ArboNed at the request of the Principal exchanges (personal) data with one or more third parties in the manner as referred to in Article 5.6, the Principal shall be responsible for his actions/omissions and for making careful arrangements in this context with those third parties.

5.8. The Principal guarantees that Users will comply with the provisions of this Article.

## Article 6. Obligations of ArboNed

6.1. ArboNed is committed to ensure an optimal availability and accessibility of the Software, with due observance of the provisions of this Article.

6.2. ArboNed shall ensure that the Principal will have 24/7 availability of the Software, with exception of situations in which the Software is temporarily closed off to install the latest versions and updates or to carry out maintenance. In case of the aforementioned (unannounced) closing off of the Software, no entitlement to compensation for damages of the Principal towards ArboNed arises.

6.3. If the Software is not available for the Principal, ArboNed shall have a best effort obligation to solve the problem as soon as possible.

6.4. ArboNed shall to the best of its ability remedy any defects in the Software if the Software does not comply with the specifications laid down in writing in the Documentation.

6.5. ArboNed guarantees the accessibility of the helpdesk by telephone and/or e-mail during office

# Addendum to the agreement concluded between the Principal and ArboNed B.V. in the context of the provision of health and safety services

hours, for receiving and responding to requests for assistance from the Principal and for reporting faults by the Principal.

6.6. Under no circumstances shall ArboNed guarantee a correct and undamaged data transmission and the absence of viruses or malware in the Software.

6.7. ArboNed shall monitor the use of and access to the Software in the context of its certification requirements and statutory obligations.

## Article 7. Intellectual Property Software

7.1. The copyrights and all other intellectual property rights relating to the Software shall never accrue or belong to the Principal. The Principal acknowledges and confirms the same, and shall refrain from any infringement of those rights.

7.2. If the Principal establishes an infringement of any nature of the rights referred to in Article 7.1, he will immediately report the same to ArboNed.

7.3. ArboNed shall indemnify the Principal against any damage and costs resulting from any claims of any third parties alleging that the Software infringes any intellectual property rights of those third parties. In the event of such an infringement, ArboNed shall immediately consult with IT&Care in order to determine whether IT&Care, for its own account and at its own expense:

a. will acquire the rights of the relevant third parties for the continued use by the Principal of the Software; or

b. will modify the Software in such a way, while maintaining a substantially comparable functionality, that it no longer infringes.

If in the opinion of ArboNed and IT&Care the above is not possible under reasonable conditions, the Principal agrees to discontinue his use of the Software at the written request of ArboNed.

7.4. The indemnification included in Article 7.3 will lapse if the Principal uses or has used the Software in any way that does not correspond with the intended use of the Software and/or is in conflict with the Documentation or instructions from ArboNed.

## Article 8. Confidentiality

8.1. The parties mutually undertake to maintain the secrecy of any confidential information that they have obtained from the other party within the framework of the End User License Agreement or that inadvertently has come to the knowledge of one of the parties, and of which they should have understood the confidential nature. Each of the parties shall take all reasonable precautions to comply with this obligation.

8.2. The confidential information shall in any case include the Software itself and the Data processed by means of the Software.

8.3. The parties also mutually undertake to maintain the secrecy of all matters relating to each other's enterprises and business activities. All information that comes to their knowledge shall only be used for the performance of the activities under the End User License Agreement or any other agreements and/or activities arising therefrom.

8.4. The Principal guarantees that Users will comply with the secrecy obligation as included in this Article 8. In addition, ArboNed ensures that employees employed by it will also comply with this confidentiality obligation.

8.5. If one of the parties violates the provisions of this Article, that party shall, without any reminder or notice of default being required, in each of these cases forfeit an immediately due and payable

penalty of € 2,500, which is not subject to any judicial mitigation, per violation and per day that the violation continues.

8.6. The penalty referred to hereinabove in Article 8.5 shall not prejudice the other rights of the injured party, including the entitlement to full compensation and/or dissolution of the End User License Agreement.

## Article 9. Duration and Termination

9.1. The Principal shall acquire the right to use the Software for the duration specified in the Module.

9.2. After the expiry of the agreed duration as specified in the Module, as well as after the expiry of any subsequent terms, the right of use of the Software shall be tacitly renewed for a period of 12 months, unless the End User License Agreement and the Module are cancelled by one of the parties in writing with due observance of a notice period of three months.

9.3. Without prejudice to its right to claim full compensation, ArboNed shall have the right to suspend the fulfilment of its obligations and/or to dissolve the End User License Agreement if:

- the Principal does not or does not fully comply with the obligations under the End User License Agreement;
- ArboNed after the conclusion of the End User License Agreement becomes aware of any circumstances that give it good grounds to fear that the Principal will not comply with his obligations;
- the Principal files a petition to be granted a suspension of payments, is declared bankrupt or transfers (any part of) his business in full or in part to third parties, or liquidates or stops his enterprise.

9.4. Furthermore, ArboNed shall have the right to dissolve the End User License Agreement if circumstances arise that are of such a nature that an unchanged performance of the End User License Agreement according to standards of reasonableness and fairness cannot possibly be demanded from it any longer.

9.5. If the End User License Agreement is dissolved, any and all claims of ArboNed against the Principal will immediately become due and payable.

## Article 10. Force Majeure

10.1. ArboNed is not obliged to fulfil any obligation under the End User License Agreement if it is prevented from doing so as a result of force majeure. Force majeure shall include:

- a shortcoming of suppliers of ArboNed;
- failure of the Software as a result of any failure or disruption in the delivery of energy;
- hacking and/or malware, such as computer viruses, worms, trojans, logic bombs, denial of service tools, hoaxes and the like;
- faults or delays that occur on the internet.

10.2. If the force majeure situation lasts longer than 30 days, the parties can dissolve the End User License Agreement in writing without being held to pay any damages.

## Article 11. Liability

11.1. Any liability of ArboNed for damage suffered by the Principal through the use of the Software is expressly excluded, except in case of intent or deliberate recklessness.

11.2. In so far as ArboNed, with due observance of the provisions of Article 11.1, is nevertheless still liable for any damage suffered by the Principal, the liability of

ArboNed shall be limited to a maximum of € 2,500 per event and € 10,000 per year, where a series of related events will count as one event.

11.3. ArboNed shall only be liable for direct damage.

Direct damage means:

- the reasonable costs for determining the cause and the scope of the direct damage;
- any reasonable costs incurred to let the defective performance of ArboNed yet comply with the End User License Agreement, unless these costs cannot be attributed to ArboNed;
- any reasonable costs incurred to prevent or limit damage, insofar as the Principal demonstrates that these costs have led to a limitation of direct damage.

11.4. ArboNed shall never be liable for any indirect damage, including but not limited to consequential damage, loss of profit, lost savings and damage due to business stagnation.

11.5. The Principal shall indemnify ArboNed against any liability (including claims from third parties) resulting from the processing of Personal Data as referred to in Article 4, for which the Principal is responsible under GDPR.

## Article 12. Obligations at the End of the End User License Agreement

12.1. Upon termination of the End User License Agreement, access to the Software for the Principal will be terminated immediately.

12.2. The Principal may submit a written request for transfer of the Data up to a maximum of three months after the termination of the End User License Agreement. If the Principal does not submit such a request or does not submit it on time, the Data will be deleted.

12.3. After receiving a request from the Principal for the transfer of the Data in accordance with the provisions of Article 12.2, the parties will consult regarding the manner in which and the costs for which the Data will be transferred. After the transfer, the Data will be deleted.

## Article 13. Final Provisions

13.1. The End User License Agreement shall only be governed by Dutch law.

13.2. Any disputes relating to the End User License Agreement shall be submitted to the Court of Law of Oost-Brabant, location 's-Hertogenbosch, the Netherlands.

13.3. No general terms and conditions shall apply to the End User License Agreement.

## MODULE Employer Portal

### Article 1. Definitions

Terms in this Module starting with a capital letter shall have the meanings included in the End User License Agreement that has been concluded by and between the parties.

### Article 2. Structure

2.1. This Module is an appendix to and constitutes an integral part of the End User License Agreement, and contains special conditions for the use of and access to the Employer Portal.

2.2. In the event of any conflict or inconsistency between the End User License Agreement and this Module, the following order of precedence shall apply:

- this Module;
- the End User License Agreement.

## Addendum to the agreement concluded between the Principal and ArboNed B.V. in the context of the provision of health and safety services

### Article 3. Employer Portal and Terms of Use

3.1. The Employer Portal shall consist of one single software application.

3.2. Below, the two software applications that can be purchased by the Principal as part of the Employer Portal are explained and the conditions subject to which these parts can be used are included.

#### i. Interface

- a. The interface is a digital connection between the Principal's HR system and the IT&Care system, allowing the data necessary for the execution of the Agreement between ArboNed and the Principal to be exchanged between the Principal, IT&Care and ArboNed.
- b. The right of use for the Interface that the Principal acquires under the End User License Agreement and this Module may only be used to exchange the necessary data for the performance of the Agreement between ArboNed and the Principal.

#### ii. Absence Management

- a. This software application concerns an

absence and reintegration information system. The software application contains absence and recovery records, and management information and reports. In addition, the software application monitors action moments within the framework of the 'Wet verbetering poortwachter' and enables the software application to interact with the health team and/or the company doctor.

- b. The right of use of the software application that the Principal acquires pursuant to the End User License Agreement and this Module may only be used for the purpose of the health absenteeism monitoring and reintegration of the Employees.
- c. ArboNed provides 1 super-user account to the Principal for access to the software application, with which the Principal can provide Access Codes to Users for the software application. These Access Codes will be fully managed and distributed internally by the Principal.
- d. Data in the software application concern Data processed by the Principal or by third parties on behalf of the Principal.

The Principal is responsible for and manages the Data.

### Article 4. Duration

4.1. ArboNed grants the Principal the right to use the Employer Portal. Access is granted for the duration as included in the agreement agreed between the parties in respect of the provision of occupational health and safety services, with due observance of the terms and conditions included in the End User License Agreement and this Module.

4.2. Renewal and termination of this Module will take place in accordance with the provisions of the Articles 9.2, 9.3 and 9.4 of the End User License Agreement.

### Article 5. Modifications

5.1. ArboNed reserves the right to change the name and content of the software application that can be purchased by the Principal as part of the Employer Portal. If any changes affect the use and/or the conditions subject to which the Principal makes use of the software application, ArboNed will inform the Principal of those changes.