

## NxtPort – General Terms and Conditions

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# 1 Applicability

## 1.1 Description

These general terms and conditions (the “**General Terms and Conditions**”) describe the *Terms and Conditions* under which *Data Providers*, *Data Users* and *App Developers* (each as defined below, and each a “**Subscriber**” of the Platform) can make use of the *Platform* (as defined below) and/or procure other services from NxtPort. The use of the Platform, the *NxtPort API*’s by *Data Providers*, *Data Users* and *App Developers* and other services rendered by NxtPort shall be governed by the *General Terms and Conditions* supplemented by the terms and conditions applicable to that specific *NxtPort API* as made available through the Platform (the “**API Terms and Conditions**” and together with the *General Terms and Conditions* and the documents referenced therein, the “**Terms and Conditions**”).

## 1.2 Entity Qualification

For the avoidance of doubt, each Subscriber may, at the same time qualify as *Data Provider*, *Data User* and/or *App Developer*. In such case, all relevant provisions will apply.

## 1.3 Operations

The *Platform* is operated and managed by **NxtPort CVBA**, registered with the Crossroads Bank of Enterprises under company and VAT number BE 0429.672.881 and having its registered office at Brouwersvliet 33, Box 8, 2000 Antwerp (Belgium) (“**NxtPort**”).

## 1.4 Subscribers

The general terms and conditions of the *Subscribers* are not applicable and are therefore explicitly excluded, even if such general terms and conditions would contain a similar clause.

Prior to registration or login in to the Platform, the *Subscribers* have been informed of the *Terms and Conditions* and have accepted all provisions thereof. By accessing the Platform, the *Subscribers* accept the *Terms and Conditions*. *NxtPort* reserves the right to modify unilaterally and at any time the *Terms and Conditions*. Any such amendments or changes will be effective immediately upon *NxtPort* making such changes available on the *Platform*. If any changes are made to the *Terms and Conditions*, such changes will (a) only be applied prospectively and (b) not be specifically directed against a specific *Subscriber* but will apply to all similarly situated *Subscribers* using the *Platform*. Each *Subscriber* may terminate the *Terms and Conditions* upon written notice to *NxtPort* if any change to the *Terms and Conditions* is unacceptable to such *Party*.

# 2 Definitions

The following definitions shall apply to the *Terms and Conditions*, unless the context necessarily requires otherwise:

“**Account**” means the personal *Account* of the *Subscriber* which enables access to and use of the *Platform*;

“**API**” means an application programming interface, a set of clearly defined methods of communication, to interact with the Platform and to provide, obtain or process Data;

**“Application Developer”** or **“App Developer”** means a User, who develops one or more Applications on the Platform;

**“Affiliates”** means any entity controlling or controlled by or under common control with a Party, where “control” is defined as the ownership of more than 50% of the equity or other voting interests of such entity or the power to direct or cause the direction of the management or policies of such entity, whether through ownership, voting securities, contract or otherwise.

**“Article”** means an *Article* of these *General Terms and Conditions*;

**“Authorized User”** means the *User* who has the right to see a specific set of *Data* available on the *Platform* pursuant to the applicable *Data Sharing Rules*;

**“Data”** means any content uploaded and shared on the Platform, regardless of the method of upload or sharing, or whether the Data was the result of an upload, the combination with other Data or enrichment of the Data by NxtPort, the Subscriber or a User;

**“Data Controller”** or **“controller”** means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data; where the purposes and means of such processing are determined by European Union or Member State law, the *controller* or the specific criteria for its nomination may be provided for by European Union or Member State law;

**“Data Processor”** or **“processor”** means a natural or legal person, public authority, agency or other body which processes personal data on behalf of the *controller*;

**“Data Provider”** means the entity which shall provide *Data* to be made available on or processed through the *Platform*;

**“Data Sharing Rules”** means the unambiguous and clear sharing rules applicable to the *Data* as described in *Article 4.1*;

**“Data User”** means the entity which shall be able to make use of specified *Data*;

**“Fees”** shall mean the amounts payable, if any, by the Data Users or App Developers, consisting of a subscription fee, a data fee and/or a transactional fee, in accordance with the Terms and Conditions and as further detailed in API Specific Terms and/or the Platform;

**“Intellectual Property Rights”** or **“IPR”** means any and all now known or hereafter existing

- (i) rights associated with works of authorship, including but not limited to copyrights, copyrightable works (and moral rights);
- (ii) trademarks, trade dress, trade names, or corporate names;
- (iii) trade secret rights;
- (iv) patents, patent disclosures, and inventions (whether patentable or not) know-how and industrial property rights;

- (v) logos, layout design rights, design rights and other proprietary rights of every kind and nature other than trademarks, service marks, trade dress, and similar rights; whether registered or not;
- (vi) database rights; and
- (vii) all registrations, applications, renewals, extensions, or reissues of the foregoing, in each case in any jurisdiction throughout the world;

**“Party”** and **“Parties”** means *NxtPort* and/or one or all of the *Subscribers*, as applicable;

**“Personal Data”** means any information relating to an identified or identifiable natural person; an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as (but not limited to) 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;

**“Platform”**, as described in Article 3: *NxtPort’s Data Sharing Platform* which will collect, store, pool and exchange *Data* from a multitude of sources and various stages in the supply chain targeting the ports and logistics sector;

**“Subscriber”** means the *Data Provider*, *Data User* and *App Developer* who shall make use of the *Platform* and to which the *Terms and Conditions* shall be applicable;

**“Technical Partner”** means any technology provider or service provider engaged by *NxtPort* for the further development or support of the *Platform*;

**“User”** means a registered user of the *Platform* that qualifies as one or more of following: *Data Provider*, *Data User* or *App Developer*.

### 3 Description of the *Platform*

Within *NxtPort*, a *Data Sharing Platform* has been developed which will collect, store, pool and exchange *Data* from a multitude of sources and various stages in the supply chain targeting the ports and logistics sector (**“Platform”**). *NxtPort* and *Data Providers* shall make certain *Data* available on the *Platform*, whereas *Data Users* and *App Developers* shall have access to such *Data* through the *Platform* and its APIs.

It is agreed that, unless and until a *Data Provider* has accepted a specific set of API Specific Terms and applicable *Data Sharing Rules*, no *Data* of the *Subscriber* will be shared with any *User*.

## 4 Licenses

### 4.1 License by *Subscriber*

**Data Provision.** By uploading, creating or otherwise providing information or *Data* on the *Platform*, *Subscriber* grants to *NxtPort* a worldwide, non-exclusive, non-transferable and non-sublicensable license which is limited to:

- (i) make the *Data* available to *Authorized Users*, in strict compliance with the instructions made available by the *Subscriber* through the *Platform* (the **“Data Sharing Rules”**), who will, subject to payment of a *Fee*, if any, be granted the right to copy, share within their

organization, create derivatives from, make commercial use of and display specified *Data*, all in strict accordance with the *Data Sharing Rules*;

- (ii) ameliorate or enrich the *Data* in an identifiable manner through the *Platform* to the extent necessary to provide the *Platform* in strict accordance with the *Data Sharing Rules*;
- (iii) use, save, store and process any raw *Data* through the *Platform* to the extent necessary to provide, maintain and improve the *Platform* including the usage for *Data* analysis via the *Platform*, solely in an aggregated and unidentifiable manner and only for the purpose of creating added value for the *Subscriber*.

The license provided by the *Subscriber* does not prevent the *Subscriber* from providing such *Data* to any other party.

**Applications.** By uploading, creating or otherwise distributing an *Application* on the *Platform*, the *Subscriber* grants *NxtPort* a worldwide, non-exclusive, non-transferable and non-sublicensable license which is limited to:

- (i) Use, perform, make available, display to the public, reproduce and distribute the *Application* in accordance with the instructions given by the *Subscriber* through the *Platform* and use *Subscriber's* name, likeness or brand (which include all of *Subscriber's* trademarks, services marks, logos, brand names or trade names ("**Marks**")) to the extent it is incorporated into the *Application*, all solely to the extent required for the distribution of the *Application* on the *Platform* to *Subscribers*;
- (ii) use, copy, store, modify, transmit and display such *Application* to the extent necessary to provide and maintain the *Platform*;
- (iii) sublicense the foregoing rights to *NxtPort* Affiliates, *Technical Partners*, or any third parties working with *NxtPort* as development partners, hosting facilities and in similar capacities, solely in order to enable them to perform their services for *NxtPort* and only in so far, those services are necessary for the provision and maintenance of the *Platform*.

*NxtPort* is not allowed to use the *Data* in a manner not authorized by *Subscriber*. *NxtPort* shall use the *Data* solely in full compliance with (i) the *Data Sharing Rules* and (iii) any applicable legislation, rules or regulations.

*Data Provider* acknowledges that it is may be practically impossible for *NxtPort* to delete any and all *Data* provided by the *Data Provider* upon request of the *Data Provider* and that its *Data* may remain available for *Authorized Users* even after termination of its *Account*. The purpose of the *Platform* is to share the *Data* with other *Subscribers* who may themselves store such *Data* beyond *NxtPort's* control. Such *Subscribers* will be fully liable for full compliance with the *Terms and Conditions*.

#### 4.2 License by *NxtPort*

**Data Provision.** *NxtPort* shall grant *Subscriber* a worldwide, limited, non-exclusive, non-transferable, limited sublicenseable (as set out in this *Article*) license to use, modify, upload, access and view its *Data* and the *Platform* in accordance with these *Terms and Conditions* and to define and process its *Data*

*Sharing Rules.* NxtPort reserves the right, but is not obliged, to review and remove any *Data* or information which is deemed to be in violation with the provisions of these Terms and Conditions or otherwise inappropriate, deemed to be in violation of any rights of third parties or any applicable legislation or regulation, may materially and adversely impact the functioning of the *Platform*, or pose a security risk to *Users*.

**Data Usage.** NxtPort shall grant the *Subscriber* a worldwide, limited, non-exclusive, non-transferable, personal license to copy the *Data*, create derivative works from the *Data*, and to sublicense and distribute commercial products developed by or on behalf of the *Subscriber* incorporating the *Data* in accordance with the *Terms and Conditions* and in strict accordance with and as permitted under the applicable *Data Sharing Rules*.

**App development.** NxtPort grants *Subscriber* a limited, non-exclusive, non-transferable, non-sublicensable license to use the *Platform* to develop and distribute *Applications* in accordance with these *Terms and Conditions*. The *App Developer* warrants to only allow use of the *Data* in accordance with the respective applicable *Data Sharing Rules*. *Subscriber* may sub-license this license to any third party working with *Subscriber* as development partners and in similar capacities, solely in order to enable them to perform their services for *Subscriber* and only in so far, those services are necessary for the development, creation of derivative works and commercial products on behalf of *Subscriber* in accordance with these *Terms and Conditions*. If the *Subscriber* grants any rights, pursuant to this Section to third parties with respect to the Platform, such third parties will be bound by this *Terms and Conditions* and the *Subscriber* agrees to be jointly and severally liable for any actions of such third parties related to their use of the *Platform*.

**Restrictions on use.** The Subscriber agrees to use the Platform and its Account only for its intended use as set forth in these Terms and Conditions. Within the limits of the applicable law, Subscriber is not permitted, unless explicitly allowed on the Platform, to

- (i) adapt, alter, translate or modify in any manner the Platform;
- (ii) decompile, reverse engineer, disassemble, or otherwise derive or determine or attempt to derive or determine the source code (or the underlying ideas, algorithms, structure or organization) of the Platform, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation;
- (iii) use or copy the Platform except as expressly allowed under this Article 4;
- (iv) gain unauthorized access to Accounts of other Users or use the Platform or its Account to conduct or promote any illegal activities;
- (v) use the Platform or its Account to generate unsolicited email advertisements or spam;
- (vi) use the Data for any illegal activities;
- (vii) use the Data through a specific API for any other purposes than the intended purpose of such API;
- (viii) impersonate any person or entity, or otherwise misrepresent its affiliation with a person or entity;
- (ix) use any high volume automatic, electronic or manual process to access, search or harvest information from the Platform other than through the documented use of the NxtPort APIs;

- (ix) alter, remove, or obscure any copyright notice, digital watermarks, proprietary legends or other notice included in the Platform;
- (x) intentionally distribute any worms, Trojan horses, corrupted files, or other items of a destructive or deceptive nature or use the Platform or its Account for any unlawful, invasive, infringing, defamatory or fraudulent purpose; or
- (xi) remove or in any manner circumvent any technical or other protective measures on the Platform.

The *Subscriber* is not allowed to use the *Platform* in a manner not authorized by *NxtPort* and these *Terms and Conditions*. *Subscriber* shall use the *Platform* solely in full compliance with (i) these Terms and Conditions, (ii) any additional instructions or policies issued by *NxtPort*, including, but not limited to, those posted within the *Platform* and (iii) any applicable legislation, rules or regulations. If *NxtPort* becomes aware or suspects, in its sole reasonable and substantiated discretion, any violation by *Subscriber* of the *Terms and Conditions* or any other instructions, guidelines or policies issued by *NxtPort*, then *NxtPort* may suspend or limit *Subscriber's* access to its *Account*. The duration of any suspension by *NxtPort* will be until *Subscriber* has cured the breach which caused such suspension or limitation.

**No implied licenses.** Except as expressly set forth herein, no express or implied license or right of any kind is granted to the *Subscriber* regarding the *Platform* or its *Account* thereof, including but not limited to any right to obtain possession of any source code, *Data* or other technical material relating to the *Platform*.

**Accounts.** The Subscriber shall receive certain Account information from *NxtPort* to be able to access its Account on the Platform and shall be free to set up Account communities within its own Account to register Authorized Users (i.e. employees, contractors, consultants or professional advisers of the Subscriber (or of its Affiliates, in accordance with the section 'Sublicensing to Affiliates' below). The Subscriber shall be liable for any breaches by its Authorized Users of the terms and conditions of these Terms and Conditions. The Subscriber shall be solely responsible for all access to and use of the Platform and its Account through its Account details and passwords.

**Sublicensing to Affiliates.** Subscriber may sub-license the licenses provided for in this Article to its Affiliates, by registering such Affiliates in the Platform. By registering such Affiliates, Subscriber warrants that it has the authority to bind such Affiliates. If the Subscriber grants any rights, pursuant to this Section, to Affiliates with respect to the Platform, such Affiliates will be bound by these Terms and Conditions and the Subscriber agrees to be jointly and severally liable for any actions of such Affiliates related to their use of the Platform and the Data.

## 5 Information Security

*NxtPort* shall adopt and use appropriate safeguards, in accordance with the instructions as set out on the *Platform*, to preserve the confidentiality, integrity and availability of the *Data* and to prevent its use or disclosure, other than as permitted by the *Terms and Conditions*, or as required by law.

Detailed controls for how *NxtPort* handles and secures the *Data* are available on the Information Security Policy page of the *NxtPort* platform. The current version of the Information Security Policy is attached to these General Terms and Conditions as Annex 1.

## 6 Professional Services

Any professional services (other than the provisioning of the Platform), (the “**Professional Services**”) will be rendered by NxtPort with the required care based on an offer provided to the Subscriber. Art. 7, 8, 9, 10, 11, 13 through 16 are applicable to these Professional Services.

The Subscriber is granted a personal, restricted, worldwide license on the deliverables provided in the course of the Professional Services (the “**Deliverables**”) for the full duration of the underlying Intellectual Property Rights, for use in its internal business.

## 7 Payment terms

### 7.1 Platform Fees

A *Fee* will be charged to the *Data Users* and *App Developers*, consisting of a subscription fee, a transactional fee and/or a data fee in accordance with the pricing schedules (the “**Fees**”). Unless otherwise agreed, payment of such *Fees* shall be managed through the *Subscriber’s Account* on the *Platform*.

### 7.2 Data Fees

No costs will be charged to *Data Providers* for the provisioning of the *Data*. Each *Data Provider* can freely determine in his dashboard the data fee applicable to the use of its *Data*. *NxtPort* will transfer all received data fees to the *Data Provider*. At any given moment, a *Data Provider* will be free to adjust its data fees downwards. A *Data Provider* can only once every three (3) months increase its data fees.

### 7.3 Invoicing and Payments

Unless otherwise provided for in the *Platform*, all undisputed invoices are due and payable by the Subscriber within thirty (30) days from the invoice. All payments made by the *Subscriber* to *NxtPort* under these Terms and Conditions shall be final and non-refundable.

### 7.4 Currency

All fees are in EURO unless stated otherwise and do not include any taxes and duties such as VAT, which shall be charged additionally to the *Subscriber*.

### 7.5 Dispute

In the event the *Subscriber* disputes any portion of an invoice, such *Subscriber* shall notify *NxtPort* of such disputed amount and the basis for the *Subscriber’s* dispute within fifteen (15) calendar days from the invoice date via registered mail, failure of which shall result in the invoice being irrevocably deemed accepted by the *Subscriber*. Any undisputed portion shall be paid as provided herein.

### 7.6 Late payment

In the event of non-payment or insufficient payment on the due date, the following shall apply automatically and without any formal notice or court order being required:

- (i) all amounts not paid when due shall bear an APR interest rate of 12%, capitalized annually;

- (ii) without prejudice to *NxtPort's* right to prove higher damages, the *Subscriber* shall owe a flat fee compensation equivalent to 10% of the unpaid invoice amount with a minimum of EUR 100 EUR.

## 8 Confidential Information

### 8.1 Non Disclosure

All software, plans, documents, know-how, *Data* and other information relating to a *Party's* business, technology, products or services or other proprietary or confidential information provided by a *Party* (the "**Disclosing Party**") to the other *Party* (the "**Receiving Party**") under the *Terms and Conditions* shall be considered and treated as confidential (the "**Confidential Information**"). The Confidential Information remains at all times the property of the Disclosing *Party*.

### 8.2 The Receiving *Party* shall

- (i) only use such Confidential Information for the purposes of complying with its obligations under the *Terms and Conditions*;
- (ii) store such Confidential Information with at least the same level of care applied when storing its own Confidential Information, and in no case with a less than reasonable level of care; and
- (iii) not disclose such Confidential Information to any third *Party*.

### 8.3 Exclusion

The confidentiality obligations as specified in this *Article 8* shall not apply to information which:

- (i) has become publicly known in a way other than by violation by the Receiving *Party* of its obligations under the *Terms and Conditions*;
- (ii) was disclosed to the Receiving *Party* by a third *Party* that is not under any obligation of confidentiality to the Disclosing *Party*;
- (iii) was developed by the Receiving *Party* independent of the Disclosing *Party's* Confidential Information, or was already known by the Receiving *Party* prior to the information being disclosed by the Disclosing *Party*; and/or
- (iv) is disclosed with the prior written consent of the Disclosing *Party*.

### 8.4 Disclosure

Notwithstanding *Article 8.2*, the Receiving *Party* may disclose the Confidential Information to its employees, consultants and suppliers which are directly involved with and/or should be informed of such Confidential Information for the execution of the Receiving *Party's* obligations as set forth in the *Terms and Conditions*. The Receiving *Party* shall impose on them confidentiality obligations which are at least similar to those included in this *Article 8*.

## 9 Data Protection

To the extent any *Personal Data* is controlled or processed by *NxtPort*, such processing shall be done in accordance with the applicable data protection legislation.

Detailed information is available on the Privacy Policy page of the *NxtPort* platform.

### 9.1 Data controller

*NxtPort* may collect any *Personal Data*, such as (but not limited to) name and e-mail address, from the *Subscribers* concerning their employees or consultants. Such *Personal Data* shall be used by *NxtPort* solely for the purpose of the management of the *Account* and the *Platform*, as well as for the contractual management of the client relationship with the *Subscriber* (invoicing, renewal request, ...). *NxtPort* may collect any *Personal Data*, such as (but not limited to) name and e-mail address, from the *Subscriber* concerning its employees or consultants. Such *Personal Data* shall be used by *NxtPort* solely for the purpose of the management of the *Account* and the *Platform*, as well as for the contractual management of the client relationship with the *Subscriber* (invoicing, renewal request, ...). In this regard, *NxtPort* shall act as *Data Controller*.

Detailed information is available on the Privacy Policy page of the *NxtPort* platform. In this regard, *NxtPort* shall act as *Data Controller*.

### 9.2 Data processor

**Data processor.** *NxtPort* may be provided access to any *Personal Data* and/or must process any *Personal Data* on behalf of the *Subscriber* when performing its obligations under these Terms and Conditions. In this regard, the *Parties* record their intention that the *Subscriber* shall act as “*Data controller*” and *NxtPort* shall act as “*Data processor*”, as specified in the General Data Protection Regulation (Regulation (EU) 2016/679 of the European Parliament and of The Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC) *NxtPort* acts exclusively on behalf of and upon the lawful instructions of the *Subscriber*, and shall not process any *Personal Data* in this regard for its own purposes. All such *processing* shall be governed by the terms and conditions of the *NxtPort* Data Processor Agreement, as attached to these Terms and Conditions as Annex 3.

### 9.3 Measures

*NxtPort* and the *Subscriber* shall each take the appropriate technical and organizational measures which are required to protect the *Personal Data* against accidental or unauthorized destruction, accidental loss, as well as against any modification of or access to, and any other unauthorized processing of the *Personal Data*.

### 9.4 Information

Each *Data* subject must be informed of the existence of his/her rights of access, rights of rectification and erasure, and right to object to *Data* processing at any time and free of charge.

### 9.5 Technical Information

Detailed controls on how *NxtPort* handles and secures *Personal Data* and Back-ups are available on the Information Security Policy page of the *NxtPort* platform. The current version of the Information Security Policy is attached to these General Terms and Conditions as Annex 1.

## 10 Intellectual Property Rights

### 10.1 Platform

The *Platform*, including any rights, title and interest (including *Intellectual Property Rights*) therein, shall at all times remain the sole and exclusive property of *NxtPort* and/or its licensor, and the Subscriber shall obtain no rights, title or interest (including without limitation *Intellectual Property Rights*) in the *Platform* pursuant to these *Terms and Conditions* except the rights expressly granted hereunder. The *Platform* (including the *Intellectual Property Rights*) may not be modified, copied, printed, reproduced, distributed, republished, performed, downloaded, displayed, posted, transmitted and/or otherwise used in any form or by any means, unless expressly permitted in these *Terms and Conditions*. Except as expressly set forth herein, no express or implied license or right of any kind is granted to the *Subscriber* regarding the *Platform* or any part thereof, including any right to obtain possession of any source code, *Data* or other technical material related to the *Platform*.

### 10.2 Deliverables

The *Deliverables*, including any rights, title and interest (including *Intellectual Property Rights*) therein, shall at all times remain the sole and exclusive property of *NxtPort* and/or its licensor, and the Subscriber shall obtain no rights, title or interest (including without limitation *Intellectual Property Rights*) in the *Deliverables* pursuant to these *Terms and Conditions* except the rights expressly granted hereunder.

### 10.3 Data

The *Data* including any rights, title and interest (including *Intellectual Property Rights, if any*) therein, shall at all times remain the sole and exclusive property of the *Data Provider* and/or its licensor and *NxtPort* and the Authorized Users shall obtain no rights, title or interest (including without limitation *Intellectual Property Rights*) in the *Data* pursuant to these *Terms and Conditions* except the rights expressly granted hereunder. The *Data* may not be modified, copied, printed, reproduced, distributed, republished, performed, downloaded, displayed, posted, transmitted and/or otherwise used in any form or by any means, unless expressly permitted in this *Terms and Conditions*.

### 10.4 App Development

The *App Developer* (or its licensor's) shall at all times retain all right, title and interest in his *App*. Other than a license to use in accordance with these *Terms and Conditions*, no other party obtains any rights in such *App*. The *App* (including the *Intellectual Property Rights*) may not be modified, copied, printed, reproduced, distributed, republished, performed, downloaded, displayed, posted, transmitted and/or otherwise used in any form or by any means, unless expressly permitted in these *Terms and Conditions*. Except as expressly set forth in Article 4, no express or implied license or right of any kind is granted to *NxtPort* or other *Users* regarding the *App* or any part thereof.

## 11 NxtPort's Rights & Obligations

*NxtPort* reserves the right, but is not obliged, to review and remove any *Data* or information which is deemed to be in violation with the provisions of the *Terms and Conditions* or otherwise inappropriate, deemed to be in violation of any rights of third *Parties* or any applicable legislation or regulation, may materially and adversely impact the functioning of the *Platform*, or pose a security risk to *Subscribers*.

If *NxtPort* becomes aware or suspects, in its sole discretion, any violation by *Subscriber* of the *Terms and Conditions*, or any other instructions, guidelines or policies issued by *NxtPort*, then *NxtPort* may suspend or limit *Subscriber's* access to its *Account*. The duration of any suspension by *NxtPort* will be until *Subscriber* has cured the breach which caused such suspension or limitation.

*NxtPort* may delete any *Data* related to the *Subscriber* after its *Account* is closed, and such *Data* shall not be recoverable. *NxtPort* shall not be responsible for any *Data* that is lost due to the closing of the *Account*.

Unless explicitly agreed otherwise, all obligations of *NxtPort* regarding the provision of the *Platform* are considered to be "best efforts obligations" ("middelenverbintenissen" in Dutch, or "obligations de moyen" in French). The *Subscribers* agree that *NxtPort* shall exercise its activities and execute its obligations relating to the *Platform* as an independent service provider.

*NxtPort* will use reasonable efforts to make each *NxtPort API* available for a minimum period of thirty-six (36) months, unless otherwise set forth in the *API Terms and Conditions* (the "Minimum Lifespan"). Following such Minimum Lifespan, *NxtPort* may, following prior notice of twelve (12) months through the *Platform*, in its sole discretion decide to discontinue such *NxtPort API*.

## 12 *Subscriber's* Rights and Obligations

The *Subscriber* shall receive *Account* information from *NxtPort* to be able to access its *Account* on the *Platform* and shall be free to set up *Account* communities within its own *Account* to provide access to several authorized individuals appointed by the *Subscriber*.

The *Subscriber* shall be solely responsible for all access to and use of the *Platform* and its *Account* and through its account community.

## 13 Liability

13.1 To the maximum extent permitted under applicable law, *NxtPort's* liability arising out of or in connection with these Terms and Conditions shall not exceed (i) the amounts of Fees paid by the *Subscriber* during a period of twelve (12) months preceding the claim or (ii) EUR 25,000. The limitation in this Section 13.1 shall not apply to the damages resulting out of the breach by *NxtPort* of its obligations under *Article 8* and *9*.

13.2 To the extent legally permitted under applicable law, *NxtPort* shall not be liable to the *Subscribers* or any third *Party*, for any special, indirect, exemplary, punitive, incidental or consequential damages of any nature including, but not limited to damages or costs due to loss of profits, reconstruction of *Data*, revenue, goodwill, production or use, procurement of substitute services, or property damage arising out of or in connection with the *Platform* under the *Terms and Conditions*, regardless of the cause of action or the theory of liability, even if *NxtPort* has been notified of the likelihood of such damages.

13.3 *Subscribers* agree that *NxtPort* can only be held liable as per the terms of this *Article 13* to the extent damages suffered by *Subscribers* are directly attributable to *NxtPort*. For the avoidance of doubt, *NxtPort* shall not be liable for any claims resulting from (i) *Subscribers'* unauthorized use of the *Platform*, (ii) *Subscribers'* or any third *Party's* modification of (any parts) of the *Platform*, (iii) *Subscribers'* unauthorized use of the *Platform* in combination with any non-*NxtPort* products or services, (iv) the

nature, accuracy, completeness or legality of the *Data* provided by a *Data Provider*, (v) the use by *Subscribers* or any third *Party* of the *Data*, (vi) any damages directly or indirectly resulting from the use of the *Data* by *Subscriber* or its employees, consultants, subsidiaries or trading partners. The exclusions and limitations of liability under this *Article* shall operate to the benefit of any of *NxtPort's* Affiliates and subcontractors under the *Terms and Conditions* to the same extent such provisions operate to the benefit of *NxtPort*.

13.4 Notwithstanding the foregoing and subject to *Article* 13.1 and 13.2, *NxtPort* may be held liable for an IT security breach towards the *Data Provider* to the extent set forth on the Service Level section of the *Platform*.

## 14 Warranties and disclaimers

The *Platform* may be unavailable from time to time, may be offered on a limited basis, or may vary depending on your region or device. *NxtPort* strives to keep the *Platform* up and running; however, all online services suffer occasional disruptions and outages. More details on the guaranteed up-time and resolutions offered by *NxtPort* are to be found on the Service Level section of the *Platform*.

Except as expressly provided in this *Article* 14 and to the maximum extent permitted by applicable law, the *Platform* is provided "AS IS," and *NxtPort* makes no (and hereby disclaims all) other warranties, covenants or representations, or conditions, whether written, oral, express or implied including, without limitation, any implied warranties of satisfactory quality, course of dealing, trade usage or practice, merchantability, suitability, availability, or fitness for a particular use or purpose, with respect to the use, misuse, or inability to use the *Platform* or any other products or services provided to the *Subscribers* by *NxtPort*. *NxtPort* does not warrant that all errors can be corrected, or that access to or operation of the *Platform* shall be uninterrupted, secure, or error-free. Any service levels provided by *NxtPort* shall be provided in accordance with the instructions as set out on the *Platform*. The *Subscribers* acknowledge and agree that there are risks inherent to transmitting information over and storing information on the internet and that *NxtPort* is not responsible and cannot be held liable for any loss or corruption of *Subscribers' Data*, except for any loss caused by any attributable negligence or default of *NxtPort*.

*Subscribers* acknowledge to solely use the *Platform* in accordance with

- (i) the *Terms and Conditions*, and
- (ii) any applicable legislation, rules or regulations (including any legislation regarding the transfer of *Data* between countries).

*Subscribers* agree that any use of the *Platform* contrary to or in violation of these representations and warranties shall constitute unauthorized and improper use of the *Platform* for which *NxtPort* cannot be held liable.

The *Subscriber* warrants that he is the owner of the *Data* uploaded by the *Subscriber* or that he has the necessary rights, licenses or permissions to make such *Data* available in accordance with these Terms and Conditions. The *Subscriber* warrants that such *Data* does not contain any restrictions such as confidentiality, privacy/personal information, sensitive data or other restrictions which would cause the use of the *Data* as permitted under these Terms and Conditions to breach any rights of third parties or applicable laws.

A *Subscriber* shall only be liable for any errors, malfunctions or inaccuracies in the *Data* provided on the *Platform* and will only be held liable for any errors or inaccuracies in enrichments or ameliorations of such *Data* to the extent specific, explicit warranties were given by such *Subscriber* on the accuracy of the *Data* or its enrichments or ameliorations in the *API Specific Terms*.

## 15 Indemnification

### 15.1 IPR Indemnification

*NxtPort* hereby agrees to indemnify and hold harmless *Subscribers* and its current and future *Affiliates*, officers, directors, employees, agents and representatives from each and every demand, claim, loss, liability, or damage of any kind whatsoever, including reasonable attorney's fees, whether in tort or in contract, that it or any of them may incur by reason of, or arising out of, any claim by any third *Party* based on an infringement of the *IPR* of such third *Party* by the *Platform* and excluding any claims resulting from

- (i) *Subscriber's* unauthorized use of the *Platform*;
- (ii) any *Data* provided by a *Data Provider*;
- (iii) *Subscribers'* or any third *Party's* modification of any of the *Platform*; and
- (iv) any *Application* running on the *Platform* developed by an *Application Developer*.

Such indemnity obligation shall be conditional upon the following:

- (i) *NxtPort* is given prompt written notice of any such claim;
- (ii) *NxtPort* is granted sole control of the defense and settlement of such a claim;
- (iii) upon *NxtPort's* request, the *Subscribers* fully cooperate with *NxtPort* in the defense and settlement of such a claim, at *NxtPort's* expense; and
- (iv) the *Subscribers* make no admission as to *NxtPort's* liability in respect of such a claim, nor do the *Subscribers* agree to any settlement in respect of such a claim without *NxtPort's* prior written consent. Provided these conditions are met, *NxtPort* shall indemnify the *Subscribers* for all damages and costs incurred by the *Subscribers* as a result of such a claim, as awarded by a competent court of final instance, or as agreed to by *NxtPort* pursuant to a settlement agreement.

In the event the *Platform*, in *NxtPort's* reasonable opinion, is likely to or becomes the subject of a third-*Party* infringement claim (as per *Article 15.1*), *NxtPort* shall have the right, at its sole option and expense, to:

- (i) modify the ((allegedly) infringing part of the) *Platform* so that it becomes non-infringing while preserving materially equivalent functionalities;
- (ii) obtain for the *Subscribers* a license to continue using the *Platform* in accordance with the *Terms and Conditions*; or
- (iii) terminate the *Terms and Conditions* and refund to the *Subscribers* an amount equal to a pro rata portion of the fees for that portion of the *Platform* which is the subject of such infringement.

The foregoing states the entire liability and obligation of *NxtPort* and the sole remedy of the *Subscribers* with respect to any infringement or alleged infringement of any *IPR* caused by the *Platform* or any part thereof.

## 15.2 Indemnification by NxtPort

*NxtPort* hereby agree to indemnify and hold harmless *Subscriber* and its current and future Affiliates, officers, directors, employees, agents and representatives from each and every demand, claim, loss, liability, or damage of any kind whatsoever, including reasonable attorney's fees, whether in tort or in contract, that it or any of them may incur by reason of, or arising out of, any claim by any third party with respect to:

- (i) any breach or violation by *NxtPort* of the Data Sharing Rules;
- (ii) any breach by *NxtPort* of its warranties pursuant to Art. 14; and
- (iii) fraud, intentional misconduct, or gross negligence committed by *NxtPort*.

## 15.3 By Subscribers

*Subscribers* hereby agree to indemnify and hold harmless *NxtPort* and its current and future Affiliates, officers, directors, employees, agents and representatives from each and every demand, claim, loss, liability, or damage of any kind whatsoever, including reasonable attorney's fees, whether in tort or in contract, that it or any of them may incur by reason of, or arising out of, claims by any third *Party* with respect to:

- (iv) any breach or violation by *Subscribers* of any provisions of the *Terms and Conditions*;
- (v) any *Data* or *Apps* violating any *IPR* of a third party;
- (vi) any breach by *Subscriber* of its warranties pursuant to Art. 14 and
- (vii) caused by fraud, intentional misconduct, or gross negligence committed by *Subscribers*.

## 16 Term and termination

### 16.1 Termination

The *Account* may be terminated by the *Subscriber* at any time upon written notification to *NxtPort*, without any justification.

### 16.2 Duration

Unless terminated by *NxtPort* or a *Subscriber*, the *Account* is provided for an indefinite term. The *Subscriber* may terminate its *Account* through the *Platform* or by providing written notice to *NxtPort*. *NxtPort* may terminate the *Account* for convenience by giving a notice period of three (3) months.

### 16.3 Termination for breach

*NxtPort* may terminate with immediate effect the *Subscriber's* right to access and use of the *Platform*

- (i) if *NxtPort* has reasonable grounds to suspect that such *Subscriber* is violating the *Terms and Conditions* (including but not limited to any violation of the *IPR* of *NxtPort*) or any other guidelines or policies issued by *NxtPort*, or
- (ii) if such *Subscriber* remains suspended for non-payment for more than 60 (sixty) days.

### 16.4 Effects of termination

Upon the termination of the *Account* for any reason whatsoever in accordance with the provisions of the *Terms and Conditions*, at the moment of effective termination:

- (i) the *Subscribers* will no longer be authorized to access or use the *Platform*;
- (ii) *NxtPort* may delete all *Data* associated with *Subscriber's Account*, including but not limited to the *Data*, on the *Platform*; and

- (iii) all rights and obligations of *NxtPort* or *Subscriber* under the *Terms and Conditions* shall terminate, except those rights and obligations under those *Articles* specifically designated in *Article 17.2*.

## 17 Miscellaneous

### 17.1 Force Majeure

A *Party* shall not be liable for any failure or delay in the performance of its obligations with regard to the *Platform* if such delay or failure is due to causes beyond its control, including but not limited to acts of God, war, strikes or labor disputes, embargoes, government orders, telecommunications, network, computer, server or Internet downtime, unauthorized access to *NxtPort*'s information technology systems by third *Parties* or any other cause beyond the reasonable control of *NxtPort* (the "Force Majeure Event"). *NxtPort* shall notify *Subscriber* of the nature of such Force Majeure Event and the effect on our ability to perform our obligations under the *Terms and Conditions* and how *NxtPort* plans to mitigate the effect of such Force Majeure Event.

### 17.2 Survival.

*Articles 8, 9, 13, 14, 15 and 17* (where applicable) shall survive any termination or expiration of these *General Terms and Conditions*.

### 17.3 Governing law and jurisdiction.

The *Terms and Conditions* shall be exclusively governed by and construed in accordance with the laws of Belgium, without giving effect to any of its conflict of law principles or rules. The courts and tribunals of Antwerp shall have sole jurisdiction should any dispute arise relating to the *Terms and Conditions*.

### 17.4 Amendment.

*NxtPort* may revise the *Terms and Conditions* from time to time to better reflect:

- (i) changes to the law, (ii) new regulatory requirements, or (iii) improvements or enhancements made to the *Platform*.

If an update affects a *Subscriber*'s use of the *Services* or legal rights as a *User* of the *Platform*, *NxtPort* will notify such *Subscriber(s)* prior to the update's effective date by sending an email to the email address associated with the *Account* or via an in-product notification. These updated *Terms and Conditions* will be effective no less than 15 days from the notification.

If a *Subscriber* does not agree to the updates made, the *Subscriber* may cancel its *Account* before the new *Terms and Conditions* become effective. By continuing to use or access the *Platform* after the updates come into effect, the *Subscriber* agrees to be bound by the revised *Terms and Conditions*.



IN WITNESS WHEREOF, the authorized representatives of the Parties have executed these General Terms and Conditions on the dates written below.

For and on behalf of SUBSCRIBER

By: \_\_\_\_\_

Name:

Title:

Date:

For and on behalf of NxtPort

By: \_\_\_\_\_

Name:

Title:

Date:

## 18 Annex 1: NxtPort Information Security Policy

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*NxtPort's* goal is to enable you to share your information through API's. For most use cases *NxtPort* collects your Data, stores it and indexes it. At all times do you, the Data Provider, keep full ownership over your Data. Protecting your Data and the Data of your customers is extremely important to us.

The aim of this document is to answer the most frequently asked questions regarding *NxtPort's* Information Security Policy. Capitalized terms used in this Information Security Policy and not separately defined shall have the respective meanings ascribed in the General Terms and Conditions or the *Customer Specific Agreement*.

If this document does not answer your questions and you require more in-depth information about NxtPort's Information Security Policy, please do not hesitate to contact us at [support@nxtport.eu](mailto:support@nxtport.eu).

### Data Centers

The *NxtPort* platform runs on the Microsoft Azure Cloud platform and therefore in Microsoft's datacenters. Microsoft cloud services are audited at least annually against SOC 1 (SSAE18, ISAE 3402) and SOC 2 (AT Section 101) standards. More information is available on <https://www.microsoft.com/en-us/trustcenter/compliance/soc>.

The *NxtPort* platform deploys services on (Tier 4) Microsoft Azure data centers in West Europe only.

### Misuse

*NxtPort* aims to be on the cutting edge of compliance and delivery. Live data can never be accessed by anonymous parties. A *Data User* can access Data only if granted that access by the *Data Provider*. Additionally, *NxtPort* closely monitors API usage and, if detecting an account with indications of suspicious activity, takes immediate action as appropriate for the specific case, such as suspension of access, contacting the Subscriber and/or contacting the Data Provider.

### Application Security

*NxtPort* fully understands the importance of that software security. In addition to continuously scanning its code for vulnerabilities, NxtPort also:

- Securely transfers all your Data and encrypts it at rest;
- Is planning an independent penetration test in 2018, to be repeated annually;
- Is preparing for ISO 27001 and 27002 certification.

If you identify a vulnerability in a NxtPort site or service, you can identify it to us via [support@nxtport.eu](mailto:support@nxtport.eu).

## Operational Security

Access to *NxtPort* systems and your Data is restricted only to those who need access in order to provide you maximum support. NxtPort maintains a strict separation between its development, test and production environments.

With its employees, contractors, and vendors working on its behalf, NxtPort has in place:

- Signed confidentiality agreements;
- Termination/access removal processes;
- Acceptable use agreements.

Security is the responsibility of everyone who works for NxtPort. NxtPort trains its employees to identify security risks and empowers them to take action to prevent bad things from happening.

## Business Continuity/Disaster Recovery

By deploying its platform to Microsoft Azure Cloud platform, which has redundant and geographically separate data centers, NxtPort can provide you with consistent services. All service layers (ingestion, storage, processing, API management and identity management) are deployed with redundancy so as to allow for quick recovery in case a single data center goes down.

## Privacy

You can review the NxtPort privacy policy on [www.nxtport.eu](http://www.nxtport.eu), but let us already state very clearly that we are committed to the confidentiality of your Data.

## 19 Annex 2: NxtPort Service Level Agreement

### Introduction

This Service Level Agreement (“SLA”) describes the levels of service that a customer of NxtPort CVBA (the “Subscriber”) will receive from NxtPort CVBA (“NxtPort”). This SLA supplements the General Terms and Conditions or, if applicable, the specific agreement entered into between the *Subscriber* and *NxtPort* (the “Customer Specific Agreement”). Capitalized terms used in this *SLA* and not separately defined shall have the respective meanings ascribed in the General Terms and Conditions or the *Customer Specific Agreement*.

### Purpose

The *Subscriber* relies on the *Platform* provided, maintained and supported by *NxtPort*. Some elements of the *Platform* are of critical importance to *Subscriber’s* business.

This *SLA* sets out what levels of availability and support the *Subscriber* is guaranteed to receive for specific items of the *Platform*. It also explains what penalties will be applied to *NxtPort* should it fail to meet these levels.

This *SLA* forms an important part of the contract between the *Subscriber* and *NxtPort*. It aims to enable the two parties to work together effectively.

### Dates and reviews

This *SLA* begins on **01-02-2018** and will run for a period of **12 months**.

It may be reviewed and amended by *NxtPort* at any point.

### Items covered

The below table of covered items lists all items covered by this *SLA* (the “*Items Covered*”). It also indicates the item’s Priority level and whether *NxtPort* guarantees Support response times, Uptime and/or Service response time.

This table may be updated at any time by *NxtPort*.

Table of Items Covered						
Item	Priority level	Guaranteed Uptime	Guaranteed Response time	Service	Guaranteed Response time	Support
Import Consignment Data API - Live	1	YES	YES		YES	
VGM API – Live	1	YES	YES		YES	
UN/LOCODE API – Live	3	YES	YES		YES	

## Exclusions

This *SLA* is written in a spirit of partnership. *NxtPort* will endeavour to rectify every issue in a timely manner.

However, there are a few exclusions. This *SLA* does not apply to:

- any equipment, software, services or other parts of the *Platform* not listed above;
- Software, equipment or services not purchased via and/or managed by *NxtPort* including, but not limited to, issues resulting from inadequate bandwidth or related to third-party software or services;
- Services and items offered by *NxtPort* in the *NxtPort* marketplace at <http://market.nxtport.eu> which are marked as “Sandbox”, i.e. intended for development and testing purposes only;
- Services and items offered by third parties in the *NxtPort* marketplace at <http://market.nxtport.eu> and marked as such.

Additionally, this *SLA* does not apply:

- if the issue is caused by using equipment, software or service(s) in a way that is not recommended or not in full compliance with any documentation or guidelines provided by *NxtPort*;
- issues that result from *Subscriber's* unauthorized action or lack of action when required, or from *Subscriber's* employees, agents, contractors, or vendors, or anyone gaining access to the *Platform* by means of *Subscriber's* passwords or equipment, or otherwise resulting from *Subscriber's* failure to follow appropriate security practices;
- issues that result from *Subscriber's* failure to adhere to any required configurations, use supported platforms, follow any policies for acceptable use, or *Subscriber's* use of the *Platform* in a manner inconsistent with the features and functionality of the *Platform* (for example, attempts to perform operations that are not supported) or inconsistent with *NxtPort's* published guidance;
- in circumstances that could be reasonably said to be beyond *NxtPort's* or a Force Majeur Event;
- if the *Subscriber* is in breach of its contract with *NxtPort* for any reason (e.g. late payment of fees).

## Responsibilities

### NxtPort's responsibilities

*NxtPort* will:

- provide and maintain the *Platform* in accordance with this *SLA*;
- ensure the *Items Covered* are available to the *Subscriber* in line with the uptime levels listed below;
- respond to Support requests within the timescales listed below;
- take reasonable steps to escalate and resolve issues in an appropriate, timely manner;
- maintain efficient communication with the *Subscriber* at all times.

### Subscriber's responsibilities

The *Subscriber* will use the *Platform* in a manner consistent with the features and functionality of the Platform and consistent with *NxtPort's* published guidance.

Additionally, the *Subscriber* will:

- notify *NxtPort* of issues or problems in a timely manner, via email to [support@nxtport.eu](mailto:support@nxtport.eu). This triggers a ticket in *NxtPort's* online support ticketing system.
- maintain efficient communication with *NxtPort* at all times.

### Guaranteed Uptime

In order to enable the *Subscriber* to do business effectively, *NxtPort* guarantees that the *Items Covered* will be available for a certain percentage of time ("*Uptime*").

For items marked as having Guaranteed Uptime in the table of *Items Covered*, the following uptime levels apply:

Priority level	Guaranteed Uptime	Penalty per hour (prorated to the nearest minute)
1	99%	5% of monthly fee
2	99%	2% of monthly fee
3	99%	1% of monthly fee

### Scheduled Maintenance

In maintaining and developing its *Platform*, *NxtPort* may on occasion need to temporarily take the *Platform* or certain parts of it offline. *NxtPort* commits to limiting outages related to Scheduled Maintenance to 2 windows of 4 hours per calendar month, and will inform the *Subscriber* of the Scheduled Maintenance at least 2 weeks beforehand.

### Measurement

*Uptime* is measured by using *NxtPort's* automated systems, over each calendar month and excluding Scheduled Maintenance windows. It is calculated to the nearest minute, based on the number of minutes in the given month. For instance, a 31-day month contains 44,640 minutes.

### Penalties

If *Uptime* for any Item Covered drops below the relevant threshold, a penalty will be applied in the form of a credit for the *Subscriber*.

This means the following month's fee payable - for the Item Covered which was impacted - by the *Subscriber* will be reduced on a sliding scale.

The level of penalty will be calculated depending on the number of hours for which the item was unavailable, minus Scheduled Maintenance and downtime permitted by the SLA, and as specified in above table.

Uptime level penalties in any month are capped at 50% of the Covered Item's monthly fee.

## Guaranteed Service Response time

For Items Covered marked as having Guaranteed Service Response Time in the table of Items Covered, the following Service Response Times apply:

Item	Guaranteed Service Response Time	Penalty
Import Consignment Data API - Live	<i>NxtPort</i> guarantees that in 99% of the times, import consignment data will be available for request within 10 minutes after the originating CUSCAR message was made available on the platform.	Not applicable
VGM API – Live	<i>NxtPort</i> guarantees that in 99% of the times, VGM data will be available for request within 10 minutes after the originating VERMAS message was made available on the platform.	Not applicable
UN/LOCODE API – Live	<i>NxtPort</i> guarantees that the UN/LOCODE data will be updated within two weeks after an update has been made available	Not applicable

## Measurement

Service Response Time is measured as specified in above table.

## Penalties

Not applicable for the Covered Items currently available.

## Guaranteed Support Response time

NxtPort commits to responding in a timely fashion to support issues raised by the Subscriber.

Guaranteed Support response times depend on the priority level of the Item(s) Covered affected and the severity of the issue.

For Items Covered marked as having Guaranteed Support Response Time in the table of Items Covered, the following Support Response Times apply:

	Issue Severity				Penalty per hour (prorated to the nearest minute)
	Fatal	Severe	Medium	Minor	
Item Priority Level 1	15 minutes	15 minutes	30 minutes	60 minutes	5% of monthly fee
Item Priority Level 2	30 minutes	30 minutes	45 minutes	60 minutes	2% of monthly fee
Item Priority Level 3	60 minutes	60 minutes	75 minutes	90 minutes	1% of monthly fee

## Severity levels

The severity levels are defined as follows:

Severity level	Definition
Fatal	Complete degradation — all users and critical functions affected. Item or service completely unavailable.
Severe	Significant degradation — large number of users or critical functions affected.
Medium	Limited degradation — limited number of users or functions affected. Business processes can continue.
Minor	Small degradation — few users or one user affected. Business processes can continue.

### Measurement

Support Response times are measured using *NxtPort's* online support ticketing system, which tracks all issues from initial reporting to resolution.

Support Response times are measured from the moment the *Subscriber* submits a support request until *NxtPort* responds to that support request. *Subscriber* is deemed to have submitted a support request when it has reported the issue via email to [support@nxtport.eu](mailto:support@nxtport.eu) – which triggers a ticket in *NxtPort's* ticketing system. *NxtPort* is deemed to have responded when it has replied to the *Subscriber's* initial request, in the form of an email, response via the ticketing system or telephone call, to either provide a solution or request further information.

Support Response times apply during standard working hours (9h-17h30 CET) only, except when a dedicated support contract between the *Subscriber* and *NxtPort* includes provisions for out of hours support. For instance, if an issue is reported at 17h CET with a response time of 60 minutes, *NxtPort* has until 9h30 CET the following day to respond.

It is vital the *Subscriber* raises every issue via *NxtPort's* online support ticketing system. If an issue is not raised appropriately through *NxtPort's* ticketing system, the guaranteed Support response time does not apply to that issue.

### Penalties

If *NxtPort* fails to meet a guaranteed Support Response Time, a penalty will be applied in the form of a credit for the *Subscriber*.

This means the following month's fee payable - for the item which was impacted - by the *Subscriber* will be reduced on a sliding scale.

The level of penalty will be calculated depending on the number of hours by which *NxtPort* missed the Support response time, as specified in above table.

Support response time penalties in any month are capped at 50% of the Item Covered's monthly fee.

### Resolution times

*NxtPort* will always endeavour to resolve problems as swiftly as possible. It recognises that the items used by the *Subscriber* are key to the *Subscriber's* business and that any downtime can cost money.

However, *NxtPort* is unable to provide guaranteed resolution times, as the nature and causes of problems can vary enormously.

For instance, it may be possible to resolve a fatal server issue in minutes, simply by restarting the server. But if a server fails due to disk error or a hardware fault (also classed as a fatal issue) it may take much longer to get back up and running.

In all cases, *NxtPort* will make its best efforts to resolve problems as quickly as possible and will provide frequent progress reports to the *Subscriber*.

#### Right of termination

*NxtPort* recognises that it provides items that are critical to the *Subscriber's* business.

If *NxtPort* fails to meet the service levels described in this document more than 5 times one calendar month, the *Subscriber* may terminate its entire contract with *NxtPort*, with no penalty.

## 20 Annex 3: NxtPort Data Processor Agreement

This Data Processing Agreement (the “Agreement”) is entered into by and between the Subscriber (as defined in the NxtPort General Terms and Conditions) and **NxtPort CVBA**, registered with the Crossroads Bank of Enterprises under company and VAT number BE 0429.672.881 and having its registered office at Brouwersvliet 33, Box 8, 2000 Antwerp (“NxtPort”) and supplements the NxtPort General Terms and Conditions (the “Platform Agreement”).

This Data Processing Agreement describes the treatment of Personal Data that is Processed by NxtPort on behalf of the Subscriber.

### 1 Introduction

Pursuant to the Platform Agreement, NxtPort provides the NxtPort platform (the “Platform”) to the Subscriber. In the provision of the Platform, Personal Data is collected and Processed by NxtPort on behalf of the Subscriber.

The Parties seek to implement a data processing agreement that complies with the requirements of the governing Data Protection Law, including the GDPR.

As from May 25, 2018, namely when the GDPR becomes applicable, this Agreement will supersede and replace all provisions in prior and current agreements between the Parties which relate, directly or indirectly, to the processing of personal data, privacy, Subscriber data, personal data access or data transfer and data protection and security.

### 2 Definitions

Following terms and expressions are to be defined as follows:

<b>“Controller”</b>	means controller as defined in article 4(7) of the GDPR.
<b>“Data Protection Law”</b>	means the GDPR and all other local legislations within the European Economic Area that might be applicable on the Processing of Personal Data.
<b>“Data Subject”</b>	means any identified or identifiable natural person;
<b>“GDPR”</b>	means the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).
<b>“Personal Data”</b>	means any information relating to an identified or identifiable natural person.

<b>“Processing”</b> or related conjugation of the verb “Process”	means any operation or set of operations which is performed on Subscriber Data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.
<b>“Processor”</b>	means processor as defined in article 4(8) of the GDPR.
<b>“Subscriber”</b>	means the Data Provider, Data User and App Developer who shall make use of the Platform and to which this Agreement shall be applicable;
<b>“Subscriber Data”</b>	means all data in any form Processed by NxtPort on behalf of the Subscriber for the purposes of delivering the Platform, including, to the extent applicable, Personal Data.
<b>“User”</b>	means a registered user of the Platform that qualifies as one or more of following: Data Provider, Data User or App Developer.

All terms and expressions as used in this Agreement and which have not been expressly defined herein, will have the same meaning as they have in the Platform Agreement.

### 3 NXTPORT AS DATA PROCESSOR

- 3.1 NxtPort only acts as Processor and will never become the Controller with respect to the Subscriber Data within the framework of the provision of the Platform. In this respect, the Subscriber is and will remain at all times the Controller with respect to the Subscriber Data.
- 3.2 NxtPort commits to processing the Subscriber Data on behalf of the Subscriber and in accordance with the provisions of the Agreement, which constitute the documented instructions from the Subscriber. Parties agree that additional instructions from the Subscriber are to be attached to this Agreement in order to be valid between Parties.
- 3.3 NxtPort shall inform Subscriber if, in its opinion, Subscriber's instruction infringes the GDPR or other Data Protection Law.

### 4 DATA PROCESSING

- 4.1 While using the Platform, Subscriber may provide certain sets of Personal Data or Personal Data to NxtPort for Processing. NxtPort will only Process Subscriber Data during the term of the Platform Agreement or alternative duration to be agreed upon, with as the case may be early termination and will in no event keep Subscriber Data longer than required for the purposes for which they are Processed. Unless legally required otherwise, NxtPort will delete or anonymize all Subscriber Data, and will delete existing copies of such Personal Data, at the moment of the termination or expiration of the Platform Agreement.
- 4.2 Each Party represents and warrants that it has or will have by May 25, 2018, implemented appropriate technical, organizational and security measures in such a manner that it will meet the requirements of the GDPR and ensure the protection of the rights of the Data Subject.
- 4.3 The Subscriber Data may relate to Data Subjects that are employees, agents, contractors, partners, suppliers or customers of the Subscriber or of the Subscriber's customers as provided to NxtPort by the Subscriber. The Personal Data may contain following elements: emailaddresses, addresses, telephone numbers, jobs, picture, Alfapass ID number, vehicle license plate,...
- 4.4 The Subscriber will ensure that the Subscriber Data can be lawfully Processed in accordance with Data Protection Law and in particular that the Data Subjects have been duly informed on the circumstances under which their Personal Data is Processed. The Subscriber will take into account instructions of NxtPort as described in the Platform Agreement in this respect.
- 4.5 Subscriber Data may be transferred to countries outside the European Economic Area provided that such transfer is done in line with applicable Data Protection Law. NxtPort will inform the Subscriber of any intended changes concerning any changes in terms of countries to which Subscriber Data is being transferred or the measures taken to ensure compliance with transfer rules under applicable Data Protection Law. At that time, the Subscriber will be allowed to object to such changes.

### 5 SUBPROCESSORS

- 5.1 NxtPort guarantees that any person acting under their authority and having access to the Subscriber Data, only Processes this Subscriber Data in accordance with the provisions of this Agreement and have in particular committed themselves to confidentiality.

- 5.2 NxtPort may engage sub-processors with respect to the Processing of the Subscriber Data. These sub-processors will be held to the same contractual obligations as set out in this Agreement. Where the sub-processor fails to fulfil its data protection obligations, NxtPort will remain fully liable towards the Subscriber for the performance of that sub-processor's obligations.
- 5.3 NxtPort will inform the Subscriber of any intended changes concerning the addition or replacement of these sub-processors. At that time, the Subscriber will be allowed to object to such changes.

## 6 TECHNICAL AND ORGANISATION MEASURES

- 6.1 NxtPort will implement appropriate technical and organisational measures to ensure that Processing is performed in accordance with Data Protection Law, as well as to ensure an appropriate level of security of the Subscriber Data, taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons. This constitutes an obligation for NxtPort to use its best endeavours.
- 6.2 NxtPort will document all information necessary in order to demonstrate the abovementioned compliance (including records of processing activities) and NxtPort will make this documentation available to Subscriber upon its request.

## 7 INFORMATION OBLIGATIONS AND ASSISTANCE

- 7.1 If NxtPort is required to Process Subscriber Data by Union or Member State law to which it is subject, NxtPort will inform the Controller of that requirement, unless that law prohibits such information.
- 7.2 Where necessary and upon request, NxtPort will assist the Subscriber with the execution of a data protection impact assessment and possible prior consultation with competent supervisory authorities with respect to the Processing in accordance with this Agreement.
- 7.3 The Parties will assist each other, upon specific request and to the extent possible, with the response to requests from Data Subjects exercising their rights under Data Protection Law. Taking into account the nature of the processing, NxtPort will assist Subscriber by appropriate technical and organizational measures for the fulfilment of Subscriber's obligation to respond to requests for exercising the data subject's rights.
- 7.4 As the case may be, the "right to be forgotten" might imply actions from NxtPort, namely removing from its system, records or databases and deleting, within a 30-days period, any Personal Data of the Data Subject requesting such a right. Upon prior discussion with Subscriber, a best practice could be to remove and erase Personal Data from Data Subject known by NxtPort as no longer using the tool, device, services or applications.
- 7.5 The Data Processor will assist Subscriber in ensuring compliance with the obligations related to the security of Data and of processing, taking into account the nature of the processing and the information available to NxtPort.
- 7.6 The Parties will inform each other without undue delay after becoming aware of a personal data breach. Furthermore, the Parties will propose and take measures to address the data breach and mitigate its possible adverse effects. If required by Data Protection Law, the Subscriber will notify the data breach to the supervisory authority and the affected Data Subjects. NxtPort will assist the Subscriber in this respect if this is deemed necessary by the latter.

7.7 The Data Processor shall make available to Subscriber all information necessary and to the extent as requested by law to demonstrate compliance with the obligations laid down in this Agreement and allow for and contribute to audits, including inspections, conducted by Subscriber or an external auditor mandated by Subscriber. Subscriber will limit his initiatives to perform an audit or an inspection to a maximum of 1 in a year, except when it is legally imposed or in case of a mutual agreement.

## 8 LIMITATIONS OF LIABILITY

8.1 Nothing in this Agreement shall limit or exclude any liability, rights or remedies provided by law. Unless agreed upon otherwise in writing by and between the Parties, NxtPort's liability hereunder shall be limited to the compensation for any damages incurred by Subscriber, caused by NxtPort's gross negligence and intent. Furthermore, Subscriber shall in no event hold NxtPort liable for any indirect, incidental and consequential damages incurred by Subscriber or for profits lost by the latter