

## Terms & Conditions

Version 1.1 - October 2015

Forum1 offers a cloud application for trainers and facilitators to lead group sessions, named "Primoforum". Customers may request and obtain the right to use Primoforum by completing the online ordering process and accepting these terms of service ("Terms").

Please take a moment to read and understand the provisions in this Terms document, because they set forth your rights and obligations with respect to the use of Primoforum, and your acceptance is required in order to obtain the right to use Primoforum. If you complete the online registration and accept these Terms on behalf of a company or other organization, you personally represent and warrant that you are authorized to represent this entity. You are advised to print this document, or save a copy locally.

### 1 Definitions

- 1.1 **Agreement:** this Terms document, the online Order, and all attached or referenced annexes, by which a complete agreement is established between Forum1 and Customer, involving the authorized use of Primoforum by Customer.
- 1.2 **Account:** the part of Primoforum that is personal to the User.
- 1.3 **Customer:** the customer whose contact details are filled out on the Order.
- 1.4 **Fees:** the fees which Customer must pay for its Subscription(s).
- 1.5 **Login Details:** the details, such as e-mail address or username and password, which must be entered to gain access to and use Primoforum.
- 1.6 **Forum1:** Forum1 coöperatie u.a., having its registered office at Herengracht 247, Amsterdam, The Netherlands. Forum1 is also what "we", "us" and "our" refer to in this document.
- 1.7 **Primoforum:** Forum1's cloud application for trainers and facilitators to lead group sessions.
- 1.8 **Order:** the online order completed by Customer in order to request one or more Subscriptions.
- 1.9 **Session Leader:** a natural person authorized by Customer to use Primoforum in order to lead a session, and to authorize Session Participants. For each Session Leader a valid Subscription is required.
- 1.10 **Session Participant:** a natural person authorized by a Session Leader to Primoforum in order to participate in a session.
- 1.11 **Subscription:** the subscription required to use Primoforum as a Session Leader. Subscriptions can be monthly or annual.
- 1.12 **User:** a natural person rightfully authorized under this Agreement to use Primoforum (as either a Session Leader or a Session Participant).

1.13 **User Data:** all electronic data or information submitted to Primoforum by a User and a session participant.

1.14 **Website:** primoforum.com and any subdomains of primoforum.com.

## **2 Authorized use and conditions of use**

2.1 Upon payment of the applicable Fees, the applicable Subscription(s) will be activated, and Customer will be enabled to create or obtain valid Login Details for its Session Leaders.

2.2 Primoforum may only be used by authorized Users, who have submitted valid Login Details. The Login Details and Accounts of Session Leaders may be used only by the authorized Session Leader, and may not be shared by multiple individuals. The Session Participants receive a one-time session code from the Session Leader, which may be shared by multiple Session Participants, as determined by the Session Leader.

2.3 Any right to use Primoforum is at all times conditional to Customer's payment of the applicable Fees for the Subscription(s). Primoforum may never be used in violation of applicable law and the legal rights of others.

2.4 Customer shall indemnify and hold Forum1 harmless from and against any claim, damage or other negative consequence arising from Customer's (alleged) violation of applicable law and/or rights of third parties.

2.5 Customer and its Users are responsible to ensure that all prerequisites to use Primoforum, are available. This includes, in any event, a device with an up to date web browser and an Internet connection. Further required or recommended prerequisites may be listed in the documentation or user guide.

2.6 Access to Primoforum may be suspended temporarily or terminated permanently at any time if Forum1 has established to a reasonable degree of certainty, acting in good faith, that the aforementioned conditions have been violated. In the event of such suspension or termination, Customer will be informed of the reason. Customer acknowledges and agrees that it may not in all cases be practicable to send notice before giving effect to suspension or termination.

## **3 Availability and support**

3.1 Forum1 shall make commercially reasonable efforts to make Primoforum available for Customer, without disruptions or downtime. Customer accepts, however, that disruptions or downtime may occur from time to time. Any information about uptime or performance of Primoforum shall be construed solely as an indication and not as a guarantee. Customer's sole remedy in the event of disruptions or downtime shall be that Forum1 shall end the disruption or downtime as soon as reasonably practicable.

3.2 In the event Customer or any User uses Primoforum in a manner other than the manner prescribed in the user documentation, Customer accepts that degraded performance and/or

errors may occur. The user documentation may provide, for example, that Primoforum may not be accessed and used by certain older browsers and/or operating systems.

- 3.3 Customer can report disruptions and ask questions about Primoforum via the contact details provided on the Website. The hours during which support will be available may be limited to a certain service window, as indicated on the Website.
- 3.4 Support is provided on a best efforts basis, and Forum1 explicitly does not guarantee that any reported issues will be addressed or resolved within a certain time.
- 3.5 Forum1 has no obligation to deliver support with respect to issues caused by any User's inappropriate use of Primoforum.

#### **4 Payment terms**

- 4.1 Depending on whether the Customer has opted for a monthly or annual Subscription, Forum1 will send Customer an invoice (normally as a pdf-file, via e-mail) for the relevant Subscription(s), every month or every year. Each Subscription shall be paid in full in advance.
- 4.2 All amounts are in euros and exclusive VAT, unless specified otherwise.
- 4.3 Invoiced amounts are due and payable within thirty (30) days after the invoice date. After this term has expired, Customer will be in default immediately without any further notification being required.
- 4.4 If Customer is in default, statutory interest will be due in respect of the outstanding invoice. Further, Customer shall be obliged to fully compensate both the judicial and extrajudicial collection costs, including lawyer's and bailiff's fees and the costs of collection agencies, in addition to the amount that is owed and the interest due in respect thereof.
- 4.5 If Customer is in default with respect to a payment obligation, Forum1 has the right to suspend access to Primoforum until the due amounts have been paid. Any suspension does not affect the obligation to pay for the Subscription.
- 4.6 Forum1 may modify the Fees for new Subscriptions at any time. For Subscriptions already in effect the Fees may only be changed with prior written consent of Customer. Forum1 shall notify Customer of any changes in Fees, no less than 30 days before the new Fees shall come into effect. If Customer does not wish to accept the new Fees, Customer may choose to let the current Subscription(s) expire and stop using Primoforum.

#### **5 Term and termination of this Agreement**

- 5.1 This Agreement enters into force when Forum1 has confirmed its acceptance of the Order (normally via e-mail). This Agreement remains valid for as long as any Subscription is valid.
- 5.2 Depending whether Customer has opted for a monthly or annual Subscription, the Subscription will be automatically renewed by another month or year if payment for the next month or year is received before the current term has expired. Each Subscription expires

automatically if no payment for the following term is received in time. In the event Forum1 has attempted to collect a recurring payment, but failed, Forum1 will notify Customer, warning that payment failed and that the Subscription would expire if the payment for renewal would not be received on time.

- 5.3 In the event a Subscription has expired, the usage rights are reduced to 'trial' rights, so that no other than 'trial' sessions can be initiated, but the Account and User Data may still be accessible. Up to 2 years after the last successful login to the trial version, Customer will have the option to renew the Subscription and keep the Account and User Data by paying the applicable Fees.
- 5.4 Neither Party may unilaterally terminate any Subscription before its expiration date, unless for cause, in the following circumstances:
- a) upon the other Party's material breach of an obligation under this Agreement, or, in case of a remediable breach, if the other Party fails to cure such breach within thirty (30) days after receipt of formal written notice specifying the breach;
  - b) the other Party has applied for or received, whether provisional or not, a moratorium, or
  - c) upon the other Party ceasing to conduct business other than for reconstruction or amalgamation while solvent, or becoming or being declared by a bankruptcy court to be insolvent or bankrupt.
- 5.5 Any provision of this Agreement which imposes an obligation after termination or expiration of this Agreement shall survive the termination or expiration of this Agreement. In any event, clause 8 9 and 12 shall survive the termination or expiration of this Agreement.

## **6 Privacy and protection of personal data**

- 6.1 Forum1 and Customer shall each comply with all laws and regulations regarding privacy and the protection of personal data, applicable to either of the Parties, and implement appropriate security measures in order to prevent loss and unlawful processing of personal data.
- 6.2 Customer retains all rights to its User Data. Forum1 shall not sell or lease access to Customer's User Data to any third party.
- 6.3 The Data Processing Agreement in Annex A further specifies the parties' respective rights and obligations with respect to the protection of personal data and privacy.

## **7 Updates and modifications to Primoforum**

- 7.1 Forum1 shall make commercially reasonable efforts to adjust Primoforum from time to time to improve its functionality and to correct faults/errors. If an adjustment leads to any significant change in functionality, Forum1 will normally inform Customer thereof by means of release notes.

## **8 Warranties, liability**

- 8.1 Forum1 provides Primoforum and the Website “as is” and “as available”, without any warranty of any kind. To the extent permitted by applicable law, Forum1 disclaims any implied warranties or representations.
- 8.2 The entire liability of Forum1 on whatever ground, including product liability, tort, contractual liability, and breach of warranty, shall be limited to direct damages, to the amount of fees actually paid by Customer for the use of Primoforum in the six (6) months preceding the damaging event, up to a maximum of 10.000 (ten thousand) euro.
- 8.3 The limitations of liability contained in this article 8 shall not apply in the following cases:
- a) wrongful intent and gross negligence,
  - b) bodily injury,
- 8.4 In order to qualify for any compensation by Forum1, Customer must notify Forum1 in writing of any loss or damage as soon as possible after the event has occurred. Any claims for damages against Forum1 shall expire by the mere passage of twelve (12) months from the date on which the claim arose.

## **9 Intellectual property rights**

- 9.1 Forum1 and its licensors retain any intellectual property rights in Primoforum. Nothing in this Agreement shall be construed as an assignment or transfer of any intellectual property from Forum1 to Customer.

## **10 Force majeure**

- 10.1 Forum1 shall have no liability to Customer under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, cybercrime, failure of a utility service or transport or telecommunications network, war, riot, fire, flood, storm or unforeseeable default of suppliers or sub-contractors, provided that the Customer is notified of such an event.

## **11 Amendments**

- 11.1 Forum1 reserves the right to make minor amendments to the Terms at any time without notice to Customer.
- 11.2 Customer will be notified of any Amendments to the Terms of Solution which Forum1 considers of material impact on the Customer’s rights under the Agreement, at least 30 days before the amendment will take effect.
- 11.3 Customer has the right to refuse material amendments to the Terms. Such refusal must be communicated to Forum1 (preferably by e-mail) before the date on which the amendments

take effect. In such case, the Agreement will remain in effect unamended until expired or terminated.

- 11.4 Amendments to the Terms shall also apply in respect of Agreements that have already been concluded.

## 12 Interpretation, choice of law and conflict resolution

- 12.1 **Choice of law.** This Agreement shall be governed exclusively by Dutch law, excluding any conflict of law provisions contained in Dutch law.
- 12.2 **Mediation clause.** Any dispute, controversy or claim arising under, out of or relating to this Agreement and any subsequent amendments of this Agreement, including, without limitation, its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims, shall be submitted to mediation in accordance with the WIPO Mediation Rules. The place of mediation shall be Amsterdam, The Netherlands. The language to be used in the mediation shall be English.
- 12.3 **Choice of forum.** Any disputes which cannot be resolved by mediation shall be submitted to the competent court in Amsterdam, The Netherlands.
- 12.4 **Precedence.** This Agreement supersedes any and all prior written or oral agreements and / or arrangements between the Parties on the same subject. In case of any conflict between these Terms and an Annex attached hereto, the Annex shall prevail.
- 12.5 With respect to notices and correspondence the Parties elect domicile at the addresses specified in this Agreement.
- 12.6 When this Agreement states something must be "written" or "in writing", this includes e-mail or other electronic messages, provided that the integrity and authenticity of the electronic message can be verified to a reasonable level of certainty.
- 12.7 Each Party signing this Agreement acknowledges that it has had the opportunity to review this Agreement with legal counsel of its choice, and there shall be no presumption that ambiguities must be construed or interpreted against the drafter.
- 12.8 The headings and titles are merely a tool to enable easy reading. The language contained within each clause itself shall be given more weight in its interpretation than the heading of the Article.
- 12.9 Any terms and conditions or exceptions put forward by Customer will not form part of the Agreement, unless explicitly accepted in writing by Forum1.
- 12.10 This Agreement may only be amended or supplemented by a written agreement between the Parties, except where otherwise specified in this Agreement.
- 12.11 If any provision of this Agreement will be held to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable. If a court finds that any

provision of this Agreement is invalid or unenforceable, but that by limiting such provision, it would become valid and enforceable, then such provision will be deemed to be written, construed, and enforced as so limited.

## **ANNEX A. Data Processing Agreement**

This Data Processing Agreement (hereafter: "DPA") forms an Annex to the Primoforum Agreement (hereafter: the "Main Agreement") between Customer and Forum1. The definitions of capitalized terms included in the Main Agreement also apply within this DPA, unless an alternative definition is provided herein.

This DPA is intended to ensure the mutual compliance of Forum1 and Customer with applicable legislation concerning privacy and data protection, and to guarantee an appropriate level of protection of personal data.

### **1 Scope and purposes of processing**

- 1.1 The User Data which may be submitted to Primoforum by the Users, may contain personal data. Principally the Customer is responsible for determining the purposes and means for the processing of such personal data. Therefore Customer shall be regarded as the "Controller" of personal information, as defined in European privacy legislation. Forum1 shall be regarded as the Customer's "Processor".
- 1.2 Forum1 undertakes to process User Data solely to provide and improve Primoforum for Customer.
- 1.3 Forum1 may carry out scientific or statistical research into how Primoforum is used, in order to improve Primoforum. As a general principle, usage data is anonymous or anonymized as much and as soon as possible.
- 1.4 Whenever this is required, the Users' informed consent shall be obtained, which shall normally occur through the acceptance of a privacy policy, required to install or use an app which forms a part of, or makes use of, Primoforum.

### **2 Division of responsibility**

- 2.1 Under this DPA Forum1 is solely responsible for its processing of personal data as a part of delivering Primoforum for Customer, in accordance with the instructions of Customer and under the express (final) responsibility of Customer.
- 2.2 Customer is responsible to acquire any opt-in permission from the data subjects as may be required pursuant to applicable privacy legislation.
- 2.3 If Forum1 subcontracts certain processing operations of personal data to any other party (e.g. storing data with a specialized hosting provider), Forum1 shall ensure that such party complies with Forum1's obligations under this Data Processing Agreement.



### **3 Place of processing**

- 3.1 Forum1 may process the personal data in countries within the European Union. In addition, Forum1 may also transfer the personal data to a country outside the European Union if the European Commission has formally determined that this country ensures an adequate level of protection for personal data, or of the so-called 'model clauses', created for this purpose by the European Commission, are used.

### **4 Security measures**

- 4.1 Forum1 implements adequate technical and organizational security measures to prevent loss and unlawful processing of personal data, given the state of the art, the sensitivity of the personal data and the costs related to the security measures. Forum1 cannot guarantee, however, that the security measures will be effective under all circumstances.

### **5 Login Details**

- 5.1 Each of the Parties shall observe proper care with respect to the Login Details, in order to avoid unauthorized access to and use of Primoforum, and any User Data.
- 5.2 Customer shall require its Users to observe proper care with respect to their Login Details.

### **6 Obligation to notify security breaches**

- 6.1 In case Forum1 becomes aware of a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to User Data, and such breach is likely to materially affect Customer and/or its Users, Forum1 shall promptly inform Customer. Forum1 shall also have the right to directly inform any data subject adversely affected by the breach, as well as any competent authority, if Forum1 in good faith understands this to be its legal or moral obligation.
- 6.2 In case Customer discovers a vulnerability in Primoforum that may lead to loss or unauthorized processing of User Data, Customer shall inform Forum1 thereof without delay. Forum1 shall then investigate without delay whether or not the supposed vulnerability does in fact exist and notify Customer of its findings.
- 6.3 Customer shall not, nor allow its Users to, engage in any activity that may pose a risk to the availability, integrity and security of Primoforum, even if such activity would be carried out for the purpose of evaluating the security of Primoforum (e.g. a penetration test). Prior written authorization by Forum1 is at all times required to engage in any activities as described in this article 6.3 .

### **7 User Data retention term**

- 7.1 User Data is stored for as long as necessary to provide Primoforum and its features to Customer and its authorized Users. User Data will be deleted 24 months after expiration or

termination of the relevant Subscription. Customer may request User Data of an expired Subscription to be deleted before the regular retention term for the User Data has expired.

## **8 Term and termination**

- 8.1 This DPA shall come into effect at the same time as the Main Agreement. This DPA shall remain in force until the Main Agreement is expired or terminated and Forum1 is no longer in the possession of Customer's User Data.