

# Terms of Use

Last updated: January 2025

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In these Terms of Use Setso, among other things, the following concepts and terms are written with a capital letter. The following concepts and terms in the singular have the same meaning as in the plural and vice versa, insofar as the context requires.

## Article 1. Definitions

- **"Offer"**: the offer from the Supplier in which, among other things, the Services are described, as well as the fee the Customer is liable for and to which these Terms of Use apply.
- **"Account"**: the digital user profile created by the User via the Website and/or the Setso App, with which the Services of Setso can be used.
- **"Services"**: access to the Website or the use of the Setso App and the use of the services provided by the Supplier via the Website and/or the Setso App. In the case of a Customer, Services are provided in accordance with the Agreement.
- **"Documentation"**: the further standard description of the (functional) specifications of the Services provided by the Supplier to the Customer and which may be changed and/or updated from time to time.
- **"End User"**: employees of the Customer or persons working on behalf of the Customer who, via the Customer and pursuant to the Agreement, obtain access to and may use solely the Setso App.
- **"User"**: Customer and End User.
- **"Terms of Use"**: these Terms of Use Setso, of which the Data Processing Agreement and/or the Privacy Statement form a part.
- **"Identification Data"**: login name, email address, password and/or other codes by which the Customer or End User is granted access to Setso Studio via their Account.
- **"Intellectual Property Rights"**: all intellectual property rights with respect to Setso Studio, Documentation, the Setso App, and the Website, including but not limited to copyrights, database rights, trademark rights, trade name rights, know-how, goodwill, trade secrets, and personality rights.
- **"Customer"**: any legal entity or natural person acting in the exercise of a profession or business, with whom the Supplier enters into an Agreement or to whom the Supplier makes an offer.
- **"Supplier"**: Setflow B.V. and its legal successors or a company or partner affiliated with Setflow B.V. that enters into a legal relationship with the Customer and has declared these Terms of Use applicable. Setflow B.V. is located at Johan van Hasselkade 257, 1032 LP Amsterdam, the 

Netherlands and is registered in the Commercial Register of the Chamber of Commerce under number 91658942.

- **"License"**: the non-exclusive, non-sublicensable, non-transferable, non-pledgeable, temporary, and revocable right to access and use Setso Studio, the Setso App, and Documentation by the User in accordance with the Terms of Use and/or applicable Agreement.
- **"Agreement"**: the agreement(s) between the Supplier and the User, of which the Terms of Use form a part, which is concluded upon acceptance of the Offer and on the basis of which the Supplier provides its Services.
- **"Parties"**: the Supplier and the User.
- **"Setso App"**: the mobile application including the iOS, Google Play, and web app versions, and such other mobile applications and/or versions thereof that the Supplier may (from time to time) launch, operate, and maintain.
- **"Setso Studio"**: the online, cloud-based web application and software of the Supplier by which Services are provided to the Customer via the Website in accordance with the Agreement and/or Terms of Use.
- **"Data Processing Agreement"**: the agreement as described in Article 10 of these Terms of Use.
- **"Website"**: the website of and managed by/for the Supplier, such as via the domains setso.com, studio.setso.com, app.setso.com, or other (sub)domains and other domain extensions belonging to the Supplier.

## Article 2. Applicability

2.1 These Terms of Use apply to Setso Studio and the Setso App, the Offer, Agreements, and other legal relationships between the Supplier and the Customer.

2.2 By using the Setso App (which includes downloading and installing it), the User agrees to these Terms of Use.

2.3 The Supplier may change the Terms of Use. The changed Terms of Use will apply unless a written objection is raised within 30 (thirty) days from the date of the change.

2.4 Changes to, as well as additions to, the Terms of Use and/or the Agreement are only valid if recorded in writing by the Supplier.

2.5 If the trade name used by the Customer designates multiple (legal) entities or companies, these shall be jointly and severally liable for fulfilling all obligations under the Agreement concluded with the Supplier.

2.6 Any general, purchasing, or other terms and conditions of the Customer are hereby expressly rejected unless these have been expressly accepted in writing by the Supplier.

2.7 If any provision of these Terms of Use is wholly or partially null and void or annulled, the remaining provisions shall remain in full force. The Supplier and the Customer shall then consult with

each other in order to agree on new provisions to replace the null or annulled provisions, taking as far as possible into account the purpose and intent of the null or annulled provision.

2.8 If the Supplier uses services of third parties for the purpose of providing its Services, the general terms and conditions and the privacy statement of the respective third parties shall also apply. The Supplier is not responsible for the services and the privacy and cookie policies of third parties.

### **Article 3. Formation of Agreement**

3.1 Each Agreement between the Supplier and the Customer is concluded upon acceptance of the Supplier's Offer.

3.2 All offers from the Supplier are non-binding, unless expressly stated otherwise in writing in the Offer.

3.3 In the event of conflicting provisions, the following hierarchy applies: (a) Data Processing Agreement; (b) Terms of Use.

### **Article 4. Services of the Supplier**

4.1 Provided that the Customer complies with its obligations under the Agreement, the Supplier shall provide its Services — as described in the Offer — exclusively to the Customer and the End User designated by the Customer. The Customer may use Setso Studio and the Setso App exclusively for its own business or organization and solely in accordance with this Agreement. The Customer is not permitted to allow third parties to use Setso Studio and the Setso App, except for the designated End User.

4.2 All Services are carried out on a best-efforts basis, unless and insofar as the Supplier has expressly guaranteed a specific result in writing in the Agreement and the result is described with sufficient specificity therein.

4.3 The Supplier will endeavor to achieve the highest possible availability of the Services but cannot guarantee that the Services are continuously available and/or that Setso Studio and the Setso App are error-free. The Supplier also does not provide any guarantees regarding the availability and reliability of its systems and networks or access to data, unless expressly agreed otherwise in writing with the Customer.

4.4 The Supplier has no control over and/or insight into the content of Setso Studio, the Setso App, and the data traffic to and/or from the User. The Supplier provides no guarantees regarding the content of the information and data in the Services it provides, particularly with respect to reliability and completeness.

4.5 The Customer indemnifies and holds the Supplier harmless against any claim, penalty, charge, or legal action by a third party in connection with (the content of) the data traffic — including personal data — and other information originating from the User.

## Article 5. Use of the Setso App

5.1 By accepting these Terms of Use, the User guarantees that they are acting in the exercise of a profession or business and not as a consumer.

5.2 To gain access to and make use of the Setso App, the User must download the App at their own risk and expense via the Apple App Store, Google Play Store, or by visiting the Website. The User is obliged to download and/or use the Setso App in accordance with these Terms of Use and/or other applicable conditions.

5.3 Apple Inc. and/or Google Inc. may, at any time and without prior notice, restrict, interrupt, or prevent the use of the Setso App, or remove the Setso App from the User's (mobile) device, or require the Supplier to do so, without the User having any right to any refund, credit, or other compensation from the Supplier or any third party.

5.4 In order to use the Setso App, the User must, at their own expense, ensure that they have the necessary equipment, (system) software, and internet connection.

## Article 6. License

6.1 Provided that the Customer complies with its obligations under the Agreement and the End User complies with their obligations under these Terms of Use, the Customer or End User obtains an "As Is" License, unless the parties have otherwise agreed in writing.

6.2 The License is granted to the Customer for the duration of the Agreement.

6.3 The User is expressly prohibited from using Setso Studio and the Setso App for any purpose other than the purpose for which they are made available. It is also expressly forbidden for the User to make Setso Studio and the Setso App available to third parties, to sell, or to rent them out without the prior consent of the Supplier.

6.4 The License may be subject to restrictions that are included in the Offer or otherwise communicated to the User. These restrictions may pertain, among other things, to usage limits. The Supplier may at any time determine that a limit has been exceeded. If the Supplier determines an excess, the Customer will be requested to comply with the License. If the Customer is unable or unwilling to act in accordance with the License, the Customer shall immediately proceed to accept an adjustment of the License by the Supplier and/or to pay for the excess usage in accordance with this Agreement.

6.5 The User is expressly prohibited from modifying, decompiling, reverse-engineering, or disassembling the source code, underlying ideas, underlying techniques, or algorithms of Setso Studio and the Setso App in any way. Likewise, the User is expressly forbidden from removing or circumventing the technical measures designed to protect Setso Studio and the Setso App.

6.6 The Supplier is entitled to incorporate technical restrictions and control mechanisms in Setso Studio and the Setso App, or otherwise, to monitor compliance with the Agreement. The Supplier is

entitled to review log files and similar records for the purpose of analyzing the use of Setso Studio.

## **Article 7. Maintenance and Support**

7.1 The Supplier is entitled to make changes in the content or scope of Setso Studio, the Setso App, and Documentation. If such changes are substantial and result in a change to the procedures applicable at the Customer, the Supplier will inform the User as soon as possible. The Supplier is not obliged to maintain, modify, or add specific features or functionalities of its Services for the User.

7.2 The Supplier is entitled to — without prior notice — temporarily disable Setso Studio and the Setso App or restrict the User's use thereof, insofar as this is reasonably necessary for maintenance or adjustments.

7.3 The Supplier is entitled to provide updates and/or upgrades of Setso Studio and the Setso App free of charge to the Customer, which are also generally made available to other customers, including patches and/or fixes. The Customer will be informed that a new upgrade and/or update will be applied.

7.4 The Supplier has the right to provide free support during office hours consisting of: (a) general questions regarding the use of Setso Studio; and (b) explanations and assistance with the updates and/or upgrades of Setso Studio performed by the Supplier. Support will be provided solely for the most recent updates of Setso Studio.

7.5 Any form of support that goes beyond what is described in Article 7.4, such as but not limited to functional improvements requested by the Customer, repair work due to user errors, improper use of Setso Studio, or other causes attributable to the Customer, will be provided at the then applicable rates of the Supplier as communicated to the Customer.

7.6 If the Customer does not install new updates offered by the Supplier, the Supplier reserves the right to terminate the Agreement.

7.7 If the Supplier is requested by the Customer to perform work, such as but not limited to additional and/or custom work, which does not fall under the Agreement, the Supplier is entitled to charge the Customer additional costs for such work.

## **Article 8. (Delivery) Deadlines**

8.1 All (delivery) deadlines mentioned by the Supplier are established to the best of its knowledge based on the data provided and will be observed as much as possible.

8.2 (Delivery) deadlines are therefore not considered as strict deadlines but as timeframes within which the Supplier will make its best efforts to fulfill what has been agreed. If it appears likely that any deadline will be exceeded, the Supplier and the Customer will consult as soon as possible to discuss further planning.

## Article 9. Access and Account

9.1 To gain access to Setso Studio and the Setso App, the User must register by creating an Account in the manner prescribed by the Supplier. The User shall provide accurate, complete, and up-to-date information during registration.

9.2 The Account is exclusively linked to the User and will be accessible by entering the Identification Data.

9.3 The Customer may, in the manner prescribed by the Supplier, invite End Users to use Setso Studio and/or the Setso App as directed by the Supplier.

9.4 The User is responsible for the use of the Account and for keeping the Identification Data confidential, both by themselves and any End Users. The Customer ensures that End Users are familiar with the provisions in these Terms of Use.

9.5 The User shall handle the Identification Data with due care. In the event of loss, theft, and/or any other form of unlawful use, the User shall immediately notify the Supplier so that appropriate measures can be taken.

9.6 The User bears all responsibility, risk, liability, and costs caused by the use, misuse, and/or dissemination of the Identification Data by the User. Under no circumstances shall the Supplier be liable for the misuse and/or unlawful use of the Identification Data.

9.7 If it can reasonably be suspected that the Identification Data has been misused or unlawfully used, the Supplier may give the User instructions to which the User is obliged to comply.

9.8 If it is established that the Identification Data has been misused or that the User has not complied with the instructions referred to in the preceding paragraph, the User is immediately in default.

## Article 10. Personal Data

10.1 If personal data is processed pursuant to the Agreement, the Customer shall be deemed the data controller within the meaning of the GDPR and the Supplier the processor within the meaning of the GDPR.

10.2 The parties shall therefore enter into a Data Processing Agreement, and with respect to the processing of personal data, the provisions of the aforementioned Data Processing Agreement shall apply.

10.3 When creating an Account, personal data is processed in accordance with the Privacy Statement of the Supplier, which can be consulted on its Website.

## Article 11. Back-ups

11.1 The User is responsible for making back-ups in a timely manner, unless the parties have expressly agreed otherwise in writing.

11.2 Only if it has been expressly and in writing agreed that the Supplier will provide, wholly or partly, for making back-ups, will the Supplier make back-ups of the Customer's data in its possession in accordance with the Agreement. In no event shall the Supplier be liable for these back-ups.

11.3 The Customer remains at all times responsible for complying with the administrative and retention obligations that apply to it by law.

## **Article 12. Code of Conduct**

12.1 The User guarantees that the Services will not be used for activities that are contrary to Dutch law and regulations or other applicable laws or regulations. The Customer must refrain from any form of unauthorized use of the Services and shall use the Services as a careful user.

12.2 The User must use Setso Studio and the Setso App in a responsible manner and in accordance with the Agreement or the instructions of the Supplier. It is prohibited to use Setso Studio and the Setso App in a manner that could overload, disrupt, or hinder the system of the Supplier and/or third parties. It is also prohibited to share information, data, images, video and audio fragments, or other content that the Supplier considers offensive, illegal, or that infringes upon the privacy of third parties.

12.3 The Supplier is entitled to remove content placed by the User in the event of an infringement of third-party rights.

12.4 The Supplier is never liable for any damage suffered by the User as a result of measures taken pursuant to the foregoing.

## **Article 13. Duration, Termination, and Consequences of Termination**

13.1 The Agreement between the Supplier and the User comes into effect upon its formation and is entered into for the duration stated in the Agreement, failing which a duration of one year shall apply.

13.2 With respect to the termination of the Agreement: (a) If the Agreement is entered into for a fixed term, the User may terminate the Agreement no later than 30 (thirty) days before the renewal date via the Website and/or the Setso App; (b) If the Agreement is entered into for an indefinite period, the User may terminate the Agreement at any time via the Website or the Setso App.

13.3 If the Agreement is not terminated in accordance with Article 13.2, the Agreement shall be tacitly renewed each time for the duration of the original period as specified in Article 13.1.

13.5 The Supplier may immediately suspend or terminate the Agreement if: (a) the User does not comply in a timely and/or complete manner with its (payment) obligations; or (b) circumstances



arise such that the fulfillment of the Supplier's obligations becomes impossible or can no longer be reasonably expected.

13.6 Notwithstanding any other provision, either party is entitled to completely or partially dissolve the Agreement by means of a registered letter without judicial intervention if the defaulting party, even after a written notice to remedy the deficiency within a reasonable period, fails to comply with its obligation.

13.7 The parties additionally have the right to immediately terminate the Agreement in the event of: (a) submission of a request for statutory debt restructuring; (b) bankruptcy or suspension of payments; or (c) liquidation or termination of the other party's business.

13.8 After termination, the User may no longer derive any rights from the Agreement, without prejudice to rights and obligations intended to continue after termination.

13.9 If the Agreement is terminated, the Supplier's claims become immediately due and payable. Amounts already invoiced for services rendered remain due.

## **Article 14. Prices**

14.1 Unless expressly stated otherwise, all prices are in euros, exclusive of VAT and other government levies.

14.2 The prices applicable to the Services are listed on the Website and/or in the Setso App.

14.3 No rights or expectations may be derived from a quotation, unless the parties have agreed otherwise in writing.

14.4 If the Supplier suspends the fulfillment of its obligations, it reserves all its claims, including the claim for payment for suspended Services.

14.5 In the case of a periodic payment obligation, the Supplier is entitled to change its prices in writing. The Supplier will change its prices at least annually, based on CBS Price Index figures.

14.6 If the Customer does not agree with a price change, the Customer is only entitled to terminate the Agreement effective from the date the price change takes effect, provided that the total price increase during one year exceeds the CBS inflation rate by more than 5 percentage points.

14.7 A price change shall take effect 30 days after the Customer has been notified.

## **Article 15. Payment**

15.1 Payment of the amounts due shall take place via the Website or in the Setso App or by any other method as determined by the Supplier.

15.2 Unless otherwise specified, payment must in any case be made upon the formation of the Agreement.

15.3 If payment is made via direct debit, the Customer hereby authorizes the Supplier to collect the amounts due. In the event of untimely payment via direct debit, the Supplier shall have the right to charge €20.00 in costs.

15.4 If payment does not occur in accordance with Articles 15.2 or 15.3, payment of the amounts due shall be made within 14 days after the invoice date, without the Customer being entitled to any compensation, set-off, or suspension. All payment terms are strict deadlines.

15.5 Any objections to the invoice must be submitted in writing with adequate substantiation within 7 days after the invoice date.

15.6 Should the Customer fail to meet any payment obligation, the Customer shall be in default without any further notice. The Customer shall owe the Supplier the costs related to the collection of all amounts owed.

## **Article 16. Intellectual Property Rights**

16.1 All Intellectual Property Rights with respect to the Services, including Setso Studio, Documentation, the Setso App, and the Website, reside exclusively with the Supplier and/or its licensors.

16.2 The User shall refrain from any actions that infringe upon the Intellectual Property Rights of the Supplier and/or its licensors.

16.3 Nothing in the Agreement is intended to result in the complete or partial transfer of the Intellectual Property Rights of the Supplier to the User.

## **Article 17. Confidentiality**

17.1 The Supplier and the User are aware that they will make confidential information available to each other and that the recipient must treat such information as confidential.

17.2 The Supplier and the User mutually undertake to keep confidential all such information. Confidential information may only be used for the performance of the Agreement.

17.3 The Receiving Party shall not make the confidential information available to anyone other than its own employees and/or third parties who have a legitimate need to know.

17.5 The Receiving Party agrees to receive and use the confidential information solely for purposes related to the Agreement.

17.6 Within 30 working days after a request from the Disclosing Party, the Receiving Party shall return or destroy all documents containing confidential information.

## **Article 18. Liability**

18.1 Except in cases of intent or gross negligence, the Supplier's total liability towards the User, on any legal basis, is limited solely to compensation for direct damages, and in any event to a maximum amount of €500 (five hundred euros), exclusive of VAT, whereby a series of related events shall be considered as one single event.

18.2 "Direct damages" shall solely mean: (a) the reasonable costs incurred to determine the cause and extent of the damage; (b) the reasonable costs incurred to prevent or limit the damage; (c) the reasonable costs incurred to repair the damage.

18.3 Except in cases of intent or gross negligence, liability for indirect damages, including consequential damages, loss of profit, lost savings, diminished goodwill, data breaches, destruction or loss of files and/or data, delay damages, damages caused by business interruption, or claims by third parties against the Customer, is expressly excluded.

18.4 The liability of the Supplier shall only arise if the User promptly and properly notifies the Supplier in writing of any default, stating a reasonable period for remedy, and if the Supplier remains in breach after that period.

18.5 The Supplier shall in no event be liable for any damages arising from services provided by third parties through the Supplier.

18.6 The User indemnifies the Supplier against all claims by third parties that relate to or result from a breach of the Agreement by the User, except insofar as such claims are the result of intent or gross negligence on the part of the Supplier.

## **Article 19. Force Majeure**

19.1 The Supplier is not obliged to perform any obligation if it is prevented from doing so due to a circumstance not attributable to its fault. Such circumstances include those beyond the control of the Supplier, such as power outages, hardware failures, internet outages, network attacks, (cyber)crime, flooding, fire, terrorism, illness, pandemics, and government measures.

19.2 If the force majeure is temporary, the Supplier is entitled to suspend the Agreement without being liable for any compensation.

19.3 The Supplier reserves the right to demand payment for services already rendered before becoming aware of the force majeure event.

19.4 If the force majeure persists for more than ninety days, both parties are entitled to dissolve the Agreement without any obligation to pay compensation.

## **Article 20. Other Provisions**

20.1 The Supplier is entitled, without the consent of the User, to (partially) assign the Agreement and the rights and obligations arising therefrom to parent companies, sister companies, subsidiaries, or a third party.

20.2 The Agreement comprises the entire agreement between the parties and supersedes all prior oral and written agreements regarding this subject.

20.3 The parties agree that the Agreement, insofar as it concerns the provision of software for use, is not to be considered a sales contract.

20.4 The Supplier is entitled to provide products and/or services from third parties or to involve third parties in fulfilling its obligations.

## **Article 21. Governing Law and Competent Court**

21.1 The Agreement is exclusively governed by Dutch law. The parties expressly declare that the Vienna Convention on Contracts for the International Sale of Goods does not apply.

21.2 All disputes between the Supplier and the User shall be exclusively submitted to the competent court in Amsterdam, Netherlands.