



Processor”	
hereinafter jointly also to be referred to as the “Parties” and each separately as a “Party”;	

**NOW, THEREFORE**, and in order to enable the Parties to carry out their relationship in a manner that is compliant with law, the Parties have entered into this Data Processing Addendum as follows:

### 1. Definitions

For the purposes of this DPA:

“**Affiliates**” shall mean any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. “Control” for purposes of this definition, means direct or indirect ownership or control of more than 50% of the outstanding voting securities or capital stock of such subject entity or any other comparable equity or ownership interest with respect to a business entity other than a corporation.

“**Authorized Affiliates**” shall mean any of Customer's Affiliate(s) which (i) is subject to the Applicable Data Protection Law and (ii) is permitted to use the on premises products and/or online products/services pursuant to the Agreement(s) between Customer and the Processor, but has not signed its own Agreement(s) with the Processor and is not a "Customer" in its own right as defined under the Agreement(s).

“**Applicable Data Protection Law**” shall mean the General Data Protection Regulation (EU) 2016/679 protecting the fundamental rights and freedoms of individuals and in particular their right to privacy with respect to the Processing of Personal Data applicable to the Controller and the Processor, and additional rules and implementations of EU data protection laid down in European member state law;

“**Controller**” shall mean Customer and its Authorized Affiliates (as applicable) who determines as a natural or legal person alone or jointly with others the purposes and means of the Processing of Personal Data;

“**Customer**” shall mean the other party to the Agreement(s) (not being a SalesManager group company) that purchased the Services from the Processor; “Customer’s Account” shall mean the Customer’s account with the Processor (as applicable) which records all Services purchased by the Customer under the Agreement(s) as at the Effective Date;

**"Customer Account Data"** shall mean Personal Data that relates to Customer's relationship with the Processor, including the names and/or contact information of individuals authorized by Customer to discuss account information, billing and support information or of individuals that Customer has associated with obtaining the Processor's Services;

**"DPA"** shall mean this Data Processing Addendum;

**"General Data Protection Regulation" or "GDPR"** shall mean 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 which will come into effect on May 25, 2018;

**"International Organization"** shall mean an organization and its subordinate bodies governed by public international law, or any other body which is set up by, or on the basis of, an agreement between two or more countries;

**"Member State"** shall mean a country belonging to the European Union;

**"Personal Data"** shall mean any information relating to an identified or identifiable natural person (Data Subject);

**"Data Subject"** shall mean an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;

**"Personal Data Breach"** shall mean a breach of security leading to the accidental or unlawful destruction, loss alteration, unauthorized disclosure or, or access to, Personal Data transmitted, stored or otherwise Processed;

**"Process/Processing"** shall mean any operation or set of operations which is performed on Personal Data or on sets of Personal Data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;

**"Processor"** shall mean one of the entities listed under Party 1 above, who Processes Personal Data on behalf of the Controller;

**"Services Agreement"** shall mean all Agreement(s) concluded between the

Controller and the Processor setting out the terms and conditions for the provision of the Services;

**"Services"** shall mean the services provided by the Processor to the Controller and described under 'subject matter of processing' in the Products/Services Schedule of this DPA;

**"Special Categories of Data"** shall mean data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership; genetic data, biometric data Processed for the purpose of uniquely identifying a natural person; data concerning health or data concerning a natural person's sex life or sexual orientation;

**"Sub-processor"** shall mean any data processor engaged by the Processor who agrees to receive from the Processor Personal Data exclusively intended for Processing activities to be carried out on behalf of the Controller in accordance with its instructions, the terms of this DPA and the terms of a written subcontract;

**"Supervisory Authority"** shall mean an independent public authority which is established by a Member State pursuant to Article 51 of the GDPR;

**"Technical and Organizational Security Measures"** shall mean those measures aimed at protecting Personal Data against accidental destruction or accidental loss, alteration, unauthorized disclosure or access, in particular where the Processing involves the transmission of data over a network, and against all other unlawful forms of Processing;

**"Third Country"** shall mean a country where the European Commission has not decided that the country, a territory or one or more specified sectors within that country, ensures an adequate level of protection; and "SalesManager group" shall mean the Processor and its Affiliates engaged in the Processing of Personal Data.

## **2. Details of the Processing**

The parties acknowledge and agree that with regard to the Processing of Customer Account Data Customer is a controller or processor, as applicable, and one of the entities listed under Party 1 is an independent controller, not a joint controller with Customer. Each party shall comply with its obligations under the Applicable Data Protection Law.

The details of the Processing operation provided by the Processor to the Controller as a commissioned data processor (e.g., the subject-matter of the processing, the nature and purpose of the processing, the type of personal data and categories of data subjects) are specified in Annex 1 in respect of on premises products and online products/services to this DPA. The Services Agreement and this DPA sets

out Controller's complete instructions to Processor in relation to the Processing of the Personal Data and any Processing required outside of the scope of these instructions will require prior written agreement between the parties.

### **3. Rights and Obligations of Controller**

The Controller:

(a) remains the responsible data controller for the Processing of the Personal Data as instructed to the Processor based on the Services Agreement, this DPA and as otherwise instructed. The Controller has instructed and throughout the duration of the commissioned data processing will instruct the Processor to Process the Personal Data only on Controller's behalf and in accordance with the Applicable Data Protection Law, the Services Agreement, this DPA and Controller's instructions. The Controller is entitled and obliged to instruct the Processor in connection with the Processing of the Personal Data, generally or in the individual case. Instructions may also relate to the correction, deletion, blocking of the Personal Data. Instructions shall generally be given in writing, unless the urgency or other specific circumstances require another (e.g., oral, electronic) form. Instructions in another form than in writing shall be confirmed by the Controller in writing without delay. To the extent that the implementation of an instruction results in costs for the Processor, the Processor will first inform the Controller about such costs. Only after the Controller's confirmation to bear such costs for the implementation of an instruction, the Processor is required to implement such instruction.

(b) warrants that:

(i) its processing of the Personal Data is based on legal grounds for processing as may be required by Applicable Data Protection Law and it has made and shall maintain throughout the term of the Services Agreement all necessary rights, permissions, registrations and consents in accordance with and as required by Applicable Data Protection Law with respect to Processor's processing of Personal Data under this DPA and the Services Agreement;

(ii) it is entitled to and has all necessary rights, permissions and consents to transfer the Personal Data to Processor and otherwise permit Processor to process the Personal Data on its behalf, so that Processor may lawfully use, process and transfer the Personal Data in order to carry out the Services and perform Processor's other rights and obligations under this DPA and the Services Agreement. Controller shall have sole responsibility for the accuracy, quality, and legality of Personal Data and the means by which Controller acquired Personal Data; and

(iii) it has assessed the Technical and Organizational Measures set out in Annex 4

of this DPA and has determined that these satisfy the requirements of Article 32 GDPR in respect of Processor's processing of Personal Data.

#### **4. Obligations of Processor**

The Processor shall:

(a) process the Personal Data only as instructed by the Controller and on the Controller's behalf; such instruction is provided in the Services Agreement, this DPA and otherwise in documented form as specified in clause 3 above. Such obligation to follow the Controller's instruction also applies to the transfer of the Personal Data to a Third Country or an International Organization.

(b) inform the Controller promptly if the Processor cannot comply with any instructions from the Controller for whatever reasons;

(c) ensure that persons authorized by the Processor to Process the Personal Data on behalf of the Controller have committed themselves to confidentiality or are under an appropriate obligation of confidentiality and that such persons that have access to the Personal Data Process such Personal Data in compliance with the Controller's instructions.

(d) assist the Controller by appropriate Technical and Organizational Measures, insofar as this is feasible, for the fulfilment of the Controller's obligation to respond to requests for exercising the Data Subjects rights concerning information, access, rectification and erasure, restriction of processing, notification, data portability, objection and automated decision-making. The Processor shall maintain the Technical and Organizational Measures set forth in Annex 4 of this DPA. To the extent such feasible Technical and Organizational Measures require changes or amendments to the Technical and Organizational Measures specified in the relevant Annex 4, the Processor will advise the Controller on the costs to implement such additional or amended Technical and Organizational Measures. Once the Controller has confirmed to bear such costs, the Processor will implement such additional or amended Technical and Organizational Measures to assist the Controller to respond to Data Subject's requests.

(e) make available to the Controller all information necessary to demonstrate compliance with the obligations laid down in this DPA and allow for and contribute to audits, including inspections conducted by the Controller or another auditor mandated by Controller. The Controller is aware that any in-person on-site audits may significantly disturb the Processor's business operations and may entail high expenditure in terms of cost and time. Hence, the Controller may only carry out an in-person on-site audit if the Controller reimburses the Processor for any costs and expenditures incurred by the Controller due to the business operation disturbance. Each requested audit shall meet the following requirements:

- (i) no more than one audit per calendar year shall be requested or conducted and upon no less than 90 days' notice to the Processor;
- (ii) shall be conducted by an internationally recognized independent auditing firm reasonably acceptable to Processor;
- (iii) take place during Processor's regular business hours, pursuant to a mutually agreed upon scope of audit;
- (iv) the duration of the audit must be reasonable and in any event shall not exceed two business days;
- (v) no access shall be given to the data of other customers; audits will not be permitted if they interfere with Processor's ability to provide the Services to any customers;
- (vi) audits shall be subject to any confidentiality or other contractual obligations of Processor or SalesManager Software group (including any confidentiality obligations to other customers, vendors or other third parties);
- (vii) any non-affiliated third parties participating in the audit shall execute a confidentiality agreement reasonably acceptable to Processor;
- (viii) all costs and expenses of any audit shall be borne by Controller; and
- (ix) any audit of a facility will be conducted as an escorted and structured walkthrough and shall be subject to Processor's security policies.

(f) notify the Controller without undue delay:

- (i) about any legally binding request for disclosure of the Personal Data by a law enforcement authority unless otherwise prohibited, such as a prohibition under the law to preserve the confidentiality of a law enforcement investigation;
- (ii) about any complaints and requests received directly from the Data Subjects (e.g., regarding access, rectification, erasure, restriction of processing, data portability, objection to processing of data, automated decision-making) without responding to that request, unless it has been otherwise authorized to do so;
- (iii) if the Processor is required pursuant to EU or Member State law to which the Processor is subject to process the Personal Data beyond the instructions from the Controller, before carrying out such processing beyond the instruction, unless that EU or Member State law prohibits such information on important grounds of public interest; such notification shall specify the legal requirement under such EU or Member State law;
- (iv) if, in the Processor's opinion, an instruction infringes the Applicable Data Protection Law; upon providing such notification, the Processor shall not be obliged to follow the instruction, unless and until the Controller has confirmed or changed it; and
- (v) after the Processor becomes aware of a Personal Data Breach at the Processor. In case of such a Personal Data Breach, taking into account the nature of the processing and information available to the Processor, upon the Controller's written request, the Processor will use commercially reasonable efforts to assist the Controller with the Controller's obligation under Applicable Data Protection Law to inform the affected Data Subjects and the Supervisory Authorities, as applicable, and to document the Personal Data Breach.

(g) assist the Controller, to the extent Controller does not otherwise have access to the relevant information, and to the extent such information is available to Processor, with any Data Protection Impact Assessment as required by Article 35 GDPR that relates to the Services provided by the Processor to the Controller and the Personal Data processed by the Processor on behalf of the Controller.

(h) deal with all enquiries from the Controller relating to its Processing of the Personal Data subject to the processing (e.g., to enable the Controller to respond to complaints or requests from Data Subjects in a timely manner) and abide by the advice of the Supervisory Authority with regard to the Processing of the Personal Data transferred.

(i) that, to the extent that the Processor is required and requested to correct, erase and/or block Personal Data processed under this DPA, the Processor will do so without undue delay. If and to the extent that Personal Data cannot be erased due to statutory retention requirements, the Processor shall, in lieu of erasing the relevant Personal Data, be obliged to restrict the further Processing and/or use of Personal Data, or remove the associated identity from the Personal Data (hereinafter referred to as "blocking"). If the Processor is subject to such a blocking obligation, the Processor shall erase the relevant Personal Data before or on the last day of the calendar year during which the retention term ends.

## **5. Sub-processing**

(a) The Controller hereby authorizes the appointment and use of Sub-processor(s) engaged by the Processor for the provision of the Services. The Controller approves the Sub-processor(s) set out in Annex 5.

(b) The Controller acknowledges and agrees that (i) SalesManager group may be retained as Sub-processors; and (ii) the Processor and SalesManager group respectively may engage third-party Sub-processors (and permit each Sub-Processor appointed under this clause 5 to appoint sub-processors) in connection with the provision of the Services.

(c) In case the Processor intends to engage new or additional Sub-processors, the Controller hereby provides general written authorization for the Processor to do so, provided that the Processor shall inform the Controller of any intended changes concerning the addition or replacement of any Sub-processor ("Sub-processor Notice") such notice to be provided at <https://www.salesmanager.nl/support> ("part of the support portal). The Controller is responsible for visiting the Sub-processor List Website from time to time. If the Controller has a reasonable basis to object to the use of any such new or additional Sub-processor, the Controller shall notify the Processor promptly in writing within 14 days after receipt of the Sub-processor Notice. In the event the Controller objects to a new or additional Sub-processor, and that objection is not unreasonable, the Processor will use reasonable efforts to make available to the Controller a change in the Services or recommend a commercially reasonable



change to the Controller's configuration or use of the Services to avoid Processing of Personal Data by the objected-to new or additional Sub-processor without unreasonably burdening the Controller. If the Processor is unable to make available such change within a reasonable period of time, which shall not exceed ninety (90) days, the Controller may terminate (notwithstanding any contrary provision in the Services Agreement and without liability to the Controller) the affected part of the Services Agreement with respect only to those Services which cannot be provided by the Processor without the use of the objected-to new or additional Sub-processor by providing written notice to the Processor.

(d) The Processor and/or SalesManager group shall impose the same data protection obligations as set out in this DPA on any Sub-processor by contract. The contract between the Processor and the Sub-processor shall in particular provide sufficient guarantees to implement the Technical and Organizational Security Measures as specified in Annex 4, to the extent such Technical and Organizational Security Measures are relevant for the services provided by the Sub-processor. The Controller agrees that in respect of transfers of Personal Data under this DPA from the EU, the European Economic Area ("EEA") and/or their Member States and Switzerland to Third Countries, to the extent such transfers are subject to the Applicable Data Protection Law, the Processor shall secure the transfer under the EU- US Privacy Shield pursuant to Decision 2016/1250/EU ("Privacy Shield"), the terms of the Standard Contractual Clauses for the Transfer of Personal Data to Processors Established in Third Countries pursuant to Decision 2010/87/EU ("Model Clauses") or such other mechanism approved by the European Commission and valid from time to time.

(e) The Processor and/or SalesManager group shall choose the Sub-processor(s) diligently.

(f) The Processor shall remain liable to the Controller for the performance of the Sub-processor's obligations, should the Sub-processor fail to fulfil its obligations. However, the Processor shall not be liable for damages and claims that ensue from the Controller's instructions to Sub-processors.

(g) The provisions of this clause 5 shall not apply to the extent Controller instructs the Processor to allow a third party to Process Controller's Personal Data pursuant to a contract that Controller has directly with the third party.

## **6. Limitation of liability**

The liability of the Processor and/or its Affiliates, taken together in the aggregate, arising out of or related to this DPA, and all DPAs between Authorized Affiliates and the Processor, whether in contract, tort or under any other theory of liability shall be exclusively governed by, the liability provisions set forth in, or otherwise applicable to, the relevant Agreement applicable to the Services. Therefore, and for the purpose of calculating liability caps and/or determining the application of other

limitations on liability, any liability occurring under this DPA shall be deemed to occur under the relevant Agreement and be subject to the 'Limitation of Liability' section of the Agreement.

## **7. Duration and termination**

(a) The terms of this DPA supplement the terms of each Agreement. The term of this DPA shall automatically expire upon the termination of the last Agreement. Save as otherwise agreed herein, termination rights and requirements shall be the same as set forth in the relevant Agreement.

(b) The Processor shall by the later of: (i) 90 days after the end of the provision of Services involving the processing of Personal Data; (ii) termination of the relevant Agreement; and (iii) expiration of the time period for which Personal Data is maintained pursuant to applicable disaster recovery practices for the Services, to the extent reasonably practicable, delete and procure the deletion of all copies of Personal Data processed by the Processor unless EU or Member State law requires the Processor to retain such Personal Data.

## **8. Miscellaneous**

(a) The Processor may modify or supplement this DPA, with reasonable notice to Customer: (i) if required to do so by a Supervisory Authority or other government or regulatory entity; (ii) if necessary to comply with applicable law; (iii) to implement new or updated Model Clauses approved by the European Commission; or (iv) to adhere to an approved code of conduct or certification mechanism approved or certified pursuant to Articles 40, 42 and 43 GDPR.

(b) In the event of inconsistencies between the provisions of this DPA and any other agreements between the Parties, the provisions of this DPA shall prevail with regard to the Parties' data protection obligations. In case of doubt as to whether clauses in such other agreements relate to the Parties' data protection obligations, this DPA shall prevail.

(c) Should any provision of this DPA be invalid or unenforceable, then the remainder of this DPA shall remain valid and in force. The invalid or unenforceable provision shall be either (i) amended as necessary to ensure its validity and enforceability, while preserving the Parties' intentions as closely as possible or – should this not be possible – (ii) construed in a manner as if the invalid or unenforceable part had never been contained therein. The foregoing shall also apply if this DPA contains any omission.

(d) This DPA and the documents referred to in it including the Agreement(s) constitute the entire understanding and agreement of the parties in relation to the processing of the Personal Data and supersede all prior agreements, discussions, negotiations, arrangements and understandings of the parties and/or their

representatives in relation to such processing. Nothing in this DPA shall exclude or limit either party's liability for fraudulent misrepresentation.

(e) This Agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement. Transmission of the executed signature page of a counterpart of this Agreement by email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this Agreement. No counterpart shall be effective until each party has executed at least one counterpart.


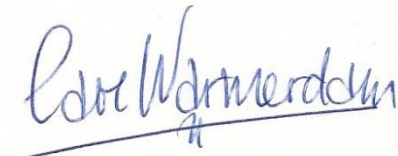
(f) This DPA shall be governed by Dutch Law except to the extent that mandatory Applicable Data Protection Law applies.

(g) This DPA has been pre-signed by the Processor and shall only become legally binding upon the receipt by the Processor of a fully executed version, Customer having executed a copy of it and returned it to the Processor at [finance@salesmanager.nl](mailto:finance@salesmanager.nl).

(h) Each Party warrants it has full capacity and authority to enter into and perform its obligations under this DPA.

IN WITNESS whereof the duly authorised representatives of each party have executed this Agreement as at the Effective Date.

For and on behalf

Of the Processor(s):	SalesManager Software BV	SalesManager International Holding Limited
Name (written out in full)	Caroline Warmerdam	Noel Digan
Position	Directeur	Director
Date:	01/07/2018	01/07/2018
Signature		

**For and On behalf of the Controller**

Name (written out in full):  
(Please use CAPITAL LETTERS)

Position:

Company/KvK/LLP reg.no:

Registered Address:

Date:

Signature:

The undersigned confirms that he/she is fully authorized to enter into this DPA and bind the Customer to this agreement

## **Product Schedule**

Subject to the Customers's Account and the Service Agreement at all times, as applicable:

### **On premise products or online products:**

- SalesManager CRM, ERP and ServiceManagement solution
- ServicePortal Solutions
- Workflow Solution
- QlikSense BI Solution

## **IN RESPECT OF ON PREMISE PRODUCTS:**

I The Controller acknowledges and agrees it: 1) processes such categories of Personal Data and such Special Categories of Data as it wishes from time to time; 2) may transfer any such Personal Data and/or Special Categories of Data to any country subject to their own validation of the data transfer mechanisms used; 3) is responsible for implementing and maintaining its own Technical and Organizational Security Measures for the on premises products to protect the security of personal data created, collected, received, or otherwise processed by Controller which it hosts on its servers. Except as specified at II below, the Processor that does NOT access and does not process any Personal Data stored on the on premises products.

II Occasionally, at the Controller's request (and with its express permission at all times) the Processor may process such Personal Data and/or Special Categories of Data as the Controller determines and provides, transfers or permits screen sharing/ remote access to the Processor, in connection with performing obligations to provide Support Services and/or Consultancy Services from time to time. In that respect the Processor shall process such Personal Data as detailed Annexes 1-5.

### **Annex 1 Personal Data, purposes and description of processing operation(s)**

- Personal Data and/or Special Categories of Data – all/inserted or submitted by the Controller (as applicable to the products/services in scope)
- Subject matter of processing/ description of processing operation(s) : performance of Processor's obligations under the relevant Agreement and/or clause 4 (a) of this DPA.

### **Annex 2 Processor's Contact details**

[finance@salesmanager.nl](mailto:finance@salesmanager.nl)

### Annex 3 Transfers outside the EEA

Please refer to Annex 5.

### Annex 4 Security measures

This Annex describes the Technical and Organizational Security Measures and procedures that the Processor shall, as a minimum, maintain to protect the security of personal data created, collected, received, or otherwise obtained.

Detailed technical measures:	Processor's position:
Pseudonymization of data	x
Encryption of data	x
Ability to ensure ongoing confidentiality, integrity, availability, and resilience of processing systems and services	v
Ability to restore the availability and access to the Personal data in a timely manner in the event of a physical or technical incident	v

The Processor will evaluate technical and organizational security measures over time, considering costs for implementation, nature, scope, context and purposes of processing, and the risk of varying likelihood and severity for the rights and freedoms of natural persons.

Certification available: N/A

### Annex 5 Sub-processor(s):

**Name Services Location:** Amsio  
**Services** Managed hosting provider in the Netherlands.  
**Location :** The Netherlands

Updates will be notified at [www.salesmanager.nl/support](http://www.salesmanager.nl/support)