
Contract Data Processing on Behalf

Preamble

This annex regulations shall apply to any and all activities associated with the Agreement, in whose scope Supplier's employees or agents process Company's personal data (hereinafter, "Data") on behalf of Company as a controller (hereinafter, "Contract Processing")*.

§ 1 Scope, duration and specification of contract processing of Data

The scope and duration and the detailed stipulations on the type and purpose of Contract Processing shall be governed by the Agreement. Specifically, Contract Processing shall include, but not be limited to, the following Data:

- Data of employees and service providers of the client (for example fulfillment and customer service), for example, their user ID and activity logs.
- Data of customer Supplier , for example names, billing and delivery addresses, communications data (Customer Service), order history, account- and payment data

Except where this annex stipulates obligations beyond the term of the Agreement, the term of this annex shall be the term of the Agreement.

§ 2 Scope of application and responsibilities

- (1) Supplier shall process Data on behalf of Company. Such Contract Processing shall include all activities detailed in the Agreement and its statement of work. Within the scope of this annex, Company shall be solely responsible for compliance with the applicable statutory requirements on data protection, including, but not limited to, the lawfulness of disclosing Data to Supplier and the lawfulness of having Data processed on behalf of Company. Company shall be the »controller« in accordance with Article 4 no. 7 of the GDPR.
- (2) Die Company's individual instructions on Contract Processing shall, initially, be as detailed in the Agreement. Company shall, subsequently, be entitled to, in writing or in a machine-readable format (in text form*), modifying, amending or replacing such individual instructions by issuing such instructions to the point of contact designated by Supplier. Instructions not foreseen in or covered by the Agreement shall be treated as requests for changes to the statement of work. Company shall, without undue delay*, confirm in writing or in text form any instruction issued orally.

§ 3 Supplier's obligations

- (1) Except where expressly permitted by Article 28 (3)(a) of the GDPR, Supplier shall process data subjects' Data only within the scope of the statement of work and the instructions issued by Company. Where Supplier believes that an instruction would be in breach of applicable law, Supplier shall notify Company of such belief without undue delay. Supplier shall be entitled to suspending performance on such instruction until Company confirms or modifies such instruction.
- (2) Supplier shall, within Supplier's scope of responsibility, organise supplier's internal organisation so it satisfies the specific requirements of data protection. Supplier shall implement technical and organisational measures to ensure the adequate protection of Company's Data, which measures shall fulfil the requirements of the GDPR and specifically its Article 32. Supplier shall implement technical and organisational measures and safeguards that ensure ongoing confidentiality, integrity, availability and resilience of processing systems and services. Company is familiar with these technical and organisational measures, and it shall be Company's responsibility that such measures ensure a level of security appropriate to the risk.
- (3) Supplier shall support Company, insofar as is agreed upon by the parties, and where possible for Supplier, in fulfilling data subjects' requests and claims, as detailed in chapter III of the GDPR and in fulfilling the obligations enumerated in Articles 33 to 36 of the GDPR.
- (4) Supplier warrants that all employees involved in Contract Processing of Company's Data and other such persons as may be involved in Contract Processing within Supplier's scope of responsibility shall be prohibited from processing Data outside the scope of the instructions. Furthermore, Supplier warrants that any person entitled to process Data on behalf of Controller has undertaken a commitment to secrecy or is subject to an appropriate statutory obligation to secrecy. All such secrecy obligations shall survive the termination or expiration of such Contract Processing.
- (5) Supplier shall notify Company, without undue delay, if Supplier becomes aware of breaches of the protection of personal data within Supplier's scope of responsibility. Supplier shall implement the measures necessary for securing Data and for mitigating potential negative consequences for the data subject; the Supplier shall coordinate such efforts with Company without undue delay.
- (6) Supplier shall notify to Company the point of contact for any issues related to data protection arising out of or in connection with the Agreement.
- (7) Supplier warrants that Supplier fulfills its obligations under Article 32 (1)(d) of the GDPR to implement a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.
- (8) Supplier shall correct or erase Data if so instructed by Company and where covered by the scope of the instructions permissible. Where an erasure, consistent with data protection requirements, or a corresponding restriction of processing is impossible, Supplier shall, based on Company's instructions, and unless agreed upon differently in the Agreement, destroy, in compliance with data protection requirements, all carrier media and other material or return the same to Company. In specific cases designated by Company, such Data shall be stored or handed over. The associated remuneration and protective measures shall be agreed upon separately, unless already agreed upon in the Agreement.
- (9) Supplier shall, upon termination of Contract Processing and upon Company's instruction, return all Data, carrier media and other materials to Company or delete the same.
- (10) Where a data subject asserts any claims against Company in accordance with Article 82 of the GDPR, Supplier shall support Company in defending against such claims, where possible.

§ 4 Company's obligations

- (1) Company shall notify Supplier, without undue delay, and comprehensively, of any defect or irregularity with regard to provisions on data protection detected by Company in the results of Supplier's work.
- (2) Section 3 para. 10 above shall apply, mutatis mutandis, to claims asserted by data subjects against Supplier in accordance with Article 82 of the GDPR.
- (3) Company shall notify to Supplier the point of contact for any issues related to data protection arising out of or in connection with the Agreement.

§ 5 Enquiries by data subjects

- (1) Where a data subject asserts claims for rectification, erasure or access against Supplier, and where Supplier is able to correlate the data subject to Company, based on the information provided by the data subject, Supplier shall refer such data subject to Company. Supplier shall forward the data subject's claim to Company without undue delay. Supplier shall support Company, where possible, and based upon Company's instruction insofar as agreed upon. Supplier shall not be liable in cases where Company fails to respond to the data subject's request in total, correctly, or in a timely manner.

§ 6 Options for documentation

- (1) Supplier shall document and prove to Company Supplier's compliance with the obligations agreed upon in this exhibit by appropriate measures.
- (2) Where, in individual cases, audits and inspections by Company or an auditor appointed by Company are necessary, such audits and inspections will be conducted during regular business hours, and without interfering with Supplier's operations, upon prior notice, and observing an appropriate notice period. Supplier may also determine that such audits and inspections are subject to prior notice, the observation of an appropriate notice period, and the execution of a confidentiality undertaking protecting the data of other customers and the confidentiality of the technical and organisational measures and safeguards implemented. Supplier shall be entitled to rejecting auditors which are competitors of Supplier.

Supplier shall be entitled to requesting a remuneration for Supplier's support in conducting inspections where such remuneration has been agreed upon in the Agreement. Supplier's time and effort for such inspections shall be limited to one day per calendar year, unless agreed upon otherwise.

- (3) Where a data protection supervisory authority or another supervisory authority with statutory competence for Company conducts an inspection, para. 2 above shall apply mutatis mutandis. The execution of a confidentiality undertaking shall not be required if such supervisory authority is subject to professional or statutory confidentiality obligations whose breach is sanctionable under the applicable criminal code.

§ 7 Subcontractors (further processors on behalf of Company)

- (1) Supplier shall use subcontractors as further processors on behalf of Company only where approved in advance by Company.
- (2) A subcontractor relationship shall be subject to such consent of Supplier commissioning further supplier or subcontractors with the performance agreed upon in the Agreement, in whole or in part. Supplier shall conclude, with such subcontractors, the contractual instruments necessary to ensure an appropriate level of data protection and information security.

ESupplier shall not be entitled to use subcontractors as part of Supplier's performance under the Agreement.

- (3) Where Supplier commissions subcontractors, Supplier shall be responsible for ensuring that Supplier's obligations on data protection resulting from the Agreement and this exhibit are valid and binding upon subcontractor.

§ 8 Obligations to inform, mandatory written form, choice of law

- (1) Where the Data becomes subject to search and seizure, an attachment order, confiscation during bankruptcy or insolvency proceedings, or similar events or measures by third parties while in Supplier's control, Supplier shall notify Company of such action without undue delay. Supplier shall, without undue delay, notify to all pertinent parties in such action, that any data affected thereby is in Company's sole property and area of responsibility, that data is at Company's sole disposition, and that Company is the responsible body in the sense of the GDPR.
- (2) No modification of this annex and/or any of its components – including, but not limited to, Supplier's representations and warranties, if any – shall be valid and binding unless made in writing or in a machine-readable format (in text form), and furthermore only if such modification expressly states that such modification applies to the regulations of this annex. The foregoing shall also apply to any waiver or modification of this mandatory written form.
- (3) In case of any conflict, the data protection regulations of this annex shall take precedence over the regulations of the Agreement. Where individual regulations of this annex are invalid or unenforceable, the validity and enforceability of the other regulations of this annex shall not be affected.
- (4) This annex is subject to the laws of Germany.

§9 Liability and damages

- (1) Company and Supplier shall be liable to data subject in accordance with Article 82 of the GDPR.

Data Processing agreement concluded by and between “Company” and “Supplier” on the processing of personal data on behalf of a controller in accordance with Article 28 (3) of the EU General Data Protection Regulation (GDPR).

– hereinafter, “Company”–

Signature

Printed Name and Title

Date

Address:

– hereinafter, “Supplier”–



Signature

Raphael Thiel

Printed Name and Title

12.04.2018

Date

Address:

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