

# DATA PROCESSING AGREEMENT

This Data Processing Agreement (the "**Data Processing Agreement**") has been entered into between Servage GmbH (the "**Supplier**") and Customers having opted to enter into this Data Processing Agreement with the Supplier (the "**Customer**").

## 1. General

- 1.1 This Data Processing Agreement forms an integral part of the agreement between the Supplier and the Customer (the "**Agreement**").
- 1.2 Upon performance of the Agreement, the Supplier will process Personal Data on behalf of the Customer in capacity of the Customer's data processor. The Customer is the data controller for the Processing of the Personal Data.
- 1.3 Should anyone else jointly with the Customer, be the data controller(s) for the Personal Data, the Customer will inform the Supplier of this fact.
- 1.4 The purpose of this Data Processing Agreement is for the Customer and the Supplier to comply with from time to time applicable requirements and obligations under Data Protection Law with regard to data processing agreements and to maintain adequate safeguards in respect of personal integrity and fundamental rights of individuals in relation to transfers of Personal Data from the Customer to the Supplier within the scope of the services performed by the Supplier for the Customer under the Agreement.

## 2. Definitions

**"Customer"** means the party defined as the Customer in the above and to the extent that the Customer enters into this Data Processing Agreement on behalf of other service recipients pursuant to the Agreement, where appropriate, such service recipients also unless otherwise is expressly set forth in this Data Processing Agreement.

**"Data Protection Law"** means the from time to time applicable laws and regulations in respect of Processing of Personal Data, and from 25 May 2018, 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 (the "**General Data Protection Regulation**").



<b>"Data Subject"</b>	means the natural person to whom Personal Data relates to.
<b>"Personal Data"</b>	means any information that the Supplier is processing on behalf of the Customer under this Data Processing Agreement, relating to an identified or identifiable natural person (" <b>Data Subject</b> "); an identifiable natural 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.
<b>"Subprocessor"</b>	means anyone Processing Personal Data as a subcontractor of the Supplier (including, but not limited to, companies within the Supplier group).
<b>"Supervisory Authority "</b>	means the supervisory authority or supervisory authorities authorised to conduct supervision of Processing of Personal Data or considered to be the supervisory authority concerned under Data Protection Law.
<b>"Supplier"</b>	means the party defined as the Supplier in the above.

2.1 Any other terms or concepts used with a capitalized initial letter in this Data Processing Agreement shall, unless otherwise is expressly stated, have the meaning provided for under Data Protection Law and otherwise under the Agreement, unless the circumstances obviously require another order of interpretation.

### 3. Responsibility and Instructions

3.1 The Customer is the data controller of all Personal Data processed by the Supplier on behalf of the Customer under the Agreement. The Customer is therefore responsible for the compliance with applicable Data Protection Law. The Customer is obliged to inform the Supplier of any changes in the business conducted by the Customer causing the Supplier to take any measure or change any routing due to the content in Data Protection Law. In addition to the requirements directly applicable to the Supplier under to Data Protection Law, the Supplier shall be obliged to comply with from time to time applicable requirements in Data Protection Law and recommendations issued by Supervisory Authority. The Customer shall also regularly inform the Supplier



regarding measures taken by third parties, including Supervisory Authority and Data Subject, relating to the Processing.

- 3.2 The Supplier and the person(s) working under the Supplier's supervision, shall only process Personal Data in accordance with the Customer's documented instructions. The Supplier must never process Personal Data for any other purposes than the purposes the Customer has contracted the Supplier for under the Agreement and as set forth in this Data Processing Agreement. Applicable instructions at the conclusion of the Data Processing Agreement are set out in Appendix 1. In addition to the specific instructions set out in Appendix 1, this Data Processing Agreement and the Agreement shall be deemed as the Customer's full instructions to the Supplier with regard to Processing of Personal Data. The Customer will immediately inform the Supplier of any changes that affect the Supplier's obligations under this Data Processing Agreement.
- 3.3 Processing may also be performed where Union or Member State law to which the Supplier or Subprocessor is subject to requires such Processing. Where Processing is required by Union or Member State law to which the Supplier or Subprocessor is subject, the Supplier or the Subprocessor will inform the Customer of the legal requirement before the processing, unless that law prohibits such information on important grounds of public interest.
- 3.4 For the purpose of clarity the Supplier has the right to, during the term of this Data Processing Agreement and thereafter, store and process data derived from the Customer in aggregated or anonymized form i.e. data that does not contain Personal Data.

#### **4. Security etc.**

- 4.1 The Supplier will take the measures necessary to observe Article 32 of the General Data Protection Regulation. Accordingly, the Supplier take measures to ensure a level of security appropriate to the risk related to the processing. In assessing the appropriate level of security, the Supplier shall in particular take into account accidental or unlawful destruction, loss, alteration or unauthorized disclosure of or access to Personal Data processed.
- 4.2 In addition the Supplier shall assist the Customer in ensuring compliance with the obligations pursuant to Articles 32 to 36 of the General Data Protection Regulation, taking into account the nature of Processing and the information available to the Supplier.

#### **5. Disclosure of Personal Data and Information**

- 5.1 The Supplier shall without delay forward to the Customer any request from a Data Subject, Supervisory authority or any other third party, regarding disclosure of data that the Supplier processes on behalf of the Customer. The Supplier, or anyone working under the Supplier's supervision, may not disclose Personal Data, or information about the Processing of Personal Data, unless expressly

instructed otherwise by the Customer, save where such obligation is provided for under applicable Data Protection Law.

5.2 The Supplier shall, taking into account the nature of the Processing, assist the Customer, by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Customer's obligation to respond to requests to exercise the Data Subjects' rights in accordance with Data Protection Law and chapter III of the General Data Protection Regulation.

5.3 The Customer shall compensate the Supplier for extra work relating to the Supplier's obligation set forth in this section 5 according to the hourly rate applied by the Supplier from time to time.

## 6. Contact with the Supervisory Authority

6.1 The Supplier shall inform the Customer of any contacts from the Supervisory Authority concerning the Processing of Personal Data.

## 7. Subprocessor

7.1 Personal Data may only be processed by a Subprocessor provided that the Supplier, on behalf of the Customer, enters into a written agreement or other legal act under Union law where equivalent obligations in respect of data protection as set out in this Data Processing Agreement are imposed on the Subprocessor.

7.2 The Supplier will inform the Customer of any intended changes concerning the addition or replacement of Subprocessors. The Customer is entitled to object to such changes. Such objections may only be attributable to objective grounds, such as the security of the processing under the Data Processing Agreement. Should the Customer make such objection and the Supplier does not accept to replace the Subprocessor in question, the Supplier shall be entitled to additional compensation from the Customer for the costs incurred due to the fact that the Subprocessor in question cannot be used by the Supplier. The Supplier also has the right to terminate the Agreement and / or this Data Processing Agreement in whole or in part (e.g. insofar as they pertain to a particular add-on service) with thirty (30) days' prior notice.

7.3 The Supplier is in particular responsible for ensuring compliance with Article 28.2 and 28.4 of the General Data Protection Regulation when engaging Subprocessors and shall ensure that such a Subprocessor provides sufficient guarantees to implement appropriate technical and organisational measures in a manner such as to ensure that the Processing meets the requirements of the General Data Protection Regulation.

7.4 The Supplier shall upon request of the Customer provide the Customer (and if requested, Customer's customers that are controllers) with an accurate and up-to-date record regarding the Subprocessors engaged by the Supplier for the

Processing of Personal Data, contact information to the Subprocessors as well as the geographic location of such Processing.

## **8. Audits**

8.1 The Supplier shall within reasonable time following the Customer's request to the Supplier thereof make available to the Customer all information necessary to demonstrate that the obligations laid down in Article 28 of the Data Protection Regulation have been complied with. This means e.g. that the Customer has, in the capacity of controller, the right to take necessary measures to verify that the Supplier can fulfil its obligations under this Data Processing Agreement and that the Supplier actually has taken measures to ensure this.

8.2 The Supplier shall also assist and contribute to audits, including inspections, conducted by the Customer or an independent auditor.

## **9. Transfers of Personal Data outside the EU/EEA**

9.1 The Supplier and Subprocessors may only transfer Personal Data to a location outside of the EU/EEA (a so-called third country) provided that from time to time applicable requirements under Data Protection Law are observed. The Supplier shall upon such transfers to Subprocessors in third countries, on the behalf of the Customer enter into an agreement where the Subprocessor is obliged to apply the EU standard contractual clauses (2010/87/EU) or any standard clauses that replace these following decision by the EU Commission and / or by the CJEU.

## **10. Confidentiality**

10.1 The Supplier shall ensure that persons authorised to process Personal Data have committed themselves to confidentiality by contract or are under an appropriate statutory obligation of confidentiality. The duty of confidentiality applies during and after the term of this Data Processing Agreement. Access to Personal Data shall be limited to such persons requiring the Personal Data in order to conduct their job assignment.

10.2 The obligation under section 10.1 above does not apply to information that the Supplier is ordered to disclose to an authority according to Data Protection Law or other statutory requirement.

## **11. Data portability**

11.1 The Supplier shall ensure that the Customer can fulfil any obligation to enable data portability regarding Personal Data processed by the Supplier on the behalf of the Customer.

## **12. Compensation**

12.1 The Supplier shall be entitled to full compensation from the Customer for all work and all costs incurred as a consequence of fulfilling section 8, 11 and 15.1 due to instructions on processing of Personal Data provided by the Customer to the Supplier, which go beyond what is set forth in Appendix 1 or the functions and level of security that the Supplier normally offers its customer, e.g. as regards the Supplier's server services and if the Supplier is required to make customizations specifically for the Customer. The Supplier shall also be entitled to compensation from the Customer for work incurred as a consequence of fulfilling the obligation according to section 5. All work for which the Supplier is entitled to compensation according to this section shall be compensated in accordance with the Supplier's hourly rates applicable from time to time. The compensation shall cover the actual cost of the Supplier.

## **13. Liability**

13.1 If the Supplier, anyone working under the Supplier's supervision, or the Supplier's Subprocessor, processes Personal Data in violation of this Data Processing Agreement or contrary to the lawful instructions provided by the Customer, the Supplier shall, taking into account the limitation of liability under the Agreement, compensate the Customer for any direct damage caused by the Supplier due to incorrect processing, including damages and any administrative fines paid by the Customer to a third party. Without prejudice to the limitation of liability under the Agreement, the Supplier's liability under this section 13.1 shall never exceed an amount equal to the fees paid by the Customer to the Supplier under the Agreement during the twelve (12) months period preceding the event that caused the damage.

13.2 If the Customer or anyone working under the Customer's supervision, or any third party engaged by the Customer cause the Supplier damage due to vague, inadequate or wrongful instructions, inadequate information from the Customer as to the nature of the data processed (e.g. if sensitive Personal Data is processed without the Customer having informed the Supplier thereof) or if the damage is due to a breach of this Data Processing Agreement, the shall Customer compensate the Supplier for such damage, including damages and any administrative fines paid by the Supplier to a third party.

13.3 The Supplier's liability for claims and damages pursuant to this section 13 is subject to: (i) the Customer informing the Supplier in writing of any claims made against the Customer without undue delay; and ii) the Customer allowing the Supplier to control the defence of the claim and to alone decide on any settlement.

**14. Term and Termination**

14.1 This Data Processing Agreement enters into force when duly signed by both Parties and remains in force as long as the Supplier processes Personal Data on behalf of the Customer.

**15. Changes to the Data Processing Agreement**

15.1 If Data Protection Law changes during the term of this Data Processing Agreement, or if the Supervisory Authority issues guidelines, decisions or regulations concerning the application of Data Protection Law that result in this Data Processing Agreement no longer meeting the requirements for a data processing agreement pursuant to Data Protection Law, the Parties shall in good faith discuss necessary changes of this Data Processing Agreement in order to meet such new or additional requirements. Such changes shall come into effect in accordance with the Parties' written agreement thereof or otherwise no later than within such time set forth in Data Protection Law or a Supervisory Authority's guidelines, decisions or regulations. The Supplier shall be entitled to reasonable compensation for any work, costs and expenses due to such changes.

15.2 Other changes and addendums to this Data Processing Agreement must be made in writing and duly signed by both Parties in order to be binding.

**16. Miscellaneous**

16.1 The provisions of the Agreement shall apply also in respect of the Supplier's processing of Personal Data and the obligations under this Data Processing Agreement. In case of inconsistency between the provisions of the Agreement and this Data Processing Agreement, the provisions of the Data Processing Agreement shall take precedence in relation to all processing of Personal Data and nothing in the Agreement shall be deemed to limit or change obligations under this Data Processing Agreement insofar that this would mean that either Party does not comply with the requirements under Data Protection Law.

16.2 German law, shall under all circumstances be applied to this Data Processing Agreement.

16.3 Disputes arising in connection with this Data Processing Agreement shall be settled in accordance with the dispute resolution procedure set out in the Agreement.

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