



ANNEX III – Data Processing Agreement Sub-Processor ('DPA')

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In accordance with Section 11 of the Master Services Agreement, the Parties wish to determine their respective rights and obligations as to the Processing of Personal Data by Provider, in accordance with 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 (hereafter: 'GDPR').

This DPA applies when Provider Processes Personal Data on behalf of the Customer in the capacity of Sub-Processor to the Customer's End-Users in connection with the Customer's use of the Services. The Customer is the main Processor of the Customer's End-Users and Provider is a Sub-Processor of the Customer's End-Users regarding the Processing of Personal Data under this DPA.

PARTIES HAVE AGREED AS FOLLOWS:

Article 1 Definitions

The words and expressions used in this Annex III are to be interpreted to have the following meaning:

- 1.1 Controller: one or all (as the case may be) of the Customer's End-Users and whose Personal Data Provider shall process under this DPA in the capacity as Sub-Processor;
- 1.2 Processor: Customer;
- 1.3 Sub-Processor: Provider;
- 1.4 Personal Data: Data that only includes information relating to natural persons who can be identified or who are identifiable, directly from the information in question; or who can be indirectly identified from that information in combination with other information.
- 1.5 Service Data: is any information, including Personal Data, which is stored in or transmitted via the Software, by, or on behalf of, our Customers and their End-Users.
- 1.6 Data Subject: the identifiable natural person to whom the Personal Data relates and who can be identified, directly or indirectly, by that Personal Data;
- 1.7 Process/Processing: 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 of Personal Data.

Article 2 Scope of application

- 2.1 Unless Parties agree otherwise in writing, the provisions of this Annex III are applicable to every type of Processing of Personal Data performed by the Sub-Processor on the basis of the Agreement. In case of any contradiction or inconsistency between this Annex III and the Agreement, the provisions of this Annex III prevail.

Article 3 Basic information relating to the Processing

- 3.1 Parties agree that Sub-Processor, in the context of the implementation of the Agreement, Processes Personal Data, with the aim of providing the Services (including hosting services, helpdesk services e.g. via the support portal, etc.) as described in the Agreement, to the Customer and the Customer's

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End-Users. Sub-Processor will only process the Personal Data that the Controller makes available via the Services. The Processor is responsible for ensuring that Sub-Processor does not process any categories of Personal Data other than those specified in Article 3.3. The Processing concerns specifically the provision, storage, deletion and exchange of the type of Personal Data as included under Article 3.3.

- 3.2 The Sub-Processor may Process the Personal Data that are passed on by the Controller, as long as this is necessary for the implementation of the assignment as determined in the Agreement. After the execution of the assignment, the Sub-Processor immediately puts an end to every other use of the Personal Data than what is necessary to enable the Controller to recuperate the Personal Data that were entrusted to the Sub-Processor. The same goes for the use of Personal Data that are the result of the Processing with which the Sub-Processor was tasked.
- 3.3 The type of Personal Data that normally will be Processed per category of Data Subject can be described in the following manner. Depending on the specific instructions and use case of the Processor and/or the Controller, this may also include other types of Personal Data.

<u>Categories of Data Subjects</u>	<u>Type of Personal Data</u>
Customers of the Customer	Identification data (particularly: surname, first name, telephone, email, IP-address)
Employee of Customer (or contact person)	Identification data (particularly: surname, first name, telephone, email, IP-address)
Extra information of the Customer and/or End-Customer	
Other categories of Data Subjects	

- 3.4 The rights and obligations of the Sub-Processor are determined in this Annex III.

Article 4 Processing by the Sub-Processor

- 4.1 Sub-Processor Processes the Personal Data only on the basis of written instructions of the Controller, save for divergent legal requirements and divergent requests from the Parties concerned; In that case, the Sub-Processor informs the Processor of that legal requirement prior to the Processing, unless such legislation prohibits such notification for important reasons of general interest. The Processor shall thereafter inform the Controller about this obligation.
- 4.2 Sub-Processor Processes Personal Data on behalf of the Controller, in accordance with this Annex III, which constitute the Controller’s instructions for the Processing of Personal Data under this DPA, with the exception of any written instructions that the Controller is obligated to provide during the term of the DPA in order to comply with applicable data protection legislation. The Processor is responsible for ensuring that the Controller’s complete instructions are set out in this DPA.
- 4.3 Sub-Processor does not have power of control over the purpose and the means for the Processing of Personal Data. If the Sub-Processor, contrary to this Annex III and the GDPR, determines the purpose and the means for a Process, the Sub-Processor will be considered to be a Controller with regard to that particular Process.
- 4.4 Sub-Processor must ensure compliance with the conditions that are imposed, on the basis of the GDPR and other legislation, on the Processing of Personal Data.



- 4.5 Sub-Processor only grants access to Personal Data to its employees who are subject to a confidentiality obligation and only in so far as necessary for the provision of Services on the basis of the Agreement.
- 4.6 Sub-Processor will inform the Processor of requests with regard to the exercise of rights relating to Personal Data that were directly obtained from a Data Subject. The Processor shall notify the Controller in a timely manner in accordance with the applicable data protection legislation. In addition Sub-Processor will, in fulfilling his duty to respond to requests from Data Subjects regarding the exercise of their rights, provide Processor with every reasonably necessary assistance, taking into account the nature of the Processing and the information that is available to him. Sub-Processor shall, at the Processor's written request, assist the Controller in fulfilling the Controller's obligation to respond to the requests for exercising Data Subject's rights. Sub-Processor shall only be required to provide assistance insofar as it is possible and to the extent the nature of the Processing requires it.
- 4.7 Sub-Processor shall be entitled to engage a sub-processor(s) in the execution of the Agreement, as well as to continue to appeal to the current sub-processors, under the condition that the protection of the Personal Data remains guaranteed. The Sub-Processor informs the Processor of intended changes regarding the addition or replacement of sub-processors, whereby the Processor is given the opportunity to object to these changes in writing, within seven (7) calendar days. Before the Sub-Processor engages a sub-processor to perform specific processing activities for the account of the Processor, the Sub-Processor shall, by means of an agreement, impose at least the same data protection obligations on this sub-processor as those that are included in this Annex III. This includes, in particular, the obligation to provide adequate guarantees with regard to the application of appropriate technical and organizational measures in order for the Processing to comply with the provisions laid down in the GDPR and for the protection of the Data Subject's rights to be guaranteed. In the agreement with the sub-processor, the Controller should be designated as a direct beneficiary, in order for him to be able to exercise the contractual rights directly vis-à-vis the sub-processor.
- 4.8 The Sub-Processor must provide the Processor with all information necessary to demonstrate compliance with the obligations included in this Annex II and allow for and contribute to audits and inspections, conducted by the Controller, or an inspector authorized by the Controller. In the event the Controller wishes to conduct an inspection, such Controller shall provide Sub-Processor with reasonable prior notice and shall at the same time specify the content and scope of the inspection. Sub-Processor may charge the Processor for any reasonable costs incurred in conjunction with such audit. The Controller (or an inspector authorized by the Controller) must enter into a confidentiality agreement with the Sub-Processor.
- The Sub-Processor will immediately inform the Controller if, in his opinion, an instruction of the Controller violates the GDPR or other European Union or Member State data protection provisions.
- 4.9 In the event the Sub-Processor Processes Personal Data outside the EEA, it will provide sufficient guarantees to ensure that the Processing will meet an adequate level of protection as determined in the GDPR. The Processor shall ensure that Sub-Processor is entitled to enter into the European Commission's standard contractual clauses for transfer of Personal Data to a third country, on the Controller's behalf.

Article 5 Notification obligation data breaches

- 5.1 Sub-Processor shall immediately inform Processor of a security breach relating to the Processing of Personal Data, and shall provide Processor inasmuch as possible with information about the following: (i) the nature of the infringement; (ii) the (potentially) affected Personal Data; (iii) the established and



expected consequences of the infringement for the Processing of Personal Data and the persons involved; and (iv) the measures that the Sub-Processor has taken and will take to limit/mitigate the negative consequences of the infringement. The Processor is responsible for notifying the Controller about this in accordance with the applicable data protection legislation.

- 5.2 The Sub-Processor acknowledges that, under certain circumstances, the Processor is legally obliged to notify the supervisory authority and possibly the Data Subjects of a security breach that relates or may relate to the Personal Data Processed by the Sub-Processor. Prior to a notification, the Processor must consult and inform the Sub-Processor about the intended notification.
- 5.3 Sub-Processor will take all measures necessary to limit/mitigate (possible) damage and to support the Processor with regard to the notification to the supervisory authority and the Data Subjects concerned. The Sub-Processor will keep the Processor informed and updated of new developments with regard to the infringement and the measures taken by the Sub-Processor to limit and terminate the scope of the infringement and to prevent a similar occurrence in the future.

Article 6 Security measures

- 6.1 Sub-Processor shall take all appropriate technical and organizational measures in accordance with Article 32 GDPR in order to protect Personal Data against loss or any form of unlawful Processing.
- 6.2 The Processor acknowledges that the security measures taken by the Sub-Processor are appropriate in view of all relevant aspects of the Process, including the state of the art and the framework of the Agreement.
- 6.3 When the Sub-Processor makes substantial changes to the applicable security measures, he immediately informs the Processor of this adaptation. The Processor is responsible for notifying the Controller about this.

Article 7 Obligations of the Parties

- 7.1 The Controller constitutes the 'data controller' with regard to the Processing of Personal Data pursuant to this Annex III, given that he alone or together with others, determines the purpose of and the means for the Processing of Personal Data.
- 7.2 Processor agrees and guarantees that the Processing of the Personal Data in accordance with this Annex III is consistent with the GDPR.
- 7.3 Taking into account the nature of the Processing and the information made available to him, the Sub-Processor will provide all the reasonably necessary assistance to the Processor in fulfilling the obligations pursuant to Articles 32 up to and including 36 GDPR.

Article 8 Termination

- 8.1 This Annex III commences on the signing date of this Annex III and has been entered into for an Indefinite period of time. This Annex III ends at the time that the Agreement ends, with the understanding that Article 8.2 remains in effect after termination of the Agreement until the Sub-Processor has fully complied with the obligation in accordance with Article 8.2.
- 8.2 At first request of the Processor, the Sub-Processor will, in the event of the termination of the Agreement, return all Personal Data made available to him to the Processor and destroy all digital copies of the Personal Data, unless the Sub-Processor is legally obliged by EU or national law to store the Personal Data. Any costs that have to be incurred with regard to the return of the Personal Data, are to be borne by the Processor. If the Processor is of the opinion that the destruction may not take place, he will inform the Sub-Processor thereof in writing. In that case, the Sub-Processor guarantees the confidentiality of the Personal Data towards the Processor and he will not Process the Personal

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Data except for the purposes of compliance with his legal obligations or after written instructions from the Processor.

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