Data processing contract

Agreement on the processing of personal data in orders
according to Art. 28 (3) of the General Data Protection Regulation (GDPR)

between the Customer

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– Data Controller - hereinafter referred to as "Client" –

and

InterMedia Solutions GmbH, Ahornstr. 7, 82041 Oberhaching

– Data Processor – hereinafter referred to as "Contractor".

1. Subject and duration of the order

(1) Subject

Subject of the agreement is the rights and obligations of the parties within the framework of the provision of services in accordance with the order, service description and General Terms and Conditions, insofar as personal data is processed by the Contractor as an order processor for the Client in accordance with Art. 28 of the GDPR.

This includes all work that the Contractor performs to fulfil the order and that represents order processing. This also applies if the order does not expressly refer to this agreement on order processing.

(2) Duration
The duration of processing corresponds to the term agreed upon in the order.

2. Nature and purpose of the processing

(1) The type of processing includes all types of processing within the meaning of the GDPR to fulfil the order.

(2) The type of personal data processed is determined by the Customer through the choice of product, configuration, the use of the services and the transmission of data.

(3) The Client shall decide on the categories of data subjects when processing personal data through product selection, configuration, the use of services and the transmission of data. The processing of sensitive, personal data according to Art. 9 of the GDPR is excluded.

(4) Purposes of processing are all purposes required to provide the contractually agreed service in the area of cloud services, hosting, software as a service (SaaS) and IT support.

3. Technical and organisational measures
Details on the technical and organisational measures can be found in the annex.

(1) The Contractor must establish security measures in accordance with Art. 28 (3) lit. c, Art. 32, and Art. 5 (1), (2) of the GDPR. Overall, the measures to be taken are data security measures which are taken to ensure a level of protection appropriate to the risk with regard to the confidentiality, integrity, availability and resilience of the systems. On this point, the latest technology, the costs of implementation, the nature, scope, and purposes of processing, as well as the varying likelihood of occurrence and severity of potential risks to the rights and freedoms of natural persons, must be considered, as stipulated in Art. 32 (1) of the GDPR.

(2) Technical and organisational measures must be updated based on technical progress and further development. In that regard, the Contractor is permitted to implement adequate alternative measures. In so doing, the security level must not fall below that of the previously agreed measures. Any significant changes are to be documented.

4. Responsibility and processing (correction, restriction, and deletion of data)

(1) Within the framework of this contract, the Client is solely responsible for compliance with the statutory provisions of data protection laws, in particular for the legality of data being passed on to the Contractor, as well as for the legality of data processing ("Data Controller" within the meaning of Art. 4 (7) of the GDPR. This also applies with regard to the purposes and means of processing set forth in this agreement.

(2) The instructions shall be initially set forth in the contract and can then be changed (individual instructions) by the Client in writing or electronically (text form). Verbal instructions must be confirmed immediately in writing or in text form. Instructions that are not provided for in the contract will be treated as a request for a change in service. In the case of proposed changes in service, the Contractor will inform the Client about their

(possible) effect on the existing services as agreed, in particular the ability to provide services and meet deadlines and any additional fees that may result. If the Contractor is not able to implement the instruction, then the Contractor is entitled to terminate the processing. Unreasonability exists in particular if the services are provided in an infrastructure that is used by several clients/customers of the Contractor (shared services) and a change in processing is not possible or acceptable for individual clients.

(3) The Contractor may not, on their own initiative, correct, delete, or restrict the processing of data processed for the Client; this may only be done when so instructed in writing by the Client. If a data subject makes direct contact with the Contractor in this regard, the Contractor shall immediately forward this request to the Client.

(4) Insofar as it is included in the scope of services, the Contractor shall ensure that the data deletion protocol, the right to have records erased or corrected, data portability, and the right to information are implemented as instructed in writing by the Client.

(5) The contractually agreed data processing shall take place exclusively within a Member State of the European Union, or in another state that is party to the Agreement on the European Economic Area. Any transfer of data to a third country requires the prior consent of the Client and may only take place if the special requirements of Art. 44 ff. of the GDPR are met.

(6) The Contractor may process the "customer data" within the scope of what is permissible under data protection law for their own purposes at their own risk if a statutory permit or a declaration of consent from the data subject allows this. This contract does not apply to such data processing. In any case, the contractor may anonymise the "client data" and process and use it in an anonymous form for their own purposes, in particular for statistical purposes. IMS can be obliged to process data without the instruction of a data subject as long as the obligation serves to comply with legal requirements.

5. Quality assurance and other Contractor obligations

The Contractor has additional legal obligations under Art. 28 to 33 of the GDPR to comply with the provisions of this order; in this respect, they guarantee particular compliance with the following requirements:

a) The Contractor is obliged to appoint a data protection officer.
   As a responsible contact person, he shall mention:
   Jens Schrodt
   Obere Gasse 16
   DE 71665 Vaihingen/Enz
   Tel. 089-244 151 52 ; E-Mail: datenschutz@intermedia-solutions.de

b) Confidentiality in accordance with Art. 28 (3) clause 2 lit. b, Art. 29, Art. 32 (4) of the GDPR. In the performance of their duties, the Contractor shall only use employees who are bound to confidentiality and who have previously been familiarised with the relevant data protection provisions. The Contractor and any person under its authority who has access to personal data may only process such

data exclusively in accordance with the instructions of the Client, including the powers granted herein, unless they are legally obliged to process it.

c) The implementation of and compliance with all technical and organisational measures required for this order in accordance with Art. 28 (3) clause 2 lit. c, 32 of the GDPR.

d) On request, the Client and the Contractor shall cooperate with the supervisory authority in the performance of their respective tasks.

e) The Contractor shall immediately notify the Client of any control procedures and measures taken by the supervisory authority in so far as they relate to this order. This also applies insofar as a competent authority is conducting an investigation into alleged administrative or criminal offences by the Contractor with regard to their processing of personal data.

f) If the Client is subject to an inspection by the supervisory authority, administrative or criminal proceedings, the liability claim of a data subject or a third party or any other claim in connection with the processing of the order with the Contractor, the Contractor must support the Client to the best of their ability.

g) The Contractor shall regularly monitor internal processes and technical and organisational measures to ensure that processing within their area of responsibility is carried out in accordance with the requirements of the applicable data protection legislation and that the rights of the data subject are protected.

h) Verifiability of the technical and organisational measures taken vis-à-vis the Client within the scope of their control authority in accordance with No. 7 of this contract.

6. Subcontracting relationships

(1) This section refers to those services which relate directly to the provision of the main service. This does not include ancillary services which the Contractor uses such as telecommunication services, postal/transport services, maintenance and user services, or data carrier disposal, or any other measures to ensure the confidentiality, availability, integrity, and resilience of the hardware and software of its data processing systems. However, the Contractor shall be obliged to enter into appropriate and legally binding contractual agreements and control measures to ensure the protection and security of the Client's data, especially when such services are outsourced. If a subcontractor does not meet their data protection obligations, they are liable to the wronged party.

(2) The Client grants the Contractor general approval to use other processors within the meaning of Art. 28 of the GDPR to fulfil the contract.

(3) The other processors currently used are listed below. The Client hereby approves of their engagement.

- Microsoft Azure Server Services, Niederlande

- TenshiTec UG, Mitterweg 1a 7, 85290 Geisenfeld

- Agency Braun EOOD, Angel Dimitrow 107a, 8080 Burgas, BG

(4) The Contractor will inform the Client if they intend to add or change the processors used. The Client may object to such changes.

(5) The objection to the intended change can be raised within a reasonable period of time after the Contractor has received the information about the change. In the event of an objection, the Contractor may, at their discretion, provide the service without the intended change or, if the provision of the service without the intended change is not reasonable for the Contractor, terminate that service to the Client affected by the change within a reasonable period of time after receipt of the objection.

(6) If the Contractor assigns tasks to other processors, it is incumbent on the Contractor to impose their data protection obligations agreed herein on said outside processors.

(7) The transfer of personal data controlled by the Client to the subcontractor and their processing activities may only commence once all these requirements for the use of subcontractors have been met.

7. Inspection rights of the Client

(1) The Client has the right to carry out inspections in consultation with the Contractor or to have them carried out by inspectors to be appointed in individual cases. They have the right to conduct periodic random checks in their business operations, which, as a rule, must be notified in good time, to ensure compliance with this agreement by the Contractor.

(2) The Contractor shall ensure that the Client can satisfy itself of the Contractor's compliance with the obligations in accordance with Art. 28 of the GDPR. The Contractor is required to furnish the necessary information to the Client upon request, and to demonstrate in particular the implementation of the required technical and organisational measures.

(3) Verification of such measures, which do not only relate to the specific order, can be provided by compliance with approved rules of conduct in accordance with Art. 40 of the GDPR;

(4) The Contractor may assert an appropriate claim for remuneration for enabling the Client to carry out inspections. A basic quota of 4 work units/year for any checks will be borne by the Contractor.

8. Communication in the event of violations by the Contractor

(1) The Contractor shall assist the Client in complying with its obligations set forth in Art. 32 to 36 of the GDPR concerning the security of personal data, the reporting of data breaches, data protection impact assessments, and prior consultations. These include, but are not limited to:

   a) ensuring an adequate level of protection by means of technical and organisational measures, that consider the circumstances and purposes of the processing, as well as the predicted likelihood and severity of a possible infringement due to vulnerabilities and make an immediate identification of relevant violations possible;
   b) the obligation to report violations of personal data to the Client without delay;

    c) the obligation to support the Client in the context of their duty to inform the person concerned and to make all relevant information available to them in this connection without delay;

    d) supporting the Client in their data protection impact assessment;

    e) supporting the Client in prior consultations with the supervisory authority

(2) The Contractor is entitled to a remuneration for support services that are not included in the service specifications or are attributable to inappropriate behaviour of the Contractor.

9. The Client's authority to issue instructions

(1) The Client shall confirm verbal instructions without delay (at least written form).

(2) The Contractor must notify the Client immediately if an instruction is likely in breach of applicable data protection regulations. The Contractor is authorised to suspend implementation of the corresponding instruction until it is confirmed or modified by the Client. The Contractor must follow the instructions of the Client within the framework of the GDPR.

10. Deletion and return of personal data

(1) Copies and duplicates shall not be created without knowledge of the Client. Excluded from this are backup copies, insofar as they are necessary to ensure proper data processing, as well as data that is necessary for the purposes of compliance with legal retention obligations.

(2) Upon completion of the contractual work or earlier, if requested by the Client – but no later than termination of the service agreement – the Contractor shall hand over to the Client all documents which have come into their possession, drafted processing and user results as well as all data resources that are related to the contractual relationship, or destroy them in line with data protection regulations, with prior consent. This also applies to commissioned subcontractors. The same applies to test and scrap materials. Records of the deletion must be presented upon request.

(3) Documentation that serves as proof of proper data processing as ordered must be kept by the Contractor beyond the term of the agreement in accordance with the respective retention periods. They may hand it over to the Client once the contract ends, thereby discharging them of their obligation.

11. Contract term, miscellaneous

(1) The agreement begins with its conclusion by the Customer. It ends with the end of the last contract under the customer number mentioned above. If order processing takes place after the end of this contract, the provisions of these agreements shall apply until the processing has concluded.
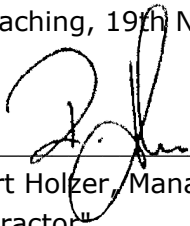
(2) The Contractor can change the agreement at their reasonable discretion with a reasonable notice period.

(3) The General Terms and Conditions of the Contractor shall also apply, available at https://www.intermedia-solutions.net/pdf/agb.pdf. In the event of any dispute, the provisions of this agreement on order processing shall take precedence over the provisions of the main contract. Should any part of this agreement become ineffective, this shall not affect the validity of the overall agreements.

(4) The exclusive legal venue for all and any disputes arising out of and in connection with this contract shall be Munich. This shall apply subject to any exclusively legal jurisdiction. This contract is subject to the legal regulations of the Federal Republic of Germany.

(5) Should Client data in possession by the Contractor be at risk as a result of seizure, confiscation, bankruptcy, or insolvency proceedings or other events and third party actions, the Contractor must immediately notify the Client thereof. The Contractor shall immediately inform all concerned responsible persons that the sovereignty and ownership of the data lies with the Client as "data controller" within the sense of the GDPR.

Oberhaching, 19th November 2021

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Robert Holzer, Managing Director
"Contractor"

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Place, Date

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Name, Title
„Client"

Annex 1: Records of Processing Activities

Annex 2: Technical-organisational measures