

Agreement order processing

## **Definitions**

**AN** The Contractor

**AG** The client

### **LV**

Performance agreement for order processing (DS-GVO-SIMPLE-CLOUD (LV)\_US.pdf) as per order processing contract (DS-GVO-SIMPLE-CLOUD (AG)\_US.pdf)

### **TOM**

Technical and organizational measures for order processing (DS-GVO-SIMPLE-CLOUD (TOM)\_US.pdf) as per contract for order processing (DS-GVO-SIMPLE-CLOUD (AG)\_US.pdf)

## **Important NOTE**

This Agreement of order processing was translated automatically and is for information only.

The binding contract document is the german reference.

## Agreement order processing

### 1. Specification of the content of the order

(1) Nature and purpose of the intended processing of data

The nature and purpose of the processing of personal data by the Contractor for the Client are described in detail in the LV.

(2) Type of data

The type of personal data used is specifically described in the course.

(3) categories of data

The categories of persons affected by the processing are described specifically in the LV.

### 2. Technical-organizational measures

(1) The contractor must document the implementation of the technical and organizational measures set out prior to the award of the contract and prior to processing, in particular with regard to the specific execution of the order, and hand them over to the client for review. If accepted by the **AG**, the documented measures become the basis of the contract. Insofar as the inspection / audit of the client results in a need for adjustment, this must be implemented by mutual agreement.

(2) The Contractor has the security according Art. 28 para. 3 lit. c, 32 DS-GVO, in particular in conjunction with Article 5 (1) (2) DS-GVO. Overall, the actions to be taken are data security measures and to ensure a level of protection appropriate to the risks, in terms of the confidentiality, integrity, availability and resilience of the systems. The state of the art, the implementation costs and the nature, scope and purpose of the processing as well as the different probability and severity of the risk for the rights and freedoms of natural persons within the meaning of Art. 32 (1) DS- GMOs to be considered [details in document TOM].

(3) The technical and organizational measures are subject to technical progress and further development. In that regard, the **AN** is allowed to implement alternative adequate measures. At the same time, the safety level of the specified measures must not be undercut. Significant changes are to be documented.

### 3. Correction, restriction and deletion of data

(1) The Contractor may not correct, delete or restrict the processing of the data processed in the order on its own initiative, but only in accordance with documented instructions from the Principal. Insofar as an affected person directly addresses the AN in this regard, the AN shall immediately forward this request to the AG.

(2) Insofar as included in the scope of services, the cancellation concept, right to be forgotten, correction, data portability and information according to documented instructions of the client are to be ensured directly by the contractor.

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#### 4. Quality assurance and other duties of the contractor

In addition to compliance with the provisions of this order, the contractor has statutory obligations under Art. 28 to 33 DS-GVO; In particular, it ensures compliance with the following requirements:

- (1) The contractor is not obliged to appoint a data protection officer. The contact person at the **AN** is - Mr. Christian Huber, GL, +49 (8642) 597823, chuber@softsimple.de - named.
- (2) The protection of confidentiality pursuant to Art. 28 para. 3 sentence 2 lit. b, 29, 32 para. 4 DS-GVO. In carrying out the work, the contractor only employs employees who are committed to confidentiality and have been previously familiarized with the data protection relevant to them. The Contractor and any person subordinate to the Contractor who has access to personal data may process such data only in accordance with the instructions of the Principal, including the powers granted in this contract, unless they are legally obliged to process them.
- (3) The implementation and compliance with all technical and organizational measures required for this contract pursuant to Art. 28 para. 3 sentence 2 lit. c, 32 DS-GVO (for details see document TOM).
- (4) The **AG** and the **AN** work together on request with the supervisory authority in the performance of their duties.
- (5) Immediate information to the client about control actions and measures of the supervisory authority, insofar as they relate to this order. This also applies insofar as a competent authority determines in the context of an administrative offense or criminal procedure with regard to the processing of personal data during order processing at the Contractor.
- (6) Insofar as the Principal is, for its part, subject to inspection by the supervisory authority, an offense or criminal procedure, the liability claim of a data subject or a third party or any other claim in connection with order processing at the Contractor, the Contractor shall use his best efforts support.
- (7) The Contractor shall regularly review the internal processes and the technical and organizational measures to ensure that the processing within his area of responsibility complies with the requirements of applicable data protection law and that the protection of the data subject's rights is ensured.
- (8) Verifiability of the technical and organizational measures taken against the client as part of its supervisory powers pursuant to Section 7 of this contract.

#### 5. Subcontracts

(1) For the purposes of this regulation, subcontracting relationships are those services which directly relate to the provision of the principal service. It does not include fringe benefits, the AN the example as telecommunication services, postal / transport services, maintenance and user services or the disposal of data carriers and other

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measures to ensure the confidentiality, availability, integrity and resilience of the hardware and software of data processing systems. However, the Contractor is obliged to take appropriate and legally compliant contractual agreements and control measures in order to ensure data protection and data security of the AG, even with outsourced ancillary services.

(2) The Contractor may only subcontract (other processors) upon the prior written consent of the Principal.

a) The AG agrees to commission the following subcontractor - hereinafter referred to as UAN - under the condition of a contractual agreement in accordance with Art. 28 para. 2-4 DS-GVO:

STRATO AG Pascalstrasse 10, 10587 Berlin

The contractor uses the services of the UAN for the processing of data on behalf of the AG, who on his behalf ensure the basis for the provision of the application provided by SaaS. However, the UAN does not process personal data. Only a system-technical deployment of a server with the operating system Windows 2008 R2, Windows Server 2012 or Windows Server 2016 is performed.

Outsourcing to subcontractors or

the change of the existing subcontractor  
are allowed, as far as:

- such an outsourcing to a subcontractor indicates to the client a reasonable time in advance in writing or in text form, and
- the client does not object to the planned outsourcing in writing or in text form by the time the data is handed over to the contractor; and
- a contractual agreement in accordance with Art. 28 para. 2-4 DS-GVO is used.

(3) The transfer of personal data of the AG to the UAN and its initial action shall only be permitted upon submission of all preconditions for subcontracting.

(4) If the UAN provides the agreed service outside the EU / EEA, the AN shall ensure that the data protection law is permissible by taking appropriate measures. The same applies if service providers within the meaning of para. 1 sentence 2 are to be used.

(5) Another outsourcing by the subcontractor

is not allowed

must be approved by the **AG** (at least text form);

must be approved by the **AN** (at least text form);

All contractual arrangements in the chain of contract shall also be imposed on the further subcontractor

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### 6. Control Rights of the AG

(1) The AG shall have the right to carry out inspections in consultation with the contractor or have them carried out by examiners appointed in individual cases. He has the right to satisfy himself of compliance with this agreement by the AN in his business through random inspections, which are usually to be registered in good time.

(2) The AN shall ensure that the client can satisfy himself of the adherence to the duties of the contractor according to Art. 28 DS-GVO. The AN undertakes to provide the AG with the necessary information upon request and, in particular, to prove the implementation of the technical and organizational measures.

(3) Proof of such measures, which do not only concern the concrete order, can be provided by

- compliance with approved codes of conduct pursuant to Art. 40 DS-GVO
- the certification according to an approved certification procedure according to Art. 42 DS-GVO
- up-to-date certificates, reports or statements of independent bodies (eg auditors, auditors, data protection officers, IT security departments, privacy auditors, quality auditors)
- appropriate certification by IT security or data protection audit (for example, according to BSI basic protection)

(4) The Contractor may assert a compensation claim in order to enable controls by the Client.

(5) The contractor appoints at least one authorized person. This is to be deposited in the LV. In the event that the persons entitled to receive change at the contractor, the contractor will inform the client in writing or in text form

### 7. Notification in case of violations by the AN

(1) The Contractor shall assist the Principal in respect of the obligations regarding the security of personal data, reporting of data breaches, data protection impact assessments and prior consultations, as provided for in Articles 32 to 36 of the GDPR. These include a.o.t.

- (a) ensuring an adequate level of protection through technical and organizational measures that take into account the circumstances and purposes of the processing and the predicted likelihood and severity of a possible breach of security due to security vulnerabilities, and enable the immediate detection of relevant injury events
  - b) the obligation to report violations of personal data immediately to the AG
  - c) the obligation to support the client in providing information to the data subject and to provide him with all relevant information without delay in this connection
  - d) the support of the WG for its data protection impact assessment
  - e) the support of the WG in the context of prior consultations with the regulator
- (2) The contractor may claim a fee for support services that are not included in the terms of reference or that are not the result of a malpractice of the contractor.

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### 8. Authority of the AG

(1) The AG has the right at any time to issue additional instructions to the contractor regarding the type, scope and procedure of data processing. Instructions can

- written
- by Fax
- by E-Mail
- orally

respectively. The Client shall promptly confirm verbal instructions to the Contractor in writing (eg fax, e-mail) insofar as they are admissible in this contract for deliveries.

(2) Provisions concerning any compensation for additional expenses arising from supplementary instructions of the Client at the Contractor shall remain unaffected.

(3) The AG shall designate at least one person entitled instructions and a Ver-representatives. In the event that the authorized persons at the AG change, the AG will notify the AN in writing or in text form.

(4) Oral instructions confirmed the AG immediately (min. Text form).

(5) The contractor must inform the client immediately if he believes that an instruction violates data protection regulations. The contractor is entitled to suspend the execution of the corresponding instruction until it is confirmed or changed by the client.

### 9. Deletion and return of personal data

(1) Copies or duplicates of the data are not created without the knowledge of the client. This does not include backup copies, to the extent necessary to ensure proper data processing, and data required for compliance with statutory retention requirements.

(2) After conclusion of the contractually agreed work or, as the case may be, at the latest upon termination of the service agreement, the Contractor shall have all documents, processing and utilization results as well as data held in connection with the contract. contractual relationship, to surrender to the AG or, with the prior consent of The same applies to test and scrap material. The log of the deletion must be submitted on request.

(3) Documentation serving as proof of orderly and proper data processing shall be kept by the contractor according to the respective retention periods beyond the end of the contract. He can hand them over to the AG for his discharge at the end of the contract.

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## **10. Protection of data subjects**

(1) The AG is solely responsible for the protection of data subjects.

(2) Insofar as the Contractor is required to cooperate with the Contractor for the protection of data subject rights - in particular with regard to information, correction, blocking or deletion - the Contractor shall take the necessary measures in accordance with the instructions of the Principal.

(3) Provisions regarding any compensation for additional expenses incurred as a result of participation in the assertion of data subjects' rights vis-à-vis the AG at the contractor shall remain unaffected.

## **11. Confidentiality obligations**

(1) Both parties undertake to treat all information received in connection with the execution of this contract as confidential for an indefinite period of time and to use it only for the execution of the contract. No party is entitled to use this information in whole or in part for purposes other than those just mentioned or to make this information available to third parties.

(2) The above obligation does not apply to information which one of the parties demonstrably received from third parties without being obliged to maintain secrecy or which is publicly known.

## **12. Compensation**

The compensation of the contractor is agreed separately.

## **13. Ending**

(1) After termination of the contract, the Contractor shall hand over to the Principal all documents, data and processing or utilization results that have come into his possession which are related to the contractual relationship. The volumes of the **AN** must then be physically deleted. This also applies to any data backups at the contractor. The deletion must be documented in a suitable manner. Test and reject material shall be destroyed immediately or physically extinguished.

(2) The client has the right to inspect the complete and contractual return and deletion of the data at the contractor. This can also be done by an inspection of the data processing equipment in the establishment of the **AN**. The on-site inspection should be announced by the AG with a reasonable deadline.

## **14. Retention**

The parties agree that the objection of the right of retention can be accepted by the AN i.S.d. § 273 BGB regarding the processed data and the associated data carrier is excluded.

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## **15. Final Provisions**

(1) Should the ownership of the client be endangered by third party measures (such as seizure or seizure), insolvency proceedings or other events, the contractor must inform the client immediately. The contractor will inform the creditors immediately about the fact that they are data processed in the order.

(2) The written form is required for side agreements.

(3) Should individual parts of this contract be ineffective, this does not affect the effectiveness of the remaining provisions of the contract.