

# Support Hub

## Data Processing Agreement

### 1. Content

2. Data Processing Agreement preamble.....	3
3. The rights and obligations of the Data Controller .....	4
4. The Data Processor acts according to instructions .....	4
5. Confidentiality.....	5
6. Security of processing .....	5
7. Use of Sub-Processors.....	6
8. Transfer of data to third countries or international organisations.....	7
9. Assistance to the Data Controller .....	8
10. Notification of personal data breach .....	10
11. Erasure and return of data .....	10
12. Inspection and audit .....	10
13. The Parties' agreement on other terms.....	11
14. Commencement and termination.....	11
A. Information about the processing .....	13
B. Terms of the Data Processor's use of sub-processors and list of approved sub-processors.....	14
B.1. Terms of the Data Processor's use of sub-processors, if applicable .....	14
B.2. Approved sub-processors .....	14
B.3. Standard contractual clauses.....	14
C. Instruction pertaining to the use of personal data .....	21
C.1. The subject of/instruction for the processing.....	21
C.2. Security of processing.....	21
C.3. Storage period/erasure procedures.....	22
C.4. Processing location .....	22

C.5. Instruction for or approval of the transfer of personal data to third countries .....	22
C.6. Procedures for the Data Controller’s inspection of the processing being performed by the Data Processor .....	22
C.7. Procedures for inspection of the processing being performed by sub-processors, if applicable .....	23

## 2. Data Processing Agreement preamble

1. This Data Processing Agreement is concluded between NIFTYCODE DOO D\B\A SUPPORT HUB and the party to the general 'Terms of Use agreement'. For the purposes of this agreement, Support Hub has a position of a **Data Processor**, and the other party to this agreement has a position of a **Data Controller**. This Data Processing Agreement sets out the rights and obligations that apply to the Data Processor's handling of personal data on behalf of the Data Controller.
2. This Agreement has been designed to ensure the Parties' compliance with Article 28, subsection 3 of *Regulation 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 (General Data Protection Regulation)*, which sets out specific requirements for the content of data processing agreements.
3. The Data Processor's processing of personal data shall take place for the purposes of fulfilment of the Data Processor's general 'Terms of Use agreement' entered on the date defined there under.
4. The Data Processing Agreement and the 'Terms of Use agreement' shall be interdependent and cannot be terminated separately. The Data Processing Agreement may however – without termination of the 'Terms of Use agreement' – be replaced by an alternative valid data processing agreement.
5. This Data Processing Agreement shall take priority over any similar provisions contained in other agreements between the Parties, including the 'Terms of Use agreement'.
6. Three appendices are attached to this Data Processing Agreement. The Appendices form an integral part of this Data Processing Agreement.
7. Appendix A of the Data Processing Agreement contains details about the processing as well as the purpose and nature of the processing, type of personal data, categories of data subject and duration of the processing.

8. Appendix B of the Data Processing Agreement contains the Data Controller's terms and conditions that apply to the Data Processor's use of Sub-Processors and a list of Sub-Processors approved by the Data Controller as well as the Standard Contractual Clauses for transfer of the personal information to third-countries.
9. Appendix C of the Data Processing Agreement contains instructions on the processing that the Data Processor is to perform on behalf of the Data Controller (the subject of the processing), the minimum security measures that are to be implemented and how inspection with the Data Processor and any Sub-Processors is to be performed.
10. The Data Processing Agreement and its associated Appendices shall be retained in writing as well as electronically by both Parties.
11. This Data Processing Agreement shall not exempt the Data Processor from obligations to which the Data Processor is subject pursuant to the General Data Protection Regulation or other legislation.

### **3. The rights and obligations of the Data Controller**

1. The Data Controller shall be responsible to the outside world (including the data subject) for ensuring that the processing of personal data takes place within the framework of the General Data Protection Regulation and any other applicable national or international legislation to which the Data Controller is subject.
2. The Data Controller shall therefore have both the right and obligation to make decisions about the purposes and means of the processing of personal data.
3. The Data Controller shall be responsible for ensuring that the processing that the Data Processor is instructed to perform is authorised in law.

### **4. The Data Processor acts according to instructions**

1. **The Data Processor shall solely be permitted to process personal data on documented instructions from the Data Controller unless processing is required under EU or Member State law to which the Data Processor is subject; in this case, the Data Processor shall inform the Data Controller of this legal requirement prior to processing unless that law prohibits such information on important grounds of public interest, cf. Article 28, sub-section 3, para a.**

2. **The Data Processor shall immediately inform the Data Controller if instructions in the opinion of the Data Processor contravene the General Data Protection Regulation or data protection provisions contained in other EU or Member State law.**

## **5. Confidentiality**

1. The Data Processor shall ensure that only those persons who are currently authorised to do so are able to access the personal data being processed on behalf of the Data Controller. Access to the data shall therefore without delay be denied if such authorisation is removed or expires.
2. Only persons who require access to the personal data in order to fulfil the obligations of the Data Processor to the Data Controller shall be provided with authorisation.
3. **The Data Processor shall ensure that persons authorised to process personal data on behalf of the Data Controller have undertaken to observe confidentiality or are subject to suitable statutory obligation of confidentiality.**
4. The Data Processor shall at the request of the Data Controller be able to demonstrate that the employees concerned are subject to the above confidentiality.

## **6. Security of processing**

1. **The Data Processor shall take all the measures required pursuant to Article 32 of the General Data Protection Regulation** which stipulates that with consideration for the current level, implementation costs and the nature, scope, context and purposes of processing and the risk of varying likelihood and severity for the rights and freedoms of natural persons, the Data Controller and Processor shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk.
2. The above obligation means that the Data Processor shall perform a risk assessment and thereafter implement measures to counter the identified risk. Depending on their relevance, the measures may include the following:
  - a. Pseudonymisation and encryption of personal data

- b. The ability to ensure ongoing confidentiality, integrity, availability and resilience of processing systems and services.
  - c. The ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident.
  - d. A process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.
3. The Data Processor shall in ensuring the above – in all cases – at a minimum implement the level of security and the measures specified in Appendix C to this Data Processing Agreement.
4. The Parties' possible regulation/agreement on remuneration etc. for the Data Controller's or the Data Processor's subsequent requirement for establishing additional security measures shall be specified in the Parties' 'Terms of Use agreement'.

## **7. Use of Sub-Processors**

- 1. The Data Processor shall meet the requirements specified in Article 28, sub-section 2 and 4, of the General Data Protection Regulation in order to engage another processor (Sub-Processor).**
- 2. The Data Processor shall therefore not engage another processor (Sub-Processor) for the fulfilment of this Data Processing Agreement without the prior specific or general written consent of the Data Controller.**
- 3. In the event of general written consent, the Data Processor shall inform the Data Controller of any planned changes with regard to additions to or replacement of other data processors and thereby give the Data Controller the opportunity to object to such changes.**
4. The Data Controller's requirements for the Data Processor's engagement of other sub-processors shall be specified in Appendix B to this Data Processing Agreement.
5. The Data Controller's consent to the engagement of specific sub-processors, if applicable, shall be specified in Appendix B to this Data Processing Agreement.

6. **When the Data Processor has the Data Controller's authorisation to use a sub-processor, the Data Processor shall ensure that the Sub-Processor is subject to the same data protection obligations as those specified in this Data Processing Agreement on the basis of a contract or other legal document under EU law or the national law of the Member States, in particular providing the necessary guarantees that the Sub-Processor will implement the appropriate technical and organisational measures in such a way that the processing meets the requirements of the General Data Protection Regulation.**

The Data Processor shall therefore be responsible – on the basis of a sub-processor agreement – for requiring that the sub-processor at least comply with the obligations to which the Data Processor is subject pursuant to the requirements of the General Data Protection Regulation and this Data Processing Agreement and its associated Appendices.

7. A copy of such a sub-processor agreement and subsequent amendments shall – at the Data Controller's request – be submitted to the Data Controller who will thereby have the opportunity to ensure that a valid agreement has been entered into between the Data Processor and the Sub-Processor. Commercial terms and conditions, such as pricing, that do not affect the legal data protection content of the sub-processor agreement, shall not require submission to the Data Controller.
8. The Data Processor shall in his agreement with the Sub-Processor include the Data Controller as a third party in the event of the bankruptcy of the Data Processor to enable the Data Controller to assume the Data Processor's rights and invoke these as regards the Sub-Processor, e.g. so that the Data Controller is able to instruct the Sub-Processor to perform the erasure or return of data.
9. **If the Sub-Processor does not fulfil his data protection obligations, the Data Processor shall remain fully liable to the Data Controller as regards the fulfilment of the obligations of the Sub-Processor.**

## **8. Transfer of data to third countries or international organisations**

1. **The Data Processor shall solely be permitted to process personal data on documented instructions from the Data Controller, including as regards transfer (assignment, disclosure and internal use) of personal data to third countries or international organisations, unless processing is required under EU or Member State law to which the Data Processor is subject; in such a case, the Data Processor shall inform the Data Control-**

**ler of that legal requirement prior to processing unless that law prohibits such information on important grounds of public interest, cf. Article 28, sub-section 3, para a.**

2. Without the instructions or approval of the Data Controller, the Data Processor therefore cannot – within the framework of this Data Processing Agreement:
  - a. disclose personal data to a data controller in a third country or in an international organisation
  - b. assign the processing of personal data to a sub-processor in a third country
  - c. have the data processed in another of the Data Processor’s divisions which is located in a third country
3. The Data Controller’s instructions or approval of the transfer of personal data to a third country, if applicable, shall be set out in Appendix C to this Data Processing Agreement.

## **9. Assistance to the Data Controller**

1. **The Data Processor, taking into account the nature of the processing, shall, as far as possible, assist the Data Controller with appropriate technical and organisational measures, in the fulfilment of the Data Controller’s obligations to respond to requests for the exercise of the data subjects’ rights pursuant to Chapter 3 of the General Data Protection Regulation.**

This entails that the Data Processor should as far as possible assist the Data Controller in the Data Controller’s compliance with:

- a. notification obligation when collecting personal data from the data subject
- b. notification obligation if personal data have not been obtained from the data subject
- c. right of access by the data subject
- d. the right to rectification
- e. the right to erasure (‘the right to be forgotten’)
- f. the right to restrict processing



- g. notification obligation regarding rectification or erasure of personal data or restriction of processing
- h. the right to data portability
- i. the right to object
- j. the right to object to the result of automated individual decision-making, including profiling

**2. The Data Processor shall assist the Data Controller in ensuring compliance with the Data Controller's obligations pursuant to Articles 32-36 of the General Data Protection Regulation taking into account the nature of the processing and the data made available to the Data Processor, cf. Article 28, sub-section 3, para f.**

This entails that the Data Processor should, taking into account the nature of the processing, as far as possible assist the Data Controller in the Data Controller's compliance with:

- a. the obligation to implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk associated with the processing
  - b. the obligation to report personal data breaches to the supervisory authority without undue delay and, if possible, within 72 hours of the Data Controller discovering such breach unless the personal data breach is unlikely to result in a risk to the rights and freedoms of natural persons
  - c. the obligation – without undue delay - to communicate the personal data breach to the data subject when such breach is likely to result in a high risk to the rights and freedoms of natural persons
  - d. the obligation to carry out a data protection impact assessment if a type of processing is likely to result in a high risk to the rights and freedoms of natural persons
  - e. the obligation to consult with the supervisory authority prior to processing if a data protection impact assessment shows that the processing will lead to high risk in the lack of measures taken by the Data Controller to limit risk
3. The Parties' possible regulation/agreement on remuneration etc. for the Data Processor's assistance to the Data Controller shall be specified in the Parties' 'Terms of Use agreement'.

## **10. Notification of personal data breach**

1. On discovery of personal data breach at the Data Processor's facilities or a sub-processor's facilities, the Data Processor shall without undue delay notify the Data Controller.

The Data Processor's notification to the Data Controller shall, if possible, take place within 48 hours after the Data Processor has discovered the breach to enable the Data Controller to comply with his obligation, if applicable, to report the breach to the supervisory authority within 72 hours.

2. According to Clause 9.2., para b, of this Data Processing Agreement, the Data Processor shall – taking into account the nature of the processing and the data available – assist the Data Controller in the reporting of the breach to the supervisory authority.

This may mean that the Data Processor is required to assist in obtaining the information listed below which, pursuant to Article 33, sub-section 3, of the General Data Protection Regulation, shall be stated in the Data Controller's report to the supervisory authority:

- a. The nature of the personal data breach, including, if possible, the categories and the approximate number of affected data subjects and the categories and the approximate number of affected personal data records
- b. Probable consequences of a personal data breach
- c. Measures which have been taken or are proposed to manage the personal data breach, including, if applicable, measures to limit its possible damage

## **11. Erasure and return of data**

1. **On termination of the processing services, the Data Processor shall be under obligation, at the Data Controller's discretion, to erase or return all the personal data to the Data Controller and to erase existing copies unless EU law or Member State law requires storage of the personal data.**

## **12. Inspection and audit**

1. **The Data Processor shall make available to the Data Controller all information necessary to demonstrate compliance with Article 28 of the General Data Protection Regulation and this Data Processing Agreement, and allow for and contribute to audits, including inspections performed by the Data Controller or another auditor mandated by the Data Controller.**

2. The procedures applicable to the Data Controller's inspection of the Data Processor are specified in Appendix C to this Data Processing Agreement.
3. The Data Controller's inspection of sub-processors, if applicable, shall as a rule be performed through the Data Processor. The procedures for such inspection are specified in Appendix C to this Data Processing Agreement.
4. The Data Processor shall be required to provide the supervisory authorities, which pursuant to applicable legislation have access to the Data Controller's and Data Processor's facilities, or representatives acting on behalf of such supervisory authorities, with access to the Data Processor's physical facilities on presentation of appropriate identification.

### **13. The Parties' agreement on other terms**

1. (Separate) terms relating to the consequences of the Parties' breach of this Data Processing Agreement, if applicable, shall be specified in the Processor's 'Terms of Use agreement'.
2. Regulation of other terms between the Parties shall be specified in the Processor's 'Terms of Use agreement'.

### **14. Commencement and termination**

1. This Data Processing Agreement shall become effective on the date of entering into the Processor's Terms of Use agreement.
2. Both Parties shall be entitled to require this Data Processing Agreement renegotiated if changes to the law or inexpediency of the provisions contained herein should give rise to such renegotiation.
3. The Parties' agreement on remuneration, terms etc. in connection with amendments to this Data Processing Agreement, if applicable, shall be specified in the Processor's 'Terms of Use agreement'.
4. This Data Processing Agreement may be terminated according to the terms and conditions of termination, incl. notice of termination, specified in the 'Terms of Use agreement'.

5. This Data Processing Agreement shall apply as long as the processing is performed. Irrespective of the termination of the 'Terms of Use agreement' and/or this Data Processing Agreement, the Data Processing Agreement shall remain in force until the termination of the processing and the erasure of the data by the Data Processor and any sub-processors.

## **A. Information about the processing**

**The purpose of the Data Processor's processing of personal data on behalf of the Data Controller is:**

- that the Data Controller is able to utilize the Support Hub's services which are owned and managed by the Data Processor to collect and process data about the Data Controller's users and customers.

**The Data Processor's processing of personal data on behalf of the Data Controller shall mainly pertain to (the nature of the processing):**

processing Data Controller's customer information, facilitating communication between Data Controller and their customers, storing content on the Data Processor's servers or servers belonging to a third-party with which the Data Processor has an agreement with, and to collect and process statistical information about the Data Controller's users.

**The processing includes the following types of personal data about data subjects:**

- Name, e-mail address, address, and other information about the customers as specified by the Data Controller

**Processing includes the following categories of data subject:**

- Persons who engage services of the Data Controller.

**The Data Processor's processing of personal data on behalf of the Data Controller may be performed when this Data Processing Agreement commences. Processing has the following duration:**

- Processing shall not be time-limited and shall be performed until this Data Processing Agreement is terminated or cancelled by one of the Parties.

**B. Terms of the Data Processor’s use of sub-processors and list of approved sub-processors**

**B.1. Terms of the Data Processor’s use of sub-processors, if applicable**

The Data Processor has the Data Controller’s general consent for the engagement of sub-processors. The Data Processor shall, however, inform the Data Controller of any planned changes with regard to additions to or replacement of other data processors and thereby give the Data Controller the opportunity to object to such changes. Such notification shall be submitted to the Data Controller a minimum of 15 days prior to the engagement of sub-processors or amendments coming into force. If the Data Controller should object to the changes, the Data Controller shall notify the Data Processor of this within 15 days of receipt of the notification. The Data Controller shall only object if the Data Controller has reasonable and specific grounds for such refusal.

**B.2. Approved sub-processors**

The Data Controller shall on commencement of this Data Processing Agreement approve the engagement of the following sub-processors:

Name	Address	Description of processing
DigitalOcean, LLC	101 Avenue of the Americas, 10th Floor New York, NY 10013	Storing of the data, collection of the data through cloud based applications, data reports management

The Data Controller shall on the commencement of this Data Processing Agreement specifically approve the use of the above sub-processors for the processing described for that party. The Data Processor shall not be entitled – without the Data Controller’s explicit written consent – to engage a sub-processor for ‘different’ processing than the one that has been agreed or have another sub-processor perform the described processing.

**B.3. Standard contractual clauses**

Data Processor is registered outside of the territory of EEA and the engagement of the Data Processor therefore falls under the transfer of the personal information to third countries specified in Chapter 5 of the Data Protection Regulation. Pursuant to Article 46 para. 2(c) Parties hereby include Standard Contractual Clauses applicable to such third-country data transfer by incorporating them in this Data Processing Agreement.

**STANDARD CONTRACTUAL CLAUSES**

For the purposes of Article 26(2) of Directive 95/46/EC for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection

## **Data Controller and**

## **Data Processor**

each a '**party**'; together '**the parties**',

**HAVE AGREED** on the following Contractual Clauses (the **Clauses**) in order to adduce adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals for the transfer by the Data Controller to the Data Processor of the personal data specified in the Data Processing Agreement.

### *Clause 1*

#### **Definitions**

For the purposes of the Clauses:

- (a) 'personal data', 'special categories of data', 'process/processing', 'controller', 'processor', 'data subject' and 'supervisory authority' shall have the same meaning as in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (1);
- (b) 'the Data Controller' means the controller who transfers the personal data;
- (c) 'the Data Processor' means the processor who agrees to receive from the Data Controller personal data intended for processing on his behalf after the transfer in accordance with his instructions and the terms of the Clauses and who is not subject to a third country's system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC;
- (d) 'the sub-processor' means any processor engaged by the Data Processor or by any other sub-processor of the Data Processor who agrees to receive from the Data Processor or from any other sub-processor of the Data Processor personal data exclusively intended for processing activities to be carried out on behalf of the Data Controller after the transfer in accordance with his instructions, the terms of the Clauses and the terms of the written subcontract;
- (e) 'the applicable data protection law' means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which the Data Controller is established;
- (f) 'technical and organisational security measures' means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

### *Clause 2*

#### **Details of the transfer**

The details of the transfer and in particular the special categories of personal data where applicable are specified in Data Processing Agreement.

### *Clause 3*

#### **Third-party beneficiary clause**

1. The data subject can enforce against the Data Controller this Clause, Clause 4(b) to (i), Clause 5(a) to (e), and (g) to (j), Clause 6(1) and (2), Clause 7, Clause 8(2), and Clauses 9 to 12 as third-party beneficiary.
2. The data subject can enforce against the Data Processor this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where the Data Controller has factually disappeared or has ceased to exist in law unless any successor entity has assumed the entire legal obligations of the Data Controller by contract or by operation of law, as a result of which it takes on the rights and obligations of the Data Controller, in which case the data subject can enforce them against such entity.
3. The data subject can enforce against the sub-processor this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where both the Data Controller and the Data Processor have factually disappeared or ceased to exist in law or have become insolvent, unless any successor entity has assumed the entire legal obligations of the Data Controller by contract or by operation of law as a result of which it takes on the rights and obligations of the Data Controller, in which case the data subject can enforce them against such entity. Such third-party liability of the sub-processor shall be limited to its own processing operations under the Clauses.
4. The parties do not object to a data subject being represented by an association or other body if the data subject so expressly wishes and if permitted by national law.

### *Clause 4*

#### **Obligations of the Data Controller**

The Data Controller agrees and warrants:

- (a) that the processing, including the transfer itself, of the personal data has been and will continue to be carried out in accordance with the relevant provisions of the applicable data protection law (and, where applicable, has been notified to the relevant authorities of the Member State where the Data Controller is established) and does not violate the relevant provisions of that State;
- (b) that it has instructed and throughout the duration of the personal data-processing services will instruct the Data Processor to process the personal data transferred only on the Data Controller's behalf and in accordance with the applicable data protection law and the Clauses;
- (c) that the Data Processor will provide sufficient guarantees in respect of the technical and organisational security measures specified in Data Processing Agreement;
- (d) that after assessment of the requirements of the applicable data protection law, the security measures are appropriate to protect personal data against accidental or unlawful destruction or ac-



cidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented by the processing and the nature of the data to be protected having regard to the state of the art and the cost of their implementation;

- (e) that it will ensure compliance with the security measures;
- (f) that, if the transfer involves special categories of data, the data subject has been informed or will be informed before, or as soon as possible after, the transfer that its data could be transmitted to a third country not providing adequate protection within the meaning of Directive 95/46/EC;
- (g) to forward any notification received from the Data Processor or any sub-processor pursuant to Clause 5(b) and Clause 8(3) to the data protection supervisory authority if the Data Controller decides to continue the transfer or to lift the suspension;
- (h) to make available to the data subjects upon request a copy of the Clauses, with the exception of Appendix 2, and a summary description of the security measures, as well as a copy of any contract for sub-processing services which has to be made in accordance with the Clauses, unless the Clauses or the contract contain commercial information, in which case it may remove such commercial information;
- (i) that, in the event of sub-processing, the processing activity is carried out in accordance with Clause 11 by a sub-processor providing at least the same level of protection for the personal data and the rights of data subject as the Data Processor under the Clauses; and
- (j) that it will ensure compliance with Clause 4(a) to (i).

#### *Clause 5*

#### **Obligations of the Data Processor**

The Data Processor agrees and warrants:

- (a) to process the personal data only on behalf of the Data Controller and in compliance with its instructions and the Clauses; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly the Data Controller of its inability to comply, in which case the Data Controller is entitled to suspend the transfer of data and/or terminate the contract;
- (b) that it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from the Data Controller and its obligations under the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by the Clauses, it will promptly notify the change to the Data Controller as soon as it is aware, in which case the Data Controller is entitled to suspend the transfer of data and/or terminate the contract;
- (c) that it has implemented the technical and organisational security measures specified in Appendix 2 before processing the personal data transferred;

- (d) that it will promptly notify the Data Controller about:
  - (i) any legally binding request for disclosure of the personal data by a law enforcement authority unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation;
  - (ii) any accidental or unauthorised access; and
  - (iii) any request received directly from the data subjects without responding to that request, unless it has been otherwise authorised to do so;
- (e) to deal promptly and properly with all inquiries from the Data Controller relating to its processing of the personal data subject to the transfer and to abide by the advice of the supervisory authority with regard to the processing of the data transferred;
- (f) at the request of the Data Controller to submit its data-processing facilities for audit of the processing activities covered by the Clauses which shall be carried out by the Data Controller or an inspection body composed of independent members and in possession of the required professional qualifications bound by a duty of confidentiality, selected by the Data Controller, where applicable, in agreement with the supervisory authority;
- (g) to make available to the data subject upon request a copy of the Clauses, or any existing contract for sub-processing, unless the Clauses or contract contain commercial information, in which case it may remove such commercial information, with the exception of full description of security measures which shall be replaced by a summary description of the security measures in those cases where the data subject is unable to obtain a copy from the Data Controller;
- (h) that, in the event of sub-processing, it has previously informed the Data Controller and obtained its prior written consent;
- (i) that the processing services by the sub-processor will be carried out in accordance with Clause 11;
- (j) to send promptly a copy of any sub-processor agreement it concludes under the Clauses to the Data Controller.

#### *Clause 6*

#### **Liability**

1. The parties agree that any data subject, who has suffered damage as a result of any breach of the obligations referred to in Clause 3 or in Clause 11 by any party or sub-processor is entitled to receive compensation from the Data Controller for the damage suffered.

2. If a data subject is not able to bring a claim for compensation in accordance with paragraph 1 against the Data Controller, arising out of a breach by the Data Processor or his sub-processor of any of their obligations referred to in Clause 3 or in Clause 11, because the Data Controller has factually disappeared or ceased to exist in law or has become insolvent, the Data Processor agrees that the data subject may issue a claim against the Data Processor as if it were the Data

Controller, unless any successor entity has assumed the entire legal obligations of the Data Controller by contract or by operation of law, in which case the data subject can enforce its rights against such entity.

The Data Processor may not rely on a breach by a sub-processor of its obligations in order to avoid its own liabilities.

3. If a data subject is not able to bring a claim against the Data Controller or the Data Processor referred to in paragraphs 1 and 2, arising out of a breach by the sub-processor of any of their obligations referred to in Clause 3 or in Clause 11 because both the Data Controller and the Data Processor have factually disappeared or ceased to exist in law or have become insolvent, the sub-processor agrees that the data subject may issue a claim against the data sub-processor with regard to its own processing operations under the Clauses as if it were the Data Controller or the Data Processor, unless any successor entity has assumed the entire legal obligations of the Data Controller or Data Processor by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The liability of the sub-processor shall be limited to its own processing operations under the Clauses.

#### *Clause 7*

#### **Mediation and jurisdiction**

1. The Data Processor agrees that if the data subject invokes against it third-party beneficiary rights and/or claims compensation for damages under the Clauses, the Data Processor will accept the decision of the data subject:

(a) to refer the dispute to mediation, by an independent person or, where applicable, by the supervisory authority;

(b) to refer the dispute to the courts in the Member State in which the Data Controller is established.

2. The parties agree that the choice made by the data subject will not prejudice its substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.

#### *Clause 8*

#### **Cooperation with supervisory authorities**

1. The Data Controller agrees to deposit a copy of this contract with the supervisory authority if it so requests or if such deposit is required under the applicable data protection law.

2. The parties agree that the supervisory authority has the right to conduct an audit of the Data Processor, and of any sub-processor, which has the same scope and is subject to the same conditions as would apply to an audit of the Data Controller under the applicable data protection law.

3. The Data Processor shall promptly inform the Data Controller about the existence of legislation applicable to it or any sub-processor preventing the conduct of an audit of the Data Processor, or any sub-processor, pursuant to paragraph 2. In such a case the Data Controller shall be entitled to take the measures foreseen in Clause 5(b).

#### *Clause 9*

### **Governing law**

The Clauses shall be governed by the law of the Member State in which the Data Controller is established.

#### *Clause 10*

### **Variation of the contract**

The parties undertake not to vary or modify the Clauses. This does not preclude the parties from adding clauses on business related issues where required as long as they do not contradict the Clause.

#### *Clause 11*

### **Sub-processing**

The Data Processor shall not subcontract any of its processing operations performed on behalf of the Data Controller under the Clauses without the prior written consent of the Data Controller. Where the Data Processor subcontracts its obligations under the Clauses, with the consent of the Data Controller, it shall do so only by way of a written agreement with the sub-processor which imposes the same obligations on the sub-processor as are imposed on the Data Processor under the Clauses (3). Where the sub-processor fails to fulfil its data protection obligations under such written agreement the Data Processor shall remain fully liable to the Data Controller for the performance of the sub-processor's obligations under such agreement.

The prior written contract between the Data Processor and the sub-processor shall also provide for a third-party beneficiary clause as laid down in Clause 3 for cases where the data subject is not able to bring the claim for compensation referred to in paragraph 1 of Clause 6 against the Data Controller or the Data Processor because they have factually disappeared or have ceased to exist in law or have become insolvent and no successor entity has assumed the entire legal obligations of the Data Controller or Data Processor by contract or by operation of law. Such third-party liability of the sub-processor shall be limited to its own processing operations under the Clauses.

The provisions relating to data protection aspects for sub-processing of the contract referred to in paragraph 1 shall be governed by the law of the Member State in which the Data Controller is established.

The Data Controller shall keep a list of sub-processing agreements concluded under the Clauses and notified by the Data Processor pursuant to Clause 5(j), which shall be updated at least once a year. The list shall be available to the Data Controller's data protection supervisory authority.

## Clause 12

### **Obligation after the termination of personal data-processing services**

The parties agree that on the termination of the provision of data-processing services, the Data Processor and the sub-processor shall, at the choice of the Data Controller, return all the personal data transferred and the copies thereof to the Data Controller or shall destroy all the personal data and certify to the Data Controller that it has done so, unless legislation imposed upon the Data Processor prevents it from returning or destroying all or part of the personal data transferred. In that case, the Data Processor warrants that it will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore.

The Data Processor and the sub-processor warrant that upon request of the Data Controller and/or of the supervisory authority, it will submit its data-processing facilities for an audit of the measures referred to in paragraph 1.

## **C. Instruction pertaining to the use of personal data**

### **C.1. The subject of/instruction for the processing**

The Data Processor's processing of personal data on behalf of the Data Controller shall be carried out by the Data Processor performing the services described in the general 'Terms of Use agreement'.

### **C.2. Security of processing**

The Processor takes the following technical and organizational measures of data security within the meaning of article 28 of the GDPR:

#### **1. CONFIDENTIALITY**

##### **Access control**

- Creating user profiles
- Authentication of users by user name and password
- Authorization by administrator only
- Use of anti-virus Software
- Use of firewall
- Constant updates for anti-virus software, firewall, operating system and other software
- Use of tested and approved data carriers
- Secure destruction of files and data carriers

#### **2. INTEGRITY**

##### **Input control**

- Protocol of the installation and operation of IT systems
- Ensure log file security (limited access for network administrator only)

##### **Order supervision**

- Conclusion of a contract or other legal instrument in accordance with article 28 of the GDPR and compliance with these regulations
- Previous review of the technical and organizational measures taken by the Sub-Processors
- Employees of Support Hub are obliged to maintain data secrecy

### **3. PRECAUTIONS AND SAFETY MEASURES**

- Periodic data backup

### **4. PROCEDURES FOR REGULAR MONITORING AND EVALUATION**

- Data protection management (data protection guidelines, IT security guidelines, data protection instructions, data protection process descriptions)
- Regular training and sensitization of employees
- Obligation of employees to data secrecy
- Obligation of Third Parties to maintain data secrecy

#### **C.3. Storage period/erasure procedures**

Personal data are stored with the Data Processor until the Data Controller requests that the data are erased or returned.

#### **C.4. Processing location**

Processing of the personal data under this Data Processing Agreement cannot be performed at other locations than Serbia and the European Union without the Data Controller's prior written consent.

#### **C.5. Instruction for or approval of the transfer of personal data to third countries**

Data Processor shall notify in writing the Data Controller on the intended transfer of the personal data to third countries in the same manner as explain herein for the purposes of engaging sub-processors.

Data Controller shall provide consent to such data transfer in accordance with the article 7. of this Data Processing Agreement.

If the Data Controller does not in this clause or by subsequent written notification provide instructions or consent pertaining to the transfer of personal data to a third country, the Data Processor shall not be entitled within the framework of this Data Processing Agreement to perform such transfer.

#### **C.6. Procedures for the Data Controller's inspection of the processing being performed by the Data Processor**

The Data Controller or the Data Controller's representative is allowed to perform a physical inspection with regards to the compliance of this Data Processing Agreement at the Data Processor's facilities.

The Data Controller's costs, if applicable, relating to physical inspection shall be defrayed by the Data Controller. The Data Processor shall, however, be under obligation to set aside the resources (mainly time) required for the Data Controller to be able to perform the inspection.

**C.7. Procedures for inspection of the processing being performed by sub-processors, if applicable**

The Data Processor is allowed to obtain an inspection report from an independent third party with regards to the Sub-Processor's compliance with this Data Processing Agreement and its associated Appendices at the Data Controller's sole expense.

The inspection report shall without delay be submitted to the Data Controller for information.

The Data Processor or the Data Processor's representative shall in addition have access to inspecting, including physically inspecting, the processing at the Sub-Processor's facilities when the Data Processor (or the Data Controller) deems that this is required.