Data Processing Agreement

Contract for the processing of personal data on behalf of a Controller in accordance with Art. 28 (3) DS-GVO (German data protection law compliant with GDPR).

Between

Client company:

Address:

– hereinafter referred to as "Controller" –

und

Desk-Net GmbH
Falkenried 74a, 20251 Hamburg

– hereinafter referred to as "Processor" –

1.   Subject of the Contract

Within the framework of service provision according to the Desk-Net contract/offer (hereinafter referred to as the Service Agreement) and the Processor's General Terms and Conditions, it is necessary for the Processor to process personal data for which the Controller acts as the responsible party in the sense of data protection regulations (hereinafter referred to as "Controller Data").

This contract specifies the data protection rights and obligations of the parties in connection with the Processor's handling of Controller Data for the purpose of carrying out the Service Agreement.

2.   Contract Duration and Termination

The term and termination of this contract are governed by the provisions regarding the duration and termination of the Service Agreement. Termination of the Service Agreement automatically results in the termination of this contract. An isolated termination of this contract is excluded.

3.   Scope of the Commissioning

3.1. The Processor processes the Controller Data on behalf and according to the instructions of the Controller as per Art. 28 DS-GVO (Order Processing). The Controller remains the responsible party in the sense of data protection law.

3.2. The processing of Controller Data by the Processor is carried out in the manner, extent, and for the purpose as specified in Annex 1 to this contract; the processing concerns the types of personal data and categories of affected persons listed therein. The duration of processing corresponds to the term of the Service Agreement.

4. Controller's Right to Issue Instructions

4.1. The Processor processes the Controller Data according to the instructions of the Controller unless the Processor is legally obligated to process data differently. In the latter case, the Processor shall inform the Controller of these legal requirements before processing, unless the relevant law prohibits such notification due to an important public interest.

4.2. The Controller's instructions are fundamentally conclusively set out and documented in the provisions of this contract. Individual instructions deviating from the stipulations of this contract or setting additional requirements require the prior consent of the Processor and can be changed, supplemented, or replaced by the Controller in written form or in text form through individual instructions.

4.3. The Processor ensures that it processes the Controller Data in accordance with the Controller's instructions. If the Processor believes that an instruction from the Controller violates this contract or applicable data protection law, it is entitled, after corresponding notification to the Controller, to suspend the execution of the instruction until confirmation by the Controller. The parties agree that the sole responsibility for processing in accordance with the instructions lies with the Controller.

5. Controller's Responsibility

5.1. The Controller is solely responsible for the legality of the processing of the Controller Data and for safeguarding the rights of the affected persons in relation to the parties. If third parties make claims against the Processor due to the processing of Controller Data in accordance with this contract, the Controller shall indemnify the Processor from all such claims upon first request.

5.2. It is the obligation of the Controller to provide the Processor with the Controller Data in a timely manner for service provision according to the Service Agreement and is responsible for the quality of the Controller Data. The Controller shall immediately and completely inform the Processor if it detects errors or irregularities concerning data protection provisions or its instructions during the inspection of the Processor's service results.

5.3. The Controller shall provide the Processor with the information specified in Art. 30 (2) DS-GVO upon request, as far as they are not already available to the Processor.

5.4. If the Processor is obliged to provide information about the processing of Controller Data to a state authority or a person, or to cooperate with these authorities, the Controller is obliged to support the Processor in providing such information or fulfilling other obligations for cooperation upon first request.

6. Requirements for Processor Staff

6.1. The Processor obligates all persons involved in processing the Controller Data to confidentiality.

6.2. The Processor may allow its employees, who are entrusted with processing personal data for the Controller, to work in a mobile office, provided that the employees are obliged by a policy to comply with general data protection regulations.

7. Security of Processing

7.1. The Processor will take appropriate technical and organizational measures as required by Art. 32 DS-GVO, taking into account the state of technology, implementation costs, and the nature, scope, circumstances, and purposes of processing the Controller Data, as well as the varying likelihood and severity of the risk to the rights and freedoms of the affected persons, in order to ensure a level of protection appropriate to the risk for the Controller Data.

7.2. The Processor is permitted to change or adapt technical and organizational measures during the term of the contract, ensuring that the agreed level of protection is not undercut.

8. Use of Sub-Processors

8.1. The Controller hereby grants authorization to the Processor to engage sub-processors for the processing of Controller Data. The sub-processors engaged at the time of the contract conclusion are listed in Annex 2. Generally, contractual relationships with service providers that involve the testing or maintenance of data processing procedures or systems by other parties, or other ancillary services, even if access to Controller Data cannot be excluded, are not subject to approval; the Processor makes appropriate arrangements to protect the confidentiality of the Controller Data in relation to the aforementioned contractual relationships.

8.2. Subcontracting relationships with subcontractors in the sense of these provisions do not exist if the Processor commissions third parties with services that are considered pure ancillary services. This includes, for example, postal, transport, and dispatch services, cleaning services, telecommunications services without direct reference to services that the Processor provides for the Controller, and security services.

8.3. The Processor will inform the Controller about intended changes regarding the engagement or replacement of additional sub-processors. The Controller has the right, in individual cases, to object to the engagement of a potential additional sub-processor. An objection can only be raised by the Controller for an important reason that must be demonstrated to the Processor. If the Controller does not object within 14 days of receiving the notification, its right to object regarding the respective engagement expires. If the Controller objects, the Processor has the right to terminate the Service Agreement and this contract with a notice period of 3 months.

8.4. The contract between the Processor and the additional sub-processor must impose the same obligations on the latter as those imposed on the Processor by this contract. The parties agree that this requirement is met if the contract provides a level of protection corresponding to this contract or imposes the obligations stipulated in Art. 28 (3) DS-GVO on the additional sub-processor.

9. Requests and Rights of Data Subjects

9.1. The Processor will support the Controller with technical and organizational measures, as far as possible, in fulfilling its obligation to respond to requests for exercising the rights of data subjects.

9.2. If a data subject submits a request directly to the Processor for exercising their rights, the Processor shall not respond independently. Instead, the Processor will promptly forward this request to the Controller and wait for its instruction.

9.3. The Processor will enable the Controller, to the extent reasonable and necessary, to correct, delete, or restrict further processing of Controller Data, or to carry out the correction, blocking, or restriction of further processing itself, if and as far as it is impossible for the Controller.

9.4. To the extent that the data subject has a right to data portability regarding the Controller Data under Art. 20 DS-GVO, the Processor will support the Controller, to the extent reasonable and necessary, in providing the Controller Data in a common and machine-readable format, insofar as the Controller cannot obtain the data otherwise.

10. Notification and Support Obligations of the Processor

10.1. If the Controller is subject to a legal obligation to report or notify due to a breach of protection of the Controller Data (especially under Art. 33, 34 DS-GVO), the Processor will promptly inform the Controller about any reportable events in its area of responsibility.

10.2. The Processor will support the Controller in fulfilling the reporting and notification obligations, upon the Controller's request, to the extent reasonable and necessary and against reimbursement of the Processor's proven expenses and costs.

10.3. The Processor will support the Controller, to the extent reasonable and necessary and against reimbursement of the Processor's proven expenses and costs, in any data protection impact assessments and any subsequent consultations with supervisory authorities required by the Controller under Art. 35, 36 DS-GVO.

11. Data Deletion

11.1. The Processor will delete the Controller Data after termination of this contract unless there is a legal obligation for the Processor to continue storing the Controller Data.

11.2. Documentation that serves to prove the contractually compliant and proper processing of Controller Data may be retained by the Processor even after the end of the contract.

12. Proofs and Inspections

12.1. The Processor will provide the Controller, upon its request, with all necessary information available to the Processor for demonstrating compliance with its obligations under this contract.

12.2. The Controller is entitled to inspect the Processor regarding compliance with the provisions of this contract, especially the implementation of technical and organizational measures; this includes inspections.

12.3. For conducting inspections, the Controller is entitled to enter the Processor's business premises where Controller Data is processed during normal business hours (Monday to Friday from 10 am to 6 pm), after timely prior notification according to the provisions, at its own expense, without disrupting operations and while strictly maintaining the confidentiality of the Processor's operational and business secrets.

12.4. The Processor is entitled to refuse to disclose information that is sensitive regarding its business or if disclosing such information would result in a violation of legal or other contractual regulations. The Controller is not entitled to access data or information about other customers of the Processor, information regarding costs, quality control and contract management reports, or any other confidential data of the Processor that are not directly relevant for the agreed inspection purposes.

12.5. The Controller must inform the Processor in a timely manner (usually at least two weeks in advance) about all circumstances related to the conduct of the inspection. The Controller may conduct only one inspection per calendar year.

12.6. At the Processor's discretion, proof of compliance with the obligations under this contract may also be provided by presenting a suitable, current audit report or certificate from an independent entity (e.g., auditors, internal audit, data protection officer, IT security department, data protection auditors, or quality auditors) or a suitable certification by IT security or data protection audit – e.g., according to BSI basic protection – (audit report), if the audit report enables the Controller to adequately assure compliance with the contractual obligations.

13. Liability

13.1. The liability of the Processor under this Agreement shall be subject to the exclusions and limitations of liability as per the Service Agreement. To the extent that third parties assert claims against the Processor that are based on a culpable breach of this Agreement or of the Controller's obligations as the data protection responsible party, the Controller shall indemnify the Processor against these claims upon first demand.

13.2. The Controller undertakes to indemnify the Processor against any fines that may be imposed on the Processor, to the extent that the Controller shares responsibility for the violation sanctioned by the fine.

14. Final provisions

14.1. Should individual provisions of this contract be or become invalid, or contain a gap, the remaining provisions shall remain unaffected. The parties commit to replacing the invalid provision with a legally permissible provision that comes closest to the purpose of the invalid provision and meets the requirements of Art. 28 DS-GVO.

14.2. Any amendments and supplements to this contract must be in writing. This also applies to the waiver of this formal requirement. The precedence of individual contractual agreements remains unaffected by this.

14.3. In the event of contradictions between this contract and other agreements between the parties, particularly the Service Agreement, the provisions of this contract shall prevail.

Hamburg, November 30th 2023

City, Date Controller

Kretschmer

Matthias Kretschmer

Desk-Net GmbH

Signature / Company Controller

Annex 1 - Subject of the Contract

1. Subject and Purpose of Processing

The client's assignment to the Processor includes the following works and/or services: General provision of the Desk-Net application, allowing users to enter, edit, and delete data. This includes the storage of such data.

2. Types of Personal Data

The following types of data are regularly processed:

- Personal master data (personal key data)
- Contact data (telephone, email)
- Planning and control data
- Others: Shift assignments, absences

3. Categories of Affected Persons

- Employees
- Suppliers (Freelancers)

4. Persons Authorized to Issue Instructions to the Client

To be entered by the client, with contact details

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5. Authorized Recipients of Instructions of the Processor

Matthias Kretschmer (m.kretschmer@desk-net.com, +49 40 88 14 170 0)

Annex 2 – Subcontractors

The Processor uses the services of third parties to process data on behalf of the Controller, who process data on its behalf ("Subcontractors").

This includes the following company(s):

Intetics GmbH Sp. Z o.o.

Aleja Juliusza Słowackiego 64,

30-004 Krakow, Poland

Amazon Web Services EMEA SARL (AWS Europe)

38 Avenue John F. Kennedy

L-1855 Luxembourg

Annex 2 – Subcontractors

Annex 3 - Technical and Organizational Measures

See TOMs document at https://desk-net.com/info/gdpr