General Terms and Conditions for Data Processing
Januar 2024

soffico GmbH (soffico)

Karl-Drais-Straße 4e

86159 Augsburg

Local Court Augsburg HRB 31405

(hereinafter 'Contractor')

1. Scope, object and term of the contract, processing purposes and data types

These General Terms and Conditions for Data Processing (DPA T&Cs) form the underlying agreement for existing and future contractual relations soffio GmbH ('soffico'; hereinafter 'Contractor') and Soffico clients, where soffico processes personal data in the context of contractual relationships with its clients (hereinafter 'Client') in their role as data processor in accordance with Article 28 GDPR.

The object of this contract shall be taken from the respective contractual agreement (hereinafter 'Main Contract').

The term (duration) of this contract corresponds to that of the Main Contract in question.

The object, the nature and purpose of processing, the categories of data subject, the types of the personal data being processed and any sub-processors can be found in the appendices to these DPA T&Cs.

2. Responsibilities

The Client is the data controller as defined in Article 4(7) GDPR and is solely responsible for adhering to the statutory requirements of data protection law, especially for the lawful processing of personal data and for instructing the processor.

The Contractor processes personal data on behalf of and on the instruction of the Client in order to perform the services defined in the Main Contract.

The Client and the Contractor are responsible for adhering to the specific GDPR provisions that apply to them and to the respective national data protection provisions.

3. Authority of the Client

The Contractor may process personal data and the results of that processing only in the context of the agreed contractual provisions, or in accordance with any specific written instructions from the Client, which may be given at any time. The Contractor may not independently correct or delete the data that they have been given for processing, or restrict how it is processed, and may only do so following documented instructions from the Client. Any processing of personal data for the Contractor's own purposes must always be agreed in writing with the Client. Furthermore, the Contractor undertakes to adhere to the provisions of the applicable laws, in particular the provisions of the DSG (Austrian Data Protection Act) and GDPR, in their respective applicable versions. If the Contractor is or has been legally obliged to process data beyond the documented instructions of the Client within the meaning of Article 28(3)(a) GDPR, they must demonstrably disclose this to the Contractor before commencing data processing.

The Contractor must notify the Client without undue delay if it is suspected that an instruction from the Client is incompatible with the data protection provisions of the European Union or its Member States.

4. Contractor obligations

The Contractor is obliged to treat as confidential all knowledge of the Client's company secrets and data protection measures learned in the course of data processing. This is without prejudice to any confidentiality clause agreed in the Main Contract. The Contractor's obligation under these provisions shall continue beyond the end of the Main Contract.

The Contractor shall make a binding declaration to have demonstrably obliged all those tasked with data processing to maintain confidentiality before they begin their task. Proof of this shall be shown to the Client on request. Statutory provisions may also give rise to confidentiality obligations. In particular, the non-disclosure obligation shall continue to apply to those involved even after their task is complete and when they no longer work for the Contractor.

If the Contractor is required by authorities to disclose the Client's data, the Contractor must inform the Client of this circumstance without undue delay and refer the authority to the Client. Any contact between the Contractor and the authority shall only take place with the agreement of the Client.

The Contractor shall organize internal processes within their area of responsibility so that they meet specific data protection requirements. The Contractor shall implement technical and organizational measures to adequately protect the Client's data from misuse and loss in accordance with the provisions in the respective data protection legislation. The Contractor must provide evidence of these measures to the Client, and to the supervisory authority if applicable, on request. The technical and organizational measures are subject to technical progress and ongoing development. The Contractor is therefore permitted to implement alternative, demonstrably suitable measures in accordance with the state of the art. It must be ensured that the level of protection does not fall below what was contractually agreed. Major changes must be documented. These technical and organizational measures can be viewed in an appendix to these DPA T&Cs: 'Appendix DPA T&Cs – TOMs'.

If a person approaches the Contractor to exercise their rights in accordance with Chapter III GDPR, the Contractor shall refer them to the Client without undue delay, assuming it is possible to identify the Client. The Contractor shall not give the person any information regarding the content of their request. If the Client is obliged, based on applicable data protection laws, to provide a data subject with information on the collection, processing or use of the data subject's data, the Contractor shall help the Client provide that information as far as possible, provided the Client has instructed the Contractor to do so in writing.

The Contractor shall inform the Client without undue delay if they, or a person engaged by them in the context of the contract, violate provisions regarding the protection of the Client's personal data or the provisions laid down in the contract. The Contractor shall demonstrably notify the Client as soon as they even suspect that there has been a data breach affecting the personal data that the Client is responsible for. The Contractor shall take the necessary measures to secure the data and minimize any adverse impact on the data subject, and shall discuss the matter with the Client without undue delay. In any case, the Client must be notified within 24 hours of the incident becoming known, or within 24 hours of when it must have become known.

The Contractor shall help the Client fulfil their obligation to notify the supervisory authority or the data subject affected by a personal data breach in accordance with Articles 33 and 34 GDPR. If it is necessary to perform a data protection impact assessment in accordance with Article 35 GDPR, the Contractor shall support

the Client with the information available to them. If it is necessary to hold a prior consultation with the supervisory authority (Article 36 GDPR), the Contractor shall also support the Client with that.

The Contractor shall maintain a record of all processing activities undertaken under their responsibility within the meaning of Article 30 GDPR. They shall make available to the Client the information necessary for the record as per Article 30 GDPR when requested.

Before carrying out any processing activity in a third country, the Contractor must first obtain written consent from the Client and meet the prerequisites laid down in Article 44 et seqq. GDPR. If processing is to take place in a secure third country, the Client shall not object unreasonably. The Contractor guarantees that they will adhere to the relevant provisions of the GDPR.

The Contractor shall appoint an independent, expert and reliable data protection officer, as far as this is required by European Union law or the law of the Member State to which the Client is subject. The Contractor shall ensure that the requirements for the data protection officer and their activities are fulfilled in accordance with Article 38 GDPR. The data protection officer's contact details shall be shared with the Client to allow direct contact. The Client shall be notified without undue delay of any change in data protection officer.

5. Subcontractor

The Contractor is permitted to add or replace subcontractors. The Contractor shall notify the Client in writing without undue delay when they plan to add or change a subcontractor, so that the Client has the opportunity to object in a two-week period. The Client shall not object without an objective reason. If the Client does not object within two weeks, the addition or replacement of the subcontractor is considered approved. This shall apply in the same way if the subcontractor establishes more subcontractor relationships.

If the Client objects, they must inform the Contractor of the reasons for the objection. In the case of an objection, the Contractor can suggest a different subcontractor in place of the rejected one at their own discretion, or they can take measures to allay the Client's concerns and have the objection withdrawn. If the Contractor is not able to allay the Client's concerns, then they may not engage the subcontractor in question.

At the time of concluding the Main Contract, the companies named in the Main Contract and in the respective appendix to these DPA T&Cs perform some services for the Contractor as subcontractors and directly process and/or use the Client's data as part of these services. Consent for these subcontractors to perform services is considered to have been given.

It is not necessary to request consent to hire subcontractors if the Contractor hires them for an ancillary service that is not directly related to the main service, such as post and shipping services, cleaning services or security services.

However, the Contractor must still put in place contractual provisions to ensure the security of the Client's data and the protection of data subjects.

The Contractor shall conclude the necessary agreements with the subcontractor in accordance with Article 28(4) GDPR. In particular, the Contractor shall ensure that the obligations in these DPA T&Cs are transferred to the subcontractor.

If a subcontractor hired by the Contractor does not fulfil their data protection obligations, the Contractor shall be liable to the Client for fulfilling the obligations of the subcontractor.

6. Client obligations

The Client is responsible for assessing the lawfulness of the data processing and for upholding data subject rights.

The Client shall notify the Contractor fully and without undue delay if they discover errors or irregularities with regard to statutory data protection provisions when checking processing outcomes or during monitoring procedures.

The Client is obliged to treat as confidential all knowledge of the Contractor's company secrets and data protection measures gained in the context of the contractual relationship. This obligation shall continue beyond the end of the Main Contract.

7. Client monitoring rights

The Client has the right to inspect and monitor the data processing facilities with regard to the processing of data that the Client has provided. They can also appoint a third party for this purpose.

The Client, or third parties appointed by them, must sign a non-disclosure agreement before performing the inspection. Inspections must take place without unnecessarily disturbing business operations.

The scope of the inspection is limited to the extent that the Client, or the third party/inspector entrusted by them, is not able to acquire knowledge of data that is not being processed for the Client but for third parties during the course of the inspection. This also includes the Contractor's trade and business secrets. The Contractor is allowed to make the inspection dependent on the signing of a non-disclosure agreement with regard to the data of other clients and the technical and organizational measures taken. Should the third party/inspector appointed by the Client be a competitor of the Contractor, the Contractor shall have the right to object.

Inspections shall take place after a notice period of four weeks, announced in writing, and during the Contractor's usual business hours.

The Contractor can also fulfil their obligations under this clause by having an inspection performed by a third party and sending a summary of the results to the Client.

8. Correction, restriction of processing, deletion and return of data carriers

Data that the Client has given the Contractor for the fulfilment of the contract shall not be copied or duplicated without the knowledge of the Client. Any data transferred by the Client, e.g. for service requests, rectification of errors, etc. or for monitoring purposes, must be deleted without a trace once it has fulfilled its purpose. Exceptions to sentence 1 are backup copies, insofar as they are necessary to guarantee proper data processing, and data that is required to comply with statutory retention obligations.

The Client may, at any time during the duration of the contract, demand that the data they have given the Contractor for the fulfilment of the contract be corrected, deleted, subject to limited processing (restricted) or returned.

9. Extraordinary termination

In the case of a serious infringement of data protection regulations or of provisions in these DPA T&Cs or in the Main Contract by the Contractor or their subcontractor, the Client may terminate contracts with the Contractor with immediate effect.

A serious infringement shall be deemed to exist in particular when certain obligations set out in this agreement, especially the agreed technical and organizational measures, remain unfulfilled to a significant extent.

10. Ending the contract

Following the end of the contract, the Contractor is obliged to return to the Client in a standard format all data processing results and documents containing personal data that were passed on to the Contractor for the performance of contracted activities, or to delete them on behalf of the Client, provided that European Union laws or the laws of Member States do not require the personal data to be saved. Evidence of the deletion must be shared with the Client. The Contractor must ensure that all subcontractors engaged by them also adhere to this requirement.

For data processed in a special technical format, the Contractor is obliged to return the data at the end of the agreement in the same format or, on the instruction of the Client, in the format in which the Contractor received the data from the Client.

Documentation demonstrating that data has been processed properly and in accordance with the contract must be kept by the Contractor after the end of the contract for the relevant retention periods.

11. Liability

Data protection liability provisions in accordance with Article 82 GDPR shall apply. Any liability provisions in the Main Contract shall remain unaffected.

The Contractor shall be liable for compensation for any damages suffered by the Client as a result of infringements of data protection provisions or the DPA T&Cs by the Contractor or their subcontractors. The Contractor shall indemnify and hold harmless the Client in this regard.

The Client shall be liable to the Contractor for the lawfulness of all instructions given and shall indemnify and hold harmless the Contractor for any damage resulting from following an instruction.

12.   Concluding provisions

Any additional agreements, changes or amendments must be agreed in writing in order to be valid. Any waiver of this requirement must also be made in writing.

Should the Client's data held by the Contractor be put at risk due to seizure, confiscation, insolvency or settlement procedures, or by other events or measures taken by third parties, the Contractor must notify the Client without undue delay.

This agreement is subject to Austrian law, with the exception of legal norms that refer to the law of other states. The provisions of the UN Convention on Contracts for the International Sale of Goods shall not apply here. The competent court in Wels, Austria, has sole jurisdiction for all disputes arising from this agreement.

Should specific provisions in these DPA T&Cs be deemed partially or fully invalid or impracticable, or should they become invalid or impracticable as a result of changes in legislation after concluding the agreement, the other provisions and the validity of the DPA T&Cs overall shall remain unaffected.

Appendix GTC AVV soffico – Support

Processing object	Support
Content and purposes	– Remote access (SW error analysis and troubleshooting) – Remote access (program maintenance) – Maintenance of the program – Consulting services – Helpdesk services
Type of processing	– Remote installation of software, ticket processing, remote maintenance, remote access
Categories of data subjects and data	– Employees Customer o Contact details o Technical data
Processing time	Contract is concluded for an indefinite period
Place of data processing	Germany

Are sub-processors used? ☐ Yes ☒ No

Is a transfer to a third country taking place or planned? ☐ Yes ☒ No

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Appendix GTC AVV soffico – Operation

Processing object	Operation
Content and purposes	– Remote access (SW error analysis and troubleshooting) – Remote access (program maintenance, software updates) – Maintenance of the program / installation of updates – Consulting services – Helpdesk services – Operating services – System administration
Type of processing	– Support planning, preparation of migrations (e.g. client migration, packaging Client migration, packaging, automation, installations\software rollout, etc.) – Remote installations of software, ticket processing, remote access – Services in connection with the operational support of IT systems (communication server, software distribution system) – Consulting and implementation activities in the system integration environment (primarily with the Orchestra communication server) – Operation of communication servers (primarily Orchestra)
Categories of data subjects and data	– Employees of the customer o Contact details o Technical data
Processing time	Contract is concluded for an indefinite period
Place of data processing	Germany

Are sub-processors used? ☐ Yes ☒ No

Is a transfer to a third country taking place or planned? ☐ Yes ☒ No