
AGREEMENT ON CONTRACTED DATA PROCESSING

01.01.2015



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Contracted data processing according to § 11 BDSG as component of offer and confirmation of order

AGREEMENT

Between the

.....

- hereinafter referred to as the principal -

XXX

XXX

XXX

XXX

XXX

XXX

and the

.....

-hereinafter referred to as the contractor -

XXX

XXX

XXX

XXX

XXX

XXX

OBJECT AND DURATION OF THE CONTRACT

The object of the contract for data handling derives from the business relationship subject to creditor-debtor law that arises from the order and order confirmation between the Principal and Contractor from....., to which we refer herewith (the performance agreement in the following).

The duration of this order corresponds to the period of the performance agreement.

SPECIFYING THE CONTENT OF CONTRACT

- Type, scope and purpose of the proposed collection, processing or use of the data

The processing and use of data is done exclusively in the area of the Federal Republic of Germany. Any relocation to a third country requires the prior consent of the principals and may only be carried out if the special preconditions of §§ 4b, 4c BDSG are fulfilled.

The type of the customer data gathered by the contracted data processing is dependent on the order issued by the customer and its necessity for the execution of the performance agreement, such as for example personal/contractual (master) data, communication and connection data and business partner data, such as customer contact data, contract cancellation and payment data, disclosure data, customer history, transaction data.

The contractor uses the personal data provided to it exclusively for the contractually agreed-upon service. The contractor is allowed to create the required temporary or duplicate files needed for procedural and data security purposes and for processing and use of the data in accord with performance, to the extent that this does not lead to a modification of the content. The contractor is not allowed to enter the personal data from the principals into systems owned by third parties. Otherwise the contractor is not allowed to create unauthorised copies of personal data. The principal will immediately inform the contractor if it detects faults or irregularities in reviewing the products of the order.

Data from address books and directories may only be used for communication in the framework of fulfilment of the commission with the principal. Any other use and communication for own or external purposes including marketing purposes is prohibited.

- Group of affected persons

The group of persons who are affected by the handling of their personal data in the framework of this contract includes private and corporate customers as well as suppliers, interested parties and contact persons.

TECHNICAL-ORGANISATIONAL MEASURES

The contractor must document the implementation of the technical and organisational measures before processing begins, in advance, especially with respect to the concrete execution of the contract and must give this to the principal for review. If accepted by the principal the documented measures will become the basis for the commission. To the extent that the review by the principal indicates a need for modifications, this will be implemented in mutual consultation.

The description of technical and organisational measures enclosed as Appendix 1 and conforming to § 9 BDSG (Data Protection and Data Security Concept) is part of this agreement. In total it is on the one hand a set of measures not specific to any given commission with respect to entry control, access control, transfer control, order control, availability control and the separation rule; as well as on the other hand measures that are specific to a given order and that derive from the service agreement on which it is based.

The measures specified must protect the personal data against accidental or illegal destruction, against accidental loss, unauthorised modification or sharing or unauthorised access. The technical and organisational measures are subject to technical progress and continued refinement. To that extent the contractor is allowed to implement alternative adequate measures. The security level for the specified measures may not be reduced. Significant changes must be documented. The contractor must provide the principal with the specifications according to § 4g Para. 2, S. 1 BDSG on request.

CORRECTING, DELETING AND BLOCKING DATA

The contractor must follow the instructions of the principal concerning which processed data in the order are to be corrected, deleted or blocked. To the extent that a person affected should directly contact the contractor for the purpose of a correction or deletion of his/her data, the contractor will immediately forward this request to the principal.

CONTROL AND OTHER OBLIGATIONS OF THE CONTRACTOR

In addition to conformity with these rules, the contractor also has the following obligations according to § 11 Para. 4 BDSG:

The contractor is obligated to appoint in writing (to the extent prescribed by law) a data security officer who can exercise his/her assigned duty in accord with §§ 4f, 4g BDSG. His/her contact data will be communicated to the principal for the purposes of direct contact.

Everyone who can access the principal's personal data in the framework of the contract must be subject to data confidentiality obligations and be instructed concerning the particular data security obligations deriving from this agreement as well as the obligation to follow instructions and/or the purpose of this contract.

The contractor is obligated to implement and observe all technical and organisational measures necessary for this agreement according to § 9 BDSG and the Appendix. He must make sure by using suitable controls that the data to be processed under this contract are only processed according to the instructions from the principal, that the assigned data processing is completed specific to the order and separately from other data processing and that the processed data is strictly separated from other data inventories.

The contractor is furthermore obligated to immediately inform the principal concerning control measures and actions by the regulatory authorities according to § 38 BDSG. This also applies to the extent that a responsible authority initiates an investigation at the contractor's premises according to §§ 43, 44 BDSG. The contractor submits to any control measures initiated by the data security regulatory authorities and will inform the principal of any control measure immediately if the principal's personal data are involved.

The contractor is furthermore obligated to carry out order controlling by means of regular checks that the contractor will make with respect to the execution of the order or fulfilment especially however compliance with and if needed adjust of rules and measures for the execution of the order.

Additionally the contractor is obligated to provide the principal with clear documentation of the technical and organisational measures taken. The contractor can present current test data, reports or excerpts from reports from independent agents (e.g. financial auditors, data security officers, etc.) or a suitable certification by an IT security or data security audit (e.g. compliant with BSI-basic security).

SUB-CONTRACTING

To the extent that subcontractors should be involved in the processing or use of the principal's personal data, this will be approved only if the following preconditions are met:

The principal can employ third parties to execute the contract to the extent that the contractor has given prior written consent. Without written consent the contractor can, on condition of observing its obligation of order controlling explained under Point 5 and observing the required due diligence, employ companies belonging to the corporate group as well as, in specific cases, other sub-contractors if this is clarified with the principal before processing or use begins.

The contractor must arrange the contractual agreements with sub-contractors in such a way that they correspond with the data security provisions in the contractual relationship between the contractor and the principal. A mutual agreement on contracted data processing is concluded between the companies of the MHP Solution Group, TIA Innovations GmbH and MHP Software GmbH.

In the case of sub-contracting the principal is to be granted rights to control and review at the sub-contractor's premises corresponding to this agreement and the § 11 BDSG in combination with No. 6 of the Appendix to § 9 BDSG. This also encompasses the principal's right to receive from the contractor on written request information about the essential content of the contract and the implementation of the obligations in the sub-contracting agreement that are relevant to data security, and, if necessary, to review the relevant contract documents.

In the sense of this rule, services that the contractor receives from third parties as supplementary support services in the execution of the contract are not to be regarded as services provided in a sub-contracting relationship. These include e.g. telecommunications services, maintenance and user service, cleaning services, auditors or data storage device disposal services. The contractor is however obligated to make contractual agreements and undertake controlling measures in order to assure the safety and security of the principal's data even when supplementary services are supplied by an external provider.

PRINCIPAL'S RIGHT TO CONTROL

The contractor grants the principal and its authorised representatives a right to review and control at any time with respect to the data protection and data security precautions, generally on condition of prior notification. The contractor is obligated in the case of disclosures and reviews to provide the required support.

The principal has the right to make sure that the contractor is complying with this agreement in its business premises by means of random sample checks that as a rule will be announced in advance. The contractor is obligated to provide the principal on request with the information required to meet its obligation of order controlling and to make the matching documentation available.

With respect to the principal's controlling obligations under § 11 Para. 2 Sent. 4 BDSG both prior to the start of data processing and during the contract period, the contractor will make sure that the principal can be sure of compliance with the technical and organisational measures taken. Independent of this the contractor will provide documentation of conformity with the technical and organisational measures taken according to § 9 BDSG through a regular certificate renewed every three years and done by a recognised financial auditing company, and audit or a sufficient document meeting the legal requirements that is prepared by its operational data protection officer (e.g. updated description of the technical and organisational measures implemented).

NOTIFICATION ON VIOLATIONS BY THE CONTRACTOR

If there is a justified suspicion of violation of data protection and data security provisions set forth in this agreement by the contractor itself, employees of the contractor, or third parties commissioned by the contractor, the contractor is obligated to immediately inform the principal of this fact. In all cases the contractor will send the principal a report if it, or persons it employs have violated the provisions for the protection of the principal's personal data or the provisions set forth in the agreement. The like applies in the case of breaches of the general provisions for the protection of personal data.

The parties are aware that, under § 42a BDSG, there can be duties to inform in the case of loss or illegal communication or disclosure of personal data. Such incidents must be communicated to the principal immediately. The contractor must take appropriate steps, in coordination with the principal, in order to secure the data and reduce possible detrimental consequences.

PRINCIPAL'S AUTHORISATION TO GIVE DIRECTIVES

The principal is responsible for compliance with the BDSG and other regulations pertaining to data protection and the legality of sending data to the contractor.

The principal reserves the comprehensive right to issue directives in the framework of the description of the commission in this agreement concerning the type, scope and procedure for data processing, which it can precisely specify through single instructions. Changes in the object of processing and the procedure must be coordinated jointly.

The principal will confirm oral instructions immediately in writing or by e-mail. The contractor will use the data for no other purposes and is specifically not entitled to share it with third parties. Copies and duplicates will not be made without the principal's knowledge. Excluded from this are back-up copies to the extent that they are required for proper data processing, as well as data that are required with respect to compliance with legal data retention obligations. The contractor will immediately inform the principal if a directive issued by the principal in its opinion violates the BDSG or another regulation concerning data protection. The contractor is entitled to suspend execution of the corresponding directive until it is changed or confirmed by the responsible party at the principal.

DELETING DATA

Once the contracted work is completed, or earlier, at the request of the principal – but at the latest on termination/cancellation of the service agreement – the contractor must surrender to the principal all results of processing and use that it generated, as well as data inventories in its possession, that have any connection with the contractual relationship or after obtaining prior consent, destroy them in

conformity with data protection law. The like applies to test material and reject material. The record of deletion must be presented on demand.

Documentation that serves to facilitate correct data processing in conformity with the contract must be handed over to the principal by the contractor corresponding to the respective retention periods beyond the end of contract. It can also hand that documentation over to the principal at the end of the contract in order to lessen its work.

Appendix 1 to the agreement under § 11 BDSG (according to Number 3.)

Date, Signature

APPENDIX 1 TO THE AGREEMENT UNDER § 11 BDSG (ACCORDING TO NUMBER 3)

Description of the technical and organisational measures according to § 9 BDSG (Data Protection and Data Security Concept) and appendix

The contractor will assure the implementation of and conformity with the technical and organisational measures according to § 9 BDSG in its area of responsibility. This means specifically

- **Entry control:** Unauthorised persons must be denied physical entry to the data processing facilities where personal data are processed and used.
- **Intrusion control:** Preventing penetration of data processing systems by unauthorised persons and preventing such persons from being able to use these systems.
- **Access control:** That only persons authorised to use a data processing system can only access the data that are subject to their access authorisation and that personal data cannot be read, copied, modified or removed by unauthorised persons during processing, use or after they have been stored. Every unauthorised act in the data processing system that lies outside the authorisation granted must be prevented.
- **Transfer control:** It may not be possible for personal data to be read, copied, changed or removed by unauthorised persons during electronic transmission or during transport or when saved to data storage devices and that it must be possible to check and determine at which points a transfer of personal data by equipment for data transfer is planned.
- **Input control:** To guarantee that it can be reviewed and determined after the fact if and by whom personal data were entered into the data processing system, modified or removed. The clarity/documentation of data management and updating must be assured.
- **Order control:** To guarantee that personal data that are processed in the order can only be processed according to the principal's directives.
- **Availability control:** To make sure that personal data are protected against accidental destruction or loss.
- **Separation control:** To make sure that data collected for different purposes can be processed separately.