

**Supplementary Agreement  
to the Standard Data Protection Clauses (Processor)  
According to Decision 2010/87/EU**

between

[...],

- hereafter: „**Controller**“ or „**Data Exporter**“ -

and

[...],

- hereafter: „**Processor**“ or „**Data Importer**“ -

- Controllers and Data Importer hereafter each a „**Party**“ and collectively: „**Parties**“ -

## **Preamble**

The Processor renders services based on a contractual relationship between the Processor and the Controller (hereafter: "**Service Contract**"), in the context of which the Processor acts in the capacity of a data processor based on a data processing agreement pursuant to Article 28 GDPR (hereafter: "**Processing Agreement**").

Following the European Court of Justice judgment of 16. July 2020 in the matter C-311/18 (*Schrems II*), the Parties seek to implement the Standard Data Protection Clauses (Processors) pursuant to Decision 2010/87/EU (hereafter: "**Standard Contractual Clauses**" or "**SCC**"). In addition to the Standard Contractual Clauses, the Parties agree on additional safeguards as set forth in this agreement on supplementing the SCC (hereafter: "**Supplementary Agreement**") as follows:

### **1. Agreement on SCCs**

The Parties herewith agree on the Standard Contractual Clauses as **attached** to this document as Annex 1 [Anmerkung: Das Formular sollte korrekt ausgefüllt und idealerweise auch unterzeichnet beigefügt werden.].

### **2. Subject Matter of the Contract; Hierarchy**

- 2.1 The purpose of the Supplementary Agreement is to create additional, supplementary guarantees to ensure an adequate level of data protection for the benefit of the individual whose personal data is processed (hereafter: "**Data Subject**").
- 2.2 The provisions of this Supplementary Agreement shall be treated as insertions into Annex 1 to the Standard Contractual Clauses.
- 2.3 The provisions of the Standard Contractual Clauses shall take precedence over this Supplementary Agreement, and the provisions of this Supplementary Agreement shall be considered as business-related clauses within the meaning of Recital 4 of Decision 2010/87/EU and shall not conflict with the Standard Contractual Clauses.
- 2.4 In the event of contradictions or doubts of interpretation, the provisions of the Supplementary Agreement shall take precedence over the Service Contract and Processing Agreement. In all other respects, the provisions of the Service Contract and Processing Agreement shall remain unaffected.

2.5 In case of ambiguity within this Supplementary Agreement, in case of doubt, provisions shall be interpreted in such a way as to give maximum effect to the rights of the Data Subject.

### **3. Procedure in Case of Third Party Access to Personal Data**

3.1 As far as the Processor knows or gains the justified suspicion that third parties (in particular private and public bodies irrespective of their actual legal form of organization, in particular administrative authorities, judicial authorities, legislative bodies, criminal prosecution authorities, secret services, state and constitution protection organizations, any of them, if applicable, including any private bodies they may have commissioned) have obtained or will soon obtain access to personal data which are subject to the data processing, and such access or approach by the third party concerned is neither the subject of the Processing Agreement nor covered by an instruction of the Controller (such a case hereafter: "**Third-Party-Access**"), the Processor shall inform the Controller of the Third-Party-Access at the earliest possible time in text form.

3.2 The Processor agrees and warrants that it will promptly notify the Data Subject about 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.

3.3 The Processor is obliged to take all measures, remedies and legal means to prevent, or – if this is not possible – to limit third party access to the lowest possible level (including all measures of interim legal protection). The Processor shall report to the Controller continuously and unrequested in text form on the progress of the measures, legal remedies and other legal means taken. The Processor shall refrain from disclosing the personal data to the relevant authorities until a competent court of last instance has issued a final order for disclosure.

3.4 If the Processor is prohibited by applicable law from providing the notice referred to in Clauses 3.1 and 3.2 or the report referred to in Clause 3.3, Processor shall take all measures and exercise all remedies and other legal means (including any interim relief measures) to be allowed to provide the notice or report.

- 3.5 Notwithstanding Clause 3.4, the Processor shall be represented by a lawyer or by a person bound to professional secrecy (such persons here collectively referred to as "**Legal Representatives**") in the context of the appeals and legal remedies to be lodged by the Processor (here collectively referred to as "**Remedy**", irrespective of the legal-dogmatic derivation). The Controller is entitled, without prejudice to the appointment of further legal representatives designated by the Processor, to select one or more legal representatives whom the Processor (also) appoints to represent the Processor in the context of the legal Remedies filed by the Processor (such legal representatives selected by the Controller here: "**Legal Co-Representatives**"). The Parties hereby agree that in the internal relationship between the Controller and the Processor, the Legal Co-Representatives shall be deemed to have been mandated by both Parties and shall pursue the interests of both Parties in the same manner and direction. In this relationship and in connection with the Remedy, the Legal Co-Representatives are released from their professional secrecy. To the extent permitted by applicable law, Legal Co-Representatives shall be fully informed of all circumstances and legal actions that are or may be relevant in connection with the Remedy. In particular, the Processor shall be obliged to provide the Legal Co-Representatives with the same information as the other Legal Representatives that it may have mandated in connection with the Remedy. Legal Co-Representatives may participate in all discussions, meetings and hearings held in connection with the Remedy and shall be invited by the Processor to such discussions, meetings and hearings with reasonable notice.
- 3.6 Legal Co-Representatives are in principle entitled to report to the Controller on all circumstances relating to the Remedy, provided that the applicable law does not prohibit this. If required under applicable law, the Legal Co-Representative will report to the Processor only in aggregated form or – if such a report is not permitted under applicable law – will act autonomously in the previously generally agreed interest of the Controller without reporting to the Controller.
- 3.7 In case of disagreement between the Legal Co-Representative and the Legal Representative chosen by the Processor on the appropriate course of action, the Legal Co-Representative is entitled, in case of doubt, to make a binding decision on the course of action in connection with the Remedy.
- 3.8 If any Third-Party-Access becomes known to the Processor, the Processor is obliged to immediately and provisionally relocate all personal data, which

are the subject of the data processing, to a storage location which is as far as possible removed from the access of the third party.

3.9 The Parties will agree on the further implications of Third-Party-Access.

#### **4. Additional Undertakings**

4.1 The Controller agrees and warrants that 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 the GDPR.

4.2 The Processor agrees that if the Data Subject invokes against it third-party beneficiary rights and/or claims compensation for damages under the SCCs, the Processor will accept the decision of the Data Subject.

#### **5. Liability**

5.1 The Parties agree that if one Party is held liable for a violation of the clauses committed by the other Party, the latter will, to the extent to which it is liable, indemnify the first Party for any cost, charge, damages, expenses or loss it has incurred.

5.2 Indemnification is contingent upon:

5.2.1 the Controller promptly notifying the Processor of a claim; and

5.2.2 the Processor being given the possibility to cooperate with the Controller in the defence and settlement of the claim.

#### **6. Final Provisions**

6.1 If and as soon as the Processor has reason to believe that the law applicable permits Third-Party-Access, it shall immediately notify the Controller in text form. In this case, the Controller shall be entitled to terminate the Service Contract including the Processing Agreement, the Standard Contractual Clauses and this Supplementary Agreement with immediate effect.

6.2 Insofar as this Supplementary Agreement causes costs and/or expenses to be incurred by the Parties (e.g. by taking technical and organizational measures, lodging legal Remedies, appointing legal representatives, etc.), each party shall bear its own costs.

- 6.3 Should one or more provisions of this Supplementary Agreement - for whatever reason - be or become invalid or unenforceable in whole or in part, this shall not affect the validity of the remaining provisions of this Supplementary Agreement. The same shall apply if a gap is found in the Supplementary Agreement. In place of the invalid or unenforceable provisions or to fill a gap, an appropriate regulation shall apply which, as far as legally possible and permissible, comes closest to what the Parties to the contract would have wanted if they had been aware of the invalidity or had considered the issue at the time of conclusion of the relevant regulation. In this context, the objective stated in Clause 2.5 shall be given priority.
- 6.4 This Supplementary Agreement shall be governed by the same law as laid down in Clause 9 of the Standard Contractual Clauses.
- 6.5 Should Decision 2010/87/EU be amended or replaced in the future, should new standard data protection clauses within the meaning of Art. 46 para. 2 lit. c or d GDPR be adopted which could be applicable to the present contractual relationship, or should the territories in which the processing of personal data takes place be the subject of an adequacy decision pursuant to Art. 45 GDPR, the Parties shall negotiate constructively, in accordance with the principles of good faith, on an appropriate and legally compliant adaptation of the Standard Contractual Clauses and this Supplementary Agreement.

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[...]

[...], .....

[...]