

ORDER PROCESSING CONTRACT

According to Art. 28(3) GDPR

Between
NETWAYS Managed Services GmbH
(hereafter: Contractor)
and
Client

Company/
Organisation:

Street:

Zip Code:

City:

Country:

PREAMBLE

This order processing agreement specifies the data protection obligations of the contracting parties resulting from the existing contractual relationship. It shall apply to all activities related to the Contract in which employees of the Contractor or persons commissioned by the Contractor process personal data for which the Client is the controller within the meaning of data protection law ("Data").

§ 1 SUBJECT MATTER, PLACE, DURATION AND SPECIFICATION OF COMMISSIONED PROCESSING

(1) Duration of the processing

The duration of the order shall be determined by the Contract.

(2) Subject of the processing:

☐ NWS Apps

The Client shall receive access to the NETWAYS Web Services and to the applications available there and will be able to use the Contractor's computing and storage capacities in his data centres (see List of Subcontractors) for this purpose (Software as a Service). The concrete object of the processing results from the use of the application(s) by the Client.

☐ NWS Cloud

The Client shall receive access to the Contractor's IT infrastructure (data centres – see List of Subcontractors) via NETWAYS Web Services for the installation and operation of his own application programs and operating systems (Infrastructure as a Service). The Contractor shall take over the maintenance of the infrastructure provided.

☐ Rental Hardware

The Client shall be granted access to rental hardware (server and/or network hardware) for the installation and operation of his own application programmes and operating systems (Rental Hardware). The Contractor shall take over the maintenance of the rental hardware provided.

(3) Place of processing

The processing of personal data on behalf of the Client shall take place exclusively in a Member State of the European Union or in a State party to the Agreement on the European Economic Area.

(4) Type of processing

The Contractor shall process personal data of the Client in his IT infrastructure, whereby all types within the meaning of Art. 4(2) GDPR may occur. In the context of the maintenance of the IT infrastructure, access to personal data of the Client cannot be excluded.

(5) Purpose of the processing

- (a) When using the NWS Apps (Software as a Service), the purpose of the processing results from the respective functions of the software used.
- (b) When using the NWS Cloud (Infrastructure as a Service), the processing serves the purpose of providing the Client with an infrastructure on which the Client can operate software solutions of his choice.
- (c) When using Rental Hardware, the processing serves the purpose of providing the Client with server and/or network hardware on which the Client can operate software solutions of his choice.

(6) Nature of the personal data

In detail, the following data are part of the data processing:

- ☐ User and login data
- ☐ Log data/-files
- ☐ Content of the communication which may also contain special categories of personal data within the meaning of Art. 9 GDPR (e.g. when using (video) chat software)
- ☐ General personal data (name, date and age of birth, place of birth, address, e-mail address, telephone number, etc.)
- ☐ Identification numbers (national insurance number, tax identification number, health insurance number, identity card number, matriculation number, etc.)
- ☐ Bank data (account numbers, credit information, account balances, etc.)
- ☐ Online data (IP address, location data, etc.)
- ☐ Physical characteristics (gender, skin, hair and eye colour, stature, clothing size, etc.)
- ☐ Ownership characteristics (vehicle and real estate ownership, land register entries, vehicle registration plates, registration data, etc.)
- ☐ Customer data (orders, address data, account data etc.)
- ☐ Value judgements (school and work reports etc.)
- ☐ Other, namely:

(7) Categories of persons concerned

The group of persons affected by the handling of personal data within the scope of this GC includes:

- ☐ User
- ☐ Persons about whom communication takes place
- ☐ Customers of the Client
- ☐ Employees of the Client
- ☐ Other:

The term of this Annex shall be governed by the term of the Contract, unless the provisions of this Annex impose obligations in excess thereof.

§ 2 SCOPE OF APPLICATION AND RESPONSIBILITY

- (1) The Contractor shall process personal data on behalf of the Client. This includes activities that are specified in the Contract and in the Service Description. With regard to the legal obligations of the data controller under this Contract, the Client shall be solely responsible for compliance with the legal provisions of the data protection laws, in particular for the lawfulness of the transfer of data to the Contractor as well as for the lawfulness of the data processing ("data controller" within the meaning of Art. 4(7) GDPR).
- (2) The Client's instructions shall initially be stipulated by the Contract and may thereafter be amended, supplemented or replaced by the Client in writing or in an electronic format (text form) to the office designated by the Contractor by means of individual instructions (individual instruction). Instructions from the Client that are not provided for in the Contract shall be treated as a request for a change in performance. Verbal instructions of the Client shall be confirmed by the Client in writing or in text form without delay.

§ 3 DUTIES OF THE CONTRACTOR

- (1) The Contractor may only process data of data subjects within the scope of the order and the instructions of the Client unless there is an exceptional case within the meaning of Article 28(3)(a) GDPR. The Contractor shall inform the Client without delay if it is of the opinion that an instruction violates applicable laws. The Contractor may suspend the implementation of the instruction until it has been confirmed or amended by the Client.
- (2) The Contractor shall organise the internal organisation in his area of responsibility in such a way that it meets the special requirements of data protection. It shall take technical and organisational measures to adequately protect the Client's data that meet the requirements of the General Data Protection Regulation (Art. 32 GDPR). The Contractor shall take technical and organisational measures to ensure the confidentiality, integrity, availability and resilience of the systems and services in connection with the processing on a permanent basis.
The Contractor reserves the right to change the security measures taken, but it must be ensured that the contractually agreed level of protection is not undercut and that the Client is informed.
- (3) The Contractor shall support the Client by means of technical organisational measures within the scope of his possibilities in fulfilling the requests and claims of data subjects pursuant to Chapter III of the GDPR and in complying with the obligations set out in Articles 32 to 36 GDPR.
- (4) The Contractor shall ensure that the employees involved in the processing of the Client's data and other persons working for the Contractor are prohibited from processing the data outside the scope of the instruction. Furthermore, the Contractor warrants that the persons authorised to process the personal data have committed themselves to confidentiality or are subject to an appropriate statutory duty of confidentiality. The confidentiality/secretary obligation shall continue to apply even after termination of the assignment.
- (5) The Contractor shall inform the Client without delay if it becomes aware of any violations of the Client's personal data protection.
The Contractor shall take the necessary measures to secure the data and to mitigate possible adverse consequences of the data subjects and shall consult with the Client on this without delay.
- (6) The Contractor shall name to the Client the contact person for data protection issues arising within the scope of the Contract. The contact details of the latter shall be communicated to the Client for the purpose of direct contact. The Client shall be informed immediately of any change of data protection officer.
- (7) The Contractor shall ensure that it complies with his obligations under Article 32(1)(d) GDPR to implement a procedure for the regular review of the effectiveness of the technical and organisational measures to ensure the security of the processing.
- (8) The Contractor shall correct or delete the contractual data if the Client so instructs.
In special cases to be determined by the Client, storage or handover shall take place; remuneration and protective measures for this shall be agreed separately, unless already agreed in the Contract.
- (9) Data, data carriers as well as all other materials shall either be surrendered or deleted at the discretion of the Client after the end of the order. If no separate instruction is given, the Contractor shall delete the data.
If additional costs arise due to deviating specifications (from the deletion), these shall be borne by the Client.
- (10) In the event of a claim being made against the Client by a data subject with regard to any claims under Art. 82 GDPR, the Contractor undertakes to support the Client in defending the claim to the extent of his possibilities.

§ 4 DUTIES OF THE CLIENT

- (1) The Client shall inform the Contractor immediately and in full if it discovers errors or irregularities in the order results with regard to data protection provisions.
- (2) In the event of a claim against the Client by a data subject with regard to any claims pursuant to Art. 82 GDPR, §3 (10) shall apply accordingly.
- (3) The Client shall inform the Contractor of the contact person for data protection issues arising within the scope of the Contract.

§5 CONTROL RIGHTS OF THE CLIENT

- (1) The Client shall have the right, in consultation with the Contractor, to carry out inspections during normal business hours or to have inspections carried out by inspectors to be named in individual cases. He shall have the right to satisfy himself of the Contractor's compliance with this agreement by means of inspections, which as a rule must be notified in good time.
- (2) The Contractor shall ensure that the Client can satisfy himself of the Contractor's compliance with his obligations under Article 28 GDPR. The Contractor undertakes to provide the Client with the necessary information upon request and, in particular, to provide evidence of the implementation of the technical and organisational measures.
- (3) If the auditor engaged by the Client is in a competitive relationship with the Contractor, the Contractor shall have a right of objection against the auditor.

§ 6 REQUESTS FROM DATA SUBJECTS

If a data subject approaches the Contractor with requests for correction, deletion or information, the Contractor will refer the data subject to the Client, provided that an assignment to the Client is possible according to the data subject's information. The Contractor shall forward the data subject's request to the Client without delay. The Contractor shall not be liable if the request of the data subject is not answered, not answered correctly or not answered in time by the Client.

§ 7 POSSIBILITIES OF PROOF

- (1) The Contractor shall demonstrate to the Client compliance with the obligations set out in this Contract by appropriate means.
- (2) Evidence of such measures, which do not only concern the specific order, may also be provided by means of
 - » compliance with approved rules of conduct in accordance with Art. 40 GDPR;
 - » certification in accordance with an approved certification procedure pursuant to Art. 42 GDPR;
 - » current attestations, reports or report extracts from independent bodies (e.g. auditors, auditing, data protection officers, IT security department, data protection auditors, quality auditors);
 - » suitable certification through IT security or data protection audit (e.g. according to BSI-Grundschutz "BSI Basic Protection").

§ 8 SUBCONTRACTORS (FURTHER PROCESSORS)

- (1) The passing on of orders within the scope of the activities specified in the main contract to subcontractors by the Contractor requires the prior written consent of the Client. The same applies to the replacement of an existing subcontractor.
- (2) Such prior consent may not be refused by the Client without good reason. The subcontractors used by the Contractor are listed in an annex. For the subcontractors named in the Annex, approval shall be deemed granted upon signature of this Agreement. The Contractor shall inform the Client in advance of any intended change regarding the use or replacement of subcontractors, giving the Client the opportunity to object to this change (Art. 28(2) GDPR). If no objection is made within 14 days of receipt, the amendment shall be deemed to have been approved.
- (3) If the Contractor places orders with subcontractors, it shall be incumbent on the Contractor to transfer his data protection obligations under this Contract to the subcontractor.
- (4) The subcontractor shall provide the agreed service within the EU/EEA.

§ 9 INFORMATION DUTIES, WRITTEN FORM CLAUSE, RIGHT OF RETENTION, CHOICE OF LAW

- (1) Should the Client's data with the Contractor be endangered by attachment or seizure, by insolvency or composition proceedings or by other events or measures of third parties, the Contractor shall inform the Client thereof without delay. The Contractor shall inform all persons responsible in this context without delay that the sovereignty and ownership of the data lies exclusively with the Client as the "responsible person" within the meaning of the General Data Protection Regulation.
- (2) Amendments and supplements to this Annex and all its constituent parts – including any representations made by the Contractor – shall require written agreement, which may also be in an electronic format (text form), and express reference to the fact that it is an amendment or supplement to these Terms and Conditions. This also applies to the waiver of this formal requirement.
- (3) In the event of any contradictions, the provisions of this Annex on Data Protection shall take precedence over the provisions of the Contract. Should individual parts of this Annex be invalid, this shall not affect the validity of the rest of the Annex.
- (4) Insofar as services of the Contractor are necessary for the Client to meet his statutory obligations, a right of retention of the Contractor is excluded.
- (5) German law shall apply.

§ 10 LIABILITY AND COMPENSATION

The Client and the Contractor shall be liable vis-à-vis data subjects in accordance with the provision set out in Article 82 GDPR.

Date:

Date:

Client



Contractor – Bernd Erk (CEO)

Appendices:

Annex on technical and organisational measures pursuant to Art. 32 GDPR (cf. also § 3 (2) of the Sample Contract Annex)
Annex List of Subcontractors Used