Contract on the commissioned processing of personal data

between

Zoovu (Germany) GmbH, Skalitzer Straße 104, 10997, Berlin

- Contractor -

and

- Client -

Preamble

(1) This contract substantiates the obligations of the contracting parties in relation to the data protection, which arises from the performance obligations on the part of the Contractor described in detail in the contract dated (hereinafter referred to as the "Principal Contract") as well as the associated data processing.

(2) This contract shall apply to all activities relating to the Principal Contract and in the course of which, employees of the Contractor (or parties appointed by the Contractor) process personal data (»Data«) of the Client.

§ 1 Business object, duration and specification of the commissioned processing

(1) The business object and duration of the commission as well as the type and purpose of the processing are set forth in the Principal Contract. Specifically, the following data in particular are an integral part of the data processing:

a) Type of data

Only data to be processed, which is transmitted to the Contractor on the occasion of a query by users of the online service of the Client. This data consists of the IP address, the session ID, interaction data (e.g. click information) as well as data from the query itself, such as names.

b) Type and purpose of the processing

The processing serves the presentation of the relevant search results within the online service of the Client and include the processing operations required for this purpose.

c) Categories of data subjects

Affected by the processing are (potential) customers of the Client as well as users of his online service.

(2) The duration of this contract shall be governed by the duration of the Principal Contract, unless further obligations arise from the provisions of this contract.

§ 2 Scope and responsibility

(1) The Contractor shall process personal data on behalf of the Client. This shall comprise the activities substantiated in the Principal Contract and – where applicable – in the associated performance description. Under this contract, the Client shall be solely responsible for compliance with the statutory provisions of the data protection laws – particularly for the lawfulness of the transfer of data to the Contractor and for the lawfulness of the data processing.

(2) The instructions shall initially be determined by the Principal Contract and can subsequently be changed, supplemented or replaced (individual instruction) by the Client in written form or in an electronic format (text form) to the office designated by the Contractor by means of individual instructions. Instructions not included in the contract shall be treated as applications for change in performance. Oral instructions shall be promptly confirmed in writing or text form.

(3) If the Contractor considers that an instruction on the part of the Client violates data protection provisions, then he shall promptly notify the Client thereof. The Contractor shall be entitled to suspend the performance of the instruction concerned until it is either confirmed or changed by the Client. The Contractor shall refuse the performance of any manifestly unlawful instruction.

§ 3 Obligations on the part of the Contractor

(1) The Contractor shall only process the data of data subjects within the framework of the assignment and the instructions provided by the Client – except in special cases in the sense laid down by Article 28 Section 3 a) DS-GVO (General Data Protection Regulation). The Contractor shall inform the Client without delay if he considers that an instruction violates applicable laws. The Contractor shall be entitled to suspend the implementation of the instruction concerned until it is either confirmed or changed by the Client.

(2) The Client is aware that the data processing affected by this contract will be performed almost exclusively on rented servers. The provider contracted by the Contractor at the time of concluding this contract is named in § 7. Unless in exceptional cases a processing of the data affected by this contract takes place outside the servers of the contracted providers on the Contractor's own systems, the obligations of the Contractor as well as the regulations agreed on in this contract to implement and ensure the suitable and organisational measures in accordance with Article 32 DS-GVO shall refer to those, which are taken and secured on the part of the Contractor. The technical and organisational measures taken at the time of conclusion of this contract by the contracted provider shall be documented and enclosed as Annex 1 of this contract. They shall be updated in the event of changes and be retrievable in their valid version from the website of the provider at any time. For the compliance with the agreed protective measures of the provider and their proven effectiveness, reference is made to the existing certification from the TÜV Rheinland, the presentation of which shall suffice as verification of suitable safeguards (cf. Annex 2 of this contract).

The Contractor shall take the necessary in-house organisational steps in his area of responsibility so that they meet the special requirements of data protection. He shall take all technical and organisational measures required to provide adequate protection for the data of the Customer in accordance with Article 32 DS-GVO – particularly the measures listed in Annex 3 as a minimum. The Contractor shall reserve the right to make changes to the security measures taken, whereby it shall be ensured that the contractually agreed level of protection be maintained.

(3) To the extent agreed, the Contractor shall provide the Client with his best possible support in fulfilling the requests and claims of data subjects in accordance with Section III of the DS-GVO as well as in compliance with the obligations set forth in Articles 32 to 36 DS-GVO. In the event that the Contractor should incur costs in so doing – particularly as a result of the necessary involvement of the provider contracted by him, then said costs shall be reimbursed by the Client to the amount verified.

(4) The Contractor shall ensure that both his employees and other persons active for the Contractor concerned with the processing of the data of the Client be prohibited from processing said data in any manner not in accordance with his instructions. Furthermore, the Contractor shall ensure that the persons authorised to process the personal data be committed to confidentiality, or be bound by an adequate statutory obligation of secrecy. This confidentiality/secrecy obligation shall remain binding beyond the ending of the assignment.

(5) The Contractor shall promptly notify the Client if he becomes aware of infringements of the protection of the personal data of the Client. The Contractor shall take the necessary measures both to secure the data and reduce possible negative effects incurred by data subjects and in this regard shall promptly consult the Client.

(6) The Contractor shall provide the Client with the name of the contact partner for data protection issues arising in the scope of this contract.

(7) The Contractor shall correct or delete the contractual data when instructed to by the Client insofar as said action is provided for in the scope of the instruction.

(8) Upon request by the Client, data, data media as well as all other materials shall either be handed over on completion of the assignment or deleted. The Client, however, can only demand the handing over of data media, insofar as these are his own property. If additional costs are incurred in the handing over or deletion of the data as a result of deviating requirements, then these shall be borne by the Client.

(9) In the event of the Client becoming involved by a data subject in relation to possible claims in accordance with Article 82 DS-GVO, the Contractor shall undertake to assist the Client in rebutting said claims within the scope of his possibilities. In the event that the Contractor should incur costs in so doing – particularly as a result of the necessary involvement of the provider contracted by him, then said costs shall be reimbursed by the Client to the amount verified.

§ 3 Obligations on the part of the Client
(1) The Client shall promptly and fully notify the Contractor in the event that he should determine errors or irregularities in relation to data protection provisions in the results of the assignment.

(2) In the event of the Client becoming involved by a data subject in relation to possible claims in accordance with Article 82 DS-GVO, then § 3 Section 10 shall apply mutatis mutandis.

(6) The Client shall provide the Contractor with the name of the contact partner for data protection issues arising in the scope of this contract.

§ 5 Request of data subjects

In the event that a data subject should contact the Contractor with claims of correction, deletion or information, the Contractor shall refer the data subject to the Client, insofar as an assignment to the Client is possible according to information from the data subject. The Contractor shall promptly forward the application of the data subject to the Client. On instruction, the Contractor shall assist the Client as far as possible to the extent agreed. In the event that the Contractor should incur costs in so doing – particularly as a result of the necessary involvement of the provider contracted by him, then said costs shall be reimbursed by the Client to the amount verified. The Contractor shall not be held liable if the Client does not (or not correctly or not within the time limit) respond to the request of the data subject.

§ 6 Verification possibilities

(1) The Contractor shall verify his compliance with the obligations laid down in this contract to the Client by suitable means.

(2) In the event that inspections on the part of the Client (or an auditor appointed by him) be necessary in individual cases, these shall be conducted during the usual business hours without disturbing operating procedures following notification taking an appropriate period of notice into account (appointment coordination). The Contractor can make said inspection dependent on the prior notification with an appropriate period of notice and on the signing of a confidentiality declaration in relation to the data of other customers and the technical and organisational measures established as well as – if appropriate – on the schedules on the part of the contracted provider. In the event that the Contractor should incur costs in so doing – particularly as a result of the necessary involvement of the provider contracted by him, then said costs shall be reimbursed by the Client to the amount verified.

(3) In the event of an inspection undertaken by a data protection supervisory body or other sovereign regulatory authority of the Client, then Section 2 shall apply mutatis mutandis as a matter of principle. A signing of a confidentiality declaration shall not be required if said authority is subject to a professional or legal confidentiality, in relation to which a violation is deemed to be criminal in accordance with the Criminal Code.

§ 7 Subcontractors

(1) Within the scope of his contractual obligations, the Contractor shall be authorised to establish further subcontractual relationships with subcontractors or to replace subcontractors. He shall promptly inform the Client thereof, whereby the Client shall have the possibility to object to such changes. The Contractor shall undertake to carefully select subcontractors based on their suitability and reliability. When enlisting the services of subcontractors, the Contractor shall bind them in accordance with the provisions of this agreement and thereby ensure that the Client is also able to directly exercise his rights resulting from this agreement vis-á-vis the subcontractors. Insofar as an involvement of subcontractors in a third country ensues, the Contractor shall ensure that an appropriate level of data protection is guaranteed with each subcontractor (e.g. by conclusion of an agreement based on EU standard data protection clauses). On request, the Contractor shall verify the conclusion of the aforementioned agreements with his subcontractors to the Client.

(2) A subcontractor relationship within the meaning of these provisions shall not be deemed to exist if the Contractor commissions third parties for services regarded as pure ancillary services.

These include postal, transport and forwarding services, cleaning services, telecommunications services with no specific reference to those services, which the Contractor provides for the Client, and security services. Maintenance and test services shall represent subcontractual relationships that are subject to approval, insofar as they are provided for IT systems, which are also used in relation to the provision of services for the Client.

(3) The hosting required within the framework of fulfilling the contractually agreed services will be conducted by the Hetzner Online GmbH, Industriestr. 25, 91710 Gunzenhausen.

§ 8 Liability and damages

Except where otherwise expressly agreed, any liability provision agreed between the parties in the Principal Contract shall also apply to the assignment processing.

§ 9 Information obligations, written form clause, choice of law

(1) In the event that the data of the Client should become endangered by distraint or seizure, by insolvency or composition proceedings or by other events or measures on the part of third parties when in the hands of the Contractor, then the Contractor shall promptly inform the Client. The Contractor shall promptly inform all responsible persons in this context that the sovereignty and ownership in relation to the data lies solely with the Client as the »responsible authority« within the meaning of the General Data Protection Regulation.

(2) Modifications and supplements to this contract and all of its components – including any assurances on the part of the Contractor – shall require a written agreement, which is also possible in an electronic format (text form), as well as the express reference that it is a modification or supplement to these conditions. This shall also apply to the waiver of this formal requirement.

(3) In the event of any contradictions, the provisions set forth in this data protection contract shall take precedence over provisions in the Principal Contract. If any parts of this Annex are ineffective, then this shall not affect the effectiveness of the remaining parts.

(4) German law shall be applicable.

(5) Contractual annexes are:

Annex 1:   Technical and organisational measures by the provider
Annex 2:   Certificate of the providers of the Contractor from the TÜV Rheinland
Annex 3:   Technical and organisational measures by the Contractor

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