**Agreement regarding contract data processing pursuant to Art. 28 GDPR (General Data Protection Regulation)**

between

**[CUSTOMER NAME]**

[Customer's address]

<Client>

And

ExaMesh GmbH

Reiterweg 2, 86972 Altenstadt

<Processor>

**Preamble**

This agreement specifies the data protection obligations of the contracting parties arising from the Ürocessor's processing of the contract data for the Client on the basis of the hosting contract concluded between the parties ('the main contract'). They are applicable to all contract data processing-related activities, by which the Processor´s employees or Processor commissioned third parties could come into contact with the Client´s personal data.

**Section 1 Subject of the order and specification of the contract content by instructions**

(1) The Processor processes personal data of the Client. The nature and purpose of this data processing, as well as the data subjects concerned of this data processing, including the data types concerned, are derived from Appendix 1 to this contract and from the main contract.

(2) The Client is entitled to give instructions to the Processor with regard to data processing. Instructions must in principle be given in text form. If instructions are given orally as an exception, they must be documented immediately by the Client in text form. The Processor and any person under the authority of the Processor who has access to personal data may process the data of the contract exclusively in accordance with the instructions of the Client, including the powers confered in this agreement, unless they are legally obliged to process them. The Processor must inform the Client immediately if he believes that an instruction violates data protection regulations.

**Section 2 Obligations of the Processor**

(1) The Processor shall, in his area of responsibility, design the internal organisation in such a way that it meets the requirements of data protection. It will take technical and organisational measures to adequately protect the data of the Client that meet the requirements of the General Data Protection Regulation (Article 32 GDPR).

(2) The Processor will only use employees who have familiarised them with the relevant provisions of data protection and shall be obliged to maintain confidentiality in an appropriate manner in the performance of the work (Art. 28 sec. 3 sentence 2 lit. b and Art. 29GDPR, Section 53 BDSG).

(3) The Processor has implemented the necessary technical and organisational measures before the commencement of the processing with regard to the actual execution of the contract. The Client is aware of these technical and organisational measures and is responsible for ensuring that they provide an adequate level of protection for the risks of the data to be processed.

(4) Technical and organisational measures are subject to technical progress and development. In this respect, the processor is permitted to implement alternative adequate measures. The level of safety of the measures laid down must not be lowered. Significant changes must be documented.

55) The Processor will assist the Client in fulfilling its obligation to respond to requests for the exercise of data protection rights of data subjects and will assist him in complying with his data protection obligations under Articles 32-36 of the General Data Protection Regulation and will provide him with all the necessary information to comply with the obligations laid down in Article 28 of the General Data Protection Regulation.

(6) The Processor shall inform the Client at any time on request about the person and contact details of the Processor's operational data protection officer.

**Section 3 Audits of the contracting authority and of supervisory authorities**

(1) Should audits of the technical organisational measures relating to the contractual data be required by the contracting entity in individual cases, these shall be carried out at the normal business hours without disruption of the operation after prior notification, taking into account a reasonable lead time.

(2) The Processor may make the execution of audits subject to the signing of a declaration of confidentiality with regard to the data of other customers and the technical and organisational measures put in place, unless the contracting authority entrusts an auditor obliged by law and/or professional confidentiality to carry out the inspection.

(3) If the examiner commissioned by the contracting authority is in a competitive relationship with the Processor, the Processor shall have a right of objection against the examiner.

(4) If a data protection supervisory authority or any other public supervisory authority of the Client wish to carry out a control of the data processing in the contract, the Processor will assist the Client in this regard. The preceding paragraphs apply accordingly.

**Section 4 Correction, restriction and deletion of data**

(1) The Processor may only delete the data processed on the order or restrict its processing if this is provided for in the main contract or in this contract for the processing of the contractual data or if the Client gives an appropriate instruction. Insofar as a data subject addresses the Processor directly with a request for deletion, the Processor shall immediately forward that request to the Client.

(2) After the end of this contract, the Processor will either delete or return all personal data at the discretion of the Client, unless there is an obligation to store the personal data under European or German data protection law.

(3) Copies or duplicates of the data shall not be issued without the knowledge of the Client. This does not apply to backup copies to the extent necessary to ensure proper data processing and data that is required to comply with legal retention obligations.

**§ 5 Subcontractors**

(1) Subcontracting relationships within the meaning of this section shall be those services which relate directly to the provision of the main service. This does not include ancillary services that the Processor uses, for example, as telecommunications services, postal/transport services, maintenance and user service or the disposal of data carriers, as well as other measures to ensure the confidentiality, availability, integrity and resilience of the hardware and software of data processing equipment. However, in order to ensure the data protection and data security of the Client´s data, the Processor is obliged to take appropriate and legally compliant contractual agreements as well as control measures, even in the case of outsourced ancillary services.

(2) The Processor may appoint subprocessors (other processors)if they are established within the European Union and the Processor has concluded a processor controller agreement with them.

**Section 6 Liability**

Liability is governed by Article 82 of the GDPR. The limitation of liability according to the main contract remains unaffected.

**Section 7 Compensation**

The remuneration of all work of the Processor is not part of this agreement but is governed by the main contract, unless otherwise specified below.

**Section 8 Term**  **and replacement of any pre-existing contracts for order data processing**

The agreement shall apply in this form from the date of signature and shall end with the full execution of the measures described in Appendix 1, without any need for termination by any of the parties or with the termination of the main contract.

**Section 9** **Final Provisions**

1. Amendments and additions to this agreement and all their components shall require written form or text form. This also applies to the renunciation of this formal requirement.

(2) German law applies. The UN Convention on Contracts for the International Sale of Goods (CISG) and German international private law shall not apply.

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Location, date name in block font and signature Client

\_\_\_\_\_\_\_\_\_\_\_, **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Location, date name in block font and signature Processor

**Appendix 1:** List of services commissioned (scope, nature, purpose of collection, processing, use of data, type of data, circle of data subjects)

|  |  |  |  |
| --- | --- | --- | --- |
| **Type of service** | **Type of processing** | **Datenarten** | **Circle of those affected** |
| Deploying instances to a server | The processing by the Processor is limited to the provision of the instances, which are managed exclusively by the Client. | (e.g. name, email address telephone number, occupation, income, portrait photos); to be supplemented by the Client | (e.g. Client´s employees; of Client´s customers); to be completed by Client. |