

anexia



DATA PROCESSING AGREEMENT
DPA-ART-28-GDPR

AGREEMENT ON CONTRACT DATA PROCESSING REGARDING TO ART 28 GDPR

between

ANEXIA Internetdienstleistungs GmbH
Feldkirchnerstraße 140
9020 Klagenfurt am Wörthersee
Austria
– hereinafter referred to as “Anexia” –
as “Contract Data Processor” pursuant to the GDPR

and

– hereinafter referred to as “Client” –
as “Responsible Party” pursuant to the GDPR

– together referred to as “Contracting Parties” or “Parties” –

PREAMBLE

This agreement serves to supplement and specify the contractual obligations of the Parties to data protection for all existing and future legally effective contracts, master level agreements, service level agreements, service descriptions, etc. (collectively referred to as “Contract” or “Contracts”) between the Client and Anexia. It applies to all activities that are related to the Contracts between the Client and Anexia and in which employees of Anexia or Anexia agents process personal data (hereinafter referred to as “Data”) by order of the Client as the Responsible Party. Furthermore, all provisions and terms of the General Data Protection Regulation (GDPR) apply to this document.

For the sake of clarity and readability of this document, all person-related notations apply to members of all genders.

1. Subject Matter, Location and Duration of Contract Data Processing

- 1.1. The Contracts between the Parties detail in each case the subject matter and duration of the Contract, the nature and purpose and location of the processing and the categories of Data processed and the categories of data subjects or they are indicated in the optional **ATTACHMENT 3** to this agreement. Under the GDPR, it is the responsibility of the Client as Responsible Party to keep a register of processing activities according to Art. 30 Para. 1 GDPR. This obligation will cease to exist if the exemption provided for in Article 30 Para. 5 GDPR applies to the Client. Notwithstanding the foregoing, it is incumbent on Anexia as contract data processor pursuant to Article 30 Para. 2 GDPR to maintain a list of all categories of processing activities carried out by order of the Responsible Party which are derived from the context of the Contracts.
- 1.2. The place of processing, taking into account Chapter V GDPR, is decided solely by the Client as the Responsible Party. The Client shall by contract or instruction instruct Anexia to conduct the processing either exclusively within the EU or the EEA or to do so in whole or in part under consideration also of the applicable legal bases of third countries or specific locations designated by the Client. Therefore, Anexia provides powerful server capacities for Anexia's Clients more than 100 data center locations worldwide.
- 1.3. The duration of the contract data processing is based on the duration of the Contracts between the Client and Anexia and the provisions agreed therein, provided that no further obligations arise from the provisions of this agreement or due to statutory provisions.

2. Area of Application and Responsibility

- 2.1. Anexia shall process Data by order of the Client. This comprises those activities specified in the Contracts. Within the framework of these Contracts, the Client is solely responsible for compliance with the statutory provisions on data protection ("Responsible Party" within the meaning of Art. 4 Para. 7 GDPR), in particular for the legality of the processing itself and the transfer of Data to Anexia as a contract data processor.
- 2.2. The instructions of the Client are set forth in the Contracts and can be changed, supplemented, or replaced (individual instructions) by the Client through written instruction (including electronic text form without requirement to sign) to Anexia. Instructions that are not included in the Contract will be treated as an application to modify the service. Any verbal instructions must be confirmed immediately in writing or in text form.

3. Obligations of Anexia as a Contract Data Processor

- 3.1. In the absence of an exceptional case within the meaning of Art. 28 Para. 3 (a) GDPR, Anexia undertakes to process Data and processing results only in the context of the order, as per the contract and the instructions of the Client. Anexia shall inform the Client immediately if it is of the opinion that an instruction breaches applicable legislation. Anexia may suspend implementation of this instruction until it is confirmed or modified by the Client.
- 3.2. Anexia has arranged the internal organization of its area of responsibility in such a way as to meet the particular requirements of data protection. Anexia shall implement technical and organizational measures to provide appropriate protection of the Client's Data in a manner that satisfies the requirements of Art. 32 GDPR. Anexia shall in the process particularly implement measures that permanently ensure the confidentiality, integrity, availability and capacity of the systems and services related to the processing. In regard to compliance with the agreed protective measures and their tested effectiveness, reference is made to the active certifications of the Quality Management System according to ISO 9001 and the Information Security Management System according to ISO 27001 of key parts of Anexia and granted by recognized, DAkkS-accredited audit and certification bodies whose certificates are sufficient for the Client as suitable guarantees regarding these standards. These certificates will be submitted to the Client upon request and are also published on the company homepage of Anexia.
- 3.3. Anexia reserves the right to change the security measures without prior notice if to do so does not threaten the contractually agreed level of protection and the measures do not contradict the GDPR. Such changes normally involve improvements to data security through the implementation of measures concerning information security, data protection, and quality management.
- 3.4. Anexia shall support the Client to the best of its ability in the latter's efforts to guarantee the rights of the data subjects pursuant to Chapter III GDPR. At the request of the Client, Anexia shall also support the Client in

complying with the latter's obligations as set out in Art. 32 to 36 GDPR, where Anexia is entitled to charge the Client for the expenses incurred after prior notification.

- 3.5.** Anexia shall notify the Client immediately if it becomes aware of breaches in the protection of the Client's Data. Anexia shall implement the measures required to safeguard the Data (in accordance with the Client's instruction) and to reduce potentially negative consequences for the data subjects and shall consult the Client about this without delay.
- 3.6.** Anexia is committed as a contract data processor to the security of the processing according to Art. 32 Para. 1 (a) through (c) GDPR, taking into account the feasibility thereof and in the context of valid contracts with the Client, and shall ensure in accordance with Article 32 Para. 1 (d) GDPR that a procedure is established for the regular review of the effectiveness of the technical and organisational measures. This process is guaranteed, among other things, by the successful certification of Anexia pursuant to ISO 9001 and ISO 27001. Details of the measures taken by Anexia under Art. 32 GDPR to ensure the security of the processing are given in **ATTACHMENT 1** to this agreement.
- 3.7.** Anexia shall correct or delete the Data covered by the Contract if the Client instructs Anexia to do so and if this falls within the framework of the instructions. If erasure in accordance with data protection regulations or a corresponding restriction of data processing is not possible, Anexia shall destroy the data carriers and other materials in response to an individual instruction by the Client in accordance with data protection regulations or, if nothing else been agreed in the Contract, return those data carriers to the Client. Anexia is entitled subject to prior notice to invoice the Client for costs incurred in the process. In specific cases to be defined by the Client, Data will be stored or transferred. Remuneration and protective measures to this end will be agreed separately, if such measures are not already agreed upon in the Contract.
- 3.8.** Data, data media as well as all other materials are to be either released or deleted/destroyed by Anexia upon termination of the Contract at the request of the Client. In the case of test and rejected/waste materials, an individual instruction concerning deletion is not required. If additional costs are incurred as a result of the Client's divergent specifications for the release or erasure of the Data, such costs are to be born by the Client.
- 3.9.** In the event of a claim by a data subject against the Client regarding any rights pursuant to Art. 82 GDPR, Anexia undertakes to support the Client to the best of its ability in the Client's defense against the claim.

4. Obligations of the Client as Responsible Party

- 4.1.** The Client is solely responsible for compliance with the statutory provisions on data protection, in particular for the legality of the processing itself and the transfer of Data to Anexia as a processor ("Responsible Party" within the meaning of Art. 4 Para. 7 GDPR).
- 4.2.** The Client must ensure that the processing of Data is carried out in accordance with the principles of Chapter II GDPR and that the technical and organizational measures taken by Anexia as a contract data processor satisfy the demands of the GDPR, taking into account the nature, scope, circumstances and purposes of the processing as well as the various probabilities of occurrence and severity of the risks to the rights and freedoms of natural persons. The Client is aware of the technical and organizational measures listed in **ATTACHMENT 1** to this Agreement and is responsible for ensuring that these measures as well as those measures set out in the Contracts provide a reasonable level of protection for the risks of the Data to be processed.
- 4.3.** The Client shall notify Anexia immediately and in full if it identifies faults or irregularities regarding data protection provision in the results of the order.
- 4.4.** In the event of a claim by a data subject against the Client regarding any rights pursuant to Art. 82 GDPR, Section 3.9 shall apply accordingly.

5. Data Protection Officer and contact information

- 5.1.** If the Client has any questions concerning general data protection, it may send an email at any time to the body set up for this express purpose at Anexia at data-protection@anexia-it.com. Irrespective of legal requirements, the Anexia Group has appointed a joint Data Protection Officer (DPO) to monitor compliance with data protection regulations at Anexia and to act as the primary contact for the Client for data protection issues during the execution of the Contract. The name and contact details of the current Data Protection Officer (DPO) of Anexia are always published on the company's homepage.

5.2. At the time of the conclusion of this agreement, the following person is the actual DPO of Anexia group:

First Name	Surname	E-Mail	Telephone
Wolfgang	Ertl	data-protection@anexia-it.com	+43-50-556-1200

5.3. The Client shall identify for Anexia one or more contacts for any data protection questions arising from any Contracts:

First name	Surname	Email	Telephone

6. Inquiries from Data Subjects

- 6.1. If a data subject contacts Anexia with demands pursuant to Chapter III GDPR (e.g. requesting correction, deletion or information), Anexia shall refer the data subject to the Client, insofar as it is possible to associate the data subject with the Client from the information provided. Anexia shall immediately forward the data subject's application to the Client. Anexia shall support the Client to the best of its ability and according to the instructions of the Client, unless otherwise agreed in the Contracts.
- 6.2. Anexia shall not be liable if the request of the data subject is not answered, not answered correctly or not answered promptly by the Client.

7. Verification Options

- 7.1. If necessary, Anexia shall use appropriate means to provide verification of compliance with the obligations set out in this agreement. These include:
 - Completion of periodical self-audits by Anexia within the ISO 9001 and ISO 27001 certifications
 - Certificate of information security: ISO 27001
 - Certificate of quality management: ISO 9001
 - Updated list of technical and organizational measures (**ATTACHMENT 1**)
- 7.2. If, in individual cases, audits by the Client or by an auditor appointed by the Client are necessary, these shall be carried out during the normal business hours of Anexia, without disruption to operations and with prior notification, including an appropriate lead time of at least two weeks. Anexia may make these audits dependent on prior notification with an appropriate lead time and on the signing of a confidentiality agreement regarding in-house information at Anexia, the Data of other customers of Anexia and the technical and organizational measures that are in place. If the auditor appointed by the Client is in a competitive relationship with Anexia, Anexia has the right to object to the appointment. The Client shall then agree to the appointment by Anexia of an independent external auditor, provided that Anexia provides a copy of the audit report.
- 7.3. The effort of an inspection to Anexia will in principle be limited to an one-person day per calendar year, unless otherwise stipulated in the Contracts. Anexia may demand remuneration for its support in the completion of further not regular or not event-driven inspections by arrangement with the Client.
- 7.4. Should a data protection supervisory authority or another supervisory authority with power over the Client carry out an audit, Section 7.2 will apply mutatis mutandis. It is not necessary to sign a confidentiality agreement if this supervisory authority is subject to a professional or statutory duty of confidentiality, a breach of which is punishable under the Criminal Code.

8. Additional Contract Data Processors

- 8.1. The Client shall grant its consent to the processing of the Data by affiliated companies of Anexia as additional contract data processors if this is necessary for the provision of services in accordance with existing Contracts. Anexia undertakes in the process to impose the same statutory and contractual data protection obligations on these additional contract data processors and has to this end established “Corporate Binding Rules” in the form of a framework agreement for contract data processing as a legally binding instrument, a corporate “Data Protection Policy” valid for all employees and affiliated persons as well as a “Data Protection Management System (DSMS)” within the Anexia Group. A list of these affiliates is given in **ATTACHMENT 2** and will be kept up-to-date by Anexia and published on the company's website.
- 8.2. The use of subcontractors as additional contract data processors is permitted only if the Client has consented in writing in advance. The regulation on subcontractors in offers or contracts between the Client and Anexia takes priority over this regulation and corresponds to such written consent of the Client.
- 8.3. A subcontractor relationship requiring consent will exist if Anexia appoints other contractors to carry out the whole service or part of the service agreed in the Contracts between the Client and Anexia, where these act as additional contract data processors and consent has not already been forthcoming from the Contracts between the Client and Anexia.
- 8.4. If Anexia issues orders to subcontractors following the Client's written consent, it is Anexia's responsibility to impose the same statutory and contractual data protection obligations to which Anexia is subject vis-à-vis the Client on these additional contract data processors.
- 8.5. A list of subcontractors appearing as additional subcontractors requiring approval is provided in **ATTACHMENT 2**.

9. Information Obligations, Written Form, Severability and Choice of Law

- 9.1. If the Client's Data held by Anexia is at risk of attachment or seizure, insolvency or settlement proceedings or other events or measures relating to third parties, Anexia shall notify the Client immediately. Anexia shall immediately inform all parties that the sovereignty and ownership of the Data lies exclusively with the Client as the Responsible Party within the meaning of the GDPR.
- 9.2. Alterations and amendments to this document and all of its component parts – including any commitments on the part of Anexia – must be agreed in writing, which can also include electronic format (text form with no signature requirement) and must contain an express reference to the fact that they constitute an alteration or amendment to this Agreement. This applies also to any waiver of this requirement of written form.
- 9.3. In the event of any contradictions, the provisions of this data protection document will take precedence over the provisions of the Contracts. Should individual parts of this document be or become ineffective, this will not affect the effectiveness of the rest of the document.
- 9.4. This agreement is governed by the law of Austria.

10. Liability and Compensation

The Client and Anexia are liable to data subjects under data protection law in accordance with the provisions of Art. 82 GDPR. Further liability and compensation regulations are to be agreed upon with overriding effect in the offers and Contracts between the Client and Anexia.

11. Confidentiality and Non-disclosure

Both Parties agree to maintain confidentiality in regard to the content of this agreement and shall not disclose said content. This does not apply to statutory disclosure requirements vis-à-vis authorities or in judicial or criminal proceedings or to persons and auditors who contractually commit to confidentiality vis-à-vis the Client and the contractor or are subject to a duty of confidentiality in accordance with Section 7.4.

Client

Anexia