anexia

DATA PROCESSING AGREEMENT
DPA-ART-28-GDPR

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AGREEMENT ON
CONTRACT DATA PROCESSING
REGARDING TO ART 28 GDPR

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between

ANEXIA Internetdienstleistungs GmbH
Feldkirchner Straße 140
9020 Klagenfurt
Austria
– hereinafter referred to as "Contractor" or "Anexia" –
as "processor" pursuant to Art 4 (8) GDPR

and

the client for a processing activity of personal data

– hereinafter referred to as "Client" –
as "controller" pursuant to Art 4 (7) GDPR

– together referred to as "Contracting Parties" or "Parties" –

PREAMBLE

This agreement serves to supplement and specify the obligations of the parties to data protection for all existing and future legally effective contracts, master level agreements, service level agreements, service descriptions, etc. (hereinafter collectively referred to as "contract" or "contracts") between client and contractor. It applies to all activities related to the contracts between client and contractor and in which contractors employees or persons commissioned by the contractor process personal data (hereinafter referred to as "Data") on behalf of the client as the data controller. Furthermore, all provisions and terms of the EU General Data Protection Regulation [Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC] (hereinafter referred to as the "GDPR") and, in addition, the national data protection laws applicable to the contracts.

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 as well as the categories and types of data and the categories of data subjects to this agreement. Under the GDPR, it is the responsibility of the Client as the controller to keep a record of processing activities according to Art 30 Par 1 GDPR. This obligation will cease to exist if the exemption provided for in Art 30 Par 5 GDPR applies to the Client. Notwithstanding the foregoing, it is incumbent on the contractor as processor pursuant to Art 30 Par 2 GDPR to maintain a record of all categories of processing activities carried out by order of the controller which also result from the context of the contracts.

1.2. The place of processing, considering Chapter V GDPR, is decided solely by the Client as the responsible. He shall instruct the contractor by contract or by means of an instruction to carry out the processing either exclusively within the EU or the EEA or to carry out the processing in part or in full, taking into account the applicable legal bases, also in third countries to be designated by the Client or at specific locations to be designated by the Client. Therefore, Anexia provides powerful server capacities for Anexia's Clients at around 100 data center locations worldwide.

1.3. The duration of processing is based on the duration of the contracts and the provisions agreed between the Client and the Contractor therein, provided that no further obligations arise from the provisions of this agreement or from legal provision.

2. Area of Application and Responsibility

2.1. The Contractor ("processor" according to Art 4 GDPR) processes data on behalf of the Client. This includes those activities which are specified in the contracts. The Client ("controller" according to Art 4 GDPR) is solely responsible within the scope of these contracts for compliance with the legal provisions on data protection, in particular for the lawfulness of the processing itself as well as for the data transfer to the Contractor as processor.

2.2. The Client's instructions are set out in the contracts and may be amended, supplemented or replaced by the Client in writing (including electronic text form) to the Contractor by individual instructions. Any verbal instructions must be confirmed immediately in writing in text form.

3. Obligations of the Contractor as Processor

3.1. The Contractor undertakes to process data and processing results only within the scope of the order in accordance with the contract and the Client's instructions, unless there is an exceptional case within the meaning of Art 28 Par 3 lit a GDPR. The Contractor shall inform the Client immediately if he believes that an instruction violates applicable laws. The Contractor may then suspend the implementation of this instruction until the Client refutes this or until the instruction has been modified in accordance with the law.

3.2. The Contractor commits itself to the security of the processing according to Art 32 Par 1 lit a to c GDPR as a processor under consideration of the feasibility within the framework of the valid contracts with the Client and guarantees according to Art 32 Par 1 lit d DSGVO to use a procedure to review the effectiveness of the technical and organizational measures on a regular basis. This procedure is guaranteed, among other things, by the successful, recurring certifications of Anexia according to ISO 9001 and ISO 27001 and is proven to the Client according to chapter 7. Details of the measures taken by the Contractor in accordance with Art 32 GDPR to ensure the security of processing are given in **ANNEX 1**.

3.3. The Contractor reserves the right to change the security measures taken without separate notification if the contractually agreed level of protection is not undercut as a result and they do not contradict the GDPR. In the standard case, these are improvements in data security through measures in terms of its Information Security, Data Protection and Quality Management.

3.4. Within his area of responsibility, the Contractor has designed the internal organization in such a way that it meets the special requirements of data protection. Anexia takes technical and organizational measures for the appropriate protection of the data of the Client, which meet the requirements of Art 32 GDPR. Anexia especially takes measures to ensure the confidentiality, integrity, availability and resilience of the systems and services in connection with the processing in the longterm. For the compliance with the agreed protective measures and their proven 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 the Anexia group of companies by recognized, DAkkS-accredited audit and certification bodies, whose certificates are sufficient for the client as proof of suitable guarantees regarding these standards. These certificates will be submitted to the client on request and are also published on the Anexia corporate homepage.

3.5. The Contractor warrants that the employees involved in the processing of the Contractor's data and other persons working for the Contractor are prohibited by obligation to process the data without authorization (data secrecy in accordance with § 6 DSG as well as § 53 BDSG). This obligation shall continue to apply even after the termination of employment with the Contractor and after the termination of the contractual relationship.

3.6. The Contractor supports the Client within the scope of his possibilities in fulfilling the rights of data subjects according to Chapter III GDPR. In addition, the Contractor supports the Client in complying with the Client's obligations set out in Art 32 to 36 GDPR within the scope of technical and organizational feasibility, insofar as this is not otherwise regulated in the contracts with the Client.

3.7. The Contractor informs the Client without delay if he becomes aware of violations of the protection of the Client's data. In such cases, the Contractor takes the necessary measures to secure the data (in accordance with the Client's instructions) in order to reduce possible negative consequences for the data subjects and coordinates this with the Client without delay.

3.8. The Contractor corrects or deletes the relevant contractual data if the Client instructs him to do so and this is covered by the scope of the instructions. If a data protection compliant deletion or a corresponding restriction of data processing is not possible, the Contractor undertakes the data protection compliant destruction of any data carriers and other materials concerned on the basis of an individual instruction by the Client or returns these data carriers to the Client, unless otherwise agreed in the contract. In special cases to be determined by the Client, storage or transfer to third parties determined by the Client shall take place, whereby remuneration and protective measures in this regard shall be agreed separately, unless already covered by the contracts.

3.9. Data, data carriers as well as all other materials will be either handed over or deleted by the Contractor after the end of the contract at the Client's request in accordance with clause 3.8. In the case of test and reject materials, individual instructions for deletion are not required. If additional costs are incurred due to specifications for the handover or deletion of the data which deviate from these, are not customary in the market and do not result from applicable data protection law or from the contracts, these shall be borne by the Client.

3.10. In the case of a claim against the Client by a data subject in accordance with Art 82 GDPR, the Contractor undertakes to provide the Client with the best possible support in defending the claim within the scope of his possibilities.

4. Obligations of the Client as Controller

4.1. The Client, as the controller, ensures that the processing is carried out in accordance with the principles set out in Chapter II GDPR and that the technical and organizational measures taken by the Contractor as the processor (**ANNEX 1**) and any additional measures specified in the contracts offer an appropriate level of protection, taking into account the nature, scope, context and purposes of the processing as well as the varying likelihood and severity of risks to the rights and freedoms of natural persons.

4.2. The Client must inform the Contractor immediately and completely if he notices errors or deviations in the processing results regarding data protection regulations.

4.3. In the case of a claim against the Client by a data subject regarding any claims according to Art 82 GDPR, clause 3.10 shall apply analogously.

5. Data Protection Officer and Contacts

5.1. General data protection questions of the Client can be raised at any time at the explicitly established position at Anexia via e-mail to data-protection@anexia-it.com. Independent of legal requirements, the Anexia group of

companies has appointed a Group Data Protection Officer (DPO), who supervises the compliance with data protection regulations at Anexia and acts as the main contact person for the Client regarding data protection issues in the course of the contract fulfillment. The name and contact details of the Group DPO are published on the Anexia company homepage.

5.2. The Client shall name one or more contact persons to the Contractor for all data protection issues arising within the scope of the contracts including the present agreement.

6. Requests of Data Subjects

6.1. If a data subject approaches the Contractor with requests pursuant to Chapter III of the GDPR (e.g. rectification, erasure or information), the Contractor shall refer the data subject to the Client, provided that an assignment to the Client is possible according to the data subject. The Contractor shall forward the data subject's request to the Client without delay. The Contractor shall support the Client in fulfilling data subject requests within the scope of its possibilities and on the instructions of the Client, unless otherwise agreed in the contracts.

6.2. The Contractor is not liable if the request of the data subject is not answered, not answered correctly or not answered in time by the Client.

7. Verification Options and Inspection Rights

7.1. The Contractor shall, if required by the Client, provide evidence of compliance with the obligations set forth in this agreement by appropriate means. This evidence shall be provided in accordance with Anexia's requirements in agreement with the Client and may include, but is not limited to:

- Certificate for Information Security Management System (ISMS) according to ISO 27001
- Certificate for Quality Management System (QMS) according to ISO 9001
- Data Protection Certifications or Data Protection Seals of approval, if available
- Updated list of Technical and Organizational Measures (TOM) (**ANNEX 1**)
- Data Protection-relevant internal audit reports for extended requirements, if available

7.2. The Client herewith declares that the valid ISO 27001 certification of Anexia by independent DAkkS-accredited testing and certification authorities as well as any existing data protection certifications are in principle sufficient for the purposes of its control and inspection rights. Furthermore, if the Client or an auditor commissioned by the Client requires inspections not related to specific events, the Client shall have the option, after giving notice and taking into account a reasonable lead time of at least four weeks, to participate in periodic tours of selected operating and data center locations of the Contractor in order to convince itself of the implementation of the technical and organizational security measures on site. Due to the high degree of standardization of the infrastructures and data center locations, among other things through so-called WWC blueprints (location, infrastructure, network blueprints), Anexia guarantees uniformly high security, data protection and basic protection standards for its systems and services worldwide.

7.3. The Contractor may make both event-related and non-event-related inspections dependent on prior notification in accordance with clause 7.2 and on the signing of a Non-Disclosure Agreement (NDA) with regard to the Contractor's internal company information, the data of other customers of the Contractor and the technical and organizational measures put in place. If the auditor commissioned by the Client is in a competitive relationship with Anexia, the Contractor shall have a right of veto against such auditor. The Client shall then agree to the appointment of an independent external auditor by the Contractor, whose audit report and results shall be made available to the Client.

7.4. The expenses of a non-occasional routine inspection according to clause 7.2 by the Client shall in principle be limited to one date per calendar year, unless otherwise provided for in the contracts. For the support in the performance of additional, non-occasional inspections, an appropriate remuneration shall be agreed between the Parties. In this context, any further rights mandatorily provided for in the GDPR shall be deemed agreed and shall take precedence in the event of contradictions with the provisions under chapter 7.

7.5. Should a data protection supervisory authority or any other sovereign supervisory authority of the Client carry out a non-occasional inspection, it shall not be necessary to sign a confidentiality and non-disclosure agreement

pursuant to clause 7.3 if such supervisory authority is already subject to a professional or statutory duty of confidentiality where a violation is liable to prosecution under the applicable national criminal code.

8. Other Processors

8.1. The Client hereby gives its consent to the processing of the data by the companies specifically defined in **ANNEX 2** (list of affiliated companies of the Anexia group of companies) as other processors, insofar as this is necessary for the services to be provided in accordance with the contracts. In this context, the Contractor undertakes to fully transfer the legal and all contractual data protection obligations to these other processors within the group of companies. For this purpose, Anexia has established "Corporate Binding Rules" in the form of a framework agreement on data protection and order processing as a binding written contractual legal act, a group-wide data protection guideline that is binding for all employees and commissioned persons, as well as a Data Protection Management System (DPMS).

8.2. The use of subcontractors or sub-service providers as other processors is only permitted if the Client has given its prior written consent. The provision on subcontractors in offers or contracts between the Client and the Contractor shall have priority over this provision and shall represent such written consent of the Client.

8.3. In addition to the specific determination of affiliated companies of the Anexia group of companies pursuant to clause 8.1, all subcontractors subject to approval who act as other processors for the Client are also listed in **ANNEX 2** and are deemed to have been approved in writing by the conclusion of the present agreement.

8.4. A subcontractor relationship as other processor pursuant to clause 8.2 exists if the Contractor commissions other companies to perform all or part of the service agreed in the contracts between the Client and the Contractor and the core activity consists of the processing of personal data of the Client as controller. A subcontractor relationship that is not subject to approval is the mere provision of subordinate ancillary services where the core activity is not the commissioned processing of personal data (e.g. pure provision of infrastructure, telecommunications, postal or cleaning services, physical security or guard services).

8.5. If the Contractor places orders with other processors after having received the Client's written consent, the Contractor shall be obligated to fully transfer all legal and contractual data protection obligations to which it is subject to the Client to these other processors.

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

9.1. Should the Client's data at the Contractor be endangered by attachment or seizure, by insolvency or settlement proceedings or by other events or measures of third parties, the Contractor shall immediately inform the Client thereof. The Contractor shall immediately inform all parties acting in this context 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. Amendments and supplements to this Agreement and all its components must be agreed in writing and must expressly state that they are an amendment or supplement to this Agreement. This shall also apply to any waiver of this written form requirement.

9.3. In the event of any contradictions under data protection law, the provisions of this agreement on data protection shall 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 the Contractor shall be liable to data subjects under data protection law in accordance with the provision set out in Art 82 GDPR. Any liability and compensation provisions that do not comply with data protection law or go

beyond this or individual provisions shall be agreed exclusively in the offers and contracts between the Client and the Contractor.

11. Confidentiality and Non-disclosure

Both parties agree to maintain confidentiality and non-disclosure with regard to this agreement. This does not apply to statutory disclosure obligations to authorities, in court or criminal proceedings as well as contractual obligations to persons and auditors of both the Client and the Contractor who undertake to maintain confidentiality in relation to the Client or the Contractor or who are subject to a non-disclosure obligation pursuant to clause 7.5 and, finally, to other order processors and affiliated companies for which the present provisions constitute an integral part within the scope of their performance of activities.

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ANEXIA Internetdienstleistungs GmbH

ATTACHMENTS

☒ ANNEX 1 – Technical and Organizational Measures (TOM)
☒ ANNEX 2 – Other Processors