

# DATA PROCESSING AGREEMENT

This Data Processing Agreement forms an integral part of the contract for the provision of Aythen's Services entered into between the Client and Aythen ("**Contract**") and governs instances when Aythen processes Personal Data on the Client's behalf as a Data Processor within the meaning of the GDPR.

For the purposes of carrying out and performing the Contract, Personal Data within the meaning of (EU) Regulation 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 ("**GDPR**") may be communicated to and/or accessed by Aythen.

The purpose of this Data Processing Agreement is to define the conditions under which Aythen undertakes, for the sole purpose of performing the Contract, to carry out, on the Client's behalf and solely for the duration of the Contract, the Personal Data Processing operations. The Parties undertake henceforth to comply with the Data Protection Regulations.

This Agreement is applicable to the services that are the subject of the Contract for which the Client acts as the data controller and Aythen acts as the data processor, within the meaning of the GDPR, in relation to the Personal Data.

The Client has assured itself, based on the information provided by Aythen and on other information at its disposal, that Aythen offers sufficient guarantees, particularly in terms of experience, resources, capacities and reliability, to implement the necessary technical and organisational measures for the Processing of Personal Data specified in the Contract to be carried out in accordance with the Data Protection Regulations.

## Article 1 - Definitions

In addition to the terms and expressions defined in this Data Processing Agreement ("**Data Processing Agreement**"), the terms and expressions "**International Organisation**", "**Data Protection Officer**" and "**Personal Data Breach**" have the same meaning as that given to them in the GDPR. Moreover, the following terms and expressions have the meaning indicated below, whether they are used in the singular or the plural:

**"Personal Data"** means any information relating to a natural person who is or can be identified, directly or indirectly, particularly by reference to an identifier, such as a name, an identification number, location data or one or more particular items of information specific to

his/her physical, physiological, genetic, mental, economic, cultural or social identity which may be communicated or made available as part of the carrying out and the performance of the Contract;

**"Security measures"** means the security measures prescribed by the Data Protection Regulations and any other obligation prescribed by said Regulations in order to guarantee the security and the confidentiality of the Personal Data, including the activities that have to be performed in the event of a Personal Data Breach, particularly in order to prevent or reduce the harmful effects of the Personal Data Breach on the Data Subjects;

**"Employee"** means the salaried employees, commissioned persons or any other natural person authorised to perform operations for the Processing of Personal Data communicated or made available by Aythen and/or any Sub-Processors that it may have;

**"Data Subject"** means, in accordance with the GDPR, the identified or identifiable natural persons to which the Personal Data relates;

**"Data Protection Regulations"** means the GDPR, French Law no. 78-17 of 6 January 1978 on Data Protection and Civil Liberties and its subsequent amendments ("**Data Protection and Civil Liberties Law**"), Directive 2002/58/EC of the European Parliament and of the Council concerning the processing of personal data and the protection of privacy in the electronic communications sector of 12 July 2002, and all of the legislative provisions, regulations, guidelines, opinions, certifications, approvals, recommendations or final legal decisions relating to the protection of personal data applicable to the Processing of Personal Data, already in force or which will come into force during the period of this Data Processing Agreement, and of any other competent authority. Should there be a contradiction between the Data Protection and Civil Liberties Law, the GDPR and/or the measures adopted by the competent authorities in their implementation, the provisions of the GDPR and the measures adopted for its implementation shall take precedence.

**"Processing"** means the processing of Personal Data within the meaning of the GDPR, entrusted to Aythen as part of the Contract and described in this Data Processing Agreement.

## **Article 2 - Processing that is the subject of the Data Processing**

**2.1** The Processing carried out by Aythen for the purposes of this Data Processing Agreement will relate only to the types of Personal Data and the categories of Data Subjects defined by the Client and for which it is responsible.

**2.2** It is made clear that the Data Processor's Services do not allow for the processing of personal health data in accordance with the certification required by law (Articles L.1111-8 et seq. of the French Public Health Code). Consequently, the Client undertakes not to process any personal health data via the Data Processor's services.

**2.3** The Client undertakes to provide the Data Processor with the data mentioned in this Data Processing Agreement for the purposes of performing the Contract and to document in writing any instruction concerning the Processing of Personal Data by the Data Processor.

**2.4** Aythen undertakes to guarantee the confidentiality of the Personal Data and that all Employees and Sub-Processors authorised to process the Personal Data in accordance with this Data Processing Agreement will respect the confidentiality of the Personal Data. The obligation of confidentiality regarding Personal Data shall remain in effect for five years from the expiry of the Contract.

## **Article 3 - Nature, purposes and terms and conditions of the Processing**

**3.1** Aythen, as Data Processor, undertakes, at its expense, to:

- a) process the Personal Data for the purpose of performing the Contract within the limits and according to the terms and conditions stipulated therein, in this Data Processing Agreement and in the Data Protection Regulations;
- b) comply with the written instructions communicated by the Client and to inform the Client if it considers that an instruction infringes the Data Processing Regulations or, more generally, the applicable legislation;

- c) process the Personal Data that is strictly necessary to perform the Contract or to comply with legal obligations;
- d) process the Personal Data legally and in accordance with the Contract, this Data Processing Agreement and the requirements laid down by the Data Protection Regulations;
- e) notify the Client, as far as possible, of any requirements for amending, updating, correcting or deleting Personal Data and to undertake to update, amend, correct or delete Personal Data at the Client's request;
- f) assist the Client and cooperate with it in the event of a request made by the competent authorities or Data Subjects and in order to comply with the obligations arising from the Data Protection Regulations;
- g) make available to the Client all information in its possession, needed to demonstrate, as part of the performance of the Contract, that said

performance complies with the obligations stated in the Data Protection Regulations.

## **Article 4 - Register of the activities relating to the Processing**

**4.1** Aythen undertakes to keep a register concerning all categories of activities relating to the Processing of Personal Data carried out on the Client's behalf. This will include:

- a) the name and contact details of Aythen and its Sub-Processors, those of the Client and, where applicable, those of the Client's and Aythen's Data Protection Officers;
- b) the categories of Processing carried out on the Client's behalf;
- c) where applicable, the transfers of Personal Data to a third country or to an International Organisation and, in the cases of transfers mentioned in Article 49, sub-section 1, second paragraph of the GDPR, the documents

vouching for the existence of the appropriate safeguards required by Article 49 of the GDPR; and

- d) a general description of the technical and organisational security measures mentioned in Article 32, sub-section 1 of the GDPR. These security measures are also stated in Aythen's Information Systems Security Policy (ISSP), available on its website.

**4.2** Aythen undertakes to provide the Client, as quickly as possible, with a copy of the register mentioned in clause 4.1 at the Client's and/or the competent authorities' request.

**4.3** Aythen undertakes to provide the Client with all information relating to the Processing of Personal Data concerning it, as part of the performance of the Contract, which it reasonably needs in order to be able to draw up its own register of activities relating to the processing mentioned in Article 30, sub-section 1 of the GDPR.

## **Article 5 - Obligations of the Client acting as Data Controller**

**5.1** The Client is solely responsible for the Personal Data and the content thereof that goes through the Data Processor's Services. The Data Processor cannot carry out any check of the content of the data and cannot be liable for their possible illegal or illicit nature and the Client expressly acknowledges this.

**5.2** The Client shall be solely and entirely responsible, as Data Controller, for any collection, processing, passing on, dissemination or representation of information or data it performs via the Services and such activities shall be done in strict compliance with the applicable Data Protection Regulations.

**5.3** The Client undertakes in particular:

- a) to provide the necessary information to the Data Subjects involved in the processing operations at the time that the data is collected;
- b) to provide the Data Processor with the instructions for processing the Personal Data;
- c) to keep a register of the processing activities mentioning the Data Processor for the relevant processing activities;

- d) to carry out, or have carried out under its responsibility, impact analyses and, where applicable, to consult the competent supervisory authority when the proposed processing will be likely to pose a high risk for the rights and liberties of the data subjects;
- e) to set the retention period and the terms and conditions for storing and deleting the Personal Data processed;
- f) to determine and comply with the technical and organisational measures relating to the protection, security and confidentiality of the Personal Data processed, to put in place an internal procedure for identifying and processing Personal Data breaches requiring notification to the competent supervisory authority and/or the data subjects;
- g) not to process health data as part of the performance of the Contract.

## **Article 6 - Obligations relating to the Employees**

**6.1** Aythen undertakes to ensure that the Employees have access solely to the Personal Data which is strictly necessary for the performance of the Contract or in order to fulfil its legal obligations and that they exclusively Process such Personal Data, in all cases, within the limits and in accordance with the terms of this Data Processing Agreement, the Contract and the Data Protection Regulations.

**6.2** Aythen also undertakes to authorise the Processing of Personal Data only by Employees who:

- a) because of their experience, their abilities and their training are suitable for guaranteeing compliance with the Data Protection Regulations and who have to access such Data in order to perform the Contract;
- b) have to comply with the strict obligations of confidentiality during the Processing of Personal Data, it being specified that Aythen will ensure such Employees comply with the instructions received and the obligations incumbent on them.

**6.3** Aythen undertakes, within the scope of the services, to establish physical, technical and organisational measures intended to ensure that:

- a) each Employee can have access solely to the Personal Data that might be subject to Processing depending on the authorisation which that Employee has;
- b) any Processing of Personal Data constituting a breach of this Data Processing Agreement, the Contract and/or Data Protection Regulations should be identified and reported to the Client without delay, including in accordance with the procedure and within the time frames mentioned in Article 8 in the event of a Personal Data Breach; and
- c) on the extinguishment of the Contract or of the assignment entrusted to the Employee, the Employee shall immediately cease the Processing of Personal Data, in accordance with the legal constraints incumbent on him/her.

## Article 7 - Sub-Processors

**7.1** The Client grants the Data Processor a general authorisation to subcontract part of its obligations under this Agreement to another data processor. Aythen may only use another data processor ("**Sub-Processor**") to carry out specific Processing activities.

**7.2** Should Aythen use a Sub-Processor, Aythen shall ensure that each Sub- Processor has appropriate guarantees in accordance with the Data Protection Regulations with regard to the technical and organisational measures adopted for the Processing of Personal Data and shall ensure that each Sub-Processor ceases the Processing of Personal Data immediately if such guarantees should be lacking. If a Sub-Processor does not meet its obligations regarding Personal Data protection, Aythen remains fully responsible to the Client for the fulfilment by the Sub-Processor of its obligations.

**7.3** Aythen shall ensure that each Sub-Processor is subject to appropriate obligations of confidentiality and that it undertakes to comply with the obligations of this Data Processing

Agreement on behalf of and in accordance with the instructions of the Client, through a written agreement that has similar content to that of the Data Processing Agreement.

## **Article 8 - Security measures**

**8.1** Aythen undertakes to implement Security Measures in accordance with the provisions of the Data Protection Regulations;

**8.2** More particularly, Aythen undertakes to:

- a) implement all of the technical and organisational measures described in its Information Systems Security Policy (ISSP), available on its website;
- b) send information, at the Client's request, relating in particular to the physical, organisational and technical measures implemented in respect of the Services for the Processing of Personal Data by Aythen and any of its own Sub-Processors, as well as, as far as reasonably possible, any other additional information that may be requested by the Client in relation to the physical, organisational and technical measures implemented in relation to the Processing of Personal Data.

## **Article 9 - Personal Data Breach**

**9.1** In the event of a Personal Data Breach, incidents that might compromise the security of the Personal Data (for example: loss of, damage to or destruction of the Personal Data, regardless of the medium or format thereof (hard copy, electronic or other), unauthorised third-party access to the Personal Data or any other Personal Data Breach), including Personal Data Breaches arising from the behaviour of any Sub-Processors and/or Employees of Aythen, Aythen:

- a) shall inform the Client of such breach, as quickly as possible after having become aware of it, by means of a written notification sent to the Client, and provide it with the relevant information to enable it, as the party responsible for this obligation of notification, to notify said breach to the competent supervisory authority, when necessary; and
- b) in conjunction with the Client, shall immediately and, in any case, without any unjustified delay, implement any measure that may be necessary to minimise the risks of any sort to the Personal Data and to mitigate the



possible harmful effects of such breach and to contribute, within the limit of the scope of the services, to the identification of the cause thereof.

**9.2** Aythen undertakes to keep a register listing the Personal Data Breaches relating to the Personal Data that is the subject of this Data Processing Agreement, the circumstances associated therewith, their consequences and the measures implemented in order to rectify them as well as any breach committed with regard to this Data Processing Agreement.

## **Article 10 - Rights of the Data Subjects**

**10.1** Aythen undertakes to cooperate with the Client to a reasonable extent to guarantee, within the time frames and in accordance with the terms and conditions set by law, that requests from the Data Subjects to exercise the rights stipulated by the Data Protection Regulations are satisfied, and more generally, to guarantee full compliance with the Data Protection Regulations. In this regard, Aythen undertakes to inform the Client of any requests submitted by Data Subjects to exercise such rights.

**10.2** Aythen shall make mechanisms available to the Client to exercise its GDPR rights via its Management Console and also by email to the contact addresses mentioned in the Preamble.

## **Article 11 - Communication and transfer of Personal Data**

**11.1** Aythen undertakes, in respect of the Processing that is the subject of this Data Processing Agreement,

- a) not to disseminate or communicate the Personal Data to third parties, including any Sub-Processors, unless the Data Processing Regulations or the Contract expressly provides for it or the Client authorises it in writing; and
- b) not to send, disseminate or store Personal Data in a country outside the European Union without the Client's express prior agreement. If Aythen is obliged to transfer Personal Data to a third country or to an international organisation, in accordance with Union law or the law of the member State to which it is subject, it must notify the Client of this prior to the processing and prove the mandatory nature of such obligation, unless the relevant law prohibits such notification on important public interest grounds.

- c) in the event of a transfer of personal data outside the European Union or to a country not having the benefit of an adequacy decision, to:
  - sign the Standard Contractual Clauses in accordance with the Data Protection Regulations;
  - take all technical and organisational measures needed to guarantee the protection and the confidentiality of the information sent in accordance with the Data Protection Regulations.

## **Article 12 - Audit**

**12.1** Aythen undertakes to provide the Client, at its request, with any document reasonably required to ensure that Aythen is complying with the obligations arising out of this Data Processing Agreement.

**12.2** Aythen acknowledges that the Client may, subject to notifying it in writing 15 days beforehand, at its expense and no more than once a year, have an audit carried out by a trusted third party, acknowledged as an independent auditor of the Parties and appointed by Aythen, to assess the organisational, technical and security measures implemented by Aythen in respect of the Personal Data Processing for the carrying out of the services only, at the conditions which will be defined by Aythen and the Client and within the limit of maintaining the Services and guaranteeing the confidentiality and security of Aythen's other clients.

## **Article 13 - End of the Contract**

At the end of the Contract for any reason whatsoever, Aythen shall ensure that it ceases any Personal Data Processing immediately and that it deletes the Personal Data as well as any copies thereof, unless it is required by the applicable legislation to retain the Personal Data, in which case, such retention must be done solely within the limits strictly provided for in the legislation. It is therefore the Client's responsibility, within the scope of the Services, to ensure the retention of its Personal Data prior to the end of the Contract.

# Article 14 – Miscellaneous provisions

**14.1** This Data Processing Agreement is governed by French law. The courts under the aegis of the Paris Court of Appeal have exclusive jurisdiction to hear any dispute arising out of this Data Processing Agreement or relating to it.

**14.2** Any amendment to this Data Processing Agreement shall only be valid if it is issued in writing and signed by the authorised representatives of the Data Controller and the Data Processor.

**14.3** This Data Processing Agreement cannot be transferred to third parties without the Data Controller's prior written agreement.

**14.4** In the event of a contradiction between this Data Processing Agreement and the other provisions of the Contract, this Data Processing Agreement shall take precedence in respect of issues affecting the Processing of Personal Data.

*Contact:*

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