

WE RECOMMEND



# Annex 7: Agreement on Contract Data Processing

Uwe

© YOOCHOOSE GmbH

24.03.2010

The Recommender Engine facilitates the output of personalized recommendations for Internet application users. To calculate these recommendations, user profiles must be generated. In doing so, the Recommender Engine collects data on the user's actions during usage in the Internet application and links them with information on his or her context (e.g. end device, Internet browser). The user profiles are employed as the basis for recommendations to the user and for a design of the Internet applications that is oriented on the user's interests.

In accordance with the contract between YOOCHOOSE and the customer of November 13, 2009 ("**ASP Agreement**"), YOOCHOOSE operates the Recommender Engine for the customer by means of ASP operation. Identification of individual users or end devices that access the customer's Internet application is made through anonymous identifiers.

Based on appropriate technical measures, YOOCHOOSE and the customer ensure that YOOCHOOSE will be unable from a technical standpoint to assign these identifiers to a specific person. As a result, YOOCHOOSE and the customer jointly assume that operation of the Recommender Engine by YOOCHOOSE will not result in the processing of personal information of the users by YOOCHOOSE in terms of data privacy law.

Due to the restrictive attitudes some supervisory authorities have regarding pseudonym data (e.g. IP addresses), the contractual parties nonetheless conclude this agreement regarding contract data processing and agree to treat the data exchanged and processed during operation of the Recommender Engine in such a manner as if they were person-related data within the meaning of Section 3 para. 1 of the German Federal Data Protection Act (BDSG) and to fulfill the resulting obligations.

## 1 Contract data processing

- 1.1 YOOCHOOSE processes the customer's data (comp. Section 3.1) on behalf of the customer to meet its contractual obligations pursuant to the ASP Agreement.
- 1.2 If, in rendering contractual services (comp. Section 3.2), YOOCHOOSE collects, processes, uses or demands access to the customer's data, YOOCHOOSE works on the customer's behalf within the meaning of Section 11 of the German Federal Data Protection Act (BDSG). The customer is the responsible entity pursuant to Section 3 para. 7 of the German Federal Data Protection Act (BDSG) and therefore solely responsible for the legality of data processing, specifically compliance with legal permissions or existence of the customer's proper consent.

## 2 Contract term

The duration of the contract corresponds to the term of the ASP Agreement.

## 3 Data processing; data; affected parties

- 3.1 As part of the contractual services (Section 3.2), YOOCHOOSE processes the following data:
  - a. Pseudonymized user identification;
  - b. Information on content accessed, rated or read by the user, services used by the user, accessed content and entered information, including the corresponding usage frequency.

- 3.2 During the implementation of the services described in the ASP Agreement (“contract data processing”), YOOCHOOSE processes and uses the customer’s data. Contract data processing includes
- a. Transmission of the customer’s data to YOOCHOOSE via a predefined tracking interface as well as via an interface to the customer’s content management system;
  - b. Calculation of recommendations through the Recommender Engine;
  - c. Transmission of recommendations to the customer via a predefined recommendation interface.

## 4 Instructions by the customer

- 4.1 YOOCHOOSE may only collect, process and use the customer’s data within the scope of the customer’s instructions. The customer reserves the right to comprehensive instruction regarding the type, extent and method of contract data processing, which the customer can specify in greater detail at any time based on individual instructions.
- 4.2 If YOOCHOOSE believes that an instruction by the customer violates the German Federal Data Protection Act or another data privacy regulation, YOOCHOOSE will immediately advise the customer of this fact in writing. YOOCHOOSE is entitled to refuse the execution of instructions that are in violation of data privacy law.

## 5 Transmission of customer data to other countries

Processing and usage of the customer’s data will only occur in member states of the European Union or in another state which is a party to the Agreement on the European Economic Area. Any transfer to a third country requires prior written consent by the customer and may only occur, if the special prerequisites in Sections 4b and 4c of the German Federal Data Protection Act are met.

## 6 Technical and organizational measures

- 6.1 YOOCHOOSE is obligated to implement and comply with the technical and organizational measures pursuant to Section 9 of the German Federal Data Protection Act (BDSG) and the Appendix 9 of the German Federal Data Protection Act (BDSG).
- 6.2 Prior to the start of contract data processing, YOOCHOOSE will submit in writing to the customer the specific plans for the implementation and compliance with the technical and organizational measures in terms of contract implementation, including the controls to be performed by YOOCHOOSE with regard to the legality of data processing and compliance with the technical and organizational measures, and will present these to the customer for inspection (“**data security concept**”). The customer can verify the correctness and plausibility of the data security concept in accordance with Section 9.
- 6.3 If this verification in accordance with Section 6.2 reveals that YOOCHOOSE’s specifications are incorrect, incompletely implemented or irreconcilable with the relevant data privacy regulations or this agreement on data privacy, the customer can demand correction of the defect within an appropriate time period.

- 6.4 If the verification in accordance with Section 6.2 results in no objections, the customer shall confirm YOOCHOOSE's data security concept in writing. With this written confirmation, the data security concept will become binding for both contractual parties and part of this agreement on data privacy.
- 6.5 YOOCHOOSE is entitled and obligated to further develop the technical and organizational measures described in this data security concept in accordance with technological progress. If applicable, YOOCHOOSE will submit the corresponding proposals to the customer. These proposals shall become binding when the customer confirms them in writing. Sections 6.2 to 6.4 apply accordingly.

## 7 Reporting requirements

YOOCHOOSE is obligated to provide the customer with the information pursuant to Section 4 g para. 1 clause 1 of the German Federal Data Protection Act (BDSG) upon request.

## 8 Correction, blocking and deletion of the customer's data

YOOCHOOSE may only correct, delete or block the customer's data upon instruction by the customer. Based on an instruction by the customer, YOOCHOOSE is obligated to perform the corresponding correction, deletion or blocking. If an affected party directly contacts YOOCHOOSE for the purpose of correction or deletion of his or her data, YOOCHOOSE will immediately forward this request to the customer.

## 9 Monitoring rights of the customer

- 9.1 The customer is entitled to perform the order monitoring provided in No. 6 of the Appendix to Section 9 of the German Federal Data Protection Act (BDSG) or have it performed by controllers to be designated in individual cases. In agreement with YOOCHOOSE, the customer may make accompanied visits to the premises of YOOCHOOSE during normal business hours for random checks on the company's compliance with data privacy regulations and this agreement on contract data processing.
- 9.2 If technical and organizational measures do not pertain to the specific order implementation, the contractual parties can replace monitoring pursuant to Section 9.1 by YOOCHOOSE submitting to the customer current certificates, reports or report extracts by independent entities (e.g. auditors, data privacy officers, IT security department, data privacy auditors, quality auditors) or appropriate certification through IT security or data privacy audits (e.g. according to IT-Grundschutz (IT Baseline Protection)).

## 10 Additional obligations of YOOCHOOSE

According to Section 11 para. 4 of the German Federal Data Protection Act (BDSG), YOOCHOOSE has the following additional obligations:

- 10.1 If legally mandated, YOOCHOOSE must appoint in writing a data privacy officer, who can perform his work in accordance with Sections 4f and 4g of the German Federal Data Protection Act (BDSG) ("**data privacy officer**"). Upon appointment, YOOCHOOSE will

immediately notify the customer in writing of the data privacy officer's contact information and any change in this respect.

- 10.2 Protection of data secrecy pursuant to Section 5 of the German Federal Data Protection Act (BDSG). All individuals who can access the customer's data must be obligated in writing to maintain data secrecy and instructed on the data protection obligations resulting from the legal data privacy regulations and this agreement on contract data processing as well as the existing obligation regarding instruction and purpose. This instruction must be documented. The customer can demand presentation of the commitment declarations by YOOCHOOSE. YOOCHOOSE may only allow contact with the customer's data to such employees for whose job responsibilities such contact is necessary.
- 10.3 Immediate information of the customer on monitoring actions and measures of the supervisory authority pursuant to Section 38 of the German Federal Data Protection Act (BDSG). This also applies if an authority in charge pursuant to Sections 43 and 44 of the German Federal Data Protection Act (BDSG) investigates at YOOCHOOSE.
- 10.4 Implementation of the controls stipulated in the data security concept (comp. Section 6.2) with regard to the technical and organizational measures and compliance with legal data privacy regulations as well as this agreement on contract data processing.

## 11 Subcontracting relationships

- 11.1 The involvement of subcontractors in contract data processing by YOOCHOOSE requires the prior written consent of the customer. In this case, YOOCHOOSE is obligated to ensure that the rules of this agreement on contract data processing also apply to the subcontractor. YOOCHOOSE must regularly monitor compliance with these obligations. YOOCHOOSE ensures that the customer also has monitoring rights with the subcontractor in accordance with this agreement on contract data processing and Section 11 of the German Federal Data Protection Act (BDSG) in conjunction with No. 6 of the Appendix to Section 9 of the German Federal Data Protection Act (BDSG).
- 11.2 The transmission of data to the subcontractor is only allowed when the requirements of Section 11.1 are met.

## 12 Reporting obligations of YOOCHOOSE

- 12.1 YOOCHOOSE is obligated to report to the customer in writing all violations by YOOCHOOSE, by individuals employed at YOOCHOOSE or subcontractors of regulations for the protection of personal information or provisions in this agreement on contract data processing.
- 12.2 The contractual parties are aware that pursuant to Section 42 a of the German Federal Data Protection Act (BDSG) there may be information obligations in the case of loss or illegal transmission or gaining knowledge of personal information. YOOCHOOSE is obligated to notify the customer of such incidents immediately and without regard of causation. This also applies to severe disruptions of operations, for suspicion of other violations of the protection of personal information or other irregularities in the handling of the customer's data. The notification must include all information the customer requires to meet his information obligation pursuant to Section 42 a of the German Federal Data Protection Act (BDSG), if this

information is available at YOOCHOOSE or can be identified by YOOCHOOSE with a reasonable effort. In coordination with the customer, YOOCHOOSE must take appropriate measures to reduce any potential disadvantageous consequences for any affected parties.

### **13 Löschung von Daten und Rückgabe von Datenträgern**

YOOCHOOSE hat sämtliche in ihren Besitz gelangte Unterlagen, erstellte Verarbeitungs- und Nutzungsergebnisse sowie Datenbestände, die im Zusammenhang mit der Auftragsdatenverarbeitung stehen, mit Ende des Auftrags oder früher nach Aufforderung durch den Kunden an den Kunden zurückzugeben oder nach vorheriger Zustimmung des Kunden datenschutzgerecht zu vernichten und dem Kunden die vollständige Rückgabe bzw. Vernichtung schriftlich zu versichern und – sofern möglich – nachzuweisen.