inetdesign°

Data Processing Agreement

Data Processor: INET-DESIGN ApS. Vølundsvej 1 DK-8230 Åbyhøj CVR nr.: 27264298 Last updated: March 21st 2018 (v2.1)

Appendices for the Data Processing Agreement

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1. Introduction

1.1

This agreement regarding processing of personal data (the "Data Processing Agreement") regulates INET- DESIGN ApS', Company registration no. 27264298 (the "Data Processor") processing of personal data on behalf of the customer (the "Data Controller"). The Data Processing Agreement is attached as an appendix to the Data Processor's terms and conditions for:

a) hosting
b) service and
c) deliveries and projects

(collectively called "Main Agreements"). In the Main Agreements, the parties have agreed the conditions for the Data Processor's delivery of the services in question. The Main Agreements are defined in three different documents, that exist on www.inet-design.dk. Furthermore, the Main Agreements can be specified in and supplemented by another written agreement, for example requirement specifications or an order confirmation which in that case has primacy for the Main Agreements.

2. Legislation

2.1

The Data Processing Agreement shall ensure that the Data Processor complies with the applicable data protection and privacy legislation (the "Applicable Law"), including in particular:

a) The European Parliament and the Council's Directive 95/46/EF of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data as implemented in Danish law with, among others, the Act on Processing of Personal Data (Act No. 429 of 31 May 2000). b) The European Parliament and the Council's Regulation 2016/679 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 that entered into force on 24 May 2016 and will be applicable on 26 May 2018 ("GDPR"). Irrespective of the general use and reference to GDPR in this Data Processing Agreement, the parties are not obliged to comply with GDPR before 25 May 2018.

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3. Extent

3.1

The Data Processor is authorized to undertake processing of the Personal Data, which is defined in appendix 1, on behalf of the Data Controller with regards to the conditions determined in the Data Processing Agreement. 3.2 The Data Processor only process Personal Data due to documented Instruction from the Data Controller ("Instruction").

4. Duration

4.1

The Data Processing Agreement shall remain in force until either a) the Main Agreement is ceased or b) the Data Processing Agreement is terminated or cancelled.

5. The Data Processor's obligations

5.1 Technical and organisational safety measures

5.1.1

In connection to the Data Processor processing the Personal Data for the Data Controller, the Data Processor may implement the appropriate a) technical- and b) organizational safety measures.

5.1.2

The safety measures shall be implemented with regards to the current technical level, implementation costs, and the concerned processing, with regards to character, extent, composition and purpose as well as the risks of variable probability and gravity for physical people's rights and freedoms, together with the types of Personal Data defined in appendix 1.

5.1.3

The parties agree that the technical and organisational safety measures, indicated in the Main Agreements, are sufficient in terms of ensuring a suitable level of safety. The Data Processor is responsible for continuously ensuring that the implemented technical and organizational measurements are sufficient in terms of ensuring a suitable level of safety.

5.2 Employer terms

5.2.1

The Data Processor shall ensure that the employees processing Personal Data for the Data Processor, have committed to confidentiality or are subjects to a suitable and statutory confidentiality.

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5.2.2

The Data Processor shall ensure that the access to Personal Data is limited to the employees, to whom it is necessary to process Personal Data to fulfill the Data Processor's obligation to the Data Controller.

5.2.3

The Data Processor shall ensure that the employees who process Personal Data for the Data Controller, only process these in accordance with the Instruction.

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5.3 Compliance documentation

5.3.1

Upon request, the Data Processor makes all information, necessary to document compliance of the requirements in the Data Processing Agreement, available to the Data Controller and provides the possibility for and contributes to revisions, comprising inspections conducted by the Data Controller or another auditor, authorized by the Data Controller. A such request shall be replied within a reasonable time frame.

5.3.2

With regard to item 5.3.1, the Data Processor shall immediately notify the Data Controller if an instruction, according to the Data Processor's opinion inflicts with the Applicable Law or data protection requirements in any other EU-court or national court.

5.4 Security breach

5.4.1

The Data Processor shall notify the Data Controller without unnecessary delay within 72 hours, if the Data Processor is aware of any breach to the Personal Data security.

5.4.2

The notification shall contain the factual circumstances of the breach the Personal Data security, its effects and the decided and planned remedial measures.

5.5 Support

5.5.1

With regard to the character of the processing, the Data Processor supports the Data Controller to the extent possible, by helping with suitable technical and organizational measures, with fulfilling the Data Controller's obligation to answer request of exercising the registered people's rights.

5.5.2

With regard to the character of the processing and the information available to the Data Processor, the Data Processor supports the Data Controller by ensuring compliance to obligations concerning the Data Controller's:

a) Processing security
b) Reporting of breaches to the Personal Data Security for controlling authorities
c) Notification of breaches to the Personal Data Security for registered people
d) Analysis of consequences concerning Data Protection, and/or

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e) Precedent hearings

6. The obligations of the DataController

6.1

The Data Controller has the obligations indicated in appendix 2 and the Main Agreements.

7. Sub-Processors

7.1

The Data Processor must obtain specific prior written authorization from the Data Controller before engaging any third-parties to process the Personal Data for the Data Controller ("Sub-Processors"), including those indicated in a) appendix 3 in this Data Processing Agreement, or b) any subsequent Instruction from the Data Controller.

7.2

The Data Processor and Sub-Processor shall conclude a written sub-processor agreement. Such an agreement shall at minimum provide the same data protection obligations as the ones applicable to the Data Processor, including the obligations under this Data Processing Agreement.

7.3

In additional cases the Sub-Processor acts only on instruction, from the Data Controller.

7.4

The Data Processor is accountable to the Data Controller for any Sub-Processor in the same way as for its own actions and omissions.

8. Transfer to Third Countries and international organizations

8.1

The Data Processor can only transfer Personal Data for a country outside of the European Unions or EØS (a "Third Country") or international organisations to the extent that is indicated in a) appendix 4 for this Data Processing Agreement or b) the Instructions from the Data Controller.

8.2

The standard contract terms of the EU Commission form the foundation for transferring Personal Data to a Third Country. Any effective regulations based on the applied transfer foundation have primacy over the regulation in this Data Processing Agreement, yet alone in relation to the processing that makes the transfer foundation necessary. Other processing is solely regulated by this Data Processing Agreement.

8.3

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9. Data processing outside of the Instruction

9.1

The Data Processor can process Personal Data outside of the Instruction in cases, where it is required by the EU court or national court, to which the Data Processor is a subject.

9.2

When processing Personal Data outside of the Instruction, the Data Processor shall notify the Data Controller of the underlying cause. The notification shall happen before the processing is conducted and shall contain a reference to the legal requirements that the processing is based on.

9.3

The notification shall happen in case notification conflicts with the EU court or the national court.

10. Remuneration and costs

10.1

The Data Controller shall remunerate the Data Processor based on time and resources spent to perform the services according to the Data Processing Agreement on the request of the Data Controller. The services can include, but are not limited to, changes in the instruction, assistance with reporting breaches to the Personal Data security, transfer of information, support in case of audit, cooperation with controlling authorities and support for request compliance from registered subjects.

10.2

The Data Controller shall remunerate the Data Processor based on time and resources spent to perform the services according to the Data Processing Agreement due to changes in the Data Controllers circumstances. The services can include, but are not limited to, support in case of changes due to new risk evaluations and consequence analyses as well as necessary changes due to the Data Controller being obligated by other legislation than mentioned in item 2.

10.3

The remuneration is calculated by the agreed hourly rates (in DKK) in the Main Agreement(s), and in case of no agreement, the remuneration is based on the supplier's existing hourly rates (in EUR).

10.4

Notwithstanding the above, INETDESIGN cannot claim remuneration for assistance or implementation of changes to the extent such assistance or change is a direct consequence of the Data Processor's own violation to this Data Processing Agreement.

11. Change of the instruction

11.1

Prior to changes in the Instruction, the parties shall to the extent possible discuss, and if possible agree on, the implementation of the change, including time and cost of the implementation.

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11.2

To cases where no other agreement exists, following applies:

a) The Data Processor shall without any unwarranted delay initiate the implementation of changes to the instruction and ensure that such changes are implemented without any unwarranted delay in correlation to the character and extent of the changes. b) The indicated estimate for time and cost of implementation shall be informed to the Data Controller without any unwarranted delay. c) The changes of the instruction are not effective until the changes have been implemented, provided that the implementation hereof is completed according to this item 11.2, and unless the Data Controller explicitly notifies to deviate from this item. d) The Data Processors are exempted from responsibility of failure to deliver services specified in the Main Agreement(s) to the extent (including time) that delivery hereof will conflict with the changed instruction, or delivery in accordance with the changed instruction is impossible. For example, this is the case when (i) where the changes due to technical, practical or legal reasons cannot be implemented, (ii) the Data Controller explicitly notifies that the changes shall be effective before the implementation is possible, or (iii) in the time span until the parties get completed possible necessary changes of the Main Agreement(s) in accordance with the change procedure in this Agreement.

12. Other conditions

12.1 General

12.1.1

The Main Agreement's regulation of breach of contract and the consequences hereof (section 12 in the Main Agreement(s)) shall apply equally to this Data Processing Agreement as if this Data Processing Agreement is an integrated part hereof. Only in cases where the Main Agreement(s) does not take position, the conditions in this item 12 shall apply to this Data Processing Agreement.

12.2 Responsibility and limitation of liability

12.2.1

The parties renounce every responsibility for indirect losses and collateral damage, comprising loss of operation, loss of goodwill, loss of savings and revenue, inclusive of expenses to gain revenue, loss of interests, loss of data, and compensation and remuneration for registered and third parties.

Each party's cumulated liability under this Data Processing Agreement is limited to the payments made under the Main Agreement in the 12 months before the occurrence of the circumstances leading to a breach of contract, except in cases of Personal Data breaches where liability shall be unlimited. If the Data Processing Agreement has not been in force for 12 months before the occurrence of the circumstances leading to a breach of contract, the limited liability amount is the agreed payment for the Main Services in the period in which the Data Processing Agreement have been effective, divided by the number of month, the Data Processing Agreement have been effective, and then multiplied by 12.

12.2.2

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12.2.3

The limitation of liability in this item 12.2 does not apply to the following:

a) Losses due to the other party's gross negligence or willful misconduct. b) Requirement of payment due to Regulation (EU) 2016/679 article 82, $ 5 of the European Parliament and the Council as well as remuneration due to the Liability and Compensation Act $ 26
c) Any breaches involving Personal Data, for which liability shall be unlimited

12.3 Force Majeure

12.3.1

The Data Processor cannot be held responsible for circumstances that commonly is defined as force majeure, including but not limited to, war, riot, terror, rebellion, strike, conflagration, natural disaster, currency restrictions, import or export restrictions, interruption of ordinary communication, interruption of or failure in energy supply, public computer systems and communication systems, long-term illness of key employees, viruses, and in case subcontractors are subject to force majeure.

12.3.2

Force majeure can only be effective up to the number of work days that corresponds to the period of the force majeure situation.

12.4 Confidentiality

12.4.1

Information related to the content of this Data Processing Agreement, the underlying Main Agreements, the other Party's business, which either in relation to the transfer for the receiving Party indicated as confidential information, or which in its nature or in other ways shall be considered confidential, must be processed confidentially and with at least the same care and discretion as the Party's own confidential information. Data, including Personal Data, always constitute confidential information.

1.2.4.2

The obligation of confidentiality does not apply information, which is or will be publicly accessible, without this being due to a breach of a Party's confidentiality obligation or information that is already in the receiving Party's possession without a corresponding confidentiality obligation or information which has been independently developed by the receiving Party.

13. Termination

13.1 Termination and cancellation

13.1.1

The Data Processing Agreement can only be terminated or cancelled in accordance to the requirements for terminations and cancellation in the Main Agreement(s).

13.1.2

Termination or cancellation of the Data Processing Agreement can only occur - and justifies - concurrent

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termination or cancellation of parts of the Main Agreement(s) concering processing of Personal Data as a result of the Data Processing Agreement.

13.1.3

When the Main Agreement(s) cease, the Data Processing Agreement will have continued effect until the Personal Data have been deleted or is returned as defined in item 13.2.3.

13.2 Effect of cease

13.2.1

The Data Processor's authorization to process Personal Data on behalf of the Data Controller shall be annulled at the termination of this Data Processing Agreement.

13.2.2

The Data Processor shall immediately delete all Personal Data upon termination of the Data Processing Agreement, except for financial records containing Personal Data which must be retained for seven years to comply with accounting regulations. The Data Processor is not entitled to include the Personal Data in the Data Processor's backup beyond what is strictly required for financial record-keeping.

13.2.3

At the termination of this Data Processing Agreement, the Data Processor and its Sub-Processors shall return the Personal Data processed under this Data Processing Agreement to the Data Controller, provided that the Data Controller is not already in possession of the Personal Data. The Data Processor is hereafter obliged to delete all the Personal Data and provide documentation for such deletion to the Data Controller.

13.2.4

The Data Processor is entitled to anonymize the Personal Data in a manner that they cannot deanonymized later, and hereafter use the anonymous data for own purpose during the period of this Data Processing Agreement and in the future.

13.2.5

With no regard to the expiry of the Data Processing Agreement, the items 12.2, 12.4, 13.2.2, 13.2.4 and 14 of the Agreement shall be continuously effective after the expiry of the Data Processing Agreement.

14. Dispute resolution

14.1

The Data Processing Agreement is subject to Danish Law except for a) regulations leading to the application of any other law than Danish Law and b) the UN convention on Contracts for the international Sale of Goods (CISG).

14.2

If the parties cannot reach resolution through negotiation, the parties are entitled to demand arbitration in the dispute at any court of competent jurisdiction.

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15. Primacy

15.1

Providing that there is a conflict between this Data Processing Agreement and the Main Agreement(s), this Data Processing Agreement has primacy unless else anything can be derived from the Data Processing Agreement.

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Appendix 1: Purpose & Main Agreement(s)

1.1

The purpose of the processing as a result of this Data Processing Agreement is to deliver services in correlation to one or more of the Main Agreements that consist of the following: by the Data Controller's instruction, the Data Processor develops, hosts, markets and/or supports one or more websites or e- business solutions for the Data Controller cf. the Data Processor's standard terms which are found on www.inet-design.dk and are effective as the Main Agreements' basis of agreement.

2. Personal Data

2.1

Types of Personal Data that are processed in relation to the delivery of services specified in one or more of the Main Agreements:
a) Ordinary Personal Data, including name, surname, address, gender, age, email address, phone numbers, and date of birth. b) Transaction information in regard to online payment as well as purchase history which can be traces back to individuals. c) Personal Data stated in relation to the use of internet applications typically for static purposes and focused marketing campaigns according to the Instruction.

2.2

The category of registered identified or identifiable physical persons encompassed by the Data Processing Agreement:
a) The Data Controller (client)
b) The Data Controller's clients
c) The Data Controller's employees
d) The Data Controller's additional suppliers (third party suppliers)

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Appendix 2: The obligations of the Data Controller

1. Obligations

1.1

The Data Controller have the following obligations:

1.1.1

The Data Controller is responsible for abiding by the, at any time, existing Personal Data legislation in terms of the Personal Data, with which the Data Processor is entrusted. The Data Controller is hereby namely responsible for the following: The statement in appendix 1 is exhaustive, and the Data Processor can act subsequently, amongst other things in terms of establishing the necessary security precautions. The Data Controller has the necessary permissions to process and to leave it to the Data Processor to process the Personal Data, processed in relation to delivery of services cf. the Main Agreements. The submitted Instruction, in accordance to which the Data Processor shall process Personal Data on behalf of the Data Controller, is legal.

1.1.2

The Data Controller notifies the Data Processor in writing in case of possible completed analyses of consequences, relevant to the given processing activities, and the Data Controller provides the Data Processor with the necessary insight to the analysis with regard to the Data Processor fulfilling his/her obligations in relation to the Data Processing Agreement.

1.1.3

The Data Controller also notifies the Data Processor about circumstances relevant to the Data Processor's execution of his/her obligations in relation to the Data Processing Agreement, including the Data Controller's ongoing risk evaluation, to the extent relevant to the Data Processor.

1.1.4

The Data Controller also notifies the Data Processor if the at all times existing Privacy Act in relation to the Personal Data that the Data Processor is entrusted with for processing, includes more than law n° 429 of 31/05/2000 with later changes on the processing of Personal Data (the Privacy Act) or the European Parliament and the Council's Order (EU) 2016/679 (incl. subsequent adjustments of danish law, which occur as a consequent of this Order).

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Appendix 3: Sub-processors

1. General

1.1

The following Sub-Processors shall be considered approved by the data Controller at the time of entering into this Data Processing Agreement:

Google LLC 1600 Amphitheatre Parkway Mountain View CA 94043, United States

Facebook Ireland Ltd. Hanover Reach, 5-7 Hanover Quay Dublin 2, Irland

Zendesk, Inc. 1019 Market St. San Francisco CA 94103, United States

Instagram Inc. 181 South Park Street, Suite 2 San Francisco CA 94107, United States

Asana Inc, 1550 Bryant Street San Francisco CA 94103, United States

Dinero Regnskab ApS Vesterbrogade 1L, 6. sal 1620 København V CVR. nr. 34731543

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Revisionsfirmaet Georg Mathiasen I/S Vølundsvej 6, Torvet 8230 Åbyhøj CVR. nr. 72430816

DanDomain A/S Normansvej 1 8920 Randers NV CVR. nr. 25476255

HubSpot Inc. 25 First Street, 2nd Floor Cambridge, MA 02141, United States

Dropbox Inc. 185 Berry Street Suite 400 San Francisco CA 94107, United States

CYBOT A/S Havnegade 39 1058 København K CVR. nr. 34624607

The Rocket Science Group, LLC (Mailchimp) 675 Ponce de Leon Avenue NE Suite 5000 Atlanta GA 30308, United States

1.2

The Data Controller does not provide general authorization for the Data Processor to use other Sub-Processors in the future. Each new Sub-Processor requires specific prior written consent from the Data Controller, even if these abide by the guidelines stated in the Data Processing Agreement and moreover, meet the legislation, comprising the General Data Protection Regulation (GDPR). The Data Processing Agreement as appendix, will be updated with an extension of the list in the item 1.1. above (appendix 3), provided that the Data Processor will make use of new Sub-Processors.

1.3

The Data Controller can have valid objections towards a Sub-Processor to the extent that the reason is substantiated.

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Appendix 4: Transfer of data to third countries

1. General

1.1

The Data Controller hereby accepts that the Data Processor can transfer Personal Data to the following company, situated in a third country:

Inet Design ApS Danska, Predstavnistvo u BiH Milana Preloga 12 71000 Sarajevo ID: 4201769620001

1.2

Personal Data cannot, other than that, be subject to Data Processing by the Data Processor or a Sub-processor in a third country or in an international organization, unless the Data Controller gives specific permission for this.

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