

DATA PROCESSOR AGREEMENT

This data processor agreement (the Agreement) is an annex to the agreement entered into between the customer (the Data Controller) and Flextrack (the Data Processor) and is applicable to the products and services described in the contract.

The Data Processor Agreement shall be in effect provided the customer has a valid and paid-up subscription and is not in arrears to Flextrack.

The Data Processor Agreement defines the processing by the Data Processor of personal data on behalf of the Data Controller.

1. BACKGROUND, PURPOSE AND SCOPE

- 1.1 As part of the Data Controller's conclusion of an agreement on delivery of the products and services in the contract, the Data Processor will carry out processing of personal information for which the Data Controller is responsible.
- 1.2 The Data Processor shall comply with the Act on Processing of Personal Data (Act No. 429 of 31 May 2000, as amended) and associated executive orders.
- 1.3 From 25 May 2018, instead of the Act on Processing of Personal Data, the Data Processor shall comply with the 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 associated legal instruments including national legislation derived therefrom.
- 1.4 It is a requirement both of the Act on Processing of Personal Data and of the General Data Protection Regulation that the Data Controller and the Data Processor conclude a written agreement, known as a 'data processor agreement', on the processing to be undertaken. This Agreement constitutes such a data processor agreement.

2. PERSONAL DATA COVERED BY THE AGREEMENT

- 2.1 This Agreement and associated instructions cover all types of personal data.

3. GEOGRAPHICAL REQUIREMENTS

- 3.1 The processing of personal data carried out by the Data Processor by agreement with the Data Controller may be carried out by the Data Processor or data sub-processors (see Clause 4) only within the borders of Denmark. The Data Processor is in no way entitled to allow data processing to take place outside the borders of Denmark without consent in writing from the Data Controller.

4. ENGAGEMENT OF DATA SUB-PROCESSORS

- 4.1 The Data Controller consents to the engagement of data sub-processors by the Data Processor, provided that the conditions laid down for this in the Agreement are fulfilled. The Data Processor shall inform the Data Controller of such data sub-processors.
- 4.2 The data sub-processor shall be under the instructions of the Data Processor. The Data Processor shall have concluded a written data processor agreement with the data sub-processor which ensures that the data sub-processor will fulfil requirements equivalent to those imposed on the Data Processor by the Data Controller pursuant to the Agreement.
- 4.3 Costs associated with the establishment of the contractual relationship with a data sub-processor, including the costs of preparing a data processor agreement and, if relevant, of establishing a basis for transfer to third countries, shall be borne by the Data processor and shall thus not be the concern of the Data Controller.
- 4.4 Should the Data Controller wish to instruct data sub-processors directly, this must take place only after discussion with, and via, the Data Processor. If the Data Controller gives instructions to data sub-processors directly, the Data Controller shall, no later than at the same time, inform the Data Processor of the instruction and the reason for it. Where the Data Controller instructs data sub-processors directly:
 - a) the Data Processor shall be relieved of all liability, and any consequence of such instructions shall be the sole responsibility of the Data Controller;
 - b) the Data Controller shall bear any costs that the instruction may have entailed for the Data Processor; the Data Processor shall inter alia be entitled to invoice the Data Controller at his usual hourly rate for any work entailed by such a direct instruction;
 - and c) the Data Controller shall himself be liable to the data sub-processors for any costs, remuneration or other payment to the data sub-processor that the direct instruction may entail.
- 4.5 In entering into the present Agreement, the Data Controller accepts that the Data Processor shall be entitled to change data sub-controllers, provided: a) that any new data sub-controller complies with equivalent conditions to those imposed in the present Clause 4 on the present data sub-controller; and b) that, no later than by the commencement of processing by another data sub-controller of personal data for which the Data Controller is responsible, the Data Controller is informed by the Data Processor of the identity of the new data sub-controller.

5. PROCESSING AND DISCLOSURE OF PERSONAL DATA

- 5.1 The Data Controller warrants that he has the required legal basis for the processing of personal data covered by the present Agreement.
- 5.2 The Data Processor may not disclose data to a third party without consent in writing from the Data Controller, unless such disclosure is required by law or by a binding request from a court or a data protection authority, or it is laid down in this Agreement.

6. SECURITY

- 6.1 The Data Processor shall take appropriate technical and organizational measures to prevent accidental or unlawful destruction, loss or deterioration of personal data, to prevent their coming to the knowledge of unauthorized persons, being misused or otherwise processed in contravention of the law; cf. Clause 1.2 and Clause 1.3 above.
- 6.2 The Data Processor shall be entitled at any time to implement alternative security measures provided that such security measures at least fulfil or provide greater security and otherwise fulfil any other security requirements laid down in this contract. The Data Processor may not carry out a deterioration of security conditions without the prior written approval of the Data Controller.

- 6.3 The Data Processor shall as far as possible, by agreement with the Data Controller, assist the Data Controller in ensuring compliance with the obligations in Articles 32 (appropriate technical and organizational measures), 35 (data protection impact analysis) and 36 (prior consultation) of the Regulation. In relation to this, the Data Processor shall be entitled to invoice the Data Controller at his usual hourly rate for all work carried out by the Data Processor that such agreement may have entailed for the Data Processor; similarly, the Data Controller shall bear the cost of any payment to the data sub-processor.
- 6.4 Should that laid down in Clause 6.3 lead to stricter security measure requirements than already agreed between the Parties pursuant to this Agreement, the Data Processor shall implement such measures to the extent possible, provided that the Data Processor receives payment for this; cf. Clause 6.5 below.
- 6.5 Costs associated with the implementation of measures as per Clause 6.4 above shall be borne by the Data Controller and shall thus not be the concern of the Data Processor. The Data Processor shall moreover be entitled to invoice the Data Controller at his usual hourly rate for all work carried out by the Data Processor that such implementation may have entailed for the Data Processor; similarly, the Data Controller shall bear the cost of any payment to data sub-processors.

7. RIGHT OF INSPECTION

- 7.1 The Data Processor shall, at the Data Controller's request, give the Data Controller sufficient information for the latter to verify that the Data Processor has taken the necessary technical and organizational security measures.
- 7.2 To the extent the Data Controller also wishes this to encompass processing taking place at data sub-processors, the Data Processor shall be informed of this. The Data Processor shall then collect sufficient information from the data sub-processor.
- 7.3 Should the Data Controller wish to carry out an inspection as laid down in this Clause 7, the Data Controller shall at all times give the Data Processor at least 30 days' notice of this.
- 7.4 Should the Data Controller wish to have a second or subsequent security audit report prepared, or should he otherwise wish an inspection to be carried out of the Data Processor's or data sub-processor's processing of personal data, or should the Data Controller wish a security audit report to be prepared at a time to be determined, this shall be agreed with the Data Processor. The Data Processor or data sub-processor may at any time demand that such a security audit report be prepared in accordance with a recognized audit standard (e.g. ISAE 3402 with frame of reference to ISO 27002:2014 or similar) by a generally recognized and independent third party dealing with such matters.
- 7.5 The Data Controller shall bear all costs associated with the Data Controller's wish to have a second or subsequent security audit report and/or with his wish to have a second or subsequent inspection of the Data Processor's or data sub-processor's processing of personal data carried out. The Data Processor shall inter alia be entitled to invoice the Data Controller at his usual hourly rate for all work done by the Data Processor that such inspection may have entailed for the Data Processor; similarly, the Data Controller shall bear the cost of any payment to the data sub-processor.

8. PERSONAL DATA BREACH

- 8.1 Should the Data Processor become aware of a personal data breach, meaning a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed, the Data Processor has an obligation to attempt without undue delay to contain the breach and to attempt to mitigate as far as possible its adverse effects and, to the extent possible, to restore any lost data.

- 8.2 The Data Processor is also under an obligation to inform the Data Controller without undue delay after becoming aware that a personal data breach has occurred. The Data Processor shall then, without undue delay, to the extent possible, provide the Data Controller with a written communication containing as much as possible of the following:
- a) a description of the nature of the personal data breach, including the categories and approximate number of data subjects and personal data records concerned;
 - b) the name and contact details of the data protection officer; c) a description of the likely consequences of the breach;
 - d) a description of the measures taken or proposed to be taken by the Data Processor or data sub-processor to address the breach, including measures to mitigate its possible adverse effects.
- 8.3 Should it not be possible to provide all the information listed in Clause 8.2 together, the information may be provided piecemeal without undue further delay.
- 8.4 It is similarly incumbent upon data sub-processors to inform the Data processor without undue delay in accordance with Clauses 8.2 and 8.3.
- 8.5 The Data Controller shall bear all the Data Processor's costs arising from such assistance. The Data Processor's assistance shall be costed at the Data processor's hourly rate for such work applicable from time to time.

9. LIMITATION OF LIABILITY

- 9.1 Unless the Parties have agreed a different limitation of liability entailing lesser liability for the Data Processor, the present Clause 9 shall apply.
- 9.2 For acts and omissions relating to the data processing carried out by the Data Processor on behalf of the Data Controller, the Data Processor shall be liable to the Data Controller according to the ordinary rules of Danish law, with the limitations set out in this Clause 9.
- 9.3 The Data Processor shall never be liable to the Data Controller for indirect losses including, but not limited to, losses arising from consequential damage, loss of earnings, loss of business, loss of goodwill, loss of data, third-party losses or other indirect losses incurred by the Data Controller or by a third party.

10. NON-DISCLOSURE

- 10.1 The Data Processor shall keep personal data processed under the Agreement confidential, and is thus entitled to use the personal data only in the course of fulfilling his obligations and rights under the Agreement. The Data Processor shall inter alia impose a duty of non-disclosure upon employees and any other persons, including data sub-processors, authorized to process the personal data covered by the Agreement. This duty of non-disclosure/confidentiality shall remain in effect after the termination of this Agreement.

11. PRECEDENCE

- 11.1 Unless otherwise laid down in the Agreement, provisions in the Agreement have precedence over corresponding provisions in other agreements between the parties.

12. DURATION AND TERMINATION OF THE DATA PROCESSOR AGREEMENT

- 12.1 The Agreement shall enter into force upon signature of the contract between the customer and Flextrack.
- 12.2 In the event of the subscription's termination for whatever reason, the Agreement shall also terminate. The Data Processor shall, however, remain bound by this Agreement as long as the Data Processor is processing personal data on behalf of the Data Controller, in that the Data Controller shall as soon as possible and no later than 30 days prior to the termination of the contract, inform the Data Processor in writing how the Data Processor is to proceed as regards the processed personal data. Upon the expiry of the contract, the Data processor shall be entitled to delete all personal data that has been processed under the terminated contract on behalf of the Data Controller, unless separately agreed otherwise.