

# Data Processing Agreement

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# Data Processing Agreement

## ANNEXES TO THE DATA PROCESSING AGREEMENT

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## 1. BACKGROUND & PURPOSE

- 1.1 The Parties have agreed that the Data Processor will provide certain services to the Data Controller, as described in greater detail in a separate agreement between the Parties (the 'Main Agreement,' which comprises the Corporation Agreement and the Project Agreement, if any) as well as in Annex 1 hereto (the 'Main Service').
- 1.2 In this connection, the Data Processor shall process personal data on the Data Controller's behalf, which is the reason why the Parties have entered into this Agreement and the annexes thereto (the 'Data Processing Agreement').
- 1.3 The purpose of the Data Processing Agreement is to ensure that the Parties comply with the personal data legislation applicable as at the date when the Data Processing Agreement was signed or, in other words, with:
  - The Danish Personal Data Act (Act no. 429 of 31 May 2000, as subsequently amended);
  - The General Data Protection Regulation (Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016) and data protection legislation.
- 1.4 Should there be conditions in the Data Processor Agreement and associated instructions which are subsequently found invalid or which prove to be contrary to the legal data protection regulations in force from time to time, the Parties may not, irrespective of subsection 1.3, invoke them. The Data Processor Agreement shall otherwise remain in force, and the Parties shall if necessary enter into negotiations in order to clarify, supplement or revise the conditions in question.

## 2. SCOPE

- 2.1 The Data Processor is hereby authorised to process personal data on the Data Controller's behalf, on the terms and conditions provided for in the Data Processing Agreement.
- 2.2 The Data Processor may only process personal data subject to documented instructions issued by the Data Controller (the 'Instructions'). This Data Processing Agreement, including annexes, forms the Instructions as of the date when the Main Agreement is signed.

2.3 The Instructions may be amended or elaborated on in greater detail by the Data Controller at any time. Such amendments may be made in accordance with the change management process agreed between the Parties, cf. the Main Agreement.

### 3. PERIOD

3.1 The Data Processing Agreement shall apply until the Main Agreement's expiry.

## 4. DATA PROCESSOR'S OBLIGATIONS

### 4.1 Technical and Organisational Security Measures

4.1.1 The Data Processor is responsible for implementing the requisite (a) technical and (b) organisational security measures. The measures shall be implemented with due consideration for the current technical level, implementation costs, nature, scope, context and purposes of the respective processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons and the types of personal data described in Annex 1.

4.1.2 Irrespective of subsection 4.1.1, the Data Processor shall implement the technical and organisational security measures specified in Annex 2 hereto.

4.1.3 The Data Processor shall implement the appropriate technical and organisational measures in such a way that the processing of personal data by the Data Processor meets the requirements in the existing personal data legislation.

4.1.4 The Parties agree that the requirement laid down in Annex 2 are sufficient as at the date when this Data Processing Agreement is signed.

### 4.2 Employee Conditions

4.2.1 The Data Processor shall ensure that the employees, third parties (i.e. consultants, repairers) as well as sub-processors, who process personal data for the Data Processor have pledged to observe confidentiality or are subject to an appropriate statutory confidentiality obligation.

4.2.2 The Data Processor shall take the necessary steps to ensure that access to personal data is only restricted to employees who are required to process personal data in order to meet the Data Processor's obligations to the Data Controller.

4.2.3 The Data Processor shall ensure that employees who process personal data for the Data Processor only process these in accordance with the Instructions.

### 4.3 Proof of Compliance

4.3.1 The Data Processor shall provide, on request, all information necessary to demonstrate compliance with the requirements in the Data Processing Agreement to the Data Controller and shall allow for and contribute to audits, including inspections conducted by the Data Controller or another auditor mandated by the Data Controller. Response to such a request shall be given within a reasonable period of time.

4.3.2 With regard to subsection 4.3.1, the Data Processor shall immediately notify the Data Controller if, in its opinion, an Instruction infringes on the data protection legislation or data protection provisions of another EU or national data protection law.

4.3.3 Additional, specific requirements for proof of compliance are stipulated in Annex 3.

#### 4.4 Records of Processing Activities

4.4.1 Each of the Parties shall maintain records of processing activities to the extent required in Article 30 of the General Data Protection Regulation.

#### 4.5 Security Breaches

4.5.1 The Data Processor shall notify the Data Controller without undue delay after becoming aware of a personal data breach.

4.5.2 Such notification shall contain the actual circumstances in connection with the personal data breach, its effects and the remedial action taken and planned.

#### 4.6 Assistance

4.6.1 At the Data Controller's request, the Data Processor shall assist the Data Controller, to the extent possible, with appropriate technical and organisational measures for the discharge of the Data Controller's obligation to respond to requests for exercising the rights of the data subjects.

4.6.2 With due consideration for the nature of the processing and the data available to the Data Processor, the Data Processor shall assist the Data Controller with ensuring compliance with the obligations concerning the Data Controller's:

- a) Security of processing;
- b) Notification of a personal data breach to the supervisory authority;
- c) Communication of a personal data breach to the data subject;
- d) Data protection impact assessment; and
- e) Prior consultation.

### 5. DATA CONTROLLER'S OBLIGATIONS

5.1 The Data Controller shall be entrusted with the obligations specified in Annex 4.

### 6. SUB-PROCESSORS

6.1 The Data Processor may only make use of a third party for the processing of personal data on the Data Controller's behalf ('Sub-Processor') to the extent provided for in (a) Annex 5 to this Data Processing Agreement or (b) the Instructions from the Data Controller.

6.2 The Data Processor and Sub-Processor shall enter into a written agreement that imposes on the Sub-Processor the same data protection obligations to which the Data Processor is subject (including in pursuance of this Data Processing Agreement).

6.3 Moreover, the Sub-Processor shall only act subject to Instructions issued from the Data Controller.

6.4 Where a Sub-Processor does not live up to the instructions, the Data Controller may forbid the use of the respective Sub-Processor.

6.5 The Data Processor is directly responsible for the Sub-Processor's processing of personal data in the same way as if the processing was undertaken by the Data Processor itself.

## 7. TRANSFER TO THIRD COUNTRIES AND INTERNATIONAL ORGANISATIONS

- 7.1 The Data Processor may only transfer personal data to a country outside the European Union or the EEA (a 'Third Country') or to international organisations to the extent provided for in (a) Annex 6 to this Data Processing Agreement or (b) the Instructions from the Data Controller.

## 8. DATA PROCESSING OUTSIDE THE INSTRUCTIONS

- 8.1 The Data Processor may process personal data outside the Instructions in cases where this is required by EU or national law to which the Data Processor is subject.
- 8.2 In case of processing of personal data outside the Instructions, the Data Processor shall notify the Data Controller of the reason for such processing. Such notice shall be given prior to the processing and shall contain a reference to the legal requirements governing the processing.
- 8.3 Notice shall not be given if such notification will be in conflict with EU or national law.

## 9. REMUNERATION AND EXPENSES

- 9.1 The Data Processor is entitled to payment based on time spent and to a refund of the Data Processor's remaining expenses in connection therewith for the services provided in accordance with the Data Processing Agreement at the Data Controller's request. The services may comprise, but are not limited to, changes to the Instructions, assistance in connection with notification of a breach of personal data security, submission and deletion of data, assistance in connection with audits, assistance in connection with termination, cooperation with supervisory authorities and assistance with compliance with requests from data subjects.
- 9.2 The Data Processor is entitled to payment based on time spent and to a refund of the Data Processor's remaining expenses in connection therewith for the services provided in accordance with the Data Processing Agreement as a result of changes in the Data Controller's circumstances. The services may comprise, but are not limited to, assistance with changes that follow from new risk assessments and impact analyses as well changes necessitated by amendments to the legislation. The consideration is calculated in accordance with the agreed hourly rates in the agreement(s) on provision of the Main Services and, where no hourly rates have been agreed therein, in accordance with the Supplier's applicable hourly rates.
- 9.3 The Parties shall be entitled to payment for compliance with this Data Processor Agreement only if this is specifically stated in the Agreement.
- 9.4 Regardless of the above, a Party shall not be entitled to payment for assistance or implementation of amendments to the extent that such assistance or amendment is a direct consequence of the Party's breach of this Data Processor Agreement.

## 10. AMENDMENTS TO THE INSTRUCTIONS

- 10.1 Prior to any amendments to the Instructions, the Parties shall discuss, to the widest extent possible, the implementation of such amendments, including implementation time and expenses in connection therewith.
- 10.2 Unless otherwise agreed, the following shall apply:

- a) The Data Processor shall initiate the implementation of amendments to the Instructions without undue delay and shall ensure that such amendments are implemented without undue delay, as seen in relation to the nature and scope of the amendments.
- b) The Data Processor shall be entitled to payment of all costs directly associated with amendments to the Instructions, including implementation costs and increased costs of delivery of the Main Service.
- c) An indicative estimate of the implementation time and expenses shall be communicated to the Data Controller without undue delay.
- d) Amendments to the Instructions shall first be considered to be applicable from the moment of the implementation of such amendments, provided that their implementation is carried out in compliance with this subsection 10.2 and unless the Data Controller explicitly states to deviate from this subsection.
- e) The Data Processor is exempt from liability for non-provision of the Main Service to the extent (including time-wise) the provision thereof will be in conflict with the amended Instructions or provision in accordance with the amended Instructions will be impossible. This can, for example, be the case (i) if such amendments cannot technically, practically or legally be implemented, (ii) if the Data Controller explicitly states that the amendments shall take effect before the implementation is possible, or (iii) during the period until the Parties have implemented the necessary amendments, if any, to the agreement(s) in accordance with the change procedures therein.

## 11. TERMINATION

### 11.1 Termination and Revocation

11.1.1 The Data Processing Agreement may only be terminated or revoked in accordance with the provisions concerning termination and revocation in the agreement(s) on provision of the Main Services.

11.1.2 Termination or revocation of this Data Processing Agreement may only take place in connection with – and with the right to – the simultaneous termination or revocation of the relevant parts of the agreement(s) on provision of the Main Service concerning processing of personal data in pursuance of the Data Processing Agreement.

### 11.2 Consequences of Expiry

11.2.1 The consequences of expiry are governed by the Main Agreement.

11.2.2 To the extent the Data Controller is not already in the possession of the personal data, the Data Processor and its Sub-Processors, if any, shall return all personal data processed by the Data Processor in accordance with this Data Processing Agreement to the Data Controller when the Data Processing Agreement expires. Unless otherwise stipulated in the Main Agreement, the Data Processor is subsequently obliged to delete all personal data received from the Data Controller. The Data Controller may request the requisite documentation in proof that this has happened.

## 12. DISPUTE RESOLUTION

12.1 The dispute resolution provisions of the Main Agreement shall also find application for this Data Processing Agreement as though this Data Processing Agreement were an integral part thereof.

Copenhagen Ø, 28<sup>th</sup> of January 2019

A handwritten signature in blue ink, appearing to read 'Kenneth Kryger Gram', written in a cursive style.

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Kenneth Kryger Gram

CEO

# ANNEX 1

## MAIN SERVICE

### 1. MAIN SERVICE

- 1.1 The Main Service consists of the following: the NAV solution and support thereof.
- 1.2 Should hosting via Microsoft Azure have been purchased, support for this will also be provided.
- 1.3 For a detailed specification of the content of the Main Services, see the Parties' NAV implementation and operation contract and Abakion's General Terms and Conditions.

### 2. PERSONAL DATA

- 2.1 Types of personal data processed in conjunction with the provision of the Main Service depend on the Data Controller's areas of responsibility, and may include:
  - a) Ordinary personal data, names, addresses, telephone numbers and mail-addresses.
  - b) Correspondence and documents containing other personal data, including sensitive information, criminal offences, significant social problems and purely private matters other than those stated in item f).
  - c) CPR numbers.
  
- 2.2 Categories of data subjects of identified or identifiable physical persons who fall within the scope of the Data Processing Agreement depend on the Data Controller's areas of responsibility, and may include:
  - a) Employees
  - b) Clients / Customers
  - c) Partners and Counterparts



# ANNEX 2

## TECHNICAL AND ORGANISATIONAL SECURITY REQUIREMENTS

### 1. SPECIFIC TECHNICAL AND ORGANISATIONAL SECURITY REQUIREMENTS:

#### 1.1 The following specific requirements are placed on the Data Processor's physical security:

- a) The Data Processor has no physical servers, but carries out processing only via cloud services or on server accounts made available by the Data Controller.
- b) The Data Processor's premises are locked and there is no general access to terminals at which employees work.

#### 1.2 The following specific requirements are placed on the Data Processor's technical security:

- a) All employee machines are encrypted with BitLocker.
- b) All employee machines undergo enforced security updates and antivirus measures.
- c) All employees' passwords are reset every three months.

#### 1.3 The following specific requirements are placed on the Data Processor's organisational security:

- a) An IT security policy shall be drawn up.
- b) All employees carrying out data processing receive instruction as to what they may process, and how.
- c) All employees carrying out data processing are trained on the content of this agreement.

#### 1.4 The following specific requirements are placed on the deletion of personal data by the Data Processor:

- a) The Data Processor amends data only on specific instructions from the Data Controller or in accordance with this Data Processor Agreement in connection with the expiry of the agreement.

### 2. Guarantees given regarding the requisite security of processing

#### 2.1 The Data Processor has given the following specific guarantees:

- a) As regards services supplied by Abakion, see the audit report.

As regards services supplied by Microsoft, see Microsoft's overview at <https://www.microsoft.com/en-us/trustcenter/compliance/complianceofferings>

# ANNEX 3

## DOCUMENTATION OF COMPLIANCE

As part of the Data Processor's provision of evidence to the Data Controller of compliance with his obligations under section 4 of the Data Processor Agreement, the points below shall be carried out and adhered to.

### 1. GENERAL DOCUMENTATION TO THE DATA CONTROLLER

2.2 The Data Processor is obliged, on written request, to forward the following general documentation to the Data Controller:

- a) A statement from the Data Processor's management that the Data Processor continuously ensures compliance with its obligations subject to this Data Processing Agreement in connection with the processing of personal data on the Data Controller's behalf.
- b) A description of the practical measures, both technical and organisational ones, which have been implemented by the Data Processor in order to ensure compliance with its obligations in accordance with the Data Processing Agreement.

2.3 The general documentation shall be submitted no more than five working days after the Data Controller has made his request in writing to the Data Processor, unless specifically agreed otherwise. Preparation by the Data Processor of documentation shall be carried out at the Data Processor's own expense.

### 3. AUDIT REPORT

3.1 The Data Processor shall arrange for an audit report to be prepared, describing the Data Processor's information security level and the measures taken by the Data Processor.

3.2 Audit reports shall be prepared by a competent third party that shall be subject to an ordinary confidentiality obligation.

3.3 The Data Processor shall, on written request and in exchange for separate consideration, order the preparation and submission of additional audit reports about certain conditions, as subsequently agreed.

3.4 The report is to be prepared at reasonable intervals at the discretion of the Data Processor, and may be forwarded to the Data Controller on request.

### 4. PHYSICAL MEETINGS AT THE DATA PROCESSOR'S

4.1 The Data Processor shall take part, on written request, in a physical meeting at the Data Processor's or the Data Controller's, where the Data Processor shall be able to account in detail for the compliance as well as for how it is ensured. A request for a meeting shall be made with at least 14 days' notice. The Data Processor shall be entitled to payment based on time and materials spent on assistance pursuant to this section.

### 5. AUDIT

- 5.1 The Data Processor shall contribute to and provide access to audits on written request.
- 5.2 Audits shall be conducted by the Data Controller or an independent third party selected by the Data Controller and approved by the Data Processor. The Data Processor may not reject a proposed third party without a reasonable justification. The independent third party shall adopt an ordinary confidentiality declaration with regard to the Data Processor. A request for an audit shall be made with at least 14 days' notice.
- 5.3 The Data processor shall be entitled to payment based on time and materials spent on assistance pursuant to this section 5, unless otherwise indicated in subsection 9.4 of the Data Processor Agreement.

## 6. MISCELLANEOUS

- 6.1 The above points are not to be regarded as exhaustive, and it is therefore incumbent upon the Data processor to undertake such additional actions and initiatives as are necessary to demonstrate the Data Processor's obligation under section 4 of the Data Processor Agreement. The Data Processor shall be entitled to payment based on time and materials spent on assistance pursuant to this section.
- 6.2 The Data Processor is not obliged to comply with a request from the Data Controller in accordance with this Annex 3 if the request clashes with the provisions of the personal data legislation. The Data Processor shall notify the Data Controller if it is the Data processor's assessment that this is the case.

# ANNEX 4

## DATA CONTROLLER'S OBLIGATIONS

### 1. OBLIGATIONS

1.1 The Data Controller has the following obligations

1.1.1 As regards the personal data that are handed over for processing to the Data Processor, the Data Controller is responsible for compliance with the personal data legislation applicable at any time. Likewise, the Data Controller is responsible and vouches for ensuring that:

- The specification in Annex 1 is exhaustive and the Data Processor can act in accordance therewith, i.e. with regard to laying down necessary security measures.
- The Data Controller has the requisite legal basis to process and have the Data Processor process the personal data that are processed in connection with the provision of the Main Services.
- The Instructions in accordance with which the Data Processor shall process personal data on the Data Controller's behalf are lawful.

1.1.2 The Data Controller shall inform the Data Processor in writing of the conducted impact analyses, if any, that are relevant for the assigned processing activities, and the Data Controller shall simultaneously provide the Data Processor with the necessary insight into the analyses so that the Data Processor can meet its obligations pursuant to the Data Processing Agreement.

1.1.3 The Data Controller shall otherwise inform the Data Processor of any circumstances of importance for the discharge of the Data Processor's obligations in accordance with the Data Processing Agreement, including, among other things, the Data Controller's continuous risk assessment, to the extent such are relevant for the Data Processor.

1.1.4 The Data Controller shall also inform the Data Processor if the personal data legislation applicable at any time to the personal data that are transferred to the Data Processor's processing comprises anything other than Act no. 429 of 31/05/2000 on the Processing of Personal Data, as subsequently amended (the Danish Personal Data Act), or Regulation (EU) 2016/679 of the European Parliament and of the Council (including subsequent adaptations of the Danish legislation implemented as a consequence of this Regulation).

1.1.5 The Data Controller shall assist the Data Processor with entering into agreements with Sub-Processors, to the extent necessary, including in order to ensure the basis of transfer to third countries.

# ANNEX 5

## SUB-PROCESSORS

### 1. 1 GENERAL PROVISIONS

1.1 The Data Controller hereby grants consent to the use of the following sub-processors by the Data Processor:

- a) Microsoft Ireland Ltd, One Microsoft Place, South County Business Park, Leopardstown, Dublin, D18 P521, Ireland
  - Delivers hosting of Azure servers and email via Exchange Online.
  - Servers located in Amsterdam, The Netherlands.
  - Microsoft personnel have no direct access to data.
  - Further information from Microsoft on GDPR compliance:
    - a. <https://www.microsoft.com/en-us/TrustCenter/>
    - b. <https://www.microsoft.com/en-us/TrustCenter/Privacy/gdpr/default.aspx>
- b) Lessor A/S, Gydevang 36, 3450 Allerød, CVR 24240010
  - Delivers operation of portal solution for salary administration. Will be involved as data sub-processor only if this product is used.
  - Separate Data Processor Agreement with Lessor available on request.
  - Further information from Lessor on the GDPR:
- c) Continia Software A/S, Stigborgsvej 60, 9400 Nørresundby, CVR 32658083
  - Delivers operation of the attachment solutions Document Capture and Expense Management. Will be involved as data sub-processor only if one or more of these products are used.
  - Separate Data Processor Agreement with Continia available on request.
  - Further information from Continia and the GDPR: <https://www.continia.com/global/legal/trust-center/gdpr-compliance-what-we-do/>

1.2 The Data Processor may not use any other Sub-Processors without the Data Controller's prior specific written consent.

1.3 The Data Controller may not refuse to approve the addition or replacement of a Sub-Processor, unless there is a specific factual justification for this, and shall give notice of such an objection within [30] days.

# **ANNEX 6**

## **TRANSFER TO THIRD COUNTRIES AND INTERNATIONAL ORGANISATIONS**

### **1. GENERAL PROVISIONS**

- 1.1 Personal data may not be subjected to processing by the Data Processor or Data Sub-Processor in a country outside the European Union or the EEA (a 'Third Country'), or an international organisation, unless the Data Controller gives specific permission for this.
- 1.2 The Data Processor shall notify the Data Controller prior to the transfer.