

Data processing agreement

Controller-to-Processor agreement

PREAMBLE

Within the framework of the agreement with you (hereinafter referred to as the Processor), you act as a Processor within the meaning of Article 28 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (hereinafter the “GDPR”).

In this respect, the Processor is informed that compliance with personal data protection regulations constitutes a fundamental requirement for Solina.

The Processor represents that it provides sufficient guarantees as to the implementation of appropriate technical and organizational measures so that the processing meets the requirements of the GDPR.

DEFINITIONS

For the purposes of this Annex, the following terms shall have the meanings set forth below:

- “recipient” means a natural or legal person, public authority, agency or another body to which personal data are disclosed, whether a third party or not;
- “personal data” means any information relating to an identified or identifiable natural person (“data subject”); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;
- “purpose” means the main objectives assigned to the processing and the substantive functions implemented;
- “data subject” means the identified or identifiable natural persons whose personal data are collected and processed;

- “processing of personal data” or “processing” means any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;
- “personal data breach” means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, personal data transmitted, stored or otherwise processed.

LEGAL STATUS OF THE PARTIES

For the purposes of the GDPR and for the proper application of this Annex:

- Solina acts as data controller;
- you act as data processor.

PROCESSING ACTIVITIES

The identification details of the data processing operation(s) covered by this annex are those declared by the Processor, who is responsible for accurately identifying the processing operations that he outsources as part of the services provided.

REPRESENTATIONS OF THE PROCESSOR

The Processor acknowledges that compliance with personal data protection regulations is a fundamental requirement for Solina.

In this respect, the Processor represents that it:

- provides sufficient guarantees as to the implementation of appropriate technical and organisational measures so that the processing complies with the GDPR and ensures the protection of the rights of data subjects;
- has implemented a privacy policy compliant with the GDPR.

INSTRUCTIONS FROM SOLINA

The Processor undertakes to process personal data only on documented instructions from Solina, including with regard to transfers of personal data to a third country or an international organization, unless required to do so by Union or Member State law to which the processor is subject; in such a case, the Processor shall inform Solina of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest.

Documented instructions shall be communicated to the Processor in writing, in any form chosen by Solina, including but not limited to documents, emails or meeting minutes.

The Processor shall immediately inform Solina if, in its opinion, an instruction infringes the GDPR or other Union or Member State data protection provisions. Such notification shall be made in writing and within a timeframe compatible with its effective consideration by Solina.

ENHANCED CONFIDENTIALITY

The Processor undertakes to ensure that any person authorized to access Solina's personal data, whether employees or subcontractors, is subject to an appropriate confidentiality obligation and to provide evidence thereof upon first request from Solina.

The Processor undertakes to train all persons authorized to access Solina's personal data on the applicable security measures. The annual training plan shall be communicated to Solina.

SECURITY OBLIGATIONS

The Processor shall implement appropriate technical and organizational measures to protect personal data against accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, personal data.

The Processor also undertakes an obligation to assist Solina in security matters. In this respect, it shall assist Solina in implementing security measures and shall inform it without delay of any identified technical vulnerability or organizational failure. Solina remains solely responsible for deciding whether to implement the measures proposed by the Processor.

PERSONAL DATA BREACH

Solina alone is responsible for notifying personal data breaches to the competent Data Protection Authority in its capacity as data controller.

To enable Solina to comply with this obligation, the Processor undertakes to notify Solina without undue delay and, where possible, no later than forty-eight (48) hours after becoming aware of any personal data breach.

In the event of delayed notification, the Processor shall provide the reasons for such delay. The breach notification shall be addressed to the contacts designated by Solina or, failing that, to its Data Protection Officer.

The notification shall at least include:

- the nature of the personal data breach, including, where possible, the categories and approximate number of data subjects concerned and the categories and approximate number of personal data records concerned;
- the name and contact details of the Processor's Data Protection Officer or other contact point;
- the likely consequences of the personal data breach;
- the measures taken or proposed to address the breach.

If the Processor is unable to provide all of this information at the same time, this does not exempt it from its obligation to notify Solina of the data breach, accompanied by all the information at its disposal, with the rest to be communicated as soon as it becomes known.

In the event of a data breach, the Processor shall, as soon as possible, take all necessary measures to remedy and mitigate the impact of the breach and shall inform Solina of the measures taken and the expected and observed results.

The Processor undertakes to actively collaborate with Solina so that it is able to meet its regulatory and contractual obligations, in particular to communicate with the persons concerned or respond to questions from the Data Protection Authority.

ASSISTANCE REGARDING DATA SUBJECT RIGHTS

The Processor undertakes to help and assist Solina, through appropriate technical and organizational measures and taking into account the nature of the processing, to fulfill its obligation to respond to requests from data subjects seeking to exercise their rights.

ASSISTANCE REGARDING DATA PROTECTION IMPACT ASSESSMENTS

The Processor shall inform Solina as soon as it becomes aware of any type of processing which, given its nature, context, and purposes, is likely to result in a high risk to the rights and freedoms of natural persons.

The Processor undertakes to help and assist Solina in carrying out the impact assessment by providing, upon first request, all the information Solina needs to carry out this impact assessment.

The Processor undertakes to help and assist Solina when the latter decides to consult the Data Protection Authority following an impact assessment indicating that the processing would present a high risk if the processing is not modified.

The Processor undertakes to provide all the information at its disposal, as well as technical assistance and support, in order to propose measures to mitigate the risks to the rights and freedoms of natural persons.

SUB-PROCESSING

The Processor is only authorized to recruit other sub-processor in the context of the processing carried out on behalf of Solina with the latter's prior written consent.

Each time a new sub-processor is used, the Processor must comply with the following obligations:

- verify that the proposed sub-processor provides sufficient guarantees regarding the implementation of appropriate technical and organizational measures to ensure that the processing meets the requirements of the applicable regulations and this amendment;
- sign a contract with the sub-processor referring to this amendment and imposing on it the same obligations regarding the protection of personal data as those set out in this amendment;
- keep up to date and make available to Solina the list, appended to this amendment, of other sub-processor recruited under the contract who have access to personal data.

The Processor remains fully liable to Solina and third parties for the actions of its own sub-processor. It is therefore the responsibility of the Processor to take all necessary measures to ensure that its sub-

processor complies with the provisions of the GDPR, as Solina has no control over the Processor's sub-processors.

INTERNATIONAL DATA TRANSFERS

No transfer of personal data may take place outside the European Union without the prior, express, and specific consent of Solina.

In the event of Solina's agreement, the Processor undertakes to comply with all obligations relating to the transfer of personal data to a third country and, in particular, to enter into a binding legal agreement with the recipient of the data, such as standard contractual clauses (SCCs), and to provide proof of this to Solina.

COOPERATION WITH THE DATA PROTECTION AUTHORITY

Solina and the Processor are required to cooperate with the Data Protection Authority at its request.

In the event that the inspection carried out at the Processor's premises concerns processing carried out on behalf of and for Solina, the Processor undertakes to inform Solina immediately and not to make any commitments on its behalf.

In the event of a Data Protection Authority inspection of Solina relating in particular to the services provided by the Processor, the latter undertakes to cooperate with Solina and to provide it with any information that the Data Protection Authority may require.

In the event that the inspection only concerns the processing carried out by the Processor as data controller, the latter shall be responsible for the inspection and shall refrain from communicating or disclosing Solina's personal data.

In any event, if the Processor is subject to a formal notice, warning, or conviction by the Data Protection Authority, even if exempt from publication, the latter is required to inform Solina without delay and no later than 48 hours after the decision.

FATE OF DATA AT THE END OF THE CONTRACT

Upon expiry of the contract and no later than the last day of the contract, the Processor is obliged to ask Solina whether it must return, transfer or delete all personal data and all existing copies and to return, transfer or delete all personal data and all existing copies no later than 30 days after the end of the contract. The Processor may not retain any data for any reason whatsoever.

At the same time as returning, transferring or deleting the data and copies, the Processor shall send Solina a certificate confirming the destruction of all existing copies of its data.

RECORD OF PROCESSING OPERATIONS

The Processor must keep a "record of processing operations" and keep it up to date.

To this end, Solina shall provide the Processor with the elements and information requested by the Processor for the proper maintenance of its register.

The Processor is required to provide proof of the existence of its register at Solina's first request or in the context of an audit.

The register shall be made available to the Data Protection Authority.

AUDIT

Solina reserves the right to carry out any checks it deems necessary to verify compliance with the above obligations by conducting an audit of the Processor or directly of one of its subcontractors.

This audit may be carried out by means of a questionnaire or an inspection. In the first case, which often occurs in the context of annual compliance checks on subcontractors, Solina sends the Processor a compliance questionnaire, which the latter undertakes to return completed within fifteen (15) days of its dispatch.

Solina may decide to carry out an audit by means of an inspection once a year.

In such a case, the Processor undertakes to respond to audit requests from Solina or a trusted third party selected by Solina, recognized as an independent auditor, with appropriate qualifications, and free to provide details of its comments and audit findings to Solina.

Solina must notify the Processor in writing of its intention to conduct an audit by means of an inspection, giving at least ten (10) days' notice. Solina may only conduct such an audit once a year, except in exceptional circumstances (such as data breaches) that would justify additional audit.

Solina shall communicate the name of the auditor, where applicable. The Processor has the right to refuse the auditor for a legitimate reason. In the event of disagreement after a third proposal, the choice of auditor shall be determined by the competent court.

The costs of the audit will be borne in full by the Controller, unless the audit reveals shortcomings on the part of the Processor, in which case the latter will bear the full cost.

The Controller will ensure that all information gathered during the audit remains confidential.

If a disagreement arises concerning compliance issues, Solina is entitled to request compliance.

RIGHTS AND OBLIGATIONS OF SOLINA

Solina undertakes to:

- provide the Processor with all the documented information and instructions necessary for the proper execution of the processing;
- inform the Processor of any changes to the processing;
- provide the Processor with the contact details of its contact person or, where applicable, its data protection officer
- notify the competent authority of any data breaches;
- comply with its data protection obligations.

Solina has the right to:

- request from the Processor, upon first request, the communication of any element, document, or documentation that guarantees that it complies with the requirements of the GDPR and this amendment;
- raise objections and reservations about other subcontractors hired by the Processor;

- conduct audits or inspections of the Processor to ensure that it complies with the requirements of the GDPR and this addendum;
- request the Processor's assistance in conducting an impact assessment and implementing the rights of data subjects, cooperating with the Data Protection Authority, implementing security measures for processing, or notifying the Data Protection Authority or data subjects of data breaches.

COMPENSATION FOR DAMAGES

Where one of the parties is individually liable for damage resulting from the processing, it shall be individually liable for that damage in its entirety in order to guarantee effective compensation for the persons concerned.

When the parties are jointly liable for damage caused by the processing, the parties are also jointly liable for the damage in its entirety in order to guarantee effective compensation to the data subject.

Notwithstanding any provision to the contrary in the contract, no limitation of liability or cap on compensation shall apply in respect of compensation for damage suffered by the persons concerned.

In the event that Solina is ordered to pay an administrative fine or any other decision causing it harm, the Processor undertakes to compensate it for the amount of the fines or damages incurred.

REVISION

Any change in case law, decision by the competent Data Protection Authority or any new regulation relating to the protection of personal data that would modify any of the provisions of this amendment shall necessarily entail its revision. The revision must be agreed upon by both parties.

In the event of disagreement on the revision of the amendment that would expose Solina to a technical, economic, or legal risk, the contract may be terminated without compensation or penalty by registered letter with acknowledgment of receipt, subject to a maximum period of six (6) months from the date of dispatch of the termination request.

POINT OF CONTACT: REPRESENTATIVE OR DPO

The contact details of Solina's Data Protection Officer are as follows: dpo@solina.com

If the Processor is not located within the European Union, it undertakes, in accordance with the applicable regulations, to appoint a representative within the European Union in writing.

The contact details of the Processor's Data Protection Officer or representative must be provided to Solina upon first request.

GOVERNING LAW AND JURISDICTION

Notwithstanding any provision to the contrary in the contract, any dispute relating to the interpretation or performance of this amendment shall be governed by French law and shall fall within the exclusive jurisdiction of the courts within the jurisdiction of the Paris Court of Appeal.