

## Attachment 4: Data Processing Agreement according to Art. 28 GDPR

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### Preamble

Crowdfox GmbH ("Crowdfox") and the customer conclude a contract for SaaS services and have agreed that this Data Processing Agreement shall become part of the main contract as an annex to the main contract. This contract shall enter into force when the main contract becomes effective and does not require any further signature to become effective. Rights and obligations are only derived from this contract if the customer has concluded the main contract with Crowdfox. This contract does not apply to services other than SaaS services.

Crowdfox processes personal data as a processor for the customer in the manner described in this agreement on behalf of the customer within the meaning of Art. 28 GDPR in compliance with the following provisions.

### I. General Regulations

1. This Data Processing Agreement (hereinafter "this agreement") governs the rights and obligations of the Customer and the contractor (hereinafter jointly referred to as "Parties") in the context of the processing of personal data by order. This agreement is designed to comply with the provisions of the applicable EU General Data Protection Regulation (hereinafter "GDPR"), the German Federal Data Protection Act and the relevant state data protection laws. Crowdfox is a processor and is hereinafter referred to as "Contractor". The customer is the controller and is hereinafter referred to as the "Customer".
2. This agreement shall apply to such activities in which the Contractor, employees of the Contractor or subcontractors engaged by the Contractor process personal data of the Customer pursuant to the Service Agreement within the meaning of Art. 28 of the GDPR.
3. Terms used in this agreement shall be understood in accordance with their definition in the GDPR.
4. This agreement replaces all previous data protection agreements and data processing agreements or contract data processing agreements between the Parties.
5. In the event of contradictions between the Service Agreement or the General Terms and Conditions and this agreement, this agreement shall take precedence as the more specific regulation in data protection matters.

### II. Subject and Duration of Processing

1. The subject matter, scope, nature and purpose of the data processing arise from this agreement and the contractual offer to which reference is hereby made (hereinafter Service Agreement).
2. The duration of this order (term) corresponds to the term of the Service Agreement.

### III. Specification of the Order Content

- a. The provision of the contractually agreed-upon data processing shall take place exclusively in a member state of the European Union or in another contracting state of the Agreement on the European Economic Area. Any transfer to a third country requires the prior consent of the

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Customer and may only take place if the special requirements of Art. 44 et seq. GDPR are fulfilled. If these requirements are met, however, there must be important reasons under data protection law to withhold consent.

- b. The following types/categories of data are regularly the subject of the processing of personal data (enumeration/description of data categories):
- Communication data (e.g. telephone, e-mail)
  - Contract master data (contractual relationship, product or contractual interest)
  - Customer history
  - Offer data
  - Ordering data
  - Address data
  - Contract billing and payment data
- c. Categories of data subjects include regular:
- Employees
  - Contact persons

### IV. Duties of the Customer

1. Within the scope of this This agreement, the Customer shall be solely responsible for compliance with the statutory provisions of the data protection laws, in particular for the lawfulness of the transfer of data to the Contractor as well as for the lawfulness of the processing ("Controller" within the meaning of Art. 4 No. 7 GDPR). This shall also apply with regard to the subject, scope, type and purpose of the data processing regulated in this This agreement, the description of the data concerned in accordance with Section 1.2 and the safeguarding of the rights of the data subjects.
2. In particular, the Customer shall be responsible for ensuring that the contractually agreed-upon technical and organizational measures ("TOM") established by the Contractor for such data processing, and currently applicable in each case, provide an adequate level of protection for the risks associated with the processed data. The Contractor is responsible for complying with these TOM.
3. The Customer shall inform the Contractor immediately and in full if the Customer discovers any errors or irregularities regarding the processing of said data with respect to data protection provisions.
4. If required, the Customer shall name the Contractor as the contact person for data protection issues arising within the scope of this This agreement.
5. Further rights and obligations of the Customer arise from the following provisions of this This agreement and the GDPR as well as any associated statutory provisions.

### V. Rectification, Restriction and Deletion of Data

1. The Contractor may not correct, delete or restrict the processing of data processed under the order on the Contractor's own authority, but only in accordance with documented instructions from the Customer. Insofar as a data subject contacts the Contractor directly in this regard, the Contractor shall immediately forward this request to the Customer. The Contractor shall not

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be liable if the request of the data subject is not answered, not answered correctly or not answered in time by the Customer and this is solely the fault of the Customer.

2. Insofar as included in the scope of services, the deletion concept, right to be forgotten, as well as rectification, data portability and information rights shall be ensured directly by the Contractor in accordance with the Customer's documented instructions.

### VI. Quality Assurance and Other Duties of the Contractor

In addition to compliance with the provisions of this This agreement, the Contractor shall have statutory obligations pursuant to Articles 28 to 33 of the GDPR; in this respect, the Contractor shall in particular ensure compliance with the following requirements:

1. Written appointment of a data protection officer who performs in accordance with Art. 38 and 39 GDPR. The contact details of the data protection officer are easily accessible on the Contractor's homepage.
2. The maintenance of confidentiality pursuant to Art. 28 Para. 3 P. 2 lit. b, Art. 29, Art. 32 Para. 4 GDPR. When performing, the Contractor shall only use employees who have been obligated to maintain confidentiality and who have previously been familiarized with the data protection provisions relevant to them. The Contractor and any person subordinate to the Contractor who has access to personal data may process such data solely in accordance with the Customer's instructions, including the powers granted in this This agreement, unless they are required by law to process it.
3. The implementation of and compliance with all technical and organizational measures required for this order in accordance with Art. 28 Para. 3 P. 2 lit. c, Art. 32 GDPR.
4. The Customer and the Contractor shall, upon request, cooperate with the Supervisory Authority in the performance of its duties.
5. The immediate informing of the Customer about control actions and measures of the Supervisory Authority, as far as they relate to this order. This shall also apply insofar as a competent authority is investigating the Contractor in the context of administrative offense or criminal proceedings with regard to the processing of personal data during the commissioned processing.
6. Insofar as the Customer is being investigated by the Supervisory Authority, or is involved in administrative offense or criminal proceedings, or a liability claim by a data subject or a third party or any other claim in connection with the commissioned processing by the Contractor has been filed against the Customer, the Contractor shall support the Customer to the best of the Contractor's ability.
7. The Contractor shall regularly monitor the internal processes as well as any technical and organizational measures to ensure that the processing in the Contractor's area of responsibility is carried out in accordance with the requirements of the applicable data protection laws and that the protection of the rights of the data subject is guaranteed.
8. Verifiability of the technical and organizational measures taken vis-à-vis the Customer within the scope of its control powers pursuant to Section 5 of this This agreement.

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### VII. Technical and Organizational Measures

1. Taking into account the current state of technology, the implementation costs and the nature, scope, circumstances and purposes of the processing, as well as the varying likelihood and severity of the risk to the rights and freedoms of natural persons, the processor shall implement appropriate technical and organizational measures in such a way that the processing of personal data complies with the requirements of applicable data protection law, in particular the GDPR and this This agreement. The processor hereby acknowledges and guarantees the rights of the data subjects as indicated above.
2. For this purpose and in accordance with Article 32 GDPR, the processor shall adequately document the specific measures and submit them to the controller upon request. After mutual agreement, the technical and organizational measures become an integral part of the contract.
3. The measures to be taken are data security measures and measures that ensure an adequate level of protection in relation to the risk concerning confidentiality, integrity, availability and resilience of the systems. The current state of technology, implementation costs, nature, scope and purposes of the processing, as well as the likelihood and severity of a risk to the rights and freedoms of natural persons within the meaning of Article 32 Para. 1 of the GDPR shall be taken into account.
4. The technical and organizational measures change with technical progress and are constantly being developed further. In this context, the processor may take appropriate alternative measures. However, the safety level of said measures shall not fall below the level agreed upon in this This agreement. The currently applicable technical and organizational measures are listed [here](#) but can also be requested at any time.

### VIII. Subcontracting

1. Subcontracting within the meaning of this regulation include those services that relate directly to the provision of the main service. This does not include ancillary services which the Contractor uses, for example, telecommunications services, postal/transport services, maintenance and user services, or the disposal of data carriers and other measures to ensure the confidentiality, availability, integrity and resilience of the hardware and software of data processing systems. However, the Contractor shall be obligated to enter into appropriate and legally compliant contractual agreements as well as control measures to ensure data protection and data security of the Customer's data also in the case of outsourced ancillary services.
2. The Contractor may engage subcontractors (further processors) within the scope of the Service Agreement, provided that written consent by the Customer has been obtained or the subcontractors – e.g. on a freelance basis – work for the Contractor predominantly in the Contractor's business premises within the EU.
3. Outsourcing to subcontractors or changing the existing subcontractor is permitted to the extent that:
  - the Contractor notifies the Customer of such outsourcing to subcontractors a reasonable time in advance in writing or text form, and
  - the Customer does not object to the planned outsourcing in writing or in text form to the Contractor by the time the data is transferred, and

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- a contractual agreement in accordance with Article 28 Paras. 2-4 of the GDPR is used as a basis.
- 4. The transfer of the personal data of the Customer to the subcontractor and the subcontractor's first processing thereof shall be permitted only after all requirements for subcontracting have been met.
- 5. Any further outsourcing by the subcontractor requires the express consent of the Customer in advance and all contractual provisions must also be fulfilled by the subcontractor.

### **IX. Control Rights of the Customer**

1. The Customer shall have the right to carry out inspections in consultation with the Contractor or to have inspections carried out by inspectors to be named in individual cases. The Customer shall have the right to satisfy itself of the Contractor's compliance with this This agreement in its business operations by means of spot checks, of which notice must be given in good time.
2. The Contractor shall ensure that the Customer can satisfy itself of the Contractor's compliance with its obligations under Article 28 of the GDPR. The Contractor undertakes to provide the Customer with the necessary information upon request and, in particular, to provide evidence of the implementation of the technical and organizational measures.
3. To allow for inspections by the Customer, it is agreed that both Parties shall bear the personnel costs incurred for the inspection themselves. The costs of third party auditors appointed by the Customer shall be borne in their entirety by the Customer.
4. The Contractor shall have the right to refuse the random on-site inspection of this section if and as long as the Contractor provides evidence of the fulfillment of the Contractor's obligations, in particular the implementation of the TOM as well as their effectiveness, by means of suitable evidence. Appropriate evidence may include, in particular, approved codes of conduct within the meaning of Art. 40 GDPR or an approved certification procedure within the meaning of Art. 42 GDPR. Both Parties agree that the submission of test certificates or reports by independent bodies (e.g., IT security officer, data protection officer), a conclusive data security concept, or suitable certification by an IT security and data protection audit are also recognized as suitable evidence.

### **X. Notification of Violations by the Contractor**

1. The Contractor shall support the Customer in complying with the obligations set out in Articles 32 to 36 of the GDPR regarding the security of personal data, data breach notification obligations, data protection impact assessments and prior consultations. These include:
  - ensuring an adequate level of protection through technical and organizational measures that take into account the circumstances and purposes of the processing, as well as the predicted likelihood and severity of a potential security breach, and allow for the immediate detection of relevant breach events
  - the obligation to report personal data breaches to the Customer without delay
  - the obligation to assist the Customer within the scope of the Customer's duty to inform the data subject and, in this context, to provide the Customer with all relevant information without delay

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- supporting the Customer during the data protection impact assessment
  - supporting the Customer within the framework of prior consultations with the Supervisory Authority
2. The Contractor may claim compensation for support services that are not included in the service description or are not due to the Contractor's misconduct.

### **XI. Authority of the Customer to Issue Instructions**

1. The Contractor - and any person subordinate to the Contractor - may only process personal data within the scope of the Customer's instructions, unless there is an exceptional case within the meaning of Article 28 Para. 3 Sent. 2 lit. a GDPR or another overriding legal provision. The Service Agreement and the This agreement constitute the final instructions of the Customer (with respect to the data processing) at the time of the conclusion of this This agreement.
2. The Customer shall confirm verbal instructions without delay (at least in text form).
3. The Contractor shall inform the Customer immediately if the Contractor believes that an instruction violates data protection regulations. The Contractor shall be entitled to suspend the implementation of the relevant instruction until it is confirmed or amended by the Customer.

### **XII. Deletion and Return of Personal Data**

1. Copies or duplicates of the data will not be made without the knowledge of the Customer. Excluded from this are backup copies, insofar as they are necessary to ensure proper data processing, as well as data that is required with regard to compliance with statutory retention obligations.
2. Upon completion of the contractually agreed-upon work or earlier upon request by the Customer – at the latest upon termination of the Service Agreement – the Contractor shall hand over to the Customer all documents, created processing and utilization results, as well as all data inventories related to the contractual relationship that have come into the Contractor's possession or, after prior consent, destroy them in accordance with data protection requirements. The same applies to test and scrap material. The record of the deletion shall be provided upon request.
3. Documentation that serves as proof of the order and proper data processing shall be retained by the Contractor in accordance with the respective retention periods even after the termination of this Agreement. The Contractor may hand them over to the Customer at the end of the contract in order to be discharged of this duty.

### **XIII. Liability**

1. Reference is made here to Art. 82 of the GDPR.
2. In all other cases, the Customer shall be fully liable for damages within the internal relationship and shall indemnify the Contractor against any claims of the data subject or third parties on first demand, which are raised against the Contractor in connection with the commissioned processing

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3. The Customer shall bear the burden of proof that any damage is not the result of a circumstance for which the Customer is responsible.
4. Any exclusions of liability in this Agreement shall not apply in case of intent and gross negligence as well as in case of damages resulting from injury to life, body or health.

### **XIV. Final Provisions**

1. Amendments and changes to this Agreement or any of its components - including any representations by the Contractor - must be made in writing in accordance with the GDPR, which may also be in an electronic format, and must contain an express reference to the fact that such amendment or change is an amendment or change to these provisions. This also applies to the waiver of this formal written requirement.
2. Should individual parts of this Agreement be invalid, this shall not affect the validity of the remainder of this Agreement.

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