

DB MAGNIFIER | Webgasse 29/3 | 1060 Wien

Data Processing Addendum

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Concluded between each "Party" (together the „Parties“)

DB Magnifier GmbH
Webgasse 29/3
1060 Wien
FN 612354x (Commercial Court Vienna)
Email: office@db-magnifier.com

(“DBM” as „**Processor**“)

and

Company
Address
Place
FN
Email
(„**abbreviation**“ as „**Controller**“)

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1 Preamble

- (1) Company provides Customer with a technical solution in the field of Database Monitoring. The extent of Processor's activities is outlined in the main (commercial) agreement between the Parties.
- (2) Due to the nature of the systems, it cannot be ruled out that Processor will have access to personal data or gain knowledge of such data, or process personal data in order to carry out or be able to carry out the maintenance and servicing of the Monitoring System, Parties agree on enter into this Data Protection Agreement („DPA“) according to Art 28 (3) GDPR.
- (3) Parties agree that in general neither party has an intention to perform content-related processing of personal data. An event of accidental access to personal data is not considered an assigned data processing.

2 Subject

Processor is assigned the following processing activities on behalf of Controller:

- IT-Support for the IT Solution provided through the main agreement
- Database Metadata (personal usage statistics)
- User Management on the platform

Processor will process the following categories of personal data on behalf of Controller:

- User Names
- Email Addresses
- Usage statistics

3 Processor Obligations

- (1) Processor shall
 - a. only process personal data in accordance with applicable Data Protection Laws and as necessary to perform its obligations under this DPA and as instructed by the Controller (this may include any changes to applicable laws and necessary changes to Controller's internal guidelines and/or processes which may affect the Processor's Processing of personal data); in such a case, the processor shall notify the controller of such legal requirements prior to the processing, unless the relevant law prohibits such notification due to an important public interest;
 - b. notify Controller without undue delay, if it deems Controller's instructions to be in violation of applicable Data Protection Laws;
 - c. support Controller by providing information and documents in response to any complaint, request or other communication made by a Data Subject, in particular in relation to the right to information, right of access, rectification, portability and right to object, to enable Controller to comply with those inquiries within the statutory periods set out in Data Protection Laws; Processor shall forward any inquiries addressed to it by Data Subjects to the Controller and shall not answer the inquiries itself;
 - d. assist Controller and provide any information Controller needs to conduct a data protection impact assessment as well as a prior consultation, unless the Controller has access to the relevant data itself;
 - e. notify Controller without undue delay in writing at the email address listed on the cover page, if the following has come to the Controller's attention ("Data Breach"):
 - i. an actual or indirect knowledge of unauthorized or unlawful processing of Personal Data,
 - ii. an accidental or unlawful loss, damage, destruction or corruption of the Personal Data;

- f. in the event of a Data Breach in accordance with e, Processor shall provide Controller, without undue delay, information about the data breach;
- g. on the termination for whatever reason, or expiry of the DPA and/or main agreement, and where applicable at the choice of Controller, destroy, or return in a format consistent with standard industry practices, all personal data and any copies thereof to Controller, unless there is an obligation to store the personal data in accordance with applicable laws;
- h. retain documentation that serves as evidence of proper data processing even beyond the end of the contract in accordance with the respective retention periods. Processor may hand over this documentation to Controller for its discharge from the end of the contract.

4 Sub Processors

- (1) Controller explicitly acknowledges and agrees to the assignment of Sub-Processors that will comply with at least equivalent obligations applicable to Processor set out in this DPA. Additional sub processors will be assigned by Processor, if their services are essential for performing the obligations laid out in the main contract.
- (2) Processor shall procure, that all authorized Sub-Processors shall comply with the equivalent obligations applicable to Processor set out in this DPA. Processor shall upon Controller's request provide a copy of the written agreement concluded with the Sub-Processor.
- (3) In the event that a Sub-Processor is located outside the EEA and the European Commission has not adopted an adequacy decision within the meaning of Art 45 GDPR with respect to the state, territory or sector concerned, Processor shall be obliged to conclude Module 3 ("Transfer of Processors to Processors") of the Standard Contractual Clauses with the Sub-Processor in accordance with the European Commission's Implementing Decision (EU) 2021/914 and to provide a copy thereof to Controller upon the latter's request.
- (4) Processor shall notify the Controller prior to the assignment of a new Sub-Processors at the email address indicated on the cover sheet.
- (5) Controller may object to the assignment of a Sub-Processor within 14 days from the date of receipt of the email. If Controller does not exercise this right of objection, the sub processor shall be deemed approved.
- (6) In case of an objection, Controller acknowledges that certain support- and maintenance activities might not be performed by Processor to the extent, they could be performed with the assistance of the objected Sub-Processor.

5 Technical and Organizational Measures

- (1) Processor agrees to adopt necessary technical and organizational measures to ensure compliance with the applicable Data Protection Laws in compliance with Art 32 GDPR and with this DPA.
- (2) Processor shall promptly inform Controller in writing about any material change to the technical and organizational measures.

6 Audit

- (1) Processor shall permit Controller, or a third-party auditor acting under Controller's direction, to conduct, data protection and/or security audits, assessments, and inspections ("Audit") concerning Processor's and Sub-Processor's data protection and security procedures relating to the processing of personal data, its compliance with this DPA and applicable Data Protection Laws, provided that no confidentiality interests of Processor or its employees and customers are thereby violated.
- (2) Controller shall inform Processor four weeks in advance about time and date of the Audit. Controller's right to conduct further audits in case Processor infringes data protection obligations remains unaffected.
- (3) Audits and inspections shall be conducted only during the Processor's normal business hours and with minimal disruption to the Processor's business.

- (4) All personal data and other information (in particular, business and trade secrets) that have become accessible to Controller and auditors commissioned by the Controller in the course of Audits and inspections must be treated as strictly confidential. To ensure confidentiality, commissioned auditors must sign a written non-disclosure agreement, regardless of whether they belong to or have been commissioned by the person responsible. Before the commissioned auditors are allowed to carry out Audits and inspections, Controller must provide Processor with a copy of the written non-disclosure agreement.
- (5) Processor shall be entitled to reject an auditor if it raises justified objections to the auditor's appointment. A justified objection shall be deemed to exist, in particular, if the auditor is in a close relationship with a competitor company, if the auditor does not sign a written non-disclosure agreement that is sufficient for the Processor or if there are other reasons that cast doubt on the professional suitability or independence of the auditor.
- (6) Controller will bear all costs of the Audit.
- (7) An audit shall not take place if the Processor conducted an independent review (carried out by an independent third party designated by the Processor) at intervals of at least three years and sends a report to Controller (e.g. ISO27001 Certification).

7 Confidentiality

- (1) Processor shall take all reasonable steps to ensure the reliability of any staff (including Sub-Processors) who may have access to, or are authorized to process, personal data and ensure such staff (including Sub-Processors) have committed themselves to appropriate obligations of confidentiality or are under appropriate statutory obligations of confidentiality. Processor shall ensure that this obligation of confidentiality shall continue following the termination of any employment agreement, services agreement or this DPA.

8 Termination

- (1) This DPA shall survive termination of the Main Agreement as long as Processor processes personal data for Controller. Following termination of the DPA, clause 7.(1) shall remain in force.
- (2) To the extent that Controller and Processor have entered into additional agreements in conflict with this DPA, the provisions of this DPA shall prevail with regard to the processing of personal data.

9 Indemnification

- (1) Controller shall indemnify and hold Processor harmless for any and all disadvantages (e.g. claims, damages, expenses and costs), including of a non-tangible nature, incurred by Processor as a result of or in connection with the improper exercise of rights and violations of Controller's obligations under this Processing Agreement, under other contracts between the Parties in connection with the commissioned data processing, or under applicable legal provisions, in particular Austrian and European data protection law, or unlawful instructions. This shall also apply to the defense against such disadvantages, regardless of whether they are justified or unfounded and regardless of the legal grounds on which they are based.

10 Liability

- (1) Processor shall only be liable to Controller for damage caused in connection with the Data Processing if it fails to comply with its obligations specifically set out in this DPA and the relevant data protection legislation (in particular the GDPR) and in any event only up to the amount of the annual fee agreed for the commissioned Data Processing.
- (2) Provided that Processor has taken security measures pursuant to Art 32 GDPR, the assertion of (recourse) claims by Controller against Processor based on the allegation that Processor has taken insufficient security measures shall be excluded.

11 General Provisions

- (1) Controller is obliged to inform Processor in case of change of the contact address indicated on the cover sheet.
- (2) This DPA is governed by Austrian law, excluding its international private law (IPRG) and the UN-Convention on the international sale of goods (CISG).
- (3) Parties irrevocably agree that the legal venue of this DPA is Vienna and the responsible court for this legal venue has exclusive jurisdiction to settle any dispute arising out of or in connection with this DPA. Each Party agrees to waive any objection to the Governing Court, whether on the grounds of venue or that the forum is not appropriate.
- (4) In the event that individual provisions of this DPA are ineffective, the remaining provisions hereof continue in full force and effect.
- (5) Ancillary agreements must be made in writing. The foregoing shall also apply to the waiver of this mandatory written form.

12 Signatures

Vienna, _____

DB Magnifier GmbH

Controller

Signature _____

Signature _____

Name _____

Name _____

Function _____

Function _____