

Data Processing Agreement

OPTEN AG

A. General Provisions

1 Subject and Scope of this Agreement

- 1.1 This Data Processing Agreement ("Agreement") specifies the rights and obligations related to data processing that arise from applicable data protection laws between OPTEN AG (hereinafter referred to as the "Provider") and its customers (hereinafter referred to as the "Customer"). Each of the Provider and Customer is referred to as a "Party," and collectively as the "Parties." This Agreement supplements the contractual agreements between the Parties, which may consist of one or more contracts concerning the provision of services to the Customer ("Contract"). The legal basis for the Parties' relationship is defined by the General Terms and Conditions ("GTC") of the Provider.
- 1.2 This Agreement applies only to services in which the Provider processes personal data on behalf of and for the purposes of the Customer ("Data Processing"), whereby the Customer acts as either the Controller or the Processor, and the Provider as either the Processor or Sub-Processor.
- 1.3 This Agreement explicitly does not apply to processing activities in which the Provider determines the purposes and means of processing and is therefore responsible for data processing under applicable data protection laws.
- 1.4 This Agreement forms an integral part of the Contract. The provisions of this Agreement do not limit the rights and obligations of the Parties regarding service provision under the Contract. However, in matters covered by this Agreement, its provisions take precedence over those of the Contract.

2. Duration of the Agreement

- 2.1 The term of this Agreement corresponds to the duration of the Contract, unless certain obligations arising from this Agreement extend beyond that period. In such cases, this Agreement remains in force until the respective obligations expire.
- 2.2 This provision does not modify the termination rights agreed upon in the Contract.

3. Definitions

- 3.1 Terms highlighted in bold and enclosed in quotation marks within this Agreement have the meanings assigned to them throughout the Agreement.

- 3.2 Data protection-related terms used in this Agreement, such as "Personal Data," "Data Subject," "Controller," "Processor," or "Data Protection Impact Assessment," have the meanings assigned to them under the Swiss Federal Data Protection Act (DSG) or, where applicable, the EU General Data Protection Regulation (GDPR).

B. Description of Data Processing and Obligations of the Parties

4. Details and Purpose of Data Processing

- 4.1 The subject and purpose of data processing are determined by the Contract and the service descriptions provided by the Provider, in conjunction with any separate instructions from the Customer.
- 4.2 The nature of the processing, the type of processed personal data ("Contractual Personal Data"), and the categories of affected data subjects are also determined by the Contract and the Provider's service descriptions, together with any specific instructions from the Customer.
- 4.3 Data processing takes place in Switzerland and in countries of the EU/EEA.
- 4.4 The duration of processing is determined in accordance with section 2.

5. Instruction Compliance, Purpose Limitation, and Control

The Provider commits and ensures that all Contractual Personal Data is processed (i) solely for the purposes described in section 4, (ii) in accordance with the Customer's instructions, (iii) in compliance with this Agreement, and (iv) is not used for the Provider's own purposes.

6. Data Security

- 6.1 The Provider commits to implementing appropriate technical and organizational security measures to ensure the confidentiality, integrity, and contractual availability of Contractual Personal Data.
- 6.2 The Provider shall implement, among others, access control mechanisms, authorization management, and procedures for regularly reviewing, assessing, and evaluating the effectiveness of technical and organizational measures. In selecting these measures, the Provider shall consider the state of the art, implementation costs, the nature, scope, circumstances, and purposes of processing, as well as the varying likelihood and severity of risks for affected data subjects.

7. Notification of Data Security Breaches

- 7.1 If the Provider becomes aware of a security breach that results in the accidental or unlawful loss, deletion, destruction, or alteration of, or unauthorized disclosure or access to, Contractual Personal Data ("Data Breach"), the Provider shall notify the Customer as soon as possible without undue delay. The Provider shall:
- (i) Investigate the Data Breach and determine its impact,
 - (ii) Provide detailed information to the Customer, and
 - (iii) Take appropriate measures to mitigate the impact and reduce the risk to data subjects.
- 7.2 The Provider will reasonably assist the Customer in fulfilling their obligations to report Data Breaches to regulatory authorities or affected data subjects.

8. Information and Support Obligations

- 8.1 The Provider commits to informing the Customer as soon as possible and proactively if:
- (i) The Provider believes they will no longer be able to fulfill the obligations under this Agreement in the foreseeable future, or
 - (ii) The Provider receives a request from a data subject to exercise their rights under data protection law regarding Contractual Personal Data. (If the Provider cannot identify the data subject, they will request the individual to contact the responsible Controller.)
- 8.2 The Provider will support the Customer in responding to data subject requests against separate remuneration.
- 8.3 Additionally, the Provider will assist the Customer in data protection impact assessments and prior consultations with supervisory authorities upon request and for an additional fee.
- 8.4 The Provider shall provide the Customer with all necessary information to demonstrate compliance with applicable data protection laws in relation to data processing. Upon request, the Provider will also provide reports on information security (for an additional fee) prepared by an auditing or certification body.

9. Confidentiality

- 9.1 The Provider commits to maintaining the confidentiality of Contractual Personal Data and ensures that individuals involved in processing are bound by confidentiality obligations.
- 9.2 These confidentiality obligations remain in effect indefinitely after the termination of this Agreement.

10. Sub-Processors

- 10.1 Sub-processors are natural or legal persons engaged by the Provider for data processing. The Provider may engage sub-processors but must establish agreements ensuring compliance with this Agreement's provisions, including confidentiality obligations.
- 10.2 The Provider will inform the Customer in writing six (6) months in advance if a new sub-processor is engaged. If the Customer does not object in writing within thirty (30) days, the new or replaced sub-processor is considered approved.
- 10.3 If the Customer objects for compelling legal or regulatory reasons, the Provider may either select another sub-processor or grant the Customer an extraordinary termination right.

11. Return or Deletion of Contractual Personal Data upon Contract Termination

Upon termination of the Contract, the Provider will delete the Contractual Personal Data or return it to the Customer in an appropriate format, as specified in the Contract.

12. Audit

- 12.1 The Customer may conduct an audit once per year to verify compliance with security measures and other obligations under this Agreement. The audit costs are borne by the Customer, and the Provider will support the audit within reasonable effort (for an additional fee).
- 12.2 The Customer's audit rights apply only to the extent that they are not otherwise permitted under the Contract.

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Attachements

- Technical and Organizational Measures:
<https://www.opten.ch/de/policies/tom>