Cyberfusion

DPA (Data Processing Agreement)

Version: 1.2
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The Data Processing Agreement below (**"Data Processing Agreement"**) applies to all processing that Cyberfusion carries out on behalf of the Customer on the basis of the Agreement concluded with the Customer. Cyberfusion and the Customer hereby take into account that:

- this Data Processing Agreement has been concluded in the context of providing the Services (hosting services in particular) to the Customer, in execution of the Agreement;
- the capitalised terms in this Data Processing Agreement have the meaning stated in the first article of the Cyberfusion General Terms and Conditions, unless a different definition is used in this Data Processing Agreement;
- if definitions are used that correspond to the definitions in the General Data Protection Regulation (**"GDPR"**), the definitions used therein apply and prevail;
- Customer is hereby regarded as the controller within the meaning of Article 4(7) of the GDPR (**"Controller"**);
- Processor is hereby regarded as a processor within the meaning of Article 4(8) of the GDPR **(“Processor”**);
- The processor will process personal data within the meaning of Article 4(1) of the GDPR in order to provide its services, on behalf of the Controller;
- Processor is prepared to comply with the obligations regarding security and other aspects of the GDPR, to the extent that this is within its power;
- Parties, partly in view of the requirement of Article 28 paragraph 3 of the GDPR, wish to record their rights and obligations in writing through this Data Processing Agreement.

Cyberfusion and Customer hereby agree as follows:

Article 1 Purposes of processing

1.1 The Processor undertakes to process personal data on behalf of the Controller under the conditions of this Data Processing Agreement. Processing will only take place in the context of the execution of the Agreement, plus those purposes that are reasonably related thereto or that are determined with further consent.

1.2 The Processor makes every effort to carefully process the personal data made available by or through the Controller in the context of the aforementioned activities.

1.3 The processing relates to the processing objectives set by the Controller, with regards to the categories of personal data and data subjects, which the Controller will submit to the Processor in writing prior to the processing.

Article 2 Processor's obligations

2.1 Processor processes data on behalf of Controller for the purposes referred to in Article 1. The processor will not process the personal data for its own purposes.

2.2 The processor will act in accordance with the GDPR when processing personal data.

2.3 Processor will immediately inform Controller if, in its opinion, instructions conflict with applicable law regarding the processing of personal data or are otherwise unreasonable.

2.4 The Processor will, if this is reasonably within its sphere of influence, provide assistance to the Controller in fulfilling its legal obligations. This concerns the provision of assistance in fulfilling its obligations under Articles 32 to 36 of the GDPR. The Processor may charge the costs incurred for this to the Controller.

2.5 The Controller guarantees that the content, use and instructions for processing the personal data as referred to in the Data Processing Agreement are not unlawful and do not infringe any rights of third parties, and indemnifies the Processor against all claims and claims related to this.

Article 3 Transfer of personal data

3.1 Processor may process personal data in countries within the European Economic Area (EEA). In addition, the Processor may transfer the personal data to a country outside the EEA, provided that that country guarantees an adequate level of protection and the Processor complies with its other obligations under this Data Processing Agreement and the GDPR.

Article 4 Engaging sub-processors

4.1 The processor may use sub-processors in the context of the Data Processing Agreement.

4.2 The sub-processors engaged by the Processor at the time of concluding this Data Processing Agreement are included in Appendix A. The Controller has the right to object to any new or changed sub-processor(s) in writing within two weeks after sending the notification about this from the Processor in writing. to make a reasoned objection. If the Controller objects, the Parties will enter into consultation to find a solution.

4.3 The Processor will impose similar obligations on the sub-processors it engages as agreed between the Controller and the Processor.

Article 5 Duty of confidentiality

5.1 The Processor is obliged to maintain the confidentiality of the personal data provided to the Processor by the Controller. The processor ensures that the persons authorised to process the personal data are contractually obliged to maintain the confidentiality of the personal data of which he or she becomes aware.

5.2 This obligation of confidentiality does not apply to the extent that the Controller has given permission to provide the information to third parties, if the provision of the information to third parties is logically necessary given the purpose for which the information is provided. personal data is provided and/or the implementation of this Data Processing Agreement, or if there is a legal obligation or judicial decision on the basis of which the information must be provided to a third party.

5.3 If the Processor is obliged to transfer personal data provided by the Controller to a third party based on a legal obligation or a judicial decision, the Processor will inform the Controller as soon as possible, unless this is prohibited by law.

Article 6 Data leak reporting obligation

6.1 The Processor shall inform the Controller without unreasonable delay of a breach relating to personal data as referred to in Article 4(12) of the GDPR (hereinafter: "Data Breach"). The Processor will take reasonable measures to limit the consequences of the Data Leak and prevent further and future Data Leaks.

6.2 The Processor will provide assistance to the Controller, taking into account the nature of the processing and the information available to him, with regards to (new developments regarding) the Data Breach.

6.3 The notification to the Controller will in any case include, to the extent known at that time:

a. the nature of the Data Breach;
b. the (expected) consequences of the Data Breach;
c. the categories of data subjects;
d. the (estimated) number of people involved;
e. which categories of personal data are affected by the Data Breach;
f. whether and how the personal data in question was secured;
g. the (proposed) measures to limit the consequences of the Data Leak or prevent further Data Leaks; and
h. any different contact details for following up on the report.

6.4 The notification will be made to the contact person of the Controller via the contact details known to us.

Article 7 Rights of data subjects

7.1 In the event that a data subject submits a request to the Processor to exercise his/her legal rights under Chapter III of the GDPR, the Processor will forward the request to the Controller and inform the data subject thereof. The controller will then process the request independently.

7.2 In the event that a data subject submits a request to the Controller to exercise one of his legal rights, the Processor will, if the Controller so requests, cooperate to the extent possible and reasonable. The Processor may charge the Controller reasonable costs for this.

Article 8 Security measures and control

8.1 The Processor will make every effort to take appropriate technical and organisational measures to protect the personal data processed for the benefit of the Controller against loss or against any form of unlawful processing.

8.2 The Controller has the right to have the Processor's compliance with the obligations in this Data Processing Agreement checked. The controller can have this checked a maximum of once a year by an independent third party who is bound by confidentiality, if there is a reasonable, communicated in writing and well-founded suspicion of violation of this Data Processing Agreement.

8.3 If an audit has already been carried out by an independent third party in a year, the Processor may, contrary to what is arranged in the previous paragraph, simply provide access to the relevant parts of the report if another request is made within the same year. A check of compliance with the Processor's obligations in the Data Processing Agreement is requested.

8.4 The Processor and Controller jointly decide on the date, time and scope of the audit.

8.5 The costs of the check described above will be borne by the Controller, unless and insofar as this check shows that the Processor has attributably failed in its obligations under this Data Processing Agreement. In that case, the costs of the inspection will be borne by the Processor.

8.6 The check and its results will be treated confidentially by the Controller.

Article 9 Liability

9.1 The division of liability with regards to the Data Processing Agreement is governed by the relevant provisions included in the Agreement, in particular the General Terms and Conditions.

Article 10 Duration and termination Data Processing Agreement

10.1 This Data Processing Agreement is concluded at the time of conclusion of the Agreement or upon acceptance of the General Terms and Conditions by the Customer and will continue for the duration of the services provided under the Agreement.

10.2 The Controller and Processor will consult with each other about changes to this Data Processing Agreement if a change in legislation or regulations gives reason to do so.

10.3 Upon termination of the Data Processing Agreement, the Processor will, without unreasonable delay, at the request and expense of the Controller, subject to deviating and prevailing agreements from the Agreement; (a) return the personal data as located on the infrastructure (under management) of the Processor to the Controller; or (b) delete the personal data as soon as possible.

Article 11 Applicable law

11.1 The provisions of the Agreement, in particular the General Terms and Conditions of Cyberfusion, also apply to this Data Processing Agreement. In the event of a conflict between a provision in this Data Processing Agreement and a provision in other applicable provisions, the provision in the Data Processing Agreement takes precedence.

11.2 Dutch law applies to this Data Processing Agreement.

11.3 All disputes that may arise between the Parties in connection with this Data Processing Agreement will be submitted to the competent court, which is also authorised to rule on disputes regarding the Agreement.

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Appendix A Overview of engaged sub-processor(s)

Subprocessor	Processing locations
Tuxis B.V. Scope: several data center services.	Netherlands
MoneyBird B.V. Scope: accounting software.	Europe
Voys B.V. Scope: VoIP.	Netherlands
The Registrar Company B.V. Scope: domain names.	Netherlands
Xolphin B.V. Scope: SSL certificates.	Netherlands
MB Martynas IT Scope: incidental assistance for DirectAdmin.	Lithuania and France
MessageBird B.V. Scope: text messages.	Belgium and Netherlands

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Appendix B Data breach notification procedure

If a Data Breach occurs at the Processor and involves personal data that the Processor processes on behalf of the Controller, the Processor will inform the Controller about this. The processor can follow the procedure below for this. Cyberfusion and Customer hereby agree as follows:

a. Discovery of the Data Breach by the Processor took place on [DATE], at [TIME].
b. The notification of the Data Breach to the Controller took place on [DATE], at [TIME].
c. Measures taken by the Processor to limit the consequences of the Data Leak and prevent further/future Data Leaks are: [MEASURES]
d. Other information regarding the Data Breach: the nature of the data breach, the (expected) consequences of the Data Breach, which categories of personal data are affected by the Data Breach, whether and how the personal data in question was secured, the categories of data subjects, the personal data is [IS/IS NOT] encrypted, hashed or in some other way made incomprehensible or inaccessible.