



## DATA PROCESSING AGREEMENT ADDENDUM

This agreement is made between **the Partner / Customer** (depending on the constellation) and the **Service Provider** (together the **Parties** and each a **Party**) on the date indicated below.

### PREAMBLE

- A) With IncaMail, the Service Provider offers a secure e-mail platform for the secure and verifiable exchange of electronic messages (**IncaMail Services**).
- B) The Parties entered into an agreement governing the Customer's access and use to IncaMail Services.
- C) For the purposes of regulating the processing of Personal Data by the Service Provider, on behalf of the Customer, the Parties wish to enter into this agreement.

### 1. DEFINITIONS

1.1 For the purposes of this agreement, the following terms will have the following meaning:

**Company Personal Data** means any Personal Data processed by the Service Provider on behalf of the Customer in connection with the provision of its services as specified in Annex 1.

**Company Usage Data** means error logs and usage statistics that may contain Personal Data and that is used for purposes compatible with development of the Service Provider's services, such as providing support, troubleshooting recurring issues and implementing improvements.

**Data Protection Laws** mean all laws and regulations applicable to the Service Provider in connection with its processing of personal data under the Subscription Agreement as a processor, including the Swiss Federal Act on Data Protection, as revised (FADP), the GDPR and the UK Data Protection Act (2018).

**GDPR** means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation).

**Personal Data Breach** means a confirmed or reasonably suspected accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to Company Personal Data.

**Sub-processor** means any third-party processor engaged by the Service Provider to process Company Personal Data in order to provide the Services to the Customer, as defined under Article 28 of the GDPR. For the avoidance of doubt, third party providers used by the Service Provider as a controller are not Sub-processors for the purposes of this agreement.

**Services** means all products and services owned and/or offered by the Service Provider and/or their suppliers/third parties, including applications, websites and technologies or functions.

**Subscription Agreement** means the agreement between Customer and the Service Provider governing access and use of the Services.

If not defined otherwise, the definitions set out in the FADP and, if applicable, the GDPR also apply.

### 2. SCOPE AND SERVICES

2.1 For purposes of this agreement, the Customer and the Service Provider agree that the Customer is the controller of Company Personal Data and the Service Provider is the processor of such



data, except when Customer acts as a processor of Company Personal Data, in which case the Service Provider is a sub-processor.

2. 2 This agreement does not apply where the Service Provider is a controller of Personal Data, in particular in connection with the processing of Company Account Data and Company Usage Data.
2. 3 The Service Provider processes on behalf of the Customer the categories of Company Personal Data and for the purposes specified in Section 1 of Appendix 1. Company Personal Data concerns the data subjects listed in Section 2 of Appendix 1.

### **3. OBLIGATIONS OF THE SERVICE PROVIDER**

3. 1 In relation to the Company Personal Data specified in Annex 1 by the Service Provider, the Service Provider will process Company Personal Data in accordance with the Customer's documented instructions as set out in the Subscription Agreement and this agreement. The Customer is solely responsible under this agreement for compliance with the applicable provisions of Data Protection Laws including but not limited to the lawfulness of the disclosures made to the Service Provider and the lawfulness of data processing.
3. 2 Notwithstanding the above, the Service Provider may disclose or provide access to Company Personal Data if the applicable laws so require. In the event that the Service Provider receives a request to disclose or otherwise process Company Personal Data, in order to comply with any applicable law to which the Service Provider is subject, the Service Provider shall, to the extent permitted by applicable law, inform the Customer.
3. 3 The Service Provider will implement appropriate technical and organisational measures to protect the Company Personal Data against any accidental or unlawful destruction or accidental loss, alternation, unauthorised disclosure or access, and will include those measures described in the summary of "Security Measures for Company Personal Data".
3. 4 The Service Provider must take reasonable steps to ensure reliability of any personnel who have access to the Company Personal Data. In addition, the Service Provider will instruct its employees and/or contractors regarding their confidentiality obligations with respect to Company Personal Data and ensure that the Service Provider's employees and/or contractors who are authorised to process the Company Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.
3. 5 The Parties acknowledge that the Service Provider uses external auditors to verify the adequacy of its security measures. This audit will be performed (i) according to ISO 27001 standards or such other alternative standards that are substantially equivalent to ISO 27001; and (ii) by independent third-party security professionals at the Service Provider's selection and expense.
3. 6 Upon the Customer's justified written request, the Service Provider will permit the Customer or any third party appointed by the Customer (subject to reasonable and appropriate confidentiality undertakings) to audit the Service Provider's data processing activities and comply with all reasonable requests of the Customer to verify and/or procure that the Service Provider is in compliance with its obligations under this agreement and Data Protection Laws. The Customer agrees that audit will be carried out (i) up to one time per year, with at least thirty days' prior notice, (ii) during the normal business hours of the Service Provider and (iii) to the extent possible, remotely by electronic means. Any time spent by the Service Provider for such audit must be reimbursed by the Customer, at the applicable professional service rates of the Service Provider. Before the audit commences, the Parties will agree on the timing, scope and duration of the audit as well as the applicable rates of the Service Provider.



#### **4. DELETION OF PERSONAL DATA**

- 4.1 The Service Provider shall retain the Company Personal Data only for as long as specified in this agreement or as otherwise necessary to satisfy the purposes for which it was provided to the Service Provider, or as required by applicable laws, taking into account the nature and functionality of the Service Provider services.
- 4.2 In the event that applicable law prevents or precludes the return, deletion or destruction of any Company Personal Data upon the Customer's request under clause 7.3, the Service Provider shall notify the Customer in writing, in reasonable detail, of the reasons for not returning, deleting or destroying such Company Personal Data, if permitted by applicable law. In such case, (i) the Service Provider shall return, delete, destroy Company Personal Data as soon as possible after the Customer's request under clause 7.3; (ii) the Service Provider shall not access, use or process such Company Personal Data without the prior written consent of the Customer. Any legal obligation shall remain reserved.

#### **5. COOPERATION BETWEEN THE PARTIES**

- 5.1 The Service Provider is obliged to have a documented process that enters into force in the event of a Personal Data Breach. The Service Provider will notify the Customer without undue delay from the day when the Service Provider discovers such Personal Data Breach. Upon request from the Customer, the Service Provider shall assist the Customer with the handling of the Personal Data Breach as well as in connection with potentially reporting the matter to the relevant data protection authority under applicable Data Protection Law(s).
- 5.2 If the Service Provider receives a request for exercising the data subject's rights under applicable Data Protection Laws from a data subject within the scope of this agreement, the Service Provider will forward such request to the Customer without undue delay. If the Customer so requests, the Service Provider will use reasonable endeavours to assist the Customer in responding to the request and/or objection.
- 5.3 If the Customer is required to carry out an impact assessment on the processing and protection of the Personal Data (a Data Protection Impact Assessment), the Service Provider will provide the Customer with all reasonable assistance and information required by the Customer to comply with such obligation, taking into account the nature of processing and the information available to the Service Provider.
- 5.4 The Service Provider reserves the right to charge a fee, based on its reasonable costs, in relation to its assistance under clauses 5.2-5.3. The Service Provider will provide further details of any applicable fee, and the basis of its calculation, to the Customer in advance of any such assistance.

#### **6. TRANSFER OF INFORMATION TO OTHER DATA PROCESSORS**

- 6.1 The Service Provider may continue to use those Sub-processors already engaged by the Service Provider as at the date of this agreement listed under the Legal information on the IncaMail website at [Legal Information – IncaMail](#).
- 6.2 If the Service Provider intends to use a new Sub-processor, the Service Provider must give a 30-day prior written notice to the Customer before the appointment of such Sub-processor. Within 15 days of receipt of that notice, the Customer may notify the Service Provider in writing of any reasonable objections to the proposed appointment and terminate the Subscription Agreement. In this case, the Service Provider will provide the Customer with a pro-rata refund of any pre-payment.



- 6.3 The Customer hereby acknowledges that, as a result of the nature of the IncaMail Services, the termination right set out in clause 6.2 above is the Customer's sole and exclusive remedy if the Customer objects to the appointment of any new Sub-processor.
- 6.4 The Service Provider will enter into written data processing agreements with Sub-processors, including terms which offer substantially the same level of protection for Company Personal Data as those set out in this agreement. With respect to those Sub-processors whose main establishment is outside of the EEA, the United Kingdom and Switzerland, then such transfer will only take place if: (a) the country ensures an adequate level of data protection; (b) in compliance with applicable Data Protection Law, in particular if one of the conditions listed in Chapter V GDPR or equivalent requirements in other applicable Data Protection Laws (such as standard contractual clauses) is satisfied.
- 6.5 The Customer agrees that the Service Provider and the relevant Sub-processors can satisfy the requirements of clause 6.4 by using standard contractual clauses adopted in accordance with Article 46(2) of the GDPR and Article 16 (d) of the FADP (as applicable).

## **7. TERM AND TERMINATION**

- 7.1 This agreement enters into force on the date of the signature of the main Agreement by the Customer.
- 7.2 If the Subscription Agreement terminates between the Customer and the Service Provider, this agreement also terminates with that the provisions of this agreement shall apply as long as the Service Provider processes Company Personal Data on behalf of the Customer.
- 7.3 If this agreement terminates, the Customer is entitled to request the Service Provider to erase or return the Company Personal Data to the Customer. The Service Provider will comply with this instruction as soon as reasonably practicable, unless otherwise required by applicable Data Protection Law.

## **8. MISCELLANEOUS**

- 8.1 This agreement shall only apply to the extent the processing of Personal Data by the Service Provider, on behalf of the Customer, is within the scope of the GDPR or the FADP.
- 8.2 This agreement shall be construed in accordance with the provisions of the Subscription Agreement. In case of any discrepancies between the Subscription Agreement and this agreement, the provisions of this agreement shall prevail. Any claims brought in connection with this Agreement will be subject to the terms and conditions, including, but not limited to, the exclusions and limitations set forth in the Subscription Agreement.
- 8.3 This Agreement shall be governed by Swiss law. To the extent the GDPR is applicable, it shall be interpreted in accordance with German law.
- 8.4 In the event of a dispute, the Parties undertake to negotiate in good faith to settle the dispute between them promptly and amicably and without resort to any legal process, if feasible within thirty (30) days following the receipt of a written notice by one Party to the other Party of the existence of such dispute. If the Parties are not successful in resolving the dispute through amicable discussions by the end of such 30-day period, then the Parties shall submit their dispute to the Court of Bern, Switzerland. The place of jurisdiction is Bern. (Partially) mandatory places of jurisdiction remain reserved. The validity, interpretation, and construction of this agreement shall be governed by the laws of Switzerland. To the extent the GDPR is applicable, this agreement shall be interpreted in accordance with German law.



- 8.5 This agreement is drawn up in German and English. The German version is the reference and takes precedence over the other language in the event of disputes. The version in English is appended to the German version for linguistic purposes.

#### **ANNEX 1: DETAILS OF COMPANY PERSONAL DATA**

##### ***Purpose***

- Receiving, encrypting, temporarily storing and transporting electronic messages to any recipient
- Managing of user and customer accounts to configure of IncaMail services, to view the logs and to send and receive messages securely

##### ***Categories of Company Personal Data to be processed***

All Personal Data provided to the Service Provider in connection with the provision of the Services, by or on behalf of the Customer, through the Customer's use of services as defined in the Subscription Agreement.

The categories of Personal Data processed depend on the functions of the Services used by the Customer, but may include, in particular, the following: e-mail, first name/last name, company, optionally postal address, password hashes, transaction logs with metadata including subject line, encrypted messages.

##### ***Personal data categories:***

**Processing and storage of only the most necessary personal data required to provide the service: e-mail, first name/last name, company, optionally postal address, password hashes, transaction logs with metadata including subject line, the content of the encrypted messages which may continue special categories of personal data as well.**

##### ***Special categories personal data and measures relevant to this:***

Acceptance, encryption, and transport of messages and documents that senders want to send to recipients in a secure manner. These may also contain sensitive data relating to senders. They can be stored in encrypted form for a limited period.

##### ***Type of processing:***

- a) Personal registration of user data via web applications or central registration by the Service Provider
- b) Acceptance of messages via various channels (web applications, add-ins, APIs such as REST, SOAP, SMTP, etc.)
- c) Encryption, logging, and temporary storage of these messages
- d) Receiving and decrypting messages for recipients
- e) Delivery of messages to the delivery channels selected by the sender and/or recipient, typically e-mail.
- f) Provision of transaction information with metadata to senders, recipients, and support staff

##### ***Frequency of processing:***

- a) One-off registration or change of personal data



- b) Ongoing processing and delivery of messages

***Duration of the processing:***

- a) Personal data, logs and the ability to decrypt messages for as long as a user account exists and is not deleted.
- b) Messages depending on storage period

***Location of data processing:***

The content of the messages will be stored exclusively in Switzerland in data centers certified in accordance with ISO27001 which meet the requirements of data protection and the requirements of the FDJP for recognized delivery platforms <https://www.bj.admin.ch/bj/de/home/staat/rechtsinformatik/e-uebermittlung.html>.

IncaMail can send messages in encrypted form to recipient systems via various channels, e.g. to mail servers. The recipient's infrastructure may also be located outside Switzerland.

***The categories of data subjects to whom the Company Personal Data relates***

Private individuals, authorities and organizations as well as their employees.