COMtrexx Maintenance - Data Processing Agreement (DPA)

In accordance with Art. 28 GDPR

Between

the customer named in the "COMtrexx Maintenance - IMS Agreement"

hereinafter referred to as the "Client"

and

Auerswald GmbH
Hordorfer Straße 36
38162 Cremlingen

hereinafter referred to as the "Contractor"

hereinafter referred to jointly as the "Parties" and individually as a "Party"

Preamble

This Agreement governs the rights and obligations of the contracting parties in the processing of personal data on behalf of a controller within the meaning of Art. 28 GDPR. It forms an integral part and annex of the "COMtrexx Maintenance - IMS Agreement" concluded between the Parties (hereinafter "IMS Agreement").

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1. Responsibility and roles

1.1 The Client is the controller within the meaning of Art. 4(7) GDPR for the lawfulness of the processing of personal data.

1.2 The Contractor is a processor within the meaning of Art. 4(8) GDPR, insofar as it processes personal data on behalf of the Client.

2. Definitions

2.1 The controller is, pursuant to Art. 4(7) GDPR, the body which, alone or jointly with other controllers, determines the purposes and means of the processing of personal data.

2.2 A processor is, pursuant to Art. 4(8) GDPR, a natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller.

2.3 Personal data is, pursuant to Art. 4(1) GDPR, any information relating to an identified or identifiable natural person (hereinafter "data subject"); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

2.4 Personal data requiring special protection is, pursuant to Art. 9 GDPR, data revealing the racial and ethnic origin, political opinions, religious or philosophical beliefs or trade union membership of data subjects, personal data pursuant to Art. 10 GDPR relating to criminal convictions and offences or related security measures, and genetic data pursuant to Art. 4(13) GDPR, biometric data pursuant to Art. 4(14) GDPR, data concerning health pursuant to Art. 4(15) GDPR and data concerning a natural person's sex life or sexual orientation.

2.5 Processing is, pursuant to Art. 4(2) GDPR, any operation or set of operations which is performed on personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

2.6 A supervisory authority is, pursuant to Art. 4(21) GDPR, an independent public authority established by a Member State pursuant to Art. 51 GDPR.

3. Subject matter and duration of the Agreement

3.1 The Contractor processes personal data in order to provide telecommunications services and related services to the Client, in particular for the setup, configuration, administration, provision, monitoring, maintenance, fault analysis, fault handling and technical support of telecommunications and communication systems.

3.2 The processing comprises, in particular, the administration of user accounts, roles, phone numbers, terminals and access rights, as well as the creation and evaluation of technical logs, usage data and connection data, insofar as this is necessary for the provision of services, for security or for billing.

3.3 Insofar as the processing comprises communication data, connection data, switching data or other traffic data, the Contractor and its sub-processors observe the secrecy of telecommunications pursuant to Section 3 TDDDG and the special statutory requirements for traffic data, in particular Section 9 TDDDG. Processing takes place exclusively to the extent necessary and for the agreed purposes. Traffic data that is no longer required is deleted or anonymised in accordance with the statutory requirements. The obligations continue to apply after this Agreement has ended.

3.4 This Agreement enters into force upon conclusion of the IMS Agreement as an integral part and annex thereof and applies for the duration of that agreement.

3.5 In the event of contradictions, the data protection provisions of this Agreement take precedence over the data protection provisions of the IMS Agreement. Mandatory statutory obligations remain unaffected.

4. Description of the processing

4.1 The processing comprises the following processing operations: collection, recording, organisation, structuring, storage, adaptation, retrieval, consultation, use, transmission, restriction, erasure and destruction, insofar as this is necessary to provide the commissioned services.

4.2 The processing takes place in particular for the following purposes:

- Operation and provision of the agreed telecommunications and communication services
- Setup, configuration and administration of systems and user accounts
- Fault analysis, support, maintenance and fault handling
- Security monitoring, logging, backup and restoration
- Billing and evidence of the agreed services
- Implementation of agreed migrations and other technical measures

5. Categories of personal data and of data subjects

5.1 Categories of personal data:

- Master data and contact data, in particular names, addresses, telephone numbers and email addresses
- Authentication and authorisation data, in particular user IDs, password hashes, roles and multi-factor authentication data
- Contract data, billing data, connection data and consumption data
- Communication and switching data, in particular phone numbers, points in time, duration, routing data and log data
- Technical usage data, in particular IP and MAC addresses, device and system identifiers, error and system messages, monitoring data and VPN access data
- Support, ticket and communication data
- Other data, insofar as its processing is necessary for the specific service commissioned and is prompted by an instruction from, or provision by, the Client

5.2 Special categories of personal data within the meaning of Art. 9 GDPR are not the subject of any targeted collection by the Contractor. However, they may form part of communication content, support enquiries or other data provided by the Client.

The Contractor processes such data exclusively on instruction and only insofar as this is necessary for the provision of services.

5.3 Categories of data subjects:

- Employees and other staff of the Client
- Customers, prospective customers and business partners of the Client
- Users of the telecommunications and IT infrastructure, including external users
- Contact persons at specialist dealers and other contractual partners
- Other natural persons whose data is processed in the course of the commissioned services

6. Place of performance / transfer to a third country

6.1 Personal data may be processed within the European Union or the European Economic Area. Processing in a state outside the European Union or the European Economic Area, including access from such a state, is permitted only if the state, recipient, place of processing and processing operation concerned are stated in the "List of engaged sub-processors" and the requirements of Art. 44 et seq. GDPR are met.

6.2 The Contractor ensures that all transfers of personal data to third countries and all access from third countries are based on a valid legal basis under Art. 44 et seq. GDPR.

6.3 A transfer or access is permitted in particular if an adequacy decision pursuant to Art. 45 GDPR exists for the specific recipient and the specific processing, or if appropriate safeguards pursuant to Art. 46 GDPR, in particular standard data protection clauses of the European Commission, have been implemented. In the case of a transfer to the United States, an adequacy decision applies only if the specific recipient is certified under the EU-U.S. Data Privacy Framework and the specific processing falls within its scope.

6.4 If the relevant transfer basis ceases to apply or is no longer sufficient for the specific processing, the Contractor shall immediately cease the third-country transfer or third-country access concerned, or shall take suitable measures in good time to continue the processing lawfully. The Client shall be informed of this without delay.

6.5 Changes to the details of sub-processors, places of processing, third-country transfers or third-country access recorded in the "List of engaged sub-processors" are governed by Art. 14 of this Agreement.

7. Binding nature of instructions and instructions of the Client

7.1 The Contractor processes personal data exclusively for the provision of the telecommunications services agreed in the IMS Agreement, and in accordance with the IMS Agreement and this Agreement.

7.2 The IMS Agreement, including this Agreement, constitutes the documented instruction of the Client within the meaning of Art. 28(3) point (a) GDPR. The processing takes place exclusively for the purposes specified therein and to the extent described therein.

7.3 Changes or additions to the documented instruction require a documented agreement between the Parties. The Contractor shall inform the Client without delay if it considers an instruction or a contractual requirement to be unlawful.

7.4 The Contractor's contact for data protection matters is the data protection officer named in Art. 10.

8. Obligations of the Client

8.1 The Client ensures that the processing is lawful and that the necessary legal bases are in place.

8.2 The Client issues only such instructions as are compatible with applicable data protection law.

8.3 The Client shall inform the Contractor without delay of any inaccuracies or irregularities identified in connection with the processing.

8.4 The Client is responsible for fulfilling the information obligations and for communicating with data subjects.

8.5 The Client provides the information and access required for the provision of services.

9. General obligations of the Contractor

9.1 The Contractor processes personal data only on the basis of this Agreement and the instructions of the Client. Statutory obligations to process data otherwise remain unaffected; the Contractor shall inform the Client of these in advance, unless this is prohibited by law. Any differing processing takes place only with the prior written consent of the Client.

9.2 Personal data is processed only for the agreed purposes and in accordance with documented instructions.

9.3 It is ensured that the persons authorised to process the data are bound to confidentiality and have been appropriately instructed.

9.4 The Contractor undertakes to implement appropriate technical and organisational measures in accordance with the "Technical and organisational measures for data security".

9.5 The Contractor supports the Client in fulfilling the obligations under Art. 32 to 36 GDPR.

9.6 The Contractor supports the Client with requests from data subjects under Art. 12 to 23 GDPR.

9.7 The Contractor informs the Client of data protection enquiries, official measures or other events that may affect the processing.

10. Data protection officer of the Contractor

The Contractor has appointed a data protection officer pursuant to Art. 37 GDPR. The data protection officer is the contact for the Contractor's data protection matters and performs their duties independently and free of instructions pursuant to Art. 38 and 39 GDPR. The following has been named as the data protection officer at the Contractor:

First name:	Maik
Surname:	Luckau
Organisational unit:	Auerswald Training Academy
Telephone number:	+49 5306 9200-781
E-mail:	datenschutz@auerswald.de

11. Reporting obligations of the Contractor

11.1 The Contractor informs the Client without delay of breaches of data protection requirements, contractual agreements or instructions, and of any personal data breach in the course of the processing on behalf of the Client.

11.2 The Contractor informs the Client without delay if a supervisory authority takes action against it pursuant to Art. 58 GDPR and this may affect the processing on behalf of the Client.

11.3 The Contractor supports the Client in fulfilling the reporting obligations under Art. 33 and 34 GDPR. In particular, it reports any unauthorised access to personal data processed on behalf of the Client without delay, and no later than within 48 hours. The report contains, in particular:

- a description of the nature of the personal data breach, including the categories and – where possible – the number of data subjects and data records concerned,
- a description of the measures taken or planned to remedy the breach and to mitigate its possible adverse effects.

12. Support with data subject rights and compliance

12.1 The Contractor supports the Client in its obligation to respond to requests for the exercise of data subject rights under Art. 12 to 23 GDPR. The provisions of Art. 9 of this Agreement apply.

12.2 The Contractor assists in the preparation of the records of processing activities by the Client. It shall communicate the information required for this purpose to the Client in a suitable manner.

12.3 Taking into account the nature of the processing and the information available to it, the Contractor supports the Client in complying with the obligations set out in Art. 32 to 36 GDPR.

13. Audit rights

13.1 The Client may check at any time, to the extent necessary, whether the Contractor complies with statutory data protection requirements, contractual provisions and instructions.

13.2 The Contractor shall provide the necessary information for this purpose.

13.3 The Client may inspect the data concerning it that is processed on its behalf in the systems and programs used.

13.4 Audits may be carried out on the Contractor's premises during normal business hours after prior notice, without disproportionately disrupting operations.

13.5 In the event of measures by a supervisory authority pursuant to Art. 58 GDPR, the Contractor supports the Client by providing the necessary information and enables on-site inspections by the authority. The Client is informed of any such measures.

14. Sub-processing relationships

14.1 The Processor is entitled to engage sub-processors in order to fulfil the contractual services. The Processor undertakes to contractually oblige every sub-processor, before engaging it, pursuant to Art. 28 GDPR to comply, to at least the same extent, with the data protection obligations arising from this Agreement.

14.2 The Processor maintains an up-to-date list of all sub-processors engaged; this list forms an integral part of this Agreement.

14.3 The Processor will inform the Client before commissioning a new sub-processor or changing existing sub-processing relationships. The Client may object to the change within 14 days for good cause. If no objection is made within this period, consent is deemed to have been given.

14.4 If there is good cause for the objection and no amicable solution can be found, the Client has a special right of termination.

15. Confidentiality obligation

15.1 The Contractor maintains the confidentiality of all data that becomes known to it in the course of the engagement and observes the same secrecy rules as the

Client. The Client is obliged to inform the Contractor of any special secrecy protection rules.

15.2 Before they begin their work, the Contractor obliges all persons who process personal data to maintain confidentiality and ensures that these persons act only on the instructions of the Client.

15.3 The obligations continue to apply beyond the end of this Agreement. Statutory disclosure obligations remain unaffected.

16. Return and deletion

16.1 After the agreed services have ended, the Contractor shall return or delete all personal data at the Client's choice, unless there is a statutory retention obligation.

16.2 Data that must be retained by law is blocked and processed exclusively to fulfil the respective statutory obligation. It is deleted without delay once the retention period has expired.

16.3 Personal data contained in backup copies is deleted as part of the regular deletion and overwriting cycle, unless a statutory retention obligation precludes this.

16.4 The Contractor confirms the return or deletion in text form.

17. Technical and organisational measures

17.1 The Contractor ensures a level of protection appropriate to the risk pursuant to Art. 32 GDPR. The measures applicable at the time the contract is concluded are described in the "Technical and organisational measures for data security".

17.2 The Contractor may adapt measures to the state of the art and to technical or legal changes, provided that the agreed level of protection is not reduced. Significant adverse changes are communicated to the Client in advance.

17.3 The Contractor reviews the effectiveness of the measures regularly and as circumstances require, and appropriately remedies any weaknesses identified.

18. Remuneration

Any remuneration for special cooperation, audit or support services is agreed in the underlying IMS Agreement or separately. Support services owed by law are not excluded by this.

19. Final Provisions

19.1 Should a provision of this Agreement be or become invalid, the validity of the remaining provisions remains unaffected. The Parties will agree a valid provision

that comes as close as possible to the economic and data protection purpose of the invalid provision.

19.2 Amendments and additions to this Agreement require at least text form, unless a stricter form is prescribed by law.

19.3 The law of the Federal Republic of Germany applies, excluding the UN Convention on Contracts for the International Sale of Goods. The exclusive place of jurisdiction for all disputes arising from or in connection with this Agreement is, as far as legally permissible, the registered office of the Contractor.

19.4 The liability of the Parties in connection with the processing of personal data is governed by the provisions of the underlying IMS Agreement and by the mandatory statutory provisions, in particular Art. 82 GDPR. The statutory claims of data subjects are neither excluded nor limited by this Agreement.

19.5 Unless the underlying IMS Agreement contains a different provision, the following applies in the internal relationship: each Party bears the share of any damage that corresponds to its respective share of responsibility and breach of duty. The statutory right of recourse under Art. 82(5) GDPR remains unaffected. One Party shall indemnify the other Party against justified third-party claims, insofar as these are based on a breach of data protection obligations for which it or a sub-processor engaged by it is responsible.

Annexes

- List of engaged sub-processors, see Contract documents
- Technical and organisational measures for data security, see Contract documents