

## **ORDER-RELATED DATA PROCESSING AGREEMENT**

Flow Swiss AG ('Flow Swiss') provides clients with cloud services. In the provision of these cloud services, Flow Swiss stores personal data on behalf of and for the purposes of the client ('Order Processing').

### **1. OBJECT AND APPLICATION AREA OF THE ORDER-RELATED DATA PROCESSING AGREEMENT**

1.1 This order-related data processing agreement ('DPA') regulates the obligations, roles and responsibilities of Flow Swiss and the client ('Contracting Parties') in terms of order processing.

### **2. VALIDITY, DURATION, RELATION TO THE CONTRACT**

2.1 This data processing agreement (DPA) is an integral part of the General Terms and Conditions (GTC). If multiple contracts exist, this DPA applies to all of them. It is valid for the entire duration of the contractual relationship and, if applicable, beyond until the deletion of the personal data processed by Flow Swiss (see section 4.2).

2.2 The provisions of this data processing agreement (DPA) complement the provisions of the General Terms and Conditions (GTC). They do not restrict the rights and obligations of the contracting parties regarding the provision or use of services. However, with respect to their subject matter, the provisions of this DPA take precedence over the provisions of the agreement.

### **3. APPLICATION AREA OF THE DPA**

3.1 This DPA is valid (as soon as the client has agreed to it) in reference to Order Processing within the framework of the services provided by Flow Swiss in accordance with the Contract.

3.2 This DPA explicitly does not apply to the processing of personal data for which Flow Swiss determines the purpose and means of processing and is therefore subject to the Swiss Federal Act on Data Protection (FADP) or to any other applicable data protection laws (in particular, the EU General Data Protection Regulation (GDPR)). Such processing of personal data for which Flow Swiss is responsible (e.g. the processing of personal data in the context of services or for the purposes of invoicing or communication with the client) will be carried out by Flow Swiss in compliance with Flow Swiss's data protection statement and the applicable data protection laws.

#### **4. INFORMATION FOR ORDER PROCESSING**

4.1 The object and purpose of the Order Processing is the provision of Cloud Services by Flow Swiss for clients. Order Processing consists of storage, provision, transfer and deletion of personal data in accordance with the provisions set out in the Contract.

4.2 Order Processing concerns personal data that the client stores according to their choice of infrastructure used by Flow Swiss for the provision of services, and data pertaining to people to whom the client grants access to its website or application, in particular personal data that is usually collected for the access, listing, and use of applications. This includes log data that is collected automatically for the informational use of a website or application (e.g. the IP address and operating system of the user's device and the date and time of browser access), data entered by users and personalized usage data collected from clients (hereafter 'Personal Data').

#### **5. ROLES AND AREAS OF RESPONSIBILITY**

5.1 The client confirms and Flow Swiss recognizes that the client is and remains responsible for the processing of Personal Data in accordance with the applicable data protection laws. The client therefore assumes the role of controller. Cases in which the client itself is the processor of the Personal Data remain reserved (see clause 5.4).

5.2 Flow Swiss acknowledges that the client, in its role as controller, is required to contractually bind Flow Swiss to some of its obligations arising from the EU GDPR (or any other applicable data protection laws) when using Cloud Services.

5.3 Flow Swiss takes on the role of the processor in terms of the processing of personal data. Insofar as Flow Swiss is not subject to the GDPR (or to any other of the applicable data protection laws) for this Order Processing, Flow Swiss assumes this role only on the basis of its contractual obligations under this DPA and is not subject to the GDPR (or any other applicable data protection laws) for this reason alone.

5.4 If the client is the processor (i.e. if the client is authorized to make storage space available to its customers under the Contract), the client confirms that its customer (i.e. the controller) has authorized the client to issue instructions to Flow Swiss for sub-processing as per a separate agreement.

## 6. FLOW SWISS'S OBLIGATIONS

6.1 Flow Swiss is obliged to process Personal Data only for the provision of Cloud Services in accordance with the service description and contractual obligations, and in accordance with this DPA.

6.2 Flow Swiss is also entitled to process the client's Personal Data insofar as is implied for the fulfillment of service obligations arising from the Contract and this DPA. On request, Flow Swiss is ready to implement further directives from the client for Order Processing. The prerequisite is that these directives are implementable and objectively reasonable for Flow Swiss within the framework of the contractually concluded Services and do not incur further costs or result in an alteration to the scope of services. In any event, the fulfillment of legal or regulatory obligations to which Flow Swiss is subject remains reserved.

6.3 Flow Swiss ensures compliance with the provisions set out in this DPA by employees entrusted with Order Processing and other Flow Swiss personnel with access to Personal Data. Flow Swiss is obliged to ensure that persons with access to Personal Data observe proper confidentiality (and also beyond the duration of their professional activities for Flow Swiss).

6.4 Flow Swiss is obliged to meet appropriate technical and organizational measures in the interests of confidentiality, integrity and contractual availability of Personal Data. In particular, Flow Swiss implements access and admission controls and processes for the regular review, assessment and evaluation of the effectiveness of technical and organizational measures. In the selection of measures, Flow Swiss takes the state of the art, the cost of implementation and the type, scope, circumstances and purposes of processing into consideration, as well as the varying probability of occurrence and the severity of risk for persons concerned. The valid measures are set out in the current Flow Swiss service description.

6.5 Flow Swiss is obligated to inform its clients in writing without delay if it becomes aware of a data security breach that affects Personal Data. In this case, Flow Swiss must inform the client of the type and extent of the breach along with possible corrective measures. The Contracting Parties enter into the necessary measures jointly to ensure protection of Personal Data and to mitigate any possible disadvantageous consequences for persons affected by the breach. Moreover, Flow Swiss is obliged to make sufficient information to the client available on application in writing, in order that the client can fulfill its obligations in accordance with the GDPR or any other applicable data protection laws related to the registration, investigation and documentation of data security breaches.

6.6 Flow Swiss agrees to assist its clients by written request and against separate remuneration as well as within the scope of its operational resources and capabilities, with the fulfillment of data subject rights (in particular, rights of access, rectification and erasure) by the client (related to personal data) according to Chapter 3 of the GDPR, or equivalent provisions of other applicable data protection laws. If a person concerned contacts Flow Swiss directly with requests related to the fulfillment of data subject rights, Flow Swiss will refer them to the client. The prerequisite for this is that Flow Swiss can establish such a link to the client based on the information provided by the person concerned.

6.7 Flow Swiss is obliged to notify the client in writing without delay if it receives a request (such as a request for access or erasure) relating to Personal Data, with the prerequisite that Flow Swiss can establish a link to the client based on the information provided by the person concerned.

6.8 By written request and in return for separate, appropriate remuneration, and taking into account its operational resources and capabilities, Flow Swiss is prepared to assist clients with data protection impact assessments and consultations with supervisory authorities.

6.9 Flow Swiss will release or delete Personal Data after the end of the Contract in accordance with the provisions of the contract.

## **7. USE OF SUBCONTRACTORS FOR DATA PROCESSING**

7.1 If a client uses services from Flow Swiss that affect Personal Data and are provided by third parties, Flow Swiss will remain the client's contractor and fulfill associated obligations arising from the DPA. The third-party service provider, which is integrated in Flow Swiss's service, is Flow Swiss's subcontractor. But there may also be cases in which Flow Swiss brokers a direct contract between the third-party service provider and the client, making the third-party service provider the client's direct processor. In such cases, it is the client's responsibility to reach any agreements with the third-party service provider that may be required under applicable data protection laws.

7.2 Flow Swiss has the right to hire subcontractors as part of the provision of Cloud Services. In such cases, Flow Swiss is obliged to reach an appropriate agreement with a subcontractor in order to enable it to comply with the provisions of this DPA. The current subcontracted processors are listed in Annex A.

7.3 Flow Swiss will use a suitable method to inform the client before Flow Swiss replaces or hires new subcontractors for existing Cloud Services after this DPA has taken effect. If the client does not object with good cause under data protection law within 30 (thirty) days of the date of notification, it will be considered to have accepted the new or replaced subcontractor.

7.4 If a subcontracted DPA entails the transfer of personal data to a country outside the EU/EEA/Switzerland, Flow Swiss will ensure that it complies with the provisions of the GDPR (or similar provisions of the Swiss Federal Act on Data Protection (FADP)) relating to the transfer of data to third countries (such as by selection of a subcontractor that implements an equivalent level of data protection through technical and organizational measures, or by incorporating recognized standard contractual clauses for the transfer of personal data to processors in third countries).

## **8. CLIENT OBLIGATIONS**

8.1 The client is responsible for the legality of processing of Personal Data, including the permissibility of the contracted or subcontracted DPA.

8.2 The client will, within its area of responsibility (such as in its own systems and applications), autonomously take appropriate technical and organizational measures to protect Personal Data.

8.3 The client agrees to immediately inform Flow Swiss if it identifies any violations of applicable data protection laws in Flow Swiss's provision of services.

## **9. RIGHTS OF INFORMATION AND VERIFICATION**

9.1 Flow Swiss is required, on written request, to provide the client with all the information that it reasonably needs to prove compliance with this DPA to persons concerned or data protection supervisory authorities.

9.2 Flow Swiss will enable the client or a third-party representative that has signed a non-disclosure agreement with the client to verify Flow Swiss's compliance with this DPA. If evidence is submitted showing that Flow Swiss has violated the DPA, it must implement suitable corrective measures immediately and at no cost.

9.3 The above rights of information and verification given to the client exist only if the Contract does not grant the client other rights of information and verification that comply with the relevant requirements of applicable data protection laws. Furthermore, these rights of information and verification are subject to the principle of proportionality and the protection of Flow Swiss's legitimate interests (in particular, security and confidentiality interests). Unless the Contracting Parties agree otherwise, the client will bear all costs of information and verification, including Flow Swiss's proven internal costs.

## **10. AMENDMENTS TO THIS DPA**

10.1 Flow Swiss reserves the right to amend this DPA: (a) if doing so is necessary to adapt to changes in the law; (b) if doing so does not lead to a deterioration in the overall security of the DPA and (from Flow Swiss's point of view) does not have a significant negative impact on the rights of the persons concerned.

10.2 As per section 10.1, Flow Swiss will inform the client of any intended changes to this DPA no later than 30 (thirty) days before such changes take effect. If the client wants to object to the changes, it can terminate the DPA in the Control Panel within 30 (thirty) days of the date of notification. If the client does not object during this period, it will be considered to have accepted the changes.

## 11. GENERAL PROVISIONS

11.1 By derogation from any agreed provisions in the Contract that require the written form, the Contracting Parties can enter into or amend the DPA electronically.

11.2 If this DPA requires a written request or notification, an e-mail sent to the address given by the client in the Control Panel will be sufficient to meet this requirement (for notifications sent to the client), as will an e-mail sent to [adv@flow.swiss](mailto:adv@flow.swiss).

11.3 Terms specific to data protection law, such as 'personal data', 'processing', 'controller', 'processor', 'data protection impact assessment', etc. have the meaning ascribed to them in the GDPR or the FADP, depending on the context. A 'data protection violation' means a personal data breach.

11.4 For all disputes and claims arising from or in connection with this DPA, the Contracting Parties hereby agree to the place of jurisdiction selected in the Contract.

11.5 If one or more provisions of the DPA are or become invalid or void, this will not affect the validity of the remaining provisions. The invalid or void provision will be replaced by a regulation that the Contracting Parties would have agreed on in good faith and from a business perspective if they had known of the flaw at the time of entering into the DPA. The same applies in the event of any gaps in the DPA.

Zurich, August 2023, Flow Swiss AG - Data Processing Agreement, Version 2.1

## Annex A - List of subcontractors

<b>bexio AG</b>	Invoicing, Quotes, Online Accounting	Alte Jonastrasse 24, 8640 Rapperswil, Switzerland
<b>Stripe Inc.</b>	Credit Card payment processing	185 Berry St, San Francisco, CA 94107, United States
<b>Zendesk Inc.</b>	Support Ticketing System	989 Market Street, San Francisco, CA 94103, United States
<b>Google Ireland Ltd.</b>	Google Workspace (Email, Collaboration) Google Analytics Google Tag Manager	Gordon House, Barrow Street Dublin 4, D04 E5W5, Irland
<b>Rocket Science Group</b>	Mailchimp Email-Newsletter	675 Ponce de Leon Ave NE Suite 5000 Atlanta, GA 30308, United States
<b>Twilio EMEA HQ</b>	SMS-Notifications	One Dockland Central South Quay Dublin 2, D02 X2W9, Irland
<b>Onfido</b>	Online identity verification, fraud detection	32-36 St. James's Street London SW1A 1ER, United Kingdom
<b>Calendly</b>	Online Appointment Scheduling	271 17th Street NW Atlanta, GA 30363, United States
<b>HubSpot</b>	CRM and Sales tooling	Two Dockland Central Guild Street Dublin 1, D02 X2W9, Irland
<b>Cloudflare EMEA Headquarters</b>	DNS, WAF, DDOS	One Dockland Central South Quay Dublin 2, D02 X2W9, Irland
<b>Commercial Excellence GmbH</b>	ComX - Sales Enablement Platform	Anna-Louisa-Karsch Str. 7 10178 Berlin, Germany