Elastycloud Premium Magento 2 Hosting

Data Processing Agreement

According to Art. 28 (3) General Data Protection Regulation (GDPR)

1. Subject-matter and duration of the processing

1.1. The subject matter of the Agreement is the rights and obligations of the parties in the context of the provision of services in accordance with the order, service description, service level agreement, subscriptions and master agreement (hereinafter together referred to as the "Main Contract"), insofar as ELASTYCLOUD AB (hereinafter referred to as "Processor") processes personal data on behalf of its customer as controller (hereinafter referred to as "Client") according to Art. 28 GDPR. This includes all activities that Processor performs to fulfil the Main Contract and that represent a data processing on behalf of Client. This also applies if the order does not explicitly refer to this Data Processing Agreement.

1.2. The duration of the processing corresponds to the term agreed in the Main Contract.

2. Nature and purpose of the processing

2.1. The nature of the processing includes all types of processing as defined by the GDPR to fulfil the Main Contract.

2.2. Purposes of the processing are all purposes required to provide the contracted services in particular in terms of cloud services, hosting, Software as a Service (SaaS), and IT support.

3. Type of personal data and categories of data subjects

3.1. The type of processed data is determined by Client by the product selection, the configuration, the use of the services, and the transmission of data.

3.2. The categories of data subjects are determined by Client via product selection, configuration, the use of the services, and the transmission of data.

4. Responsibility and processing on documented instructions

4.1. Client is solely responsible for complying with the legal requirements of data protection laws, in particular the legality of the transfer of data to Processor and the legality of data processing under this Agreement ("Controller" in the sense of Art. 4 no. 7 GDPR). This also applies to the purposes and means of processing set out in this Agreement.

4.2. The instructions are initially determined by the Main Contract and can then be changed by Client in writing or in an electronic format (text form) by individual instructions (individual instruction). Verbal instructions must be confirmed immediately in writing or in text form. Instructions that are not provided for in the Main Contract are treated as an application for a change in performance. In the event of proposed changes, Processor shall inform Client of the effects that this will have on the agreed services, in particular, the possibility of providing services, deadlines, and remuneration. If the implementation of the instruction is not reasonable to Processor, Processor is entitled to terminate the processing. Unacceptability exists in particular if the services are provided in an infrastructure that is used by several Clients/customers of Processor (shared services), and a change in the processing for individual Clients is not possible or is unreasonable.

4.3. The contractually agreed data processing takes place as a rule mainly in a Member State of the European Union or in another contracting state of the Agreement via the European Economic Area, unless the transfer of data to third countries becomes necessary in order to provide the service. In the event that a transfer to a third country takes place, Processor shall ensure that the requirements pursuant to Art. 44 ff. GDPR are fulfilled.

5. Rights of Client, obligations of Processor

5.1. Processor may process data of data subjects only within the framework of the order and the documented instructions of Client, unless there is an exceptional case within the meaning of Article 28 (3) (a) GDPR (obligation under the law of the European Union or of a Member State). Processor shall inform Client without delay if it considers that an instruction violates applicable laws. Processor may suspend the implementation of the instruction until it has been confirmed or modified by Client.

5.2. In the light of the nature of the processing, Processor shall, as far as possible, assist Client with appropriate technical and organisational measures in order to fulfil the rights of the data subjects laid down in Chapter III of the GDPR. Processor is entitled to demand appropriate compensation from Client for these services. Processor shall provide Client with cost information in advance.

5.3. Processor shall assist Client in ensuring compliance with the obligations pursuant to Articles 32 to 36 of the GPDR taking into account the nature of processing and the information available to Processor Processor is entitled to demand appropriate compensation from Client for these services.

5.4. Processor ensures that the employees involved in the processing of the data of Client and other persons acting on behalf of Processor are prohibited from processing the data outside the instruction issued. Furthermore, Processor ensures that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality. The obligation of confidentiality/secrecy persists even after the order has been completed.

5.5. Processor shall inform Client immediately if it becomes aware of violations of the protection of personal data of Client. Processor shall take the necessary measures to safeguard the data and to mitigate possible adverse consequences for the data subjects.

5.6. To the extent that this is mandatory under applicable Swedish law, Processor guarantees the written appointment of a Data Protection Officer, who shall carry out its activity in accordance with Art. 38 and 39 GDPR. A contact option will be published on the website of Processor, if applicable.

5.7. At the end of the provision of the processing services, Processor will, at the choice of Client, either delete or return the personal data, unless there is an obligation under European Union or national law to retain the personal data, or something else results under any other contractual arrangements. If Client does not exercise this option, deletion is deemed agreed. If Client chooses to return, Processor can demand a reasonable compensation. Processor shall provide Client with cost information in advance.

5.8. If a data subject asserts claims for compensation according to Art. 82 GDPR, Processor shall support Client in defending the claims within the scope of its possibilities. Processor may require an appropriate remuneration for this.

6. Obligations of Client

6.1. Client must immediately and completely inform Processor if it identifies errors or irregularities with regard to data protection regulations when carrying out the order.

6.2. In the event of termination, Client undertakes to delete personal data which it has stored during its service, before the termination of the Agreement.

6.3. At the request of Processor, Client appoints a contact person for data protection matters.

7. Requests from the data subjects

If the data subject approaches Processor with requests for correction deletion or information, Processor shall refer the data subject to Client, provided that an assignment to Client is possible according to the information of the data subject. Processor shall immediately forward the request of the data subject to Client. Processor shall support Client within the scope of its possibilities. Processor shall not be liable if the request of the data subject is not answered by Client, not answered correctly or not answered in due time.

8. Measures for the security of processing according to Art. 32 GDPR

8.1. Processor will take appropriate technical and organisational measures in its area of responsibility to ensure that the processing is carried out in accordance with the requirements of the GDPR and ensure the protection of the rights and freedoms of the data subjects. In accordance with Art. 32 GDPR, Processor shall take appropriate technical and organisational measures to ensure the confidentiality, integrity, availability and resilience of the processing systems and services in the long term.

8.2. The current technical and organisational measures of Processor can be viewed at the following link: https://www.elastycloud.com/terms/dpatom/ . Processor clarifies that the technical and organisational measures listed under the link are merely descriptions of a technical nature which are not to be regarded as part of this Agreement.

8.3. Processor will operate a procedure for the regular review of the effectiveness of the technical and organisational measures to ensure the security of processing in accordance with Art. 32 (1) lit. d) GDPR.

8.4. Over time, Processor will adapt the measures taken to developments in the state of the art and the risk situation. A change in the technical and organisational measures taken is reserved to Processor, provided that the level of protection under Art. 32 GDPR is not fallen short of.

9. Proof and verification

9.1. Client shall be entitled to regularly assure itself of compliance with the provisions of this Agreement, in particular the implementation of and compliance with the technical and organisational measures pursuant to section 8 of this Agreement. For this purpose, it may, for example, obtain information from Processor, have existing test certificates from experts, certifications or internal audits presented to it or have Processor's technical and organisational measures inspected personally or by a competent third party during normal business hours, provided that the third party is not in a competitive relationship with Processor.

9.2. Client shall only carry out inspections to the extent necessary and shall show due consideration for Processor's operating procedures. The parties shall agree on the time and type of inspection in good time.

9.3. Client shall document the results of the inspection and inform Processor thereof. In the event of errors or irregularities discovered by Client, in particular during the inspection of the results of the processing, Client shall inform Processor without delay. If facts are ascertained during the inspection, the future avoidance of which requires changes to the ordered procedure, Client shall inform Processor of the necessary procedural changes without delay.

9.4. Processor may require reasonable compensation for information and assistance. Processor shall provide Client with cost information in advance. The cost for Processor through an inspection is always limited to one day per calendar year.

10. SubProcessors (other Processors)

10.1. Client grants Processor the general permission to use other processors within the meaning of Art. 28 GDPR for the fulfilment of the Agreement.

10.2. The processors currently used can be accessed via the following link: https://www.elastycloud.com/terms/dpasup/ . Client shall regularly inform itself about changes there. Client agrees to their use.

10.3. Processor shall inform Client if it intends to withdraw or replace other processors. Client may object to such changes.

10.4. The objection to the proposed change can only be raised against Processor for a reason related to a material data protection right within a reasonable time after receipt of the information about the change. In the event of an objection, Processor may choose to provide the service without the intended change or, if the performance of the service without the intended change is not reasonable to Processor, stop providing the service affected by the change to Client within a reasonable time after receipt of the objection.

10.5. If Processor places orders with other processors, it is Processor's responsibility to impose its data protection obligations under this Agreement to the other processor.

10.6. Additional processors within the meaning of this regulation are only those other processors who provide services directly related to the provision of the main service. It does not cover ancillary services related to telecommunications, printing/postal/transport services, maintenance and service, user services or the disposal of data media and other measures to ensure the confidentiality, availability, integrity and resilience of personal data, networks, services, data processing systems and other IT systems. However, in order to ensure data protection and data security with respect to the data of Client, Processor is obliged to take appropriate and legally compliant contractual agreements as well as control measures for such ancillary services.

11. Liability and compensation

11.1. In the case of assertion of a claim for compensation by a data subject person pursuant to Art. 82 GDPR, the parties undertake to support each other and to contribute to the clarification of the underlying facts.

11.2. The liability regulation agreed between the parties in the Main Contract for the provision of services shall also apply to claims arising from this Data Processing Agreement and in the internal relationship between the parties for claims of third parties under Art. 82 GDPR, unless expressly agreed otherwise.

12. Term, miscellaneous

12.1. This Agreement begins with the conclusion by Client. It ends with the end of the last Contract between Processor and Client. If any data processing on behalf of Client still takes place after termination of this contract, the regulations of this Agreement are valid until the actual end of the processing.

12.2. Processor may amend this Agreement at its reasonable discretion with reasonable notice. In particular, Processor expressly reserves the right to unilaterally amend this Agreement if major legal changes in relation to this Agreement occur. Processor shall separately inform Client of the significance of the planned amendment and shall furthermore grant Client a reasonable period of time to declare an objection. Processor shall inform Client in the notice of amendment that the amendment will become effective if Client does not object within the set period. In the event of an objection by Client, Processor shall have an extraordinary right of termination.

12.3. Client acknowledges this Agreement as part of the Master Agreement: https://www.elastycloud.com/terms/ma/ concerning the services booked by him.

12.4. In the event of any contradictions, the provisions of this Agreement for data processing shall prevail to the provisions of the Main Contract. Should individual parts of this Agreement be ineffective, this does not affect the validity of the remaining Agreement.

12.5. The exclusive place of jurisdiction for all disputes arising from and in connection with this contract is the registered office of Processor. This applies subject to any exclusively legal place of jurisdiction. This Agreement is subject to the statutory provisions of Sweden.

12.6. If the data of Client is endangered by seizure or confiscation, by a bankruptcy or settlement procedure, or by other events or measures of third parties, Processor shall inform Client immediately. Processor will inform all persons responsible in this connection without delay that the sovereignty and the ownership of the data lie exclusively with Client as the "Controller" within the meaning of the GDPR.

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