

The English language version is for convenience purposes only, binding is only the German language version

## Data processing contract (according to Article 28 GDPR)

between

Client and ATINO GmbH, Springorumallee 2,  
(hereinafter “**Customer**”) 44795 Bochum  
(hereinafter “**Contractor**”)

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## 1. Subject matter of the contract and scope of application

- 1.1. **Subject matter of the contract.** In accordance with the General Terms and Conditions for SpeakWare (hereinafter “**main contract**”), the Contractor shall provide the Customer with online software and a platform for the creation and, if necessary, operation of speech applications, including communication of the speech applications with external servers (gateway function). This annex to data processing (hereinafter “**contract**”) regulates the processing of personal data that the Contractor processes on behalf of the Customer in connection with the execution of the main contract. It is concluded with acceptance of the main contract and does not require a separate signature. The terms “personal data”, “data subject” and “processing” in this contract are as described in Art. 4 Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter “**GDPR**”). Terms defined in the main contract have the meaning defined in the main contract.
- 1.2. **Content of data processing.** The subject, nature and purpose of processing as well as the nature of the personal data processed (hereinafter “**data**”) as well as the data subject categories are regulated in ANNEX 1 – DETAILS REGARDING DATA PROCESSING.
- 1.3. **Scope of application.** This contract shall only apply if and to the extent that it deals with personal data, processing is carried out and the Customer is subject to the provisions of GDPR in accordance with Art. 3 and 4 GDPR when processing the data.

## 2. Obligations of the Customer

- 2.1. **Responsibility under data protection law.** The Customer remains the sole controller in the relationship between the Customer and the Contractor within the meaning of Art. 4 No. 7 GDPR. During the duration of the contract, the Customer alone is especially responsible
  - a) for adhering to data protection principles (Art. 5 GDPR),
  - b) for the legality of data processing (Art. 6 et seq. GDPR),
  - c) for the fulfilment of transparency obligations (Art. 12, 13, 14 and 21 GDPR), in particular the Customer is obliged to inform the users of the development tool and, if applicable, the

- end users of the speech application about the data processing,
- d) for safeguarding the rights of the data subjects (Art. 12, 15 to 23 GDPR),
  - e) for keeping the list of processing activities as the controller (Art. 30 GDPR),
  - f) for reporting any data protection violations (Art. 32, 33 GDPR), and
  - g) for carrying out data protection impact assessments (Art. 35, 35 GDPR).

The contractor's support obligations under this contract remain unaffected.

- 2.2. **Instructions.** The Customer shall, if necessary, give instructions on handling the data within the scope of the subject matter of the main contract, in particular with regard to the purposes and essential means of processing. Instructions must be given in writing (email is sufficient). The parties shall notify each other without delay of any changes to those authorised to receive and give instructions (email is sufficient).

### 3. Obligations of the Contractor

- 3.1. **Subjection to instructions.** The Contractor shall only process the data on the basis of documented instructions from the Customer, unless the Contractor is obliged to do so by the law of the EU or EU member states to which the Contractor is subject. In the event of this kind of obligation, the Contractor shall notify the Customer of these legal requirements prior to processing, unless the law in question prohibits this kind of notification on the grounds of an important public interest. Instructions given by the Customer may also relate to the transfer of personal data to a country outside the European Economic Area, unless already provided for in this contract.
- 3.2. **Earmarking.** The Contractor shall process the data for the purposes set out in ANNEX 1 – DETAILS REGARDING DATA PROCESSING and in accordance with the Customer's instructions.
- 3.3. **Duty to inform.** The Contractor shall immediately inform the Customer if, in the opinion of the Contractor, an instruction issued by the Customer violates the GDPR or other data protection regulations of the EU or the member state in which the Contractor has its registered office. The Contractor shall be entitled to suspend the execution of the corresponding instruction until it has been confirmed or amended by the Customer. The Contractor shall not be obliged to legally examine any instructions.
- 3.4. **Rights of the data subject.** If data subjects assert their rights to information (Art. 15 GDPR), rectification (Art. 16 GDPR), deletion (Art. 17 GDPR), restriction of processing (Art. 18 GDPR) or data transferability (Art. 20 GDPR), the Customer shall comply with these rights independently and on its own authority. The same applies in the event of objection (Art. 21 GDPR) or revocation of consent. If it is impossible for the Customer to comply with the rights of the data subject, the Contractor shall support the Customer in accordance with Section 3.7. The handing over and deletion of the data at the end of the contract shall be governed primarily by Section 7. The Contractor shall forward applications from data subjects to the Customer.
- 3.5. **Data secrecy.** The Contractor guarantees that the people it authorises to process the data have committed themselves to confidentiality or are subject to an appropriate legal obligation of confidentiality.
- 3.6. **Duty to report.** If the Contractor becomes aware of an infringement of the protection of personal data within the meaning of Art. 4 No. 12 GDPR within the scope of data processing and the data of the Customer is affected by this, the Contractor shall notify the Customer of this immediately.
- 3.7. **Duty of support.** In view of the nature of the processing, the Contractor shall support the Customer as far as possible with suitable technical and organisational measures to comply with its obligation to respond to requests to exercise the rights of the data subjects as set out in Art. 12-23 GDPR. The Contractor is under no obligation to provide the software in a way that the rights of data subjects under GDPR can be fulfilled by the Customer itself by means of integrated functions. Taking into account the type of processing and the information available to it, the Contractor shall also support the Customer in complying with the obligations set out in Articles 32 to 36 GDPR (data security, reporting obligations in the event of data breaches, data protection impact assessment and consultation of data protection authorities).
- 3.8. **Data security.** The Contractor shall take all measures necessary in accordance with Art. 32 GDPR within its area of responsibility. The measures taken by the Contractor at the beginning

of the contract are described in Annex 2 – Technical and organisational measures for data security. The Contractor is obliged to examine these for their appropriateness and, in the event of any concerns, to inform the Customer thereof without delay. The Contractor shall be entitled to adapt the measures to the respective requirements, provided that this does not lower the overall level of data protection. Changes must be documented by the Contractor.

- 3.9. **Enquiries from supervisory authorities.** Enquiries from supervisory authorities (Art. 31 GDPR) relating to the Contractor's independent obligations under GDPR (cf. Art. 30, 32, 44 et seq. Para. 1 GDPR) shall be answered by the Contractor independently and the Contractor shall inform the Customer only to the extent that the matter has direct legal consequences for the Customer.

#### 4. Monitoring rights of the Customer

- 4.1. **Monitoring.** With regard to the data, the Customer is entitled to verify compliance with

- a) the legal provisions on data protection,
- b) the agreements contained in this contract, and
- c) the instructions of the Customer

to carry out monitoring at the Contractor's premises in consultation with the Contractor. The Customer must give prior notice of any monitoring at the Contractor's premises. Monitoring shall be carried out during normal business hours and without having a negative impact on the Contractor's business operations.

- 4.2. **Proof of compliance with Art. 28 GDPR.** The Contractor shall provide the Customer with all necessary information to prove compliance with the obligations laid down in Art. 28 GDPR. The Contractor shall undertake to provide the Customer with the necessary information on this upon request and, in particular, to prove that the technical and organisational measures have been implemented.

- 4.3. **Proof of general measures.** Evidence of measures, which not only relate to specific data, may also be provided at the discretion of the Contractor by

- a) compliance with approved rules of conduct in accordance with Art. 40 GDPR,
- b) certification in accordance with an approved certification procedure in accordance with Art. 42 GDPR, and
- c) current attestations, reports or extracts of reports from independent authorities (e.g. auditors, reviewers, data protection officers, IT security department, data protection auditors).

- 4.4. **Legitimate interests of the Contractor** If the Contractor's operational and business secrets may be disclosed or its intellectual property endangered by monitoring, or its interests similarly impaired, the Customer must have monitoring carried out by an expert and independent third party that undertakes in advance to maintain secrecy with the Contractor in writing.

#### 5. Subcontracted data processors

- 5.1. **Approval requirement.** For its part, the Contractor may only involve further data processors (hereinafter "**subcontracted data processors**") with the prior written consent of the Customer (email is sufficient). The approval may relate to specific companies (hereinafter "**individual approval**") or be granted generally for a group or type of company (hereinafter "**general approval**").

- 5.2. **Granted approvals.** The Customer hereby approves the subcontracted data processors named in ANNEX 3 – APPROVED SUBCONTRACTED DATA PROCESSORS.

- 5.3. **Information and objection for general approvals.** The following applies in the case of a general approval:

- a) The Contractor shall inform the Customer of any intended replacement of an existing subcontracted data processor or the involvement of a new subcontracted data processor (change) with a reasonable period of advance notice, usually at least four weeks. The information can be sent to the Customer by email.
- b) The Customer has the right to object to the change of the subcontracted data processor in writing (email is sufficient). In the event of an objection, the Contractor shall be entitled to terminate this contract and the main contract extraordinarily with effect from the planned

entry into force of the change (email is sufficient). The Contractor shall reimburse the Customer for any advance payments made for the period after the termination takes effect. The Customer shall only exercise his right of objection in the event of an important reason. An important reason shall be deemed to exist if the Customer's legitimate interest in not making the change substantially outweighs the Contractor's interest in the change.

**5.4. Agreements with subcontracted data processors** The Contractor shall impose the corresponding data protection obligations on the subcontracted data processors as stipulated in this contract.

**5.5. Involvement of further data processors by subcontracted data processors** The following shall apply to the involvement of further data processors by a subcontracted data processor (third-party processor): The Contractor shall enter into agreements with the subcontracted data processors regarding the involvement of third parties in accordance with Art. 28 Para. 2 and 4 GDPR and shall manage the involvement of third parties independently. Consent or advance information from the Customer in relation to third-party processors is not owed. Upon request, the Contractor shall inform the Customer about third-party processors. This Clause 5.4 shall apply mutatis mutandis to any of the third-party controller's subcontracted data processors.

## **6. Remuneration**

**6.1. Separate remuneration.** The Contractor's services under this contract shall be settled with the remuneration agreed in the main contract, but with the following exceptions:

- a) The Customer shall reimburse the Contractor for the expenses caused by the fulfilment of the support obligations under Clauses 3.4 and 3.7.
- b) If the content of the Customer's instructions goes beyond what the Contractor owes the Customer explicitly in accordance with the main contract and its performance description, the Customer shall pay the Contractor separately for the corresponding expenses.
- c) The Customer shall reimburse the Contractor for any expenses incurred as a result of monitoring (in particular in accordance with Clause 4.1), with the exception of expenses incurred as part of the proof of general measures in accordance with Clause 4.3.

The obligation to pay remuneration shall not apply if and to the extent that the expenditure was caused by a culpable breach of duty on the part of the Contractor.

**6.2. Working hours and advance payments.** Expenses according to Clause 6.1 not only include external costs (e.g. travel expenses) but also remuneration for the working hours of the personnel used by the Contractor. An hourly rate of € 90 (net) shall apply. For more extensive work, the Contractor may demand an appropriate advance payment from the Customer.

## **7. Return and deletion of the data at the end of the contract**

**7.1. Return.** The Customer cannot demand the return of the data at the end of the contract. In fact, the Customer hereby irrevocably instructs the Contractor to delete the data at the end of the contract in accordance with Clause 7.2.

**7.2. Deletion.** At the end of the term of this contract, the Contractor shall delete the Customer's data from its data carriers and destroy documents with data on it (in each case including backup copies) unless the Contractor is obliged to further store the data by the law of the EU or the member state in which it has its registered office. If deletion is only possible with disproportionate effort (e.g. in archives), the data will be temporarily blocked and deleted completely as part of the next regular deletion.

## **8. Term**

The term of this contract corresponds with the term of the main contract. The right to termination without notice for good cause shall remain unaffected.

## **9. Changes and final provisions**

Clauses 10 and 11 of the main contract shall apply.

## **ANNEX 1 – DETAILS REGARDING DATA PROCESSING**

### **1. Object, nature and purpose of processing**

- *Provision of SpeakWare software as software as a service (development tool and voice application operation, if required)*
- *Provision of the gateway function between external servers and the server of the voice assistance system provider*

### **2. Type of personal data**

- *Login and usage data of SpeakWare software users*
- *Access data concerning the developer accounts at the voice assistance system providers*

*According to the common understanding of the parties, the data listed below has no personal reference for the Customer and Contractor since it cannot be readily assigned to a natural person.*

***The Customer hereby undertakes to refrain from doing anything and to take appropriate measures to ensure that the following data cannot be assigned by the Customer and the Contractor to any natural person, consequently that the end users cannot be identified. If the Customer wishes to deviate from this, this must be agreed in advance with the Contractor.***

*In this case, the data processing contract shall also apply to the following data:*

- *recognised questions from end users*
- *generated answers to end users' data transferred via the gateway function, e.g. enquiries to a shop system of the Contractor, access tokens*
- *other end user data generated or processed by the voice application*

### **3. Data subject categories**

- *SpeakWare software users*

*Under the conditions set out in Paragraph 2 of this Annex:*

- *additional end users (users of voice applications)*

### **4. Special instructions/agreements**

*None*

**Annex 2 – Technical and organisational measures for data security**

[https://www.hosteurope.de/download/2018-09-14\\_Host\\_Europe\\_TOMs\\_DSGVO\\_V1.1.pdf](https://www.hosteurope.de/download/2018-09-14_Host_Europe_TOMs_DSGVO_V1.1.pdf)

ANNEX 3 – APPROVED SUBCONTRACTED DATA PROCESSORS

**1. Individual approvals**

No.:	Company, address, country	Service provided	Comments, applicable	if
1	Host Europe GmbH, Cologne/Germany	Hosting	---	

Note. The voice assistance system providers are not subcontracted data processors, but are independently responsible within the meaning of the GDPR.

**2. General approvals**

The Contractor may use subcontracted data processors based in the European Economic Area for hosting services.