

SMB Solutions Cloud Services

1 Cloud Service Data Processing Agreement (DPA)

2 Effective (“INSERT DATE”)

This SMB Solutions Cloud Service Agreement (“**Data Processing Agreement**”) is between SMB Solutions Cloud Services and [Insert Customer Name] of [Insert Customer Address] referred to as “**Parties**”.

3 Introduction, Scope, Definitions

- 3.1 This Agreement regulates the rights and obligations of the Company and Processor (hereinafter referred to as the "Parties") in the context of the processing of personal data on behalf of the Company.
- 3.2 This Agreement applies to all activities in which employees of the Processor or Subprocessor commissioned by the Processor process personal data of the Company on its behalf.
- 3.3 Terms used in this Agreement shall be understood in terms of their definition in the [EU General Data Protection Regulation \(GDPR\)](#)
- 3.4 (GDPR). In this sense, the Company is the "Controller" and the Processor is the "Processor".

4 Subject Matter and Duration of the Processing

4.1 Subject Matter

The Processor shall undertake the following processing operations:

The processing is based on the service SMBS Cloud Services existing between the parties (hereinafter "Main Contract").

4.2 Duration

The processing shall begin on **[DATE]** and continues for an indefinite period until termination of this Agreement by either party.

5 Nature, Purpose and Data Subjects of the Data Processing:

5.1 Nature of the Processing

The nature of the processing is as follows:

- 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 of data.

5.2 Purpose of the Processing

The underlying purpose of the processing is specified in the service description of the service level agreement.

5.3 Type of Data

The following data is processed:

- end user title, first and last name, email address

5.4 Categories of Data Subjects

The following are data subjects of the processing:

- employees of the Company

6 Duties of the Processor

- 6.1 The Processor shall process personal data only as contractually agreed or as instructed by the Company, unless the Processor is obliged by law to carry out specific processing. If such obligations exist for the Processor, it shall notify the Company thereof prior to processing, unless such notification is prohibited by law. Furthermore, the Processor shall not use the data provided for processing for any other purpose, in particular not for its own purposes.
- 6.2 The Processor confirms that it is aware of the legal provisions of the applicable data protection laws. He observes the principles of correct data processing.
- 6.3 The Processor undertakes to maintain strict confidentiality during processing.
- 6.4 Persons who may gain knowledge of the data processed in the commissioning must agree in writing to maintain confidentiality, unless they are already legally subject to a relevant confidentiality obligation.
- 6.5 The Processor warrants that the persons employed by it for processing have been made familiar with the relevant provisions of data protection and this Agreement prior to commencement of processing. Appropriate training and awareness-raising measures shall be repeated on a regular basis. The Processor shall ensure that persons employed for data processing are instructed and monitored appropriately on an ongoing basis with regard to the fulfilment of data protection requirements.

- 6.6 In connection with the processing, the Processor shall support the Company to the extent necessary in fulfilling its data protection obligations, in particular in compiling and updating the records of processing activities, in carrying out the data protection impact assessment and any necessary consultation with the supervisory authority. The necessary information and documentation shall be kept available and shall be forwarded without delay to the Company upon request.
- 6.7 If the Company is subject to inspection by supervisory authorities or other bodies, or if data subjects assert rights against it, the Processor undertakes to support the Company to the extent necessary insofar as the processing is concerned.
- 6.8 The Processor may provide information to third parties or the data subjects only with the prior consent of the Company. It shall immediately forward requests addressed directly to it to the Company.
- 6.9 Insofar as required by law, the Processor shall appoint a competent and reliable person as Data Protection Officer (DPO). It shall be ensured that the DPO has no conflicts of interest. In cases of doubt, the Company can contact the DPO directly. The Processor shall inform the Company immediately of the contact details of the DPO or give a reason why no DPO has been appointed. The Processor shall inform the Company immediately of any changes in the identity or internal tasks of the DPO.
- 6.10 The processing takes place exclusively within the EU, at a data centre based in Germany.
- 6.11 If the Processor is not established in the UK, it shall appoint a responsible representative in the UK in terms of Art. 27 of the GDPR. The contact details of the representative as well as any changes in the identity of the representative are to be communicated to the Company immediately.

7 Security of Processing

- 7.1 The Processor is obligated to implement and maintain technical and organisational measures in accordance with the latest state of the art and recognised best practices.
- 7.2 The data security measures described in Annex 1 are mandatory. They define the minimum owed by the Processor. The description of the measures must be sufficiently detailed as to enable a knowledgeable third party to recognise beyond a doubt at any time, on the basis of the description alone, what the required minimum should be. A reference to information which cannot be directly taken from this Agreement or its Annexes is impermissible.
- 7.3 The data security measures can be adapted to the technical progress and further organisational development as long as the level does not fall below the level agreed to here. The Processor shall immediately implement any changes required to maintain information security. The Company must be informed immediately of any changes. Material changes must be agreed to between the parties.
- 7.4 If the data security measures taken do not or no longer meet the Company's requirements, the Processor shall notify the Company immediately.

- 7.5 The Processor warrants that the data to be processed will be strictly separated from other data files.
- 7.6 Copies or duplicates will not be made without the knowledge of the Company. Technically necessary, temporary duplications are excluded, as far as an impairment of the data protection level agreed to herein is excluded.
- 7.7 The processing of data in private residences is permitted only with the prior written consent of the Company in individual cases. Insofar as such processing takes place, the Processor shall ensure that a level of data protection and data security corresponding to this Agreement is maintained and that the control rights of the Company specified in this Agreement can be exercised without restriction in the private residences concerned. The commissioned processing of data with private devices is not permitted under any circumstances.
- 7.8 Dedicated data carriers that originate at the Company or are used for the Company must be specially marked and are subject to ongoing administration. They must be stored appropriately at all times and must not be accessible to unauthorised persons. Incoming and outgoing data carriers are to be documented.
- 7.9 The Processor shall provide regular confirmation of the fulfilment of its obligations, in particular the complete implementation of the agreed technical and organisational measures and their effectiveness. The confirmation shall be provided to the Company at the latest every 12 months without being requested to do so and otherwise at any time upon request. The confirmation can be provided through approved codes of conduct or an approved certification procedure. Confirmations shall be kept for at least three calendar years after completion of data processing and shall be provided to the Company at any time upon request.

8 Regulations for the Rectification, Deletion and Blocking of Data

- 8.1 The Processor shall rectify, delete or block data processed within the scope of this Agreement only under the contractual agreement or instructions of the Company.
- 8.2 The Processor shall follow the relevant instructions of the Company at all times and also beyond the termination of this Agreement.

9 Subcontracting Relationships

- 9.1 The commissioning of Sub processors is only permitted with the written consent of the Company in individual cases.
- 9.2 Such consent shall be possible only if the Subprocessor has at least been contractually bound to comply with data protection obligations comparable to those agreed to in this Agreement. Upon request, the Company shall have access to the relevant contracts between Processor and Subprocessor.
- 9.3 It must be possible for the Company to effectively exercise its rights towards the Subprocessor as well. In particular, the Company must be entitled to carry out inspections at any time to the extent specified here at Subprocessors as well, or to have them carried out by third parties.

- 9.4 The responsibilities of the Processor and Subprocessor shall be clearly distinguished.
- 9.5 Further subcontracting by the Subprocessor is not permitted.
- 9.6 The Processor shall carefully select the Subprocessor, particularly considering the suitability of the technical and organisational measures taken by the Subprocessor.
- 9.7 The forwarding of data commissioned to be processed to the Subprocessor is only allowed if the Processor has been convinced and has documented same, that the Subprocessor has fulfilled its obligations completely. The Processor shall provide the documentation to the Company without being requested to do so.
- 9.8 The engagement of Subprocessors who carry out commissioned processing in territories other than the territory of the UK shall be possible only if the conditions set out in Clauses 4 (10) and (11) of this Agreement are observed. In particular, it is only permissible as far and as long as the Subprocessor offers appropriate data protection safeguards. The Processor shall inform the Company of the specific data protection safeguards offered by the Subprocessor and how a confirmation of such safeguards may be obtained. Insofar as a currently valid international data transfer agreement (IDTA) or the international data transfer addendum to the European Commission's standard contractual clauses for international data transfers (Addendum) are used as appropriate safeguards, the Controller will grant the Processor, the authority to perform all actions necessary for this and to grant and receive declarations of intent for and from the Subprocessor. Furthermore, the Processor is empowered to exercise the rights and authority granted to the Company by this Agreement against the Subprocessor.
- 9.9 The Processor shall adequately verify compliance with the Subprocessor's obligations on a regular basis, at the latest every 12 months. The audit and its results shall be documented in a comprehensible manner so that they can be understood by a competent third party. The documentation shall be provided to the Company without being requested to do so. The Processor shall safeguard the audit documentation at least until the end of the third calendar year after completion of the commissioned processing and shall provide it to the Company at any time upon request.
- 9.10 If the Subprocessor does not comply with its data protection obligations, the Processor shall be liable to the Company for this.
- 9.11 At present, the Subprocessors designated in Annex 2 with their names, addresses and contents of the agreements are engaged in the processing of personal data to the extent specified therein and are approved by the Company. The other obligations of the Processor towards Subprocessors set forth herein shall remain unaffected.
- 9.12 For the purposes of this Agreement, subcontracting relationships are only those services which are directly related to the performance of the main service. Ancillary services, such as transport, maintenance, cleaning and the use of telecommunications services or user services, are not included. The Processor's obligation to also ensure compliance with data protection and data security in these cases shall remain unaffected.
- 9.13 Every instance of consent to engage a Subprocessor in terms of this clause is given on condition of fulfilment of the obligations of the Processor in terms of this clause. Should the obligations fail to be fulfilled the consent becomes void. This also applies to the approvals granted in Clause 11.

10 Rights and Obligations of the Company

- 10.1 The Company is solely responsible for assessing the permissibility of the processing and the safeguarding of the rights of data subjects.
- 10.2 The Company issues all commissions, partial commissions or instructions in writing. In urgent cases, instructions may be given verbally. The Company will confirm such instructions in writing as soon as possible.
- 10.3 The Company shall inform the Processor without delay if it detects errors or irregularities in the review of performances in terms of the Agreement.
- 10.4 The Company shall be entitled to monitor compliance with data protection provisions and the contractual agreements at the Processor to a reasonable extent itself or through third parties, in particular by obtaining information and inspecting the stored data and data processing programs as well as inspecting the on-site controls. The persons entrusted with the inspection shall be given access and insight by the Processor to the extent necessary. The Processor is obliged to provide necessary information, to demonstrate procedures and to provide confirmations which are necessary for the performance of an inspection. The Processor shall be entitled to refuse inspections by third parties insofar as they are in competition with it or for similarly important reasons.
- 10.5 Inspections at the Processor's premises must be carried out without undue disruption to its business operations. Unless otherwise indicated for urgent reasons, which are to be documented by the Company, inspections shall be carried out after reasonable advance notice and during the Processor's business hours, and no more frequently than every 12 months. Insofar as the Processor provides confirmation of the correct implementation of the agreed data protection obligations as provided for in Chapter 5 (8) of this Agreement, an inspection shall be limited to spot checks.

11 Notification Duties

- 11.1 The Processor shall immediately notify the Company of any breaches of the protection of personal data processed on behalf of the Company. Justified cases of suspicion of this must also be reported. The notification must be sent within 24 hours of the Processor becoming aware of the relevant event to an address specified by the Company. It shall contain at least the following information:
 - a. a description of the nature of the breach of the protection of personal data, indicating where possible the categories and approximate number of data subjects, the categories concerned and the approximate number of personal data sets concerned;
 - b. the name and contact details of the Data Protection Officer or any other contact point for further information;
 - c. a description of the likely consequences of the breach of the protection of personal data;

- d. a description of the measures taken or proposed by the Processor to remedy the breach of the protection of personal data and, where appropriate, measures to mitigate its possible adverse effects
- 11.2 Significant disruptions in the execution of the Agreement or violations of data protection provisions or the provisions of this Agreement by the Processor or persons employed by it shall also be notified without delay.
- 11.3 The Processor shall inform the Company without delay of any controls or measures taken by supervisory authorities or other third parties as far as these relate to the commissioned processing.
- 11.4 The Processor undertakes to assist the Company in its obligations under Articles 33 and 34 of the GDPR to the extent required.

12 Instructions

- 12.1 The Company reserves a comprehensive right to give instructions with regard to the commissioned processing.
- 12.2 The Company and the Processor designate the persons exclusively authorised to issue and accept instructions in Annex 3.
- 12.3 In the event of a change or a longer absence of the designated persons the other party must be notified without delay of successors or representatives.
- 12.4 The Processor shall inform the Company immediately if, in the Processor's opinion, an instruction issued by the Company violates statutory provisions. The Processor is entitled to suspend the execution of the relevant instruction until it is confirmed or changed by the responsible person at the Company.
- 12.5 The Processor must document the instructions given to it and their implementation.

13 Termination of the Agreement

- 13.1 If data processed in the terms of the Agreement or copies thereof are still in the Processor's power at the end of the contractual relationship, the Processor shall either destroy the data or hand it over to the Company at the Company's option. The Company must make the choice within 2 weeks of being requested to do so by the Processor. Destruction must be carried out in such a way that it is no longer possible to recover even residual information with justifiable effort.
- 13.2 The Processor is obliged to bring about the immediate destruction or return by Subprocessors as well.
- 13.3 The Processor shall furnish confirmation of proper destruction and provide such confirmation to the Company without delay.
- 13.4 Documentation which serves as confirmation of the proper processing of data shall be kept by the Processor at least until the end of the third calendar year after the end of the Agreement. It may hand them over to the Company to be released from liability.

14 Remuneration

The remuneration of the Processor is conclusively regulated in the Main Contract. There shall be no separate remuneration or costs reimbursement within the scope of this Agreement.

15 Liability

- 15.1 The Company and the Processor are jointly and severally liable for the compensation of damages suffered by a person due to impermissible or incorrect data processing within the scope of the contractual relationship.
- 15.2 The Processor shall bear the burden of proof that damage is not the result of a circumstance for which it is responsible, insofar as it has processed the relevant data under this Agreement. As long as this proof has not been furnished, the Processor shall indemnify the Company upon first request against all claims raised against the Company in connection with the commissioned processing. Under these conditions, the Processor shall also reimburse the Company for all costs incurred in legal defence.
- 15.3 The Processor shall be liable to the Company for any damage culpably caused by the Processor, its employees or its agents or any Subprocessors engaged by the Processor in connection with the performance of the commissioned contractual services.
- 15.4 Numbers (15.2) and (15.3) shall not apply if the damage has been caused by the correct implementation of the commissioned service or an instruction issued by the Company.

16 Contractual Penalty

In the event of a culpable breach of its obligations in terms of this Agreement, the Processor incurs a contractual penalty commensurate with the breach. The contractual penalty shall be incurred in particular in the event of deficiencies in the implementation of the agreed technical and organisational measures. In the case of ongoing infringements, each calendar month in which the infringement occurs in whole or in part shall be deemed an individual incident. The plea of continuation is excluded.

17 Special Termination Right

- 17.1 The Company may terminate the Main Contract and this Agreement at any time without notice ("extraordinary termination") if the Processor has committed a serious breach of data protection regulations or the provisions of this Agreement, is unable or unwilling to carry out a lawful instruction from the Company or denies the Company's rights of control in breach of the Agreement.
- 17.2 A serious breach shall be deemed to have occurred in particular if the Processor fails to fulfil or has failed to fulfil to a significant extent the obligations specified in this Agreement, especially the agreed technical and organisational measures.

- 17.3 In the case of negligible infringements, the Company shall set the Processor a reasonable deadline to remedy the situation. If the situation is not remedied in time, the Company is entitled to extraordinary termination as described in this section.
- 17.4 The Processor shall reimburse the Company for all costs incurred by the latter as a result of the premature termination of the Main Contract or of this Agreement through extraordinary termination by the Company.

18 Miscellaneous

- 18.1 Both parties are obliged to treat as confidential all knowledge of business secrets and data security measures of the respective other party, acquired within the bounds of the contractual relationship beyond the termination of the Agreement as well. If there are doubts as to whether information is subject to confidentiality, it shall be treated as confidential until it is released by the other party in writing.
- 18.2 Should property of the Company be endangered at the Processor by measures taken by third parties (e.g. by seizure or confiscation), by insolvency proceedings, settlement proceedings or by other events the Processor shall notify the Company immediately.
- 18.3 Collateral contracts must be in writing and must make express reference to this Agreement.
- 18.4 Should individual parts of this Agreement be invalid, this shall not affect the validity of the remaining parts of the Agreement.

19 Agreement Execution

The Customer has had the opportunity to review the General Terms and Conditions for SMB Cloud Services and Cloud service level agreement prior to executing this **Data Processing Agreement**.

SMB Solutions Cloud Services recommends that Customer prints copies of these documents for the Customer's records.

All references in the Supplements to "Service" mean "Cloud Service", and to "Named Users" mean "Authorised Users."

Customer's contact details for sending system notices are:

Name	
Email	
Direct Contact Number	

The system provisioning notification recipient name and e-mail address are necessary for system notices.

IN WITNESS WHEREOF, the Parties hereto have caused this **Data Processing Agreement** to be executed by their respective authorised representatives.

Accepted By

INSERT NAME who holds the authorised company position of **insert title**

Signatures

 Place, Date

 Place, Date

 Company

 Processor

20 Annex 1 - Technical and Organisational Measures

In the following, the processing-related technical and organisational measures to guarantee data protection and data security are specified, which the Processor must at minimum set up and continuously maintain. The aim is to guarantee, in particular, the confidentiality, integrity and availability of the data commissioned to be processed.

- Pseudonymisation
- Encryption
- Confidentiality including
 - Access Control
 - Entry Control
 - Authorisation Control
 - Separation Control
- Integrity
 - Transfer Control
 - Input Control
- Availability and Resilience
 - Availability Control
 - Resilience Control
- Recoverability
- Procedures for Regular Review, Assessment and Evaluation including
 - Data-Protection-Management-System
 - Incident-Response-Management-System
 - Data Protection By Design and Default
 - Order Control

21 Annex 2 – Approved Subprocessors

Subprocessor	Address	Content of the Agreement

22 Annex 3 – Persons Authorised to Give Instructions, Address for Reporting Data Breaches

The following persons are authorised to give instructions:

Name

Contact Details

The following persons are authorised to receive instructions:

Name

Contact Details

Contact for the notification of Personal Data Breaches:

Name

Contact Details

23 Annex 4 - Data Protection Officer

Presently, the following person has been appointed as Data Protection Officer at the Processor:

Richard Duffy
Chief Executive Officer
richard@smbsolutions.com.au

_____END DOCUMENT_____