
Agreement on Contract Processing under the EU General Data Protection Regulation (GDPR)

Updated August 2024

between

DATEV eG

Paumgartnerstrasse 6–14

90429 Nuremberg, Germany

– hereinafter referred to as “DATEV” –

and

Contractor

– hereinafter referred to as “Contractor” –

– collectively referred to as the “Parties” –

Preamble

This Annex specifies the obligations of the contracting Parties regarding data protection resulting from the data processing described in detail in the service agreement (data processing agreement or contract). It shall apply to activities related to the service agreement where the Contractor's employees or those authorized by the Contractor process personal data (“data”) on behalf of DATEV.

Section 1 - Subject, Duration, and Specific Details of the Data Processing

Section 3.1. of the service agreement specifies the subject of the agreement, the nature and purpose of the data processing, and the categories of data subjects. The duration is determined in accordance with the provisions of the service agreement.

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Section 2 - Scope and Responsibility

- (1) The Contractor processes personal data on behalf of DATEV. This includes activities that are specified in the service agreement and in the description of services. Within the scope of this agreement, DATEV is solely responsible for compliance with the legal provisions of the data protection laws, in particular for the legality of the data transfer to the Contractor as well as for

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the legality of the data processing ("controller" within the meaning of Art. 4, paragraph 7 of the GDPR). If, within the scope of this data processing agreement, DATEV is itself the processor as defined in Art. 4, paragraph 8, of the GDPR, the Contractor is "another processor" within the terms of Art. 28, paragraph 2 and 28, paragraph 4, of the GDPR. In this case, the Contractor of this agreement, as "another processor," hereby grants DATEV's customers the same data processing rights as DATEV is entitled to under this agreement.

- (2) The instructions are defined in the service agreement and can then be amended, supplemented or replaced by individual instructions by DATEV in writing (e.g., email) to the body designated by the Contractor (individual instructions). Instructions not provided for in the service agreement shall be treated as a request for a service modification. Verbal instructions must be confirmed immediately in writing by DATEV.

Section 3 - Obligations of the Contractor

- (1) The Contractor may only process personal data that is the subject of the agreement within the scope of the agreement and the instructions given by DATEV unless there is an exceptional case within the meaning of Art. 28, para. 3, point (a), of the GDPR and its requirements are respected.
- (2) The Contractor is obligated to inform DATEV without undue delay if it believes that an instruction violates applicable law. The Contractor may suspend the implementation of the instruction until it has been confirmed or amended by DATEV.
- (3) The Contractor shall take technical and organizational measures to adequately protect DATEV's data that comply with the requirements of the General Data Protection Regulation (Art. 32 GDPR).
- (4) The Contractor shall document the necessary technical and organizational measures before the start of the data processing and shall make it available for inspection by DATEV. The details of this technical and organizational measure can be found in the Annex for Technical and Organizational Measures pursuant to Art. 32 of the GDPR as well as in the checklist filled out by the Contractor for the technical organizational measures for the service agreement. In addition, the rules of conduct for employees of external companies on DATEV's premises listed in the Annex for the service agreement for the provision of services on DATEV's premises shall apply.

Technical and organizational measures shall be subject to technical progress and further development. In this respect, the Contractor is permitted to implement alternative adequate measures. These shall be documented by the Contractor accordingly. The safety level of the measures specified in the installations may not be lowered.

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- (5) The Contractor shall support DATEV appropriately in fulfilling the requests and claims of data subjects pursuant to Chapter III of the GDPR as well as in complying with the obligations referred to in Art. 32 to 36 of the GDPR.
- (6) In the event of a claim to DATEV by a data subject regarding possible claims for damages pursuant to Art. 82 of the GDPR, the Contractor undertakes to assist DATEV in defending the claim to the extent possible.
- (7) The Contractor shall ensure that employees involved in the processing of DATEV's data and other persons working for the Contractor are prohibited from processing the data outside the instructions provided by DATEV. In addition, the Contractor shall ensure that the persons responsible for processing personal data are bound by confidentiality and that this obligation of confidentiality shall continue even after the termination of the contract.
- (8) The Contractor shall inform DATEV (soc@datev.de) without undue delay if it becomes aware of possible personal data breaches related to DATEV's personal data protection and, if necessary, shall take initial risk-mitigating measures. The information includes a detailed description of the incident, the possible categories of personal data, and the approximate number of individuals involved, as well as a point of contact with the Contractor for further information for DATEV. The Contractor assists DATEV in clarifying and, if necessary, remedying the adverse effects.
- (9) The Contractor shall designate DATEV the contact person for data protection issues arising within the scope of the agreement.
- (10) The Contractor ensures that a procedure is in place to regularly verify the effectiveness of the technical and organizational measures to ensure the security of the data processing (Art. 32, paragraph 1, point (d), of the GDPR).
- (11) During the term of the agreement, the Contractor shall correct or delete the contractual data as instructed by DATEV. If a data-protection-compliant erasure or a corresponding restriction of data processing is not possible, the Contractor shall take over the data-protection-compliant destruction of storage media and other materials on the basis of an individual instruction by DATEV or shall return this storage media to DATEV, unless already agreed in the agreement. In special cases, to be determined by DATEV, a retention or handover takes place; remuneration and protective measures are to be agreed separately, unless already agreed in the agreement.
- (12) Data, storage media, and all documents are to be handed over or deleted after the end of the order, at DATEV's discretion (which must be in writing or in text form), if they are the property of DATEV.

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Section 4 - Obligations of DATEV

- (1) DATEV shall inform the Contractor immediately and in full if it discovers errors or irregularities in the results of the services regarding data protection resulting from the data processing described in detail in the service agreement.
- (2) In the event of a claim against the Contractor by a data subject regarding possible claims for damages pursuant to Art. 82 of the GDPR, Section 3, paragraph 6 shall apply accordingly

Section 5 - Requests from Data Subjects

If a data subject contacts the Contractor with requests pursuant to Art. 15 to 21 of the GDPR, the Contractor shall immediately refer the data subject to DATEV and forward the request to DATEV. The Contractor shall assist DATEV in fulfilling these requests of the data subjects to the extent necessary.

Section 6 - Proof of Fulfillment

- (1) The Contractor shall demonstrate to DATEV compliance with the obligations laid down in this agreement by appropriate means. The Contractor undertakes to provide DATEV with the documented checks and the necessary information upon request. In particular, the implementation of the technical and organizational measures pursuant to Art. 32 of the GDPR must be demonstrated.
- (2) Evidence of compliance with the obligations laid down in this agreement may be provided by:
 - Up-to-date audits, reports, or report extracts from independent bodies (e.g., auditors, data protection officers, IT security department, data protection auditors, quality auditors)
 - Carrying out a self-audit according to the TOMs checklist (see Annex), appropriate certification by IT security or data protection audit (e.g., according to BSI Standards, ISO 27001, ISO 27018, ISO 27701)
 - Compliance with approved rules of conduct pursuant to Art. 40 of the GDPR
 - The certification according to an approved certification procedure pursuant to Art. 42 of the GDPR
 - Agreement between DATEV and the Contractor that proof can also be provided with the following documents/certificates.

- (3) Control rights

The Contractor undertakes to assist DATEV in audits pursuant to Art. 28, paragraph 3, sentence 2, point (h), of the GDPR in order to comply with data protection regulations and contractual agreements to the appropriate and necessary extent.

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The audits are carried out by DATEV itself or by a third party appointed by DATEV. Should the third party appointed by DATEV be in a competitive relationship with the Contractor, the Contractor shall have the right to object. Authorized third parties must be obliged to maintain confidentiality. This applies in particular to statements of professional or legal secrecy.

An audit may be carried out in particular by obtaining information and inspecting the stored data and the data processing programs, as well as by other means. Other measures include requesting certification, data protection audit reports, and on-site inspections. On-site inspections shall be carried out by DATEV with reasonable advance notice during normal business hours. The inspections shall be carried out without disrupting operations and with due regard for the security and confidentiality interests of the Contractor and shall in principle be limited to once per calendar year. Exceptions are made for the purpose of checks.

Section 7 - Other Processors (Subcontractors)

- (1) A subcontractor relationship requiring consent exists if the Contractor assigns additional contractors to process personal data as agreed in the agreement. The Contractor shall enter into agreements with such third parties to the extent necessary to ensure appropriate data protection and information security measures.
- (2) The use of subcontractors as additional processors is only permitted with the prior consent of DATEV.
- (3) Subcontracting

The subcontractors employed at the conclusion of the agreement are listed in Section 3.2 of the respective service agreement.

DATEV agrees that the Contractor, or the subcontractors themselves, may engage additional subcontractors. The Contractor shall inform DATEV before subcontractors are engaged or replaced by the Contractor or other subcontractors.

DATEV may object to the announced amendments – within a reasonable period of time and for important data protection reasons – vis-à-vis the Contractor. If there is no objection within the time limit, consent to the amendment shall be deemed to have been given. If there is an important reason under data protection law and if an amicable solution is not possible between the parties, DATEV is granted the right to terminate the agreement for cause.

If the Contractor engages subcontractors, it shall be the Contractor's responsibility to delegate its data protection obligations under this agreement to the subcontractor.

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Section 8 - Transfers to Third Countries

- (1) Transmission takes place only on documented instructions of the controller in third countries outside the EU and the EEA, provided that the requirements of Art. 44 et seq. of the GDPR are met.
- (2) Unless provided for in the service agreement, the contracting Parties shall set out in that contract the manner in which the appropriate level of protection for data processing in the third country is ensured.

In principle, the appropriate level of protection can be achieved:

- By an adequacy decision of the commission (Art. 45, paragraph 3, of the GDPR);
- By binding internal data protection regulations, possibly including additional protective measures (Art. 46, paragraph 2, point (b), in conjunction with Art. 47 of the GDPR);
- By appropriately modulated standard data protection clauses, including additional protective measures (Art. 46, paragraph 2, point (c), of the GDPR);
- By approved rules of conduct (Art. 46, paragraph 2, point (e), in conjunction with Art. 40 of the GDPR);
- By an approved certification mechanism (Art. 46, paragraph 2, point (f), in conjunction with Art. 42 of the GDPR);
- By other measures (Art. 46, paragraph 2, point (a), paragraph 3, point (a) and (b), of the GDPR);
- The Contractor is also entitled to ensure the appropriate level of protection in other ways provided for in Art. 44 et seq. of the GDPR.

Details of this can be found in the table in Section 3.2 of the service agreement.

- (3) Unless otherwise stipulated in the agreement, data processing in a third country is only permitted with the prior consent of DATEV. The Contractor shall inform DATEV in advance of the third country(s) concerned and the manner in which the appropriate level of protection within the meaning of Art. 44 et seq. of the GDPR is ensured for the data processing there.
- (4) The Contractor shall provide a contact that DATEV can pass on to the data subject as the body where the guarantees are available or where a copy of the guarantee can be requested.

Section 9 - Liability

DATEV and the Contractor are liable to data subjects in accordance with the regulation set out in Art. 82 of the GDPR.

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Section 10 - Duty to inform, Written Form, Choice of Law

- (1) DATEV must immediately inform the Contractor in the event that the Contractor's data at DATEV is at risk due to seizure or confiscation, as a result of insolvency or settlement proceedings, or due to any other third-party events or measures. DATEV will immediately inform all of the individuals responsible in this context that the sovereignty and ownership of the data lies exclusively with the DATEV as the "controller" within the terms of the General Data Protection Regulation.
- (2) Pursuant to the GDPR, changes and additions to this Annex and all of its components – including any assurances made by Contractor – must be made in writing (this can also include in an electronic format) and must contain an explicit reference to the fact that such changes and additions constitute a change and/or addition to the terms of this agreement. This also applies to waiving the provision requiring that changes be made in a certain form.
- (3) If a provision of this annex is legally invalid the validity of the remainder of the provision shall not be affected thereby.
- (4) German law shall apply.