

Data Processing Agreement (DPA) in accordance with Article 28 General Data Protection Regulation (GDPR)

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1. General Conditions

This contract describes the obligations and rights of the client (customer) and the contractor with regards to data protection, which result from agreements, orders and contracts between the two parties.

It applies to all activities in which the contractor's employees or those commissioned by the contractor process the client's personal data.

Within the framework of this agreement, the client is responsible for compliance with the legal requirements of the General Data Protection Regulation (GDPR), in particular for the lawfulness of the transfer of data to the contractor and for the lawfulness of data processing in accordance with Art. 4 GDPR Responsible solely responsible.

The contractor is GroupKom GmbH, Behringstr. 21-25, 12437 Berlin, Germany.

2. Subject and duration of the agreement

(1) Subject

The contractor processes personal data on behalf of the client as part of the provision of the service to the client. The object of the service is the configuration, use and support service for the emergency management and communication platform EVALARM.

(2) Duration

The duration is based on the duration of the main contract, unless the following provisions result in additional obligations or rights of termination.

3. Specification of the agreement's content (acc. Art. 28 (3) GDPR)

(1) Nature and Purpose of the intended Processing of Data

The processing of personal data in the order takes place exclusively in accordance with the GDPR and the regulations of this agreement.

The scope and purpose of the data processing by the contractor result from the terms of use (<https://www.evalarm.de/privacy>).

The provision of the contractually agreed data processing takes place exclusively in a member state of the European Union, in another state party to the Agreement on the European Economic Area or in a third country with an appropriate level of data protection as described in 7(2).

(2) Type of Data

The following data types / categories are the subject of the processing of personal data:

- Name
- Address
- Contact details
- E-Mail address
- Contract Master data
- Log data
- Contract billing and payment data
- Service and support requests

(3) The following groups of people / categories are subject to the processing of personal data:

- Client
- Employees of the client
- Contact person of the client
- Contractor
- Employees of the contractor

4. Technical and organizational Measures (TOM) (acc. Art. 28 (1) and Art. 28 (3) lit. c, f GDPR)

(1) The organizational measures taken by the contractor in accordance with Article 32, Paragraph 1 of the GDPR and Article 5, Paragraphs 1 and 2 of the GDPR can be accessed at any time at: <https://www.evalarm.de/adv>. With this agreement, the client agrees to the documented measures as the basis of the order.

(2) The contractor has to ensure the security acc. Art. 28, Para. 3 lit. c, 32 GDPR, in particular in conjunction with Art. 5 Para. 1, Para. 2 GDPR. Overall, the measures to be taken are data security measures and to ensure a level of protection appropriate to the risk in terms of confidentiality, integrity, availability and resilience of the systems. The state of the art, the implementation costs and the type, scope and purpose of processing as well as the different probability of occurrence and severity of the risk for the rights and freedoms of natural persons within the meaning of Art. 32, Paragraph 1 GDPR have to be considered.

(3) The technical and organizational measures are subject to technical progress and further development. In this respect, the contractor is allowed to implement alternative adequate measures. The security level of the defined measures must not be undercut. Significant changes must be documented.

5. Authorization, restriction and deletion of the data (acc. Art. 28 (3) lit. e GDPR)

The contractor may not correct or delete the data processed in the order, but only after documented instructions from the client, or restrict their processing. Insofar as a data subject contacts the contractor directly, the contractor will immediately forward this request to the client. Any support of the client beyond the forwarding (in particular in the case of providing information) in processing inquiries of affected parties will be carried out after the client's written request, subject to the contractor's assumption of the resulting costs in accordance with Section 12 within the scope of his options.

6. Quality assurance and other obligations of the contractor (acc. to Art. 28 (3) lit. b, f GDPR)

In addition to compliance with the provisions of this order, the contractor has legal obligations in accordance with Art. 28 to 33 GDPR; insofar as it ensures to observe the following guidelines:

Written appointment of a data protection officer who carries out his work in accordance with Art. 38 and 39 GDPR. The contact details are:

Lucas Gabriel, Datenschutzbeauftragter, datenschutz@evalarm.de.

(1) The protection of confidentiality in accordance with Art. 28 para. 3 sentence 2 lit. b, 29, 32 para. 4 GDPR. The contractor only uses employees who are obliged to maintain confidentiality and who have previously been familiarized with the data protection provisions relevant to them. The contractor and any person subordinate to the contractor who has access to personal data may only process this data in accordance with the instructions of the client, including the powers granted in this contract, unless they are legally obliged to process them.

- (2) The implementation and compliance with all technical and organizational measures required for this order in accordance with Art. 28 para. 3 sentence 2 lit. c, 32 GDPR and Annex 1.
- (3) The client and the contractor work together on request with the supervisory authority in fulfilling their tasks.
- (4) Immediate information of the client about control actions and measures of the supervisory authority, insofar as they relate to this order. This also applies if a competent authority ascertains in the context of an administrative offense or criminal procedure in relation to the processing of personal data during order processing by the contractor.
- (5) Insofar as the client is subject to control by the supervisory authority, an administrative offense or criminal procedure, the liability claim of a data subject or a third party or another claim in connection with order processing by the contractor, the contractor must support him to the best of his ability.
- (6) The contractor regularly checks the internal processes as well as the technical and organizational measures according to Annex 1 to ensure that the processing in his area of responsibility takes place in accordance with the requirements of the applicable data protection law and the protection of the rights of the data subject is guaranteed.

7. Subcontract (acc. Art. 28 (2), (3) lit. d, (4) GDPR)

- (1) Subcontracting within the meaning of this regulation is to be understood as services that relate directly to the provision of the main service. This does not include ancillary services that the contractor uses such as telecommunications services, testing services, postal / transport services, maintenance and support service or the disposal of data carriers as well as other measures to ensure the confidentiality, availability, integrity and resilience of the hardware and software of data processing systems. However, the contractor is obliged to take appropriate and legally compliant contractual agreements and control measures to ensure data protection and data security of the customer's data, even with outsourced ancillary services.
- (2) The contractor may only commission subcontractors (other data processors) with the prior written or documented consent of the client.
 - a) The client agrees to the commissioning of the following subcontractors on the condition of a contractual agreement in accordance with Art. 28 Para. 2-4 GDPR with the contractor:

Company	Address/Country	Leistung	Third country
Hetzner Online GmbH	Industriestr. 25 91710 Gunzenhausen Deutschland	Hosting	no
Commify UK Limited (agierend als Esendex)	20 Wollaton Street Nottingham NG 1 5FW United Kingdom	SMS / Voice-Message	Yes, according to the Commission's adequacy decision (Article 45 (3) GDPR)
Apple Inc.	Kurfürstendamm 26, 10719 Berlin Germany	Alerting via Push-Notification (APN)	Yes, standard data protection clauses (Art. 46 para. 2 lit. c and d GDPR)
Google Ireland Limited	Gordon House, Barrow Street, Dublin 4 Ireland	Alerting via Push-Notification (FCM)	Yes, standard data protection clauses (Art. 46 para. 2 lit. c and d GDPR)

- b) Outsourcing to subcontractors or changing the existing subcontractor are permitted, provided that:
 - the contractor notifies the client of such outsourcing to a subcontractor a reasonable time in writing or in text form and
 - the client does not object to the contractor in writing or in text form against the planned outsourcing by the time the data is handed over.
- (3) Depending on the mobile device, the Google/Android (FCM) or Apple (APN) service is used for the transmission of push notifications. Data is only transmitted in encrypted form.
- (4) The transfer of personal data of the client to the subcontractor and his first action are only permitted if all the requirements for subcontracting are met.
- (5) If the subcontractor provides the agreed service outside the EU / EEA, the contractor ensures the data protection lawfulness by appropriate measures.

8. Control right of the client (acc. Art. 28 (3) lit. h, (5) GDPR)

- (1) The client has the right to have carried out the order control provided for in the TOMs by an external, independent data protection officer in consultation with the contractor. If the client requests the personal exercise of the inspection rights, he is permitted to do so after prior registration (appointment scheduling), during normal business hours and without disrupting the operational process and after agreeing a fee in accordance with Section 12 for the associated effort.
- (2) The contractor ensures that the client can check the compliance with the obligations of the contractor according to Art. 28 GDPR. The contractor undertakes to provide the client with the necessary information upon request and, in particular, to demonstrate the implementation of the technical and organizational measures. The contractor may make this check dependent on the signing of a confidentiality agreement with regard to the data of other customers and the technical and organizational measures implemented.
- (3) The contractor can assert a claim for remuneration in accordance with Section 12 to enable the client to carry out checks.

9. Notification in the event of violations by the contractor (acc. Art. 33 und 34 GDPR)

- (1) The contractor supports the client in complying with the obligations under Article 32 to 36 of the GDPR regarding the security of personal data, reporting obligations in the event of data breaches, data protection impact assessments and previous consultations. These include
 - a) ensuring an adequate level of protection through technical and organizational measures that take into account the circumstances and purposes of the processing as well as the predicted probability and severity of a possible violation of the law due to security gaps and enable the immediate detection of relevant injury events,
 - b) the obligation to immediately report violations of personal data to the client,
 - c) the obligation to support the client as part of his duty to provide information to the person concerned and to provide him with all relevant information immediately in this connection,
 - d) the support of the client in previous consultations with the supervisory authority.
- (2) The contractor can claim compensation for support services that are not included in the service description or that are not due to misconduct on the part of the contractor.

10. Authority to issue instructions from the client (acc. Art. 28 (3) lit. a und Art. 29 GDPR)

- (1) Instructions can be given verbally in justified urgent cases, otherwise they must be given at least in text form. Verbal instructions must be confirmed immediately by the client in text form.
- (2) The contractor must inform the client immediately if he believes that an instruction violates data protection regulations. The contractor is entitled to suspend the implementation of the relevant instruction until it is confirmed or changed by the client.
- (3) If the client issues individual instructions that go beyond the agreed scope of services, the client and contractor will jointly agree and agree on the reimbursement of the costs justified in accordance with Section 12.

11. Deletion and return of personal data (acc. Art. 28 (3) lit. g GDPR)

- (1) Copies or duplicates of the data will not be made without the knowledge of the client. This does not include backup copies, insofar as they are necessary to ensure proper data processing, as well as data that are required to comply with statutory retention requirements.
- (2) After completion of the contractually agreed work or earlier upon request by the client - at the latest when the service agreement is terminated - the contractor has to hand over to the client or destroy all the documents he has come into possession of, the processing and usage results created, as well as databases that are related to the contractual relationship in accordance with data protection law after prior approval. The same applies to test and reject material. The deletion log must be submitted on request.
- (3) Documentation that serves to prove the proper order and data processing must be kept by the contractor in accordance with the respective retention periods beyond the end of the contract. He can hand them over to the client at the end of the contract to relieve him.

12. Fees

If the client needs support in accordance with section 5 to answer inquiries from those affected, he must reimburse the costs incurred as a result.

Insofar as the client will exercise control rights in accordance with Section 8, the previously agreed amount of the fee is based on an hourly rate to be determined by the employee assigned for the care.

If the client gives instructions to the contractor in accordance with section 10, he must reimburse costs incurred through this instruction.

13. Applicable law / place of jurisdiction

- (1) German law applies exclusively to the contract.
- (2) The parties agree as the place of jurisdiction the court responsible for Berlin Treptow-Köpenick.

14. Severability clause

Should individual provisions of this agreement be ineffective or unenforceable or become ineffective or unenforceable after the conclusion of the contract, the remaining validity of the agreement remains unaffected. The ineffective or unenforceable provision should be replaced by the effective and enforceable regulation, the effects of which come closest to the economic objective that the contracting parties have pursued with the ineffective or unenforceable provision. The above provisions apply accordingly in the event that the contract proves to be incomplete.

Berlin, 01.12.2022

Place, Date



Data Protection Officer
GroupKom GmbH