

# Terms of Use for the Provision of Network Access Services

## § 1 Contractual Basis

1. These Terms of Use shall apply to the provision of the software-based Next Generation Network Access Services of XplicitTrust that automatically create tunnels between user devices and machines (hereinafter referred to as "Services", the term "Services" as used herein shall include, unless otherwise specified, the underlying software) by the Provider to the Customer during the term of the contractual relationship. The Services consist of and are provided through software agents which are installed on the user devices and/or machines on the one hand and the central components stored and operated by the Provider on remote servers (e.g., API, Broker Service, Relay Service) on the other hand. Customers of the Services are exclusively companies and legal entities under public law.
2. The scope of the Services, the type and number of licenses as well as the amount of fees shall be determined by the specific individual license agreement (hereinafter referred to as "Subscription"). In the event of any conflict, the customer-specific provisions in the Subscription or in any other customer-specific documents shall take precedence over these Terms of Use.
3. These Terms of Use in their respective current version shall also apply to all future Subscriptions between the Provider and the Customer relating to the provision of the Services even if this is not expressly referred to again.
4. Terms and conditions of the Customer that conflict with, deviate from or supplement these Terms of Use shall not become part of the Subscription, even if neither party expressly objects to such terms and conditions.

## § 2 Conclusion of Subscriptions; Amendments

1. If Subscriptions are concluded online, the following terms shall apply: The presentation of the Services on the website of the Provider does not constitute a binding offer by the Provider to conclude a Subscription. Rather, the Customer submits an offer by completing its order. Before submitting its order, the Customer can check it for input errors and make corrections if necessary. The Provider will immediately confirm receipt of the order to the Customer; this automatic confirmation of receipt does not constitute acceptance of the Subscription. The Subscription between the Provider and the Customer is only concluded when the Provider sends the Customer a separate order confirmation. The Provider is free to accept or reject the Customer's offer at its own discretion. The Customer receives its individual order data together with the order confirmation.
2. For new Subscriptions, the Terms of Use in its current version at the time of the conclusion of the Subscription shall apply. For ongoing Subscriptions the Provider may amend the Terms of Use. Such amendments shall become effective if the Customer does not object to the amendment in writing (e.g. by e-mail) within one (1) month after receipt of a notice of amendment and the Provider has informed the Customer in the notice of amendment of the right to object and of the applicable deadline. If the Customer objects to the amendment, the original terms and conditions shall continue to apply. In this case, the Provider shall be entitled to terminate the affected Subscription within two (2) weeks after receipt of the objection. Excluded from this reservation of the right to make amendments are such amendments that relate to material contractual obligations of one party or that change the equivalence relationship between service and consideration more than insignificantly.

## § 3 Scope of Services

1. The Services are made available to the Customer by the Provider during the term of the Subscription and within the scope of the agreed availability according to § 5 below. The scope of the Services in detail depends on the subscription model selected by the Customer which is described in detail on the XplicitTrust website valid at the time of conclusion of the Subscription.
2. The Services are centrally and automatically updated during the term of the Subscription; updates may also include new or modified functions as long as the contractually agreed range of functions is not significantly restricted thereby.
3. The Provider is entitled to have the contractually agreed Services provided in whole or in part by third parties as subcontractors

(agents), whereby the Provider always remains directly obligated to the Customer.

4. During the term of the Subscription the Provider makes available to the Customer a service desk to answer questions on the application and use of the Services and to report problems and faults. The purpose of the Support shall be to assist the Customer with technical problems in connection with the use of the Services which the Customer cannot solve itself. In particular, the Support does not include the provision of professional, organizational or technical advice to the Customer on the use of the Services.
5. The subject matter of the Subscription does not include services for the installation or configuration of the Services or the underlying software, for example adaptations to the software according to specifications of the Customer or the provision of other consulting services.
6. The Provider regularly adapts the range of functions of the Services at its own discretion to further technological development and changing market requirements to fulfill the agreed purposes of use in the best possible way. This may involve amendments to functionalities and adaptations to new technologies. Such amendments shall only be made if they are reasonable for the Customer and the achievement of the purpose of the Subscription is not jeopardized thereby. The Provider will inform the Customer of such changes in advance.

## § 4 Right to Use the Services

1. The Services, the underlying software and all intellectual property rights therein or relating thereto are and shall remain the exclusive property of the Provider or the right holder and licensor of the Provider. The Customer only has the right to use the Services and the underlying software as set forth in the Subscription and these Terms of Use.
2. For the term of the Subscription the Provider grants to the Customer a non-exclusive, non-transferable and non-sublicensable right to use the Services for its own business purposes and with the agreed number of users and/or assets. The licensed users are usually employees of the Customer, they can use the Services for their own business devices (laptops, tablets, etc.). Licensed assets can in particular be networked machines of the Customer. The right to use includes the right to install and operate the software agents on the user devices of the agreed number of users and/or on the agreed number of assets. In the event that the number of licensed users or assets is exceeded, the Customer shall be obliged to purchase additional licenses. The Customer is not entitled to use the Services for purposes other than the intended use which is dependent on the selected license model and determined by the description on the XplicitTrust website.
3. The Customer undertakes to use the Services and the underlying software exclusively in accordance with the Subscription, these Terms of Use and the agreed license scope and neither to pass it on to third parties nor to make it accessible to third parties in any other way. The Customer shall not be entitled to reverse engineer, decompile or reproduce all or any part of the underlying software. Statutory rights of the Customer to use the Services and the underlying software resulting from mandatory copyright law shall remain unaffected by these provisions.
4. The Provider is entitled to check at any time and by means of appropriate technical and organizational measures if the Customer uses the Services and the underlying software in compliance with the terms of the Subscriptions and these Terms of Use.

## § 5 Availability of the Services

1. The Provider warrants an availability of the central components of the Services at the delivery point of 99% on a calendar year average. An eligible downtime within the meaning of this availability clause shall be assumed if the central components of the Services are not available to the Customer due to circumstances for which the Provider is responsible. Downtimes not attributable to the Provider shall accordingly be deemed available times. Downtime attributable to the Provider shall in particular not be assumed if the Services (i) are not available only for individual users, devices or for individual assets or (ii) are not available to the Customer due to
  - a. incorrect operation or use contrary to the terms of the Subscription by the Customer and its users,

- b. planned and announced maintenance work,
- c. operational faults or other technical problems outside the sphere of influence of the Provider (e.g. power failures or failures of the internet connection),
- d. cyberattacks, if and insofar as the Provider has taken protective measures in accordance with the state-of-the-art to prevent such attacks, or
- e. force majeure events.

If possible, the Provider will carry out planned maintenance work at times of low data traffic (e.g. in the evenings or at weekends) and the Provider will notify the Customers with a reasonable advance notice period of at least three (3) working days; in urgent cases (e.g. installation of an important security patch) this deadline may be shorter. The total duration of planned maintenance work shall not exceed eight (8) hours per month.

2. The Provider may temporarily restrict access to the Services for individual or all Customers, users and/ or assets if and insofar as the security of the business, the maintenance of network or data integrity or the avoidance of serious faults or imminent loss of data so require. In the event of such a decision, the Provider shall give due consideration to the legitimate interests of the Customer, inform the Customer without delay of the measures taken and do everything reasonable to lift the access restriction as quickly as possible.

### **§ 6 Customer Responsibility**

1. For trouble-free use of the Services, the Customer requires a reliable and high-performance internet connection. It is the Customer's responsibility to establish and maintain a sufficient internet connection. The Customer is also responsible in other respects for compliance with the respective current minimum technical requirements as defined on the website of XplicitTrust and for compliance with the agreed intended use.
2. The Customer shall ensure that customary and state-of-the-art security measures (such as anti-virus program and firewall) are installed on its systems, devices and assets and that these and any application software used are regularly updated. The Customer also undertakes to set up and maintain all necessary precautions for the regular protection of its systems and data.
3. The Customer is responsible for the authentication of its users, devices and assets. The Customer has to choose and use one of the third-party identity providers and tools listed on the XplicitTrust website. The Provider will not support the Customer with the authentication. In particular, the Provider does not advise the Customer on the choice, configuration or use of the authentication tool, secure passwords or other aspects in relation to the authentication process.
4. The Customer is responsible for ensuring that at any time the latest version of the Services and the underlying software is installed on its devices and assets. In particular, it is prohibited to prevent the automatic and central installation of updates by the Provider by any technical measures.
5. The Customer shall report any malfunction of the Services to the Provider in a comprehensible and detailed form, stating all information relevant to the root cause analysis. In particular, the steps that led to the occurrence of the fault, the mode of appearance and the effects of the fault must be stated.
6. The Customer is obliged to comply with the applicable laws when using the Services. The Customer undertakes to refrain from any activity that is likely to impair and/or place an excessive burden on the operation of the Services or the underlying software or the technical infrastructure.
7. The Customer shall inform its users of the aforementioned obligations and monitor their observance by the users. In the event of a breach by the Customer or its users of legal regulations or its contractual obligations, in particular those set forth in this § 6, as well as in the event of justified suspicion of illegal or improper use of the Services, the Provider shall be entitled to temporarily block the Customer's access to the Services. The Provider will inform the Customer of the blocking as far as possible before, but at the latest immediately after the blocking, stating the relevant reasons for this, insofar as this is legally permissible.
8. The Customer shall indemnify the Provider from and against all damages, costs and other claims of third parties based on an alleged or actual unlawful use of the Services by the Customer or its

users; this shall not apply if the Customer is not at fault. Further statutory rights of the Provider due to contractual infringements by the Customer or its users shall remain unaffected.

### **§ 7 Fees and Payment Conditions**

1. During the term of an agreed trial period the Services are provided free of charge. The obligation to pay does not start before the trial period has ended.
2. The amount of the subscription fees as well as the terms of payment are set forth in the Subscription and depend on the subscription model selected by the Customer and the number of licensed users or assets. If not agreed otherwise, the subscription fee shall be invoiced to the Customer for the entire term of the Subscription in advance.
3. Unless otherwise agreed, all prices are net prices in euros, plus the applicable statutory value-added tax, customs, fees and other public charges that may be incurred in the case of export deliveries.
4. Invoices shall be sent to the Customer by the Provider electronically by e-mail. Unless otherwise specified, they shall be due for payment without deduction immediately upon receipt by the Customer. If the Customer is in default with the payment of an invoice for more than thirty (30) days, the Provider may temporarily suspend the provision of the Services. Any other legal claims of the Provider remain unaffected.
5. The Provider is entitled to adjust the agreed subscription fees appropriately in compliance with the following conditions. An adjustment may consist of both an increase and a reduction of the subscription fees. The Provider will notify the Customer of the price adjustments at least three (3) months before it takes effect, stating the reasons.

The Provider may adjust the agreed subscription fees appropriately (i) if and to the extent that individual factors underlying its calculation change due to circumstances for which the Provider is not responsible and which are not within its direct sphere of influence and (ii) if this has not only insignificant effect on the costs for the provision of the Services for the Provider, (iii) in particular if

- new legal, regulatory or technical requirements, new security regulations or new data protection requirements cause increased costs or expenses for the Provider (e.g. for necessary functional extensions of the Services) or
- the Provider relies on the infrastructure, products or services of other suppliers or service providers for the provision of the Services and these preliminary services are no longer available to the Provider or are only available to the Provider in a modified form and/or at a higher price, without this being attributable to circumstances for which the Provider is responsible.

An increase in subscription fees due to such specific cost increases shall only be made if and to the extent that these increases are not offset by other cost reductions.

The Provider may also adjust the agreed subscription fees to the general price development on the market (e.g. with regard to the amount of employee salaries, rents, energy costs, etc.). In order to calculate and prove the price development, the Provider may, for example, use the development of the consumer price index in the country of the Customer as a basis. In this respect, the index development since the last price adjustment (or since the conclusion of the Subscription, if it is the first price adjustment) shall be decisive. If the subscription fees increase by more than 10%, the Customer may object to the increase in writing or by e-mail within two (2) weeks of its announcement. If the Customer does not make use of its right of objection, the price adjustment shall come into effect when the Subscription is extended. If the Customer objects in due time, the subscription fees remain unchanged, but the Provider reserves the right to terminate the Subscription with a notice period of two (2) months. Together with the adjustment notice, the Provider will inform the Customer of its right to object, the corresponding deadline and the consequences of a failure to object.

### **§ 8 Claims due to Material Defects**

1. During the term of the Subscription, the Provider warrants that the Services comply with the product description and the user documentation and, subject to the conditions of § 9, are free of third-party property rights that prevent or restrict the contractual use of the Services.

2. Functional impairments of the Services resulting from the hardware or software environment of the Customer, faulty data, improper use or other circumstances originating from the area of responsibility of the Customer do not constitute a defect. The liability for defects presupposes that (i) the Customer uses the latest version of the Services and the underlying software, (ii) the Customer complies in all respects with the system requirements and conditions of use, and (iii) the Customer does not modify the Services or use them contrary to the contractual specifications (e.g. for purposes other than those agreed) unless the Customer proves that the defect is independent of these circumstances. Claims can only be asserted by the Customer due to defects that are reproducible or can be described comprehensively by the Customer.
3. Duly notified defects of the Services shall be remedied by the Provider during the term of the Subscription within a reasonable period of time. The obligation to maintain and repair does not include, in particular, the adaptation of the Services to changed systems, assets or devices at the Customer.
4. If the correction of a material defect finally fails and if this constitutes an important reason for the Customer, the Customer may terminate (*Kündigung*) the Subscription for good cause without observing a notice period. The Customer shall not be entitled to withdraw (*Rücktritt*) from the Subscription. The Provider shall only pay compensation for damages and futile expenses within the limits set out in § 10 of these Terms of Use.
- b. in all other cases only in the event of a breach of a material contractual obligation, without which the achievement of the purpose of the Subscription would be jeopardized and on the fulfillment of which the Customer may therefore rely, and in these cases restricted to compensation for typical and foreseeable damages.
4. The Provider shall be liable for the restoration of data within the limits set forth in § 10 para. 3 only to the extent that the Customer has ensured that the data can be reproduced at any time with reasonable effort.
5. Liability for damages resulting from the loss of life, physical injury or injury to health as well as liability according to the German Product Liability Act (*ProdhaftG*) shall not be affected by the above-mentioned provisions.
6. The above-mentioned liability restrictions shall also apply to the legal representatives, agents and employees of the Provider.

#### **§ 11 Confidentiality, Data Protection**

1. The contracting parties shall be obliged to maintain confidentiality regarding all business and trade secrets of the other contracting party entrusted to them, made accessible to them or which become known to them in another way, as well as about other business relationships and operational facts. Confidential information is in particular all internal information on the Services (e.g. algorithms, interfaces, source code of proprietary software, internal components of the documentation).
2. The receiving party is obliged to use such confidential information only for the contractually intended purpose and not to disclose it to third parties. The receiving party shall grant access to the confidential information only to those of its employees and subcontractors who need to know it in order to fulfill the purposes of the Subscription.
3. The Customer is prohibited from obtaining confidential information by means of reverse engineering. Reverse engineering is understood to mean all actions, including observation, testing, examination and deconstruction, with the aim of obtaining confidential information. Any mandatory statutory provisions of copyright law remain unaffected.
4. The obligation to maintain confidentiality shall not apply to confidential information which was already known to the receiving party without the obligation to maintain confidentiality or is or becomes generally known without the receiving party being responsible or which is legally disclosed to the receiving party by a third party without an obligation to maintain confidentiality or was proven to have been independently developed by the receiving party.
5. Any additional statutory confidentiality obligations (e.g. with regard to business or trade secrets or with regard to personal data under the General Data Protection Regulation (GDPR)) remain unaffected.
6. As the Provider processes personal data on behalf of the Customer, the contracting parties shall conclude the Data Processing Agreement (DPA) attached to these Terms of Use as an Annex which forms an integral part of these Terms of Use and the Subscription (cf. Annex below). According to the DPA the Provider will process and use the personal data of the Customer and its users solely for the purpose of fulfilling the Subscription and exclusively according to the instructions of the Customer.
1. The Provider warrants that the Services do not infringe any intellectual property rights of third parties that exclude or restrict the use of the Services for the agreed purposes during the term of the Subscription at the intended place of use.
2. If third parties enforce claims against the Customer due to the infringement of their intellectual property rights caused by the Services, the Customer shall inform the Provider immediately. The Customer authorizes the Provider to conduct the dispute with the third party judicially and extrajudicially on its own. Whether the Provider uses this authorization is at the Provider's free discretion. The Customer will not acknowledge the claims of the third party without the consent of the Provider and shall also refrain from doing anything else that could hinder the defense of the claims.
3. If the Services have a defect of title during the term of the Subscription, the Provider shall provide the Customer with a lawful way to use the Services. To rectify the defect in title, the Provider may alternatively at its choice modify or replace the Services. If an infringement of third party intellectual property rights and/or a legal dispute concerning the third party claims can be settled or avoided by the Customer using a more up-to-date version of the Services provided by the Provider free of charge, the Customer shall be obliged to use this up-to-date version as part of its obligation to minimize damages, unless the Customer proves that the use of the more up-to-date version is unreasonable for it.
4. The Provider will indemnify the Customer within the liability limits set forth in § 10 of these Terms of Use from all costs and damages arising from the infringement of intellectual property rights, insofar as these are based on a defect of title for which the Provider is responsible. In particular, the Provider shall not be liable for infringements of intellectual property rights which occur due to the use of the Services not authorized and intended by the Provider or due to the fact that they have been modified by the Customer.
5. In all other respects, the provisions for material defects in § 9 of these Terms of Use shall apply accordingly to the Customer's claims based on defects of title.

#### **§ 10 General Liability**

1. If the Provider provides the Customer with the Services free of charge, e.g. during a free trial period, the Provider shall only be liable in this respect for intentional and grossly negligent breaches of duty.
2. The Provider shall only be liable for defects already existing at the time of the conclusion of the Subscription, if the Provider is responsible for such defects.
3. In all other respects, the Provider will pay compensation for damages and for futile expenses, regardless of the legal reason, only to the following extent:
  - a. in the event of intent and gross negligence and insofar as the Provider has expressly assumed a guarantee (*Garantie*) in the full amount;

#### **§ 12 Term and Termination**

1. If the Customer uses the Services free of charge during a free trial period it has the right to terminate the Subscription during the free trial period at any time for convenience.
2. The Subscription shall come into effect upon confirmation by the Provider and has an initial binding term of one (1) contractual year, if not agreed otherwise in the Subscription. If the Customer purchases additional licenses for additional users and/or assets during the term of an already existing Subscription, the term for these new licenses depends on the overall Subscription term, meaning that all licenses end at the same time (i.e., end of the current Subscription period). The Subscription (including the term of all user and asset licenses) automatically extends for further periods of one (1) contractual year, unless it is terminated by either party with effect to the end of the current Subscription period with three (3) months advance notice.
3. The right of both parties to terminate the Subscription for good cause remains unaffected by the above provisions. Good cause shall be deemed to exist for the Provider, in particular, if the

Customer is more than two (2) months in default with the payment of the subscription fee or if the Customer breaches material contractual obligations in any other way and does not cease or cure this breach within one (1) week even after being requested to do so by the Provider. If the Provider terminates the Subscription due to good cause for which the Customer is responsible, the Customer shall not be reimbursed for any prepaid subscription fees.

4. The Customer has the right to partially terminate the Subscription, i.e. relating to individual user or asset licenses.
5. Any termination can be declared in writing or by e-mail.

#### **§ 13 Final Provisions**

1. The Services may be subject to the export control laws of various countries, including without limitations the law of Germany, other Member States of the European Union or the United States of America. The Customer will neither export the Services to countries, persons or entities prohibited by such laws nor use the Services in countries prohibited by such laws.
2. The Provider shall be entitled to assign, transfer or otherwise dispose of, by operation of law or otherwise, the Subscription and any of its rights or obligations under the Subscription to XplicitTrust without the prior written consent of the Customer. The Customer may only assign or transfer contractual rights and obligations to third parties – including companies affiliated with the Customer – with the prior written consent of the Provider.
3. Any amendments and additions to these Terms of Use or the Subscription must be made in writing or in text form in order to be effective (notifications by e-mail shall be sufficient). This requirement of written or text form may itself only be waived in writing by the parties.
4. These Terms of Use and the Subscription shall be governed by the laws of the Federal Republic of Germany, excluding the conflict of laws rules of private international law and excluding the UN Convention on Contracts for the International Sale of Goods. The exclusive place of jurisdiction for all disputes arising out of or in connection with the Subscription shall be the registered office of the Provider. The Provider shall be entitled to take legal action at any other national or international court of competent jurisdiction.
5. If individual clauses of these Terms of Use or of the Subscription are or become invalid, or if the contracts contain a loophole, the validity of the other clauses shall not be affected. The invalid or missing clause shall be replaced by a valid clause which comes as close as possible to the intended economic intentions of the contracting parties at the time of the conclusion of the contract.

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## **Annex DPA**

### **Standard Contractual Clauses for Processing pursuant to Art. 28 GDPR**

### **Clause 7 Obligations of the Parties**

#### **Section I**

##### **Clause 1 Purpose and scope**

- a) The purpose of these Standard Contractual Clauses (the Clauses) is to ensure compliance with Article 28 (3) and (4) of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).
- b) The controllers and processors listed in Annex I have agreed to these Clauses in order to ensure compliance with Article 28 (3) and (4) of Regulation (EU) 2016/679.
- c) These Clauses apply to the processing of personal data as specified in Annex II.
- d) Annexes I to IV are an integral part of the Clauses.
- e) These Clauses are without prejudice to obligations to which the controller is subject by virtue of Regulation (EU) 2016/679.
- f) These Clauses do not by themselves ensure compliance with obligations related to international transfers in accordance with Chapter V of Regulation (EU) 2016/679.

##### **Clause 2 Invariability of the Clauses**

- a) The Parties undertake not to modify the Clauses, except for adding information to the Annexes or updating information in them.
- b) This does not prevent the Parties from including the standard contractual clauses laid down in these Clauses in a broader contract, or from adding other clauses or additional safeguards provided that they do not directly or indirectly contradict the Clauses or detract from the fundamental rights or freedoms of data subjects.

##### **Clause 3 Interpretation**

- a) Where these Clauses use the terms defined in Regulation (EU) 2016/679 respectively, those terms shall have the same meaning as in that Regulation.
- b) These Clauses shall be read and interpreted in the light of the provisions of Regulation (EU) 2016/679.
- c) These Clauses shall not be interpreted in a way that runs counter to the rights and obligations provided for in Regulation (EU) 2016/679 or in a way that prejudices the fundamental rights or freedoms of the data subjects.

##### **Clause 4 Hierarchy**

In the event of a contradiction between these Clauses and the provisions of related agreements between the Parties existing at the time when these Clauses are agreed or entered into thereafter, these Clauses shall prevail.

##### **Clause 5 Docking clause**

- a) Any entity that is not a Party to these Clauses may, with the agreement of all the Parties, accede to these Clauses at any time as a controller or a processor by completing the Annexes and signing Annex I.
- b) Once the Annexes in (a) are completed and signed, the acceding entity shall be treated as a Party to these Clauses and have the rights and obligations of a controller or a processor, in accordance with its designation in Annex I.
- c) The acceding entity shall have no rights or obligations resulting from these Clauses from the period prior to becoming a Party.

#### **Section II**

##### **Obligations of the Parties**

##### **Clause 6 Description of processing(s)**

The details of the processing operations, in particular the categories of personal data and the purposes of processing for which the personal data is processed on behalf of the controller, are specified in Annex II.

##### **7.1. Instructions**

- a) The processor shall process personal data only on documented instructions from the controller, unless required to do so by Union or Member State law to which the processor is subject. In this case, the processor shall inform the controller of that legal requirement before processing, unless the law prohibits this on important grounds of public interest. Subsequent instructions may also be given by the controller throughout the duration of the processing of personal data. These instructions shall always be documented.
- b) The processor shall immediately inform the controller if, in the processor's opinion, instructions given by the controller infringe Regulation (EU) 2016/679 or the applicable Union or Member State data protection provisions.

##### **7.2. Purpose limitation**

The processor shall process the personal data only for the specific purpose(s) of the processing, as set out in Annex II, unless it receives further instructions from the controller.

##### **7.3. Duration of the processing of personal data**

Processing by the processor shall only take place for the duration specified in Annex II.

##### **7.4. Security of processing**

- a) The processor shall at least implement the technical and organizational measures specified in Annex III to ensure the security of the personal data. This includes protecting the data against a breach of security leading to accidental or unlawful destruction, loss, alteration, unauthorized disclosure or access to the data (personal data breach). In assessing the appropriate level of security, the Parties shall take due account of the state of the art, the costs of implementation, the nature, scope, context and purposes of processing and the risks involved for the data subjects.
- b) The processor shall grant access to the personal data undergoing processing to members of its personnel only to the extent strictly necessary for implementing, managing and monitoring of the contract. The processor shall ensure that persons authorized to process the personal data received have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.

##### **7.5. Sensitive data**

If the processing involves personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, genetic data or biometric data for the purpose of uniquely identifying a natural person, data concerning health or a person's sex life or sexual orientation, or data relating to criminal convictions and offences ("sensitive data"), the processor shall apply specific restrictions and/or additional safeguards.

##### **7.6. Documentation and compliance**

- a) The Parties shall be able to demonstrate compliance with these Clauses.
- b) The processor shall deal promptly and adequately with inquiries from the controller about the processing of data in accordance with these Clauses.
- c) The processor shall make available to the controller all information necessary to demonstrate compliance with the obligations that are set out in these Clauses and stem directly from Regulation (EU) 2016/679. At the controller's request, the processor shall also permit and contribute to audits of the processing activities covered by these Clauses, at reasonable intervals or if there are indications of non-compliance. In deciding on a review or an audit, the controller may take into account relevant certifications held by the processor.
- d) The controller may choose to conduct the audit by itself or mandate an independent auditor. Audits may also include inspections at the premises or physical facilities of the processor and shall, where appropriate, be carried out with reasonable notice.
- e) The Parties shall make the information referred to in this Clause, including the results of any audits, available to the competent supervisory authority/ies on request.

processor becomes aware that the personal data it is processing is inaccurate or has become outdated;

#### 7.7. Use of sub-processors

- a) The processor has the controller's general authorization for the engagement of sub-processors from an agreed list. The processor shall specifically inform in writing the controller of any intended changes of that list through the addition or replacement of sub-processors at least one month in advance, thereby giving the controller sufficient time to be able to object to such changes prior to the engagement of the concerned sub-processor(s). The processor shall provide the controller with the information necessary to enable the controller to exercise the right to object.
- b) Where the processor engages a sub-processor for carrying out specific processing activities (on behalf of the controller), it shall do so by way of a contract which imposes on the sub-processor, in substance, the same data protection obligations as the ones imposed on the data processor in accordance with these Clauses. The processor shall ensure that the sub-processor complies with the obligations to which the processor is subject pursuant to these Clauses and to Regulation (EU) 2016/679.
- c) At the controller's request, the processor shall provide a copy of such a sub-processor agreement and any subsequent amendments to the controller. To the extent necessary to protect business secret or other confidential information, including personal data, the processor may redact the text of the agreement prior to sharing the copy.
- d) The processor shall remain fully responsible to the controller for the performance of the sub-processor's obligations in accordance with its contract with the processor. The processor shall notify the controller of any failure by the sub-processor to fulfil its contractual obligations.
- e) The processor shall agree a third party beneficiary clause with the sub-processor whereby - in the event the processor has factually disappeared, ceased to exist in law or has become insolvent - the controller shall have the right to terminate the sub-processor contract and to instruct the sub-processor to erase or return the personal data.

#### 7.8. International transfers

- a) Any transfer of data to a third country or an international organization by the processor shall be done only on the basis of documented instructions from the controller or in order to fulfil a specific requirement under Union or Member State law to which the processor is subject and shall take place in compliance with Chapter V of Regulation (EU) 2016/679.
- b) The controller agrees that where the processor engages a sub-processor in accordance with Clause 7.7. for carrying out specific processing activities (on behalf of the controller) and those processing activities involve a transfer of personal data within the meaning of Chapter V of Regulation (EU) 2016/679, the processor and the sub-processor can ensure compliance with Chapter V of Regulation (EU) 2016/679 by using standard contractual clauses adopted by the Commission in accordance with Article 46 (2) of Regulation (EU) 2016/679, provided the conditions for the use of those standard contractual clauses are met.

#### Clause 8 Assistance to the controller

- a) The processor shall promptly notify the controller of any request it has received from the data subject. It shall not respond to the request itself, unless authorized to do so by the controller.
- b) The processor shall assist the controller in fulfilling its obligations to respond to data subjects' requests to exercise their rights, taking into account the nature of the processing. In fulfilling its obligations in accordance with (a) and (b), the processor shall comply with the controller's instructions.
- c) In addition to the processor's obligation to assist the controller pursuant to Clause 8(b), the processor shall furthermore assist the controller in ensuring compliance with the following obligations, taking into account the nature of the data processing and the information available to the processor:
  - 1) the obligation to carry out an assessment of the impact of the envisaged processing operations on the protection of personal data (a 'data protection impact assessment') where a type of processing is likely to result in a high risk to the rights and freedoms of natural persons;
  - 2) the obligation to consult the competent supervisory authority/ies prior to processing where a data protection impact assessment indicates that the processing would result in a high risk in the absence of measures taken by the controller to mitigate the risk;
  - 3) the obligation to ensure that personal data is accurate and up to date, by informing the controller without delay if the

- 4) the obligations in Article 32 of Regulation (EU) 2016/679.

- d) The Parties shall set out in Annex III the appropriate technical and organizational measures by which the processor is required to assist the controller in the application of this Clause as well as the scope and the extent of the assistance required.

#### Clause 9 Notification of personal data breach

In the event of a personal data breach, the processor shall cooperate with and assist the controller for the controller to comply with its obligations under Articles 33 and 34 of Regulation (EU) 2016/679, where applicable, taking into account the nature of processing and the information available to the processor.

##### 9.1. Data breach concerning data processed by the controller

In the event of a personal data breach concerning data processed by the controller, the processor shall assist the controller:

- a) in notifying the personal data breach to the competent supervisory authority/ies, without undue delay after the controller has become aware of it, where relevant/(unless the personal data breach is unlikely to result in a risk to the rights and freedoms of natural persons);
- b) in obtaining the following information which, pursuant to Article 33 (3) of Regulation (EU) 2016/679, shall be stated in the controller's notification, and must at least include:
  - 1) the nature of the personal data including where possible, the categories and approximate number of data subjects concerned and the categories and approximate number of personal data records concerned;
  - 2) the likely consequences of the personal data breach;
  - 3) the measures taken or proposed to be taken by the controller to address the personal data breach, including, where appropriate, measures to mitigate its possible adverse effects.

Where, and insofar as, it is not possible to provide all this information at the same time, the initial notification shall contain the information then available and further information shall, as it becomes available, subsequently be provided without undue delay.

- c) in complying, pursuant to Article 34 of Regulation (EU) 2016/679, with the obligation to communicate without undue delay the personal data breach to the data subject, when the personal data breach is likely to result in a high risk to the rights and freedoms of natural persons.

##### 9.2. Data breach concerning data processed by the processor

In the event of a personal data breach concerning data processed by the processor, the processor shall notify the controller without undue delay after the processor having become aware of the breach. Such notification shall contain, at least:

- a) a description of the nature of the breach (including, where possible, the categories and approximate number of data subjects and data records concerned);
- b) the details of a contact point where more information concerning the personal data breach can be obtained;
- c) its likely consequences and the measures taken or proposed to be taken to address the breach, including to mitigate its possible adverse effects.

Where, and insofar as, it is not possible to provide all this information at the same time, the initial notification shall contain the information then available and further information shall, as it becomes available, subsequently be provided without undue delay.

The Parties shall set out in Annex III all other elements to be provided by the processor when assisting the controller in the compliance with the controller's obligations under Articles 33 and 34 of Regulation (EU) 2016/679.

#### Section III

##### Final Provisions

##### Clause 10 Non-compliance with the Clauses and termination

- a) Without prejudice to any provisions of Regulation (EU) 2016/679, in the event that the processor is in breach of its obligations under these Clauses, the controller may instruct the processor to suspend the

processing of personal data until the latter complies with these Clauses or the contract is terminated. The processor shall promptly inform the controller in case it is unable to comply with these Clauses, for whatever reason.

- b) The controller shall be entitled to terminate the contract insofar as it concerns processing of personal data in accordance with these Clauses if:
- 1) the processing of personal data by the processor has been suspended by the controller pursuant to point (a) and if compliance with these Clauses is not restored within a reasonable time and in any event within one month following suspension;
  - 2) the processor is in substantial or persistent breach of these Clauses or its obligations under Regulation (EU) 2016/679;
  - 3) the processor fails to comply with a binding decision of a competent court or the competent supervisory authority/ies regarding its obligations pursuant to these Clauses or to Regulation (EU) 2016/679.
- c) The processor shall be entitled to terminate the contract insofar as it concerns processing of personal data under these Clauses where, after having informed the controller that its instructions infringe applicable legal requirements in accordance with Clause 7.1 (b), the controller insists on compliance with the instructions.
- d) Following termination of the contract, the processor shall, at the choice of the controller, delete all personal data processed on behalf of the controller and certify to the controller that it has done so, or, return all the personal data to the controller and delete existing copies unless Union or Member State law requires storage of the personal data. Until the data is deleted or returned, the processor shall continue to ensure compliance with these Clauses.

#### ANNEX I

##### List of parties

- A. Controller: The Customer concluding the Subscription
- B. Processor: The Provider concluding the Subscription

#### ANNEX II

##### Description of the processing

Categories of data subjects whose personal data is processed:

- the controller and their employees, if they are authorized to use the subscription in the third-party provider used for proof of identity (directly or via their group membership)

Categories of personal data processed:

- name stored in the identity verification service used by the third-party provider selected by the controller
- e-mail address
- IP addresses

Sensitive Data: n/a

Nature of the processing:

- The name is displayed in the management interface of the person responsible in order to provide an overview of the number and each individual user of client subscriptions. If a log file is generated for support requests, it cannot be ruled out that the name will be stored in it. Log files are transmitted to the processor in encrypted form, viewed there and deleted after the support request has been completed.
- The e-mail address is displayed in the responsible person's management interface to provide an overview of the number and each individual user of client subscriptions and is used for authentication against the identity verification service selected by the responsible person and the result of the authentication process is stored permanently for auditing purposes.  
If a log file is generated for support requests, the e-mail address is stored in it. Log files are transmitted to the processor in encrypted form, viewed there and deleted after the support request has been completed.
- The IP addresses of each client, i.e. a device authenticated by e-mail address, and each asset are stored, used for the provision of the service and displayed in the management interface of the person responsible.  
If a log file is generated for support requests, the IP addresses are stored in it. Log files are transmitted to the processor in encrypted form,

viewed there and deleted after the support request has been completed.

- Targeted processing of the personal data entered by users by the processor is not intended. Nevertheless, it cannot be completely ruled out that the processor may occasionally be able to access data in log files or in the live system during maintenance work and thus gain knowledge of personal data.

Purpose(s) for which the personal data is processed on behalf of the controller:

- Provision of the services as agreed in the subscription
- Evaluation of log files

Duration of processing: corresponds to the term of the Subscription.

#### ANNEX III

##### Technical and Organizational Measures, including to ensure the Security of Data

Description of the technical and organizational security measures (including any relevant certification) implemented by the processor(s) to ensure an adequate level of protection, taking into account the nature, scope, context and purposes of the processing and the risks to the rights and freedoms of natural persons:

Technical and organizational security measures implemented by XplicitTrust:  
[https://xplicittrust.com/contract/Annex%20III%20-%20TuOM\\_en.pdf](https://xplicittrust.com/contract/Annex%20III%20-%20TuOM_en.pdf)

#### ANNEX IV

##### List of sub-processors

The controller consents to the appointment of the following sub-processors:

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If the Provider is not XplicitTrust itself, XplicitTrust acts as a sub-processor for the Provider.

The controller consents to the appointment of the following sub-processors of XplicitTrust:  
[https://xplicittrust.com/contract/Annex%20IV%20-%20LdU\\_en.pdf](https://xplicittrust.com/contract/Annex%20IV%20-%20LdU_en.pdf)