

Data Processing Agreement ACE

This Data Processing Agreement ("Agreement") forms an integral part of the Terms of Services ACE Platform ("TOS") by and between:

PARTIES:

1. The Customer who has signed this Agreement, or on whose behalf this Agreement has been signed, on the signature page of this Agreement, hereinafter referred to as: "Controller";

and

2. Incentro Software & Licensing B.V., established at Van Deventerlaan 20, 3528 AE Utrecht, registered at the Chamber of Commerce under number 74880349, hereinafter referred to as: "Processor";

hereinafter jointly referred to as "Parties";

TAKING INTO ACCOUNT THAT:

- A. On the basis of the TOS Processor provides Controller with the right to access and use the ACE Platform and related Services;
- B. In the course of performing the Services to Controller, Personal Data of Controller's employees and others whose Personal data is being stored in the cloud environment of Controller, may be processed by Processor;
- C. Parties wish to lay down their arrangements with regard to the processing and protection of the aforementioned Personal Data in this Agreement;
- D. This Agreement must be regarded as a data processing agreement within the meaning of Article 28 GDPR;

AND DECLARE TO HAVE AGREED AS FOLLOWS:

Article 1. Definitions

- 1.1. For the implementation of this Agreement, the terms "Personal Data", "Personal Data Breach", "processing", "Processor", "Controller" and "Data Subject" have the same meaning as in Article 4 GDPR.
- 1.2. All other terms written with a capital letter have the meaning as described in the TOS.

Article 2. Term and termination

- 2.1. This Agreement shall into force when the TOS have become effective between the Parties and Processor has begun the processing of Personal Data on behalf of the Controller.
- 2.2. This Agreement will remain effective notwithstanding termination of the TOS. Upon termination of the Agreement, Processor will discontinue Controller's access to the ACE platform and delete or anonymize all existing copies of the Personal Data made available to Processor in the course of providing Services to the Controller, unless applicable law requires the storage of these Personal Data. When all Personal Data have been deleted or anonymized, this Agreement will expire automatically.

- 2.3. Obligations arising from the Agreement, which by their nature are intended to continue after termination of the Agreement, continue to apply after termination. These obligations include the provisions regarding confidentiality and liability.
- 2.4. If one or more provisions of this Agreement prove not to be legally valid, the Agreement will take effect with regard to the other provisions

Article 3. Subject of this Processor Agreement

- 3.1. Processor processes Personal Data on behalf of the Controller in the context of the Agreement. Processor will process the Personal Data on the basis of Controller's documented instructions as included in the TOS, unless required to do so by applicable law to which Processor is subject; in such a case, the Processor shall inform the Controller of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest. The processing purposes, types of Personal Data and categories of Data Subjects are included in Appendix 1.
- 3.2. Processor takes appropriate technical and organizational measures to secure the Personal Data against accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data transmitted, stored or otherwise processed by Processor. The technical and organizational measures are set out in Appendix 2. Controller agrees that these measures offer a level of security appropriate to the risk of processing the Personal Data taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons.
- 3.3. Processor ensures that persons authorized to process the Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.

Article 4. Obligations of the Controller

- 4.1. The Controller declares to process Personal Data in a manner as laid down in the GDPR. This means that Personal Data is processed:
 - In a proper and careful manner;
 - In view of the purposes for which the Personal Data are processed, sufficient, relevant and not excessive;
 - correct and accurate;
 - in accordance with the GDPR and other relevant legislation; and
 - without infringing any right of third parties.

Article 5. Personal Data Breach

- 5.1. If a Personal Data Breach is discovered by Processor, it will report this to the Controller without undue delay.
- 5.2. Processor shall report a Personal Data Breach to the main point of contact and associated email address provided by the Controller on the signature page of this Agreement.
- 5.3. If and to the extent known to Processor, the notification shall include the following information:
 - The nature of the Personal Data Breach including where possible, the categories and approximate number of Data Subjects concerned and the categories and approximate number of Personal Data records concerned;
 - A contact point (name and contact details) where more information about the Personal Data Breach can be obtained;
 - The established and suspected consequences of the Personal Data Breach; and
 - The measures that Processor has already taken or proposes to take to address the Personal Data Breach, including, where appropriate, measures to mitigate its possible adverse effects.

Article 6. Requests from Data Subjects and assistance

- 6.1 Processor will endeavour to assist the Controller within a reasonable period of time to comply with:
 - i) justified requests from Data Subjects as set out in articles 15 until 22 of the GDPR, insofar as it concerns Personal Data to which Processor has access;
 - ii) the obligations pursuant to Articles 32 to 36 GDPR, taking into account the nature of processing and the information available to the Processor.
- 6.2 Processor may charge reasonable costs for the aforementioned assistance to the Controller.

Article 7. Sub-processors and international transfer

- 7.1. The Controller hereby gives Processor specific authorisation to make use of the Google cloud environment for the hosting of the ACE platform.
- 7.2. The Controller hereby gives Processor general permission to engage any other sub-processors (subcontractors) when processing Personal Data on the basis of this Agreement. All this with due observance of the applicable privacy legislation and agreements between the Parties. Processor will inform Controller as soon as possible of its intention to engage another sub-processor. Controller has the right to object to a new sub-processor to be engaged. It will do this in writing and with reasons within two weeks after the notification. In the event of an objection by the Controller, the Parties will enter into consultation in order to arrive at a solution. The Controller does not object on unreasonable grounds.
- 7.3. Personal data will be processed by Processor in accordance with the provisions of Chapter V of the GDPR.

Article 8. Audit

- 8.1. The Controller is entitled to have the processing of Personal Data and compliance with the Agreement by Processor checked once a year by an external and independent auditor who is bound by confidentiality. The Processor is obliged to admit the auditor engaged by Controller to perform the audit and will cooperate in having the audit carried out. Processor reserves the right to charge Controller reasonable costs for such cooperation.
- 8.2. The Controller will only perform the audit or have it performed after a prior written notification to the Processor. Notice of the audit must be given at least two weeks in advance.
- 8.3. The costs of an audit will be borne by the Controller, unless the audit results in serious irregularities or deviations.

Article 9. Liability

- 9.1. The liability clause as included in Article 11 of the TOS also applies to this Agreement, with the understanding that the limitation and exclusion of liability of Processor also applies to any fines, orders for periodic penalty payments, and other monetary sanctions imposed on Controller by any supervisory authority if and to the extent that they would be attributable to Processor.

Article 10. Final provision

- 10.1. Dutch law applies to this Agreement.
- 10.2. All disputes that may arise between the Parties on the basis of this Agreement will be submitted to the same court that is designated as the competent court in the TOS.
- 10.3. If there is a conflict between the provisions of this Agreement and the provisions of the TOS, the provisions of this Agreement will prevail when it comes to the protection and processing of Personal Data.
- 10.4. Parties will revise this Agreement if necessary, such as when there is a change in the processed Personal Data, the security measures or amended legislation gives cause to do so.

IN WITNESS WHEREOF THE PARTIES HERETO HAVE SIGNED THIS AGREEMENT IN TWO ORIGINAL COUNTERPARTS:

Processor:

Date: _____

City: _____

Name: _____

Function: _____

Signature: _____

Controller:

Date: _____

City: _____

Name: _____

Function: _____

Signature: _____

Main point of contact in case of Personal Data Breaches:

Name: _____

Email: _____

Appendix 1. Processing purposes, Personal Data and Data Subjects

The ACE platform assists organisations in optimizing their Cloud services by centralizing billing, performing automated reviews and giving recommendations based on cloud services metadata.

In order to perform these Services, Processor may process the following Personal Data:

- email addresses of UserAdmins and Users for authentication, authorization and notification in the ACE platform
- names for identification of UserAdmins and Users in the ACE platform
- telephone numbers for authentication of UserAdmins and Users
- IP addresses for sending and receiving data to and from UserAdmins and Users
- When Controller stores Personal Data in its own cloud environment that exchanges data with the Tenant, processor may process such Personal Data as part of the Services

Processor will receive the following Personal Data from Controller:

- email addresses of UserAdmins and Users for authentication, authorization and notification in the ACE platform
- names for identification of UserAdmins and Users in the ACE platform
- telephone numbers for authentication of UserAdmins and Users
- IP addresses for sending and receiving data to and from end-users

Appendix 2. Security measures

The technical and organizational measures include at least the following:

- Processor informs its employees about confidentiality and the handling of confidential data. It does this by means of a personnel manual that is made available to all its employees and which employees must adhere to. This is part of the employment contract;
- Processor has set preconditions to guarantee the security of information. Processor is ISO 27001 certified. To this end, it has drawn up an Information Security Policy that is complied with;
- Processor is assessed annually by an external auditor with regard to the extension or maintenance of the ISO 27001 certification; and
- Processor uses secure connections.