

# **Agreement on Order Data Processing (neutral version)**

(hereinafter referred to as the "Agreement")

between

## **Company or Person**

hereinafter referred to as the "Client"

and

## **Swiss Learning Hub AG**

Maneggstrasse 17  
8041 Zurich

hereinafter referred to as the "Processor"

hereinafter referred to individually as "the Party" and collectively as "the Parties"

## **1 Preamble**

For the provision of the services agreed in the contract, the Processor processes, on behalf of the Client, personal data that is transmitted, stored or received by the Client in connection with the processing of the order ("Order Data"). This Agreement specifies the obligations of the Parties with regard to data protection aspects based on the mandatory requirements of the Swiss Data Protection Act and, if and to the extent applicable, the EU GDPR. In this respect, it supplements the contractual agreement from the Main Contract. Unless otherwise provided for in this Agreement, the provisions of the Main Contract shall apply. Any further legal obligations are reserved.

## **2 Subject matter and term of the Agreement**

The subject matter of the data processing, its nature and purpose as well as the type of personal data and the categories of data subjects are primarily set out in the Main Contract and are described in more detail in this Agreement including its annexes.

The Agreement shall enter into force upon signature or upon entry into force of the Main Contract and shall automatically end with the termination of the contractual services, but in any case with the deletion of the Client's data.

The Client may terminate the Agreement at any time without observing a notice period if (i) there is a repeated and serious violation by the Processor of the provisions of this Agreement or of mandatory data protection regulations, the Processor cannot or does not want to execute an instruction of the Client in conformity with the Contract, or if the Processor refuses the Client's audit rights in breach of the contract and (ii) the Processor fails to remedy this breach of contract within a grace period of at least thirty (30) days.

### **3 Place of data processing**

The processing of Order Data takes place in Switzerland, within the EU, the EEA or in a country that is assessed by the European Commission as having an adequate level of protection and offers adequate protection of personal data within the meaning of the Swiss Data Protection Act. Any relocation of order data processing to a country outside this territory may only take place with the prior consent of the Client, in text form and in accordance with the applicable legal provisions (in particular in compliance with the conditions contained in Chapter V of the EU GDPR and the Swiss Data Protection Act). In such a case, the Processor shall conclude suitable additional contracts, in particular before transmitting or disclosing Order Data, and, if necessary, shall take appropriate legal, technical or organisational measures.

### **4 Responsibility of the Client**

Within the framework of this Agreement, the Client is responsible for compliance with the applicable legal provisions for the lawfulness of the data processing itself, including the permissibility of the order data processing by the Processor. The Client guarantees that the Order Data has been collected lawfully and in compliance with all applicable legal provisions, and that the provision of the Order Data to the Processor for processing and all instructions given to the Processor with regard to the processing of the Order Data are lawful and do not violate any rights of third parties. The Client is responsible in particular for obtaining any necessary consent from the data subjects.

The Client shall designate to the Processor a contact person for data protection questions and communications arising within the framework of this Agreement and, in cases where this is required by Article 37 of the EU GDPR, the Data Protection Officer. The contact person is listed in Annex 4. The respective other Party must be notified of any changes without delay.

### **5 Duties of the Processor**

#### **5.1 Compliance with instructions**

The Processor shall be obliged to process the Order Data exclusively in accordance with the provisions of the Main Contract, this Agreement and the other documented instructions of the Client. Corrections, deletions and the restriction of processing are also only permissible according to the corresponding instructions of the Client.

If, in the case of deviating obligations of the applicable law (e.g. binding orders or enquiries from competent authorities), the Processor is obliged to carry out processing activities other than those specified by the Client, or if it is of the opinion that an instruction of the Client violates applicable data protection regulations, it must inform the Client of this as early as possible and before following any external specifications and instructions, as far as this is legally permissible.

Instructions must usually be given in text form (i.e. in writing, by fax, by e-mail or in a documented electronic format). Verbal instructions must be confirmed immediately in writing or in a documented electronic format.

Persons authorised to issue instructions of the Client and recipients of instructions of the Processor are listed in Annex 4.

#### **5.2 Confidentiality**

The Processor undertakes to treat Order Data confidentially and to make it accessible only to persons who are dependent on access to the Order Data in order to fulfil their duties towards the Processor. The Processor shall ensure that the employees involved in the processing of the Order Data and other persons working for the Processor are prohibited from processing the Order Data outside of the obligations arising from the Main Contract and this Agreement. Furthermore, the Processor shall ensure that the persons authorised to process the Order Data have committed themselves to confidentiality and/or are subject to an appropriate statutory duty of confidentiality. The duty to maintain confidentiality/secretcy shall remain in force even after the end of the order data processing.

### **5.3 Technical and organisational measures**

The Processor shall design and maintain the internal organisation in its area of responsibility in such a way that it meets the special requirements of data protection during the term of this Agreement. It shall take technical and organisational measures ("TOM") in order to adequately protect the Order Data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, which comply with the requirements of the Swiss Data Protection Act and Art. 32 EU GDPR, if applicable.

The TOMs currently taken by the Processor are documented in Annex 3 to this Agreement. The Client hereby confirms that it has examined these measures and that they are sufficient (taking into account the state of the art, implementation costs, and the nature, scope, circumstances and purposes of the processing as well as the different probability of occurrence and severity of the risk to the rights and freedoms of natural persons).

At the discretion of the Processor, the TOMs taken can be adapted over time to technical and organisational developments. The Processor may only make such adjustments if they reach the security level of the previous TOMs at a minimum. If necessary, the Processor shall provide the Client with information on the content of the current TOMs.

### **5.4 Processing directory**

Insofar as the Processor is legally obliged to keep a processing record, this list shall be released to the Client upon request, if and to the extent that it relates to the Order Data.

### **5.5 Reporting violations**

The Processor shall inform the Client immediately, but no later than within 48 hours, if it becomes aware of any violations or suspected violations of the Order Data committed by itself or one of its sub-processors. The notification must be made in writing to the Client's contact person specified in Annex 4 (e-mail is sufficient) and, as far as possible, provide appropriate information about the nature and extent of the breach, the data and persons affected, the affected IT system and the time of discovery. In such a case, the Processor shall propose potential measures to ensure the protection of the Order Data and to mitigate possible adverse consequences for the data subjects. It is the Client's responsibility to comply with the reporting duties and other obligations arising from the breach of the Order Data. Notification of a breach of the Order Data by the Processor does not constitute an acknowledgement of fault or liability on the part of said party.

### **5.6 Duty to inform, notification of control actions and measures taken by authorities**

To the extent permitted by law, the Processor shall inform the Client of any control actions and measures taken by an authority to the extent that they affect current order data processing activities.

### **5.7 Requests from data subjects**

If a data subject contacts the Processor directly with requests for correction, deletion, information or other claims regarding Order Data, the Processor shall refer the data subject to the Client, provided that an assignment to the Client is possible according to the data subject.

### **5.8 Support of the Client**

#### **5.8.1 Data security, etc.**

The Processor shall provide the Client with appropriate support in complying with legal obligations to ensure appropriate data security, to report data breaches, to carry out data protection impact assessments and to maintain the documentation of the processing operations.

#### **5.8.2 Rights of data subjects**

The Processor shall provide the Client with appropriate support in the processing of requests from data subjects in connection with data protection claims (e.g. requests for information or deletion), as well as

in the case of information obligations vis-à-vis authorities. This includes, if necessary, support in compiling the necessary data and information.

### **5.8.3 Reimbursement of costs**

The Processor's obligations to provide support to the Client in accordance with this Section 5.8 are subject to separate remuneration on a time and material basis.

### **5.9 Obligation to return and delete data**

Upon termination of the Main Contract, the Order Data shall either be returned to the Client or deleted in accordance with the contractual provisions, in the absence of such a provision, at the Client's discretion, unless the applicable statutory or regulatory provisions stipulate an obligation on the part of the Processor to retain the Order Data or parts thereof.

## **6 Subcontracting**

The Client shall grant the Processor the right to engage sub-processors in the processing of the Order Data at its own discretion, provided that these provisions are complied with. The sub-processors are listed in Annex 2. If the Processor adds or changes sub-contractors, the Processor shall update Annex 2 and send it to the Client for information.

A subcontracting relationship within the meaning of this provision exists in particular if the Processor commissions other sub-processors, in whole or in part, to perform the main services to which the Main Contract and/or this Agreement relate. Subcontracting relationships within the meaning of this provision are not to be understood as services that the Processor acquires from third parties as ancillary services to support the performance of the order. These include, for example, telecommunications services or cleaners. However, in order to ensure the protection and security of the Client's data, the Processor is obliged to conclude appropriate and legally compliant contractual agreements, in particular with regard to data protection and confidentiality, and to take control measures, even in the case of third-party ancillary services.

The Processor shall conclude the necessary agreements within the meaning of the Swiss Data Protection Act and Art. 28 (4) and (6) EU GDPR, if applicable, with the sub-processor. In doing so, it must be ensured that the sub-processor abides by the same obligations as the Processor under the Main Contract or this Agreement (namely confidentiality, data protection and data security requirements, control rights and TOMs).

If the sub-processor provides the agreed service outside the EU/EEA, or in a country deemed by the European Commission to fall short of an adequate level of protection, or does not offer adequate protection of personal data within the meaning of the Swiss Data Protection Act, the sub-processor shall be obliged to provide appropriate safeguards in accordance with applicable data protection law (in particular to conclude appropriate additional contracts and to take additional appropriate legal, technical or organisational measures) before initial disclosure of Order Data to the relevant sub-processor and to maintain such safeguards throughout the term of the contract.

## **7 Control rights of the Client**

Upon request, the Processor shall provide the Client with evidence that it is in compliance with the data protection obligations set out in this Agreement and in the Main Contract by suitable means (e.g. reports and certificates).

The Client has the right to check the Processor's compliance with the legal and contractual obligations in connection with the processing of Order Data on the basis of this Agreement and the provisions of the Main Contract by means of an on-site audit. The Processor shall cooperate appropriately during such audits. The Parties shall agree on the time, duration and subject matter of the audits, and on applicable security and confidentiality provisions in advance.

The Client shall be entitled to have an audit carried out at its own expense in accordance with this Section

7 by an external, competent body that is bound by confidentiality. Engaging a competitor or competitor of the Processor to perform the audit is not permitted.

The audit shall be carried out during normal business hours, preferably without disrupting operations, after reasonable advance notice of at least thirty days in advance, unless mandatory provisions of applicable data protection law or a data protection authority prescribe shorter deadlines. An audit by the Client shall be limited to a maximum of three working days per calendar year. If more than one working day is required, the Processor may demand remuneration from the Client for support in performing an audit initiated by the Client.

If, after submission of relevant information or in the course of an audit, violations of this Agreement or the Main Contract under data protection law are discovered, the Processor shall implement appropriate corrective measures without undue delay and free of charge.

## **8 Liability**

The liability of the Parties under this Agreement shall be governed by the applicable liability provisions and limitations under the Main Contract. Further liability claims under mandatory law are reserved.

## **9 Final provisions**

### **9.1 Written form**

All new annexes and all subsequent amendment agreements to this Agreement or Annex 1 must be made in writing and must refer to this Agreement. They must be duly signed by both Parties. In addition to handwritten signatures, signatures in electronic form (e.g. with Skribble, DocuSign, etc.) shall also be recognised as written form. Amendments to Annexes 2 and 4 shall enter into force after delivery to the other Party without signature. Amendments to Annex 3 by the Processor may be made under the conditions of Section 5.3.

### **9.2 Partial nullity**

If parts of this Agreement or an annex are void or prove to be ineffective, the remainder of the Agreement shall continue to apply. The Parties shall then interpret and structure the Agreement in such a way that the purpose intended by the void or legally ineffective parts is achieved as far as possible.

### **9.3 Applicable law**

This Agreement shall be governed by Swiss law, to the exclusion of private international law and the provisions of the Vienna Convention on Contracts for the International Sale of Goods (United Nations Convention on Contracts for the International Sale of Goods, concluded in Vienna on 11 April 1980).

### **9.4 Place of jurisdiction**

The City of Zurich shall be the exclusive place of jurisdiction.

## **Grounds:**

Annex 1: Specification of Data Processing

Annex 2: List of Approved Sub-processors

Annex 3: Technical and Organisational Measures of the processor (on demand)

## Annex 1: Specification of Data Processing

### 1 Type of data

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

- ☒ Personal master data, e.g. name, address, dates of birth, marital status, occupation, etc.
- ☒ Communication data (e.g. telephone number, e-mail address)
- ☒ Assessment, evaluation and training data (education reports, learning documentation, ...)
- ☐ Contract master data (contractual relationship, product or contract interest), e.g. custody account number, cash account number
- ☐ Custody account and cash account balances, contract settlement and payment data, e.g. bank details (IBAN, BIC, account holder)
- ☐ Tax data, e.g. exemption data, church tax data, tax certificates, tax ID
- ☐ Data relating to customer consultation, e.g. consultation protocol with economic situation, income level, experience horizon, risk assessment
- ☐ Planning and control data, e.g. product-related data (execution dates for plans)
- ☐ User access data (e.g. PINs and TANs)
- ☐ Information (from third parties, e.g. credit agencies, or from public directories)
- ☐ Other: \_\_\_\_\_

### 2 Categories of data subjects

The categories of persons affected by the processing include:

- ☒ Customers of the Client
- ☐ Interested parties of the Client
- ☒ Employees of the Client
- ☐ Suppliers of the Client
- ☐ Applicants for positions at the Client
- ☐ Other: \_\_\_\_\_

## Annex 2: List of Approved Sub-processors

Depending on its products, the Processor engages the following sub-processors:

Valid for all time2learn SaaS products:

| Name, legal form, registered office of the company                | Type of service                                                                                                                    |
|-------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------|
| Netrics Biel AG, Biel                                             | Operation and monitoring of the time2learn cloud infrastructure in the data centre of Netrics or MS Azure Cloud Switzerland North. |
| Microsoft Schweiz GmbH, Zurich Airport<br>(Subcontractor Netrics) | Operation of the time2learn infrastructure in MS Azure Cloud Switzerland North                                                     |

Valid for time2learn Young Talents:

| Name, legal form, registered office of the company       | Type of service                                                                                                        |
|----------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------|
| Ring Service GmbH, Rapperswil                            | First level support from time2learn. Answering telephone and e-mail enquiries as well as conducting distance training. |
| Brightcove, Inc. (Zencoder), Boston, Massachusetts 02210 | Video encoding                                                                                                         |

Valid for time2learn My Skills:

| Name, legal form, registered office of the company | Type of service                     |
|----------------------------------------------------|-------------------------------------|
| Scrambl. AG, 6010 Kriens                           | Skill-based match-making technology |

## Annex 3: Technical and Organisational Measures of the Processor

On demand