

**Data Processing Agreement pursuant to Art. 28 GDPR****Preamble**

This Agreement sets forth the rights and obligations of the Parties with regard to the processing of Personal Data by TolaData on behalf of the Customer under the SaaS-Agreement as the controller.

**1. Object, Nature, Scope and Purpose of the Commission**

1.1. The object, nature, scope and purpose of the data processing are stated in the ToU and the License Sheet (if applicable).

1.2. Any transfer of personal data in the course of the ToU to a third country is subject to compliance with the specific requirements of Articles 44 to 49 GDPR. In any case, in which the Parties use the Standard Contractual Clauses for the transfer of Personal Data to processors established in third countries under Directive 95/46/EC of the European Parliament and of the Council (Official Journal L 39 dated 12.22.2010, p. 5 et seqq.) or another version substituting this decision (following: Standard Contractual Clauses), the regulations of the Standard Contractual Clauses shall prevail over those in this Data Processing Agreement in case of any discrepancies.

**2. Term and Termination**

2.1 The term and termination of this Agreement shall be determined by the terms and conditions of the term and termination of the principal contract. Termination of the principal contract shall automatically lead to the termination of this Agreement.

2.2 The Customer may terminate this Data Processing Agreement at any time without notice, if there is an important reason for the termination of this Data Processing Agreement, in particular but not limited thereto if TolaData violates material obligations under this Data Processing Agreement or if TolaData has committed a serious breach of the applicable data protection regulations.

**3. Nature and purpose of the processing, type of personal data**

3.1. The data made available or accessible to TolaData include personal data within the meaning of the GDPR. Specifically, the following categories of data may be processed:

- Core data (e.g. name, address)
- Contact details (e.g. phone number, e-mail address)
- Other: Any data the Customer might enter into the Platform

3.2. TolaData collects, organizes, structures and stores the data made available for purposes of fulfilling the obligations arising from the principal contract.

**4. Data Subjects**

The group of data subjects affected by processing through TolaData within the context of this commission includes the following categories of persons:

- Employees
- Other: Any data subject whose data the Customer enters into the Platform.

## **5. Customer's Authority to Issue Instructions**

5.1 The processing of personal data by TolaData and the persons subordinated to it who have access to the data shall exclusively take place within the framework of the SaaS-Agreement and based on the Customer's documented instructions (cf. Article 29 GDPR). The Customer has a comprehensive right of direction with regard to the nature, scope and method of the data processing, which may be specified in individual instructions. If TolaData is subject to a legal obligation which allows for a different processing, TolaData shall inform the Customer of the respective legal requirements, unless such notification is legally prohibited.

5.2 TolaData and Customer shall document any instructions given by the Customer in an appropriate manner. Instructions given orally are to be confirmed by the Customer in written form without delay.

5.3 TolaData has no obligation whatsoever to legally examine the instructions of the Customer. If however, Toladata is of the opinion that an instruction of the Customer violates data protection provisions, TolaData shall inform the Customer accordingly. TolaData shall be entitled to suspend the execution of the relevant instruction until the instruction has been confirmed or amended.

## **6. Obligations of TolaData**

6.1. TolaData undertakes vis-à-vis the Customer to adhere to the applicable data protection provisions, and the provisions of this Data Processing Agreement with the utmost diligence.

6.2. The processing of Customer data by TolaData within the scope of this Agreement shall be carried out exclusively in accordance with the instructions of the Customer pursuant to Art. 28 para. 3 sentence 2 lit. a DSGVO, unless TolaData is obliged to carry out further processing in accordance with the law of the European Union or the law of the Member State to which it is subject. In such a case, the contractor shall notify the client of these legal requirements, unless the relevant law prohibits such notification because of an important public interest.

6.3. TolaData shall provide for appropriate technical and organisational measures pursuant to Article 24 GDPR in order to adhere to the data protection provisions, in particular to ensure data security pursuant to Article 32 GDPR.

6.3. TolaData shall monitor and document the fulfilment of its obligations under the contractual provisions and under data protection law and shall provide the Customer upon request with the required information and suitable evidence. This also includes monitoring the execution of the data processing within the context of the commission and the technical and organizational measures taken.

6.4. TolaData shall obligate in writing the persons authorized to process Customer data in accordance with Art. 28 para. 3 lit. b DSGVO to maintain confidentiality unless they are already subject to an appropriate legal obligation of confidentiality. Upon the Customer's request, TolaData shall submit these declarations to the Customer at any time.

6.5 TolaData is prohibited from processing or using Customer data for other, especially for its own, purposes unless such processing serves the fulfilment of the principal contract, unless agreed upon otherwise in writing, except where the data was anonymized prior to such processing .

6.6. Should supervising authorities request information from or take measures at the Customer, TolaData shall, upon the Customer's request, offer its support to the extent that is required to settle the matter.

6.7. Furthermore, TolaData shall support the Customer in a reasonable manner with regard to the adherence to the obligations stated in Articles 12 to 22 and 32 to 36 GDPR, if data processing within the context of the commission pursuant to this SaaS-Agreement is concerned, and shall, in particular, provide any required information which is available to it.

## **7. Data Security**

7.1 TolaData shall protect the data it has been provided with against unauthorized disclosure and manipulation by taking appropriate technical and organizational measures pursuant to Article 32 GDPR. Data and systems have to be protected from, including but not limited to, unauthorized or accidental destruction, accidental loss, technical defects, falsification, theft, illegal use, unauthorized access as well as from unauthorized modifications, copying, deletion, forwarding, access and any other unauthorised processing. Moreover, TolaData must ensure that appropriate measures are taken to quickly restore the availability of personal data and access thereto in cases of technical incidents and must allow for an examination of the effectiveness of the technical and organizational measures taken.

7.2 TolaData shall ensure that the data made available to it for processing is strictly separated from any other data sets. Data storage media which are provided by the Customer to TolaData are to be labelled accordingly. The receipt and return of such data storage media is to be documented.

7.3 TolaData shall work out a security concept with the measures that have been taken and shall hand it over to the Customer upon request.

7.4. Upon request TolaData shall provide Customer with all the necessary information, including certifications, audit and inspection reports, which serve to demonstrate compliance with the duties and obligations set forth in this Agreement.

7.5 The technical and organizational measures to be taken by TolaData shall be subject to continuous updating and adjustment reflecting the technical and organizational progress. TolaData shall inform the Customer of any significant changes regarding the technical and organizational measures.

7.6. TolaData hereby acknowledges that the Customer is entitled at any time to verify compliance with the technical and organisational measures set forth in this Agreement and the other contractual duties and obligations on the required scale, in particular by soliciting information and on-site inspections of stored data, data processing equipment and data processing programmes at TolaDatas premises. For this purpose, TolaData is further obligated to grant the Client access to the premises where the Client data are physically or electronically processed.

7.7. The Customer or an authorised representative has the right to carry out the aforementioned inspections during normal business hours. These inspections shall be announced well in advance (generally at least two weeks in advance) and shall have as little effect as possible on TolaData's operations.

## **8. Requests from Data Subjects**

8.1 TolaData may correct, delete, block or transfer data, which are processed within the context of the commission exclusively upon instruction of the Customer.

8.2 If a data subject contacts TolaData directly to assert his or her rights, in particular those stated in Articles 12 to 23 of the GDPR, with regard to the data processed within in context of the commission, TolaData shall forward such requests to the Customer without delay.

TolaData may only disclose information to third parties or to the data subject after having obtained the Customer's previous written consent, unless it is legally obliged to do so.

8.3 If a data subject contacts the Customer, TolaData shall reasonably support the Customer in order to respond to the data subject's request. For this purpose, TolaData shall provide for appropriate technical and organisational measures.

## **9. Subcontracting**

9.1 TolaData is entitled to commission third parties with the processing of the personal data. The subcontractors assigned at the time of the conclusion of this Data Processing Agreement are listed at [<https://humanitec.com/technical-definitions>].

9.2 TolaData shall notify the Customer of any change in relation to the incorporation of new or the replacement of existing subcontractors. The Customer has the right to object to such changes. An objection may only be raised by the Customer in writing within a period of one week from receipt of a corresponding notification from TolaData and for important reasons to be proven to TolaData. If the Customer objects, TolaData is entitled to terminate the SaaS-Agreement and this Data Processing Agreement with one month's notice from receipt of the objection.

9.3 The contract between TolaData and the subcontractor must impose essentially the same obligations on the subcontractor as are the responsibility of TolaData under this Data Processing Agreement. The Parties agree that this requirement is met if the contract has a level of protection corresponding to this Data Processing Agreement or if the subcontractor is subject to the obligations set out in Art. 28 (3) GDPR

9.4 Services that TolaData uses from third parties as an ancillary service to support the performance of the processing are not subcontractor relationships within the meaning of the above provisions. These include e.g. Telecommunications services, cleaning services, testing services or, under certain circumstances, maintenance services. However, in order to ensure the protection and security of the data of the Customer as well as to ensure confidentiality, TolaData is obligated to make lawful and appropriate contractual agreements with externally assigned ancillary services and to take control measures.

## **10. Notifications by TolaData**

10.1 TolaData shall inform the Customer without delay if it determines that it or an employee has violated data protection regulations or provisions of this Agreement when processing Customer data, provided that there is a risk of a violation of the protection of personal data of the Customer within the meaning of Art. 4 No. 12 DSGVO.

10.2. Insofar as the Customer is subject to statutory information obligations due to an incident pursuant to clause 10.1 due to unlawful acquisition of knowledge of Customer data (in particular pursuant to Art. 33 and 34 DSGVO), TolaData shall support the Customer in fulfilling the information obligations at the latter's request within the scope of what is reasonable and necessary against reimbursement of the expenses and costs incurred by TolaData as a result thereof. Notifications pursuant to Art. 33 or 34 DSGVO for the Customer may only be made by the TolaData following prior instructions from the C

10.3 In consultation with the Customer, TolaData shall immediately take appropriate measures in order to secure the data and to reduce any potential negative consequences for the data subjects.

## **11. Liability**

11.1. The Customer and TolaData are jointly and severally liable for the compensation of damages suffered by a person due to inadmissible or incorrect data processing within the scope of the contractual relationship.

11.2. In the internal relationship with TolaData, the Customer alone is responsible for the compensation of damages suffered by a person concerned due to an inadmissible or incorrect processing of Customer data within the scope of order processing in accordance with the applicable data protection law.

11.3. The Customer undertakes to indemnify TolaData internally against all claims by third parties unless and until he can prove that TolaData has not fulfilled its obligations under the GDPR which apply specifically to TolaData as a processor or has acted in disregard of a legally issued instruction from the Customer or against a legally issued instruction.

11.4. Should a data protection authority or a court impose a fine on TolaData for data processing by TolaData based on an instruction from the Customer, the Customer shall reimburse TolaData the corresponding amount in full upon written notification within 30 days of the written notification.

11.5. The Customer shall reimburse TolaData for all costs arising from the infringement for which it is responsible in accordance with clauses 10.3 and 10.4, including the costs of legal proceedings.

11.6 Unlimited liability: TolaData shall be liable without limitation for intent and gross negligence, for breach of a contractually granted guarantee and in accordance with the Product Liability Act. In the event of simple negligence, TolaData shall be liable for damages resulting from injury to life, limb and health of persons. In addition, the following limited liability shall apply: In the event of simple negligence, TolaData shall only be liable in the event of a breach of an essential contractual obligation of the main contract, the fulfilment of which is essential for the proper performance of the main contract and on the observance of which the Customer may regularly rely (cardinal obligation). Liability for simple negligence is limited to the amount of damages foreseeable upon conclusion of the contract, the occurrence of which must typically be expected.

## **12 Erasure or Return of Data**

12.1 Upon termination of the principal contract or earlier when requested by the Customer – and no later than at the moment when the commission has been completed – TolaData must, at the Customer's discretion, either return all personal data in its possession and connected to the commission, whether included in documents, in generated processing or utilisation results or in data sets, in a generally readable form or, with prior consent, destroy or delete them in accordance with data protection law regulations, unless there is a legal obligation to store the personal data. The destruction or erasure is to be confirmed to TolaData in written form. In the case of electronic data, the processing and utilisation results or data sets shall be handed over in a format to be agreed upon by the Parties, or, if no agreement has been made, on standard data storage media in a format that is customary in the market and permits a structured readout.

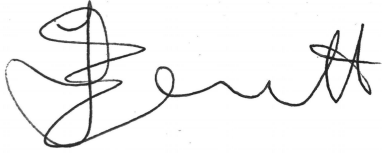

12.2 There is no right to retain any personal data which have been made available or have been collected or processed by TolaData within the framework of this contractual relationship, nor any of the respective data storage media.

### 13 Miscellaneous

13.1 If the Customer's data are endangered due to measures of third parties taken at TolaData, e.g. in the form of seizure or distraint, through insolvency or settlement proceedings or any other event, TolaData must inform the Customer without delay.

13.2 Amendments to this Data Processing Agreement and its Attachment have to be made in writing. This also applies to an amendment of this written form requirement.

13.3 In the case of any discrepancies between the SaaS-Agreement and this Data Processing Agreement the Data Processing Agreement shall prevail.

<p>Berlin, 19 November 2020</p>  <p><b>TolaData GmbH</b>          Represented by: Jo Bennett          Position: CEO (Geschäftsführerin)</p>	<p>Place, date</p>   <p>Customer:          Represented by:          Position:</p>
<p>Place, date</p>    <p><b>TolaData GmbH</b>          Represented by: Linda Kleeman          Position: CEO (Geschäftsführerin)</p>	

*Please sign and send signed scan via email to [info@toladata.com](mailto:info@toladata.com)*