



# **Data Processing Agreement**

**Maileon Benelux BV**

[Date]

## **The signing parties**

1. The private company with limited liability Company Name, statutorily established in and having its office in , at , in this matter duly represented by Company Person, hereinafter referred to as: 'Data Controller';

**and**

2. The private company with limited liability Maileon Benelux B.V. (KvK 75474050) statutorily established in Rotterdam and having its office in (3044BC) Rotterdam, at the Van Nelleweg 1, in this matter duly represented by B. van Breemen and M. Worst, hereinafter referred to as: 'Processor';

Parties hereinafter also collectively referred to as "Parties".

## **Whereas:**

- A. The parties have entered into a Contract in respect of the provision of services by Processor to Data Controller in the performance of which Personal Data are provided by Processor to Data Controller, or at least Processor may come into contact with Personal Data of Data Controller.
- B. The parties attach great importance to protecting this Personal Data;
- C. In accordance with Article 28(3) of the AVG, the parties wish to set out in this Processor Agreement their agreements on the processing of the Personal Data.

## **Have been agreed:**

### **Article 1. Definitions**

The terms used below and above have the following meanings:

1. Annex means an annex to this Processor Agreement which forms an integral part thereof.
2. Personal Data: any information relating to an identified or identifiable natural person ('the Data Subject'); an identifiable natural person is considered to be one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identity or to one or more elements characterising the physical, physiological, genetic, psychological, economic, cultural or social identity of that natural person (ex Article 4(1) AVG).
3. Data Subject(s): identified or identifiable natural person to whom the Personal Data processed relates (ex Article 4(1) AVG).
4. Processing: any operation or set of operations involving Personal Data or a set of Personal Data, whether or not carried out by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction of data (ex Article 4(2) AVG).
5. Processor Agreement: this agreement includes its annexes (ex Article 28(3) AVG).
6. Agreement: the agreement, as mentioned in the preamble, from which this Processor Agreement arises including any annexes attached thereto.
7. Data breach: a breach that has occurred in relation to personal data, including, for example but not limited to, any breach included organisational and/or technical security measures (leading to the destruction, loss, alteration or unauthorised provision of, or unauthorised access to and/or inspection of (transmitted, stored or otherwise processed) (Personal) Data).
8. Supervisor: an independent public authority responsible for monitoring compliance with the law in relation to the processing of Personal Data. In the Netherlands, this is the Personal Data Authority.
9. Laws and regulations: this includes at least, but not exclusively, the General Data Protection Regulation (GDPR).
10. Third party/parties: a natural or legal person, a public authority, and department or other body, other than the Data Subject, nor the Controller, nor the Processor, nor the persons authorised under the direct authority of the Controller or the Processor to process Personal Data.
11. Sub-processor: another processor engaged by the Processor to perform specific processing activities on behalf of the Processor.

## **Article 2. Creation, duration and termination of the Processor Agreement**

1. This Processor Agreement shall enter into force on the date that both Parties have signed this Processor Agreement.
2. This Processor Agreement is and will remain in force as long as the Processor has or will acquire, in any manner whatsoever, the disposal of Personal Data (originating) from the Data Controller. Not earlier than after it is apparent to the Parties that the Processor no longer has or will obtain, in any manner whatsoever, access to Personal Data (originating) from the Processor, the Processor Agreement may be terminated by either Party with immediate effect. This Processor Agreement is therefore in force in any case during the term of the Agreement.
3. This Processor Agreement forms an indissoluble part of the Agreement. It is not possible to terminate the Processor Agreement separately (prematurely).
4. Deviations from this Processor Agreement shall only be binding to the extent that the Parties have expressly agreed in writing.

## **Article 3. Processing of Personal Data**

1. Processor shall process Personal Data necessary for the performance of the Contract and furthermore only upon the written instruction of the Data Controller. The actual Processing(s) depends on the services purchased by the Processor. Annex 1 contains a non-exhaustive overview of Personal Data, categories of Data Subjects, and (actual) Processing(s) that take place/ that the Processor may process in the performance of the Contract.
2. If a Data Subject wishes to exercise her rights in accordance with applicable Laws and Regulations, the Processor shall inform the Data Controller.
3. Processor shall notify Data Controller if, in its opinion, an instruction of Data Controller violates the Laws and Regulations.
4. Processor shall, to the extent possible, support the Data Controller on the basis of the Agreement, within the statutory time limits, to comply with the obligations under the applicable Laws and Regulations, including the rights of Data Subjects, such as, but not limited to, a request for inspection, correction, supplementation, deletion or blocking of Personal Data and the execution of an honoured registered objection as well as in the obligations incumbent on Processed Party as referred to in Articles 32 to 36 GDPR. Processor reserves the right to charge the costs involved in these efforts to the Data Controller. Whereby the time spent by Processor will be charged at the hourly rate then applicable to the Data Controller.
5. Controller grants Processor permission under the Agreement to engage a Sub-Worker to process the Personal Data. Processor shall inform Data Controller about the Sub-Worker deployed. The Sub-Processors deployed at the time of signing this Processor Agreement are specified in Schedule 2. If the Data Controller does not agree on reasonable grounds with the proposed change or addition of a particular Sub-Processor, Data Controller is permitted to object. Processor is permitted to offer an alternative within 4 weeks.
6. Where Processor engages a Sub-Processor, the Processor shall ensure that the provisions of Article 28(4) GDPR are complied with, whereby the Sub-Processor undertakes in any event to take appropriate technical and organizational measures concerning the Processing of Personal Data and undertakes to observe confidentiality.
7. Outside the performance of the Contract, Processor shall not be permitted to disclose Personal Data to anyone other than Data Controller, except at the written request of Data Controller, or with the express written consent of Data Controller or when necessary to comply with a legal obligation.

#### **Article 4. Personal data security**

1. The parties are obliged to ensure that Personal Data is adequately secured and are obliged to take appropriate technical and organisational measures to prevent loss and unlawful Processing.
2. In any case, at the time of signing, Processor has taken the security measures as listed in Annex 3. Processor may review and modify these measures from time to time.
3. The control of the overall Processing of Personal Data by Processor will in principle take place through a periodic audit by Processor.
4. In mutual consultation with the Processor, the Processor is also permitted to perform an audit or have an audit performed once a year to determine whether the Processing of Personal Data complies with the applicable Laws and Regulations and the agreements made in this Processor Agreement. A request to that end must be substantiated by Processor. Processor shall (in such a case) make available all information necessary to demonstrate compliance with the obligations laid down in this Processor Agreement. The costs involved in the efforts of Processor shall be borne by Data Controller, with the time spent by Processor being charged to Data Controller at the hourly rate then applicable at Processor.
5. The audit referred to in Article 4.4 may only be carried out by an auditor who meets the following requirements:
  - a. diploma from a recognized IT audit course;
  - b. irreproachable behavior, as evidenced by a recent Certificate of Good Conduct (VOG);
  - c. at least three (3) years of proven experience in IT audit work; and
  - d. registered with the register of the professional organization of IT auditors (NOREA).
6. If and to the extent that an audit under Article 4.4 reveals that Processor's compliance is deficient in one or more areas, Processor shall make concrete proposals for improvement.
7. The parties shall consult with each other if a change in the (organisational and/or technical) security measures to be taken is necessary. They shall endeavour to agree on a change in the security measures.

#### **Article 5. Confidentiality**

1. Processor shall keep the Personal Data processed in the context of the performance of the Agreement confidential and shall take all necessary measures to ensure the confidentiality of the Personal Data. Processor shall also impose the obligation of confidentiality on its staff and all persons and Sub-Processors engaged by it.
2. The duty of confidentiality referred to in this article does not apply if Processor has given express written consent to disclose the Personal Data to a Third Party, or a legal obligation exists to disclose the Personal Data to a Third Party or it concerns data that are not of a secret or confidential nature, are already of common knowledge, or confidentiality is not possible by virtue of a legal obligation.

#### **Article 6. Data breaches**

1. In the event of a discovery of a (potential) Data Breach, Processor shall inform Data Controller without unreasonable delay as soon as it becomes aware of the personal data breach. This notification by Processor shall include the following information:
  - a. A Description of the nature of the breach, including in any case, if possible:
    - i. The date and time when the Data Breach occurred and was discovered;
    - ii. The number of Data Subjects affected by the Data Breach and
    - iii. What categories of personal data are involved in the Data Breach;
  - b. The contact details of the point of contact within Processor regarding the Data Breach;
  - c. The (alleged) cause of the Data Breach;
  - d. The already known and foreseeable consequences of the Data Breach;
2. Processor shall keep Data Controller informed of new developments regarding the Data Breach, also Processor shall submit to Data Controller the measures taken to mitigate and terminate the Data Breach and to be able to prevent a similar Data Breach in the future.
3. Processor shall not, on its own initiative, report a Data Breach to the Supervisor, nor shall it inform the Data Subject(s) on its own initiative about a Data Breach. This responsibility lies with Data Controller.



## **Article 7. Liability**

1. Data Controller shall indemnify Processor against all damages and against all claims of third parties, including but not limited to Data Subject(s), Third Party(ies) or other persons and organisations, as a result of unlawful or negligent acts of Data Controller and/or any acts contrary to the Laws and Regulations and/or this Processor Agreement.

2. Processor excludes liability for indirect damage including in any case, but not exclusively, consequential damage, trading loss, loss of profit, missed savings, reduced goodwill, damage due to business stagnation, damage resulting from third-party claims and reputational damage.

3. If the Processor is liable, on whatever basis, for the (direct) damage and costs that the Data Controller suffers or has suffered in connection with the performance of this Processor Agreement, also including (administrative) fines and/or penalties imposed on the Data Controller, the (cumulative) liability (or cumulative liabilities) based on any legal ground or grounds whatsoever, shall be limited to compensation of the (direct) damage for which Processor is insured and its insurance pays out, or such amount shall never exceed the amount paid by Data Controller to Processor over 12 months preceding the moment of the relevant claim(s). Under no circumstances will the total liability of Processor for (direct) damage, on any basis whatsoever, exceed €50,000.

4. Any limitations of liability of Processor from the Agreement, its (supply) conditions, and/or any other agreement entered between the Parties shall not apply to claims under this Processor Agreement.

## **Article 8. Return of Personal Data and Retention Period**

1. At the first request of the Data Controller and, unless otherwise agreed in writing between the Parties, in any event after the expiry of the Contract and the Processing Agreement, all Personal Data in the Processor's possession must be returned or provided to the Data Controller or a third party to be designated by the Data Controller, as the Data Controller chooses, or must be destroyed and/or deleted and all existing copies must be removed unless storage of the Personal Data is required under Union or Member State law. The costs involved in the efforts of Processor shall be borne by Data Controller, whereby the time spent by Processor shall be charged to Data Controller at the hourly rate then applicable to Processor.

2. Until the moment this Processor Agreement ends, Processor shall render all its cooperation concerning the transfer of the Processor's work as laid down in this Processor Agreement to Data Controller or a successor Processor. The costs involved in these efforts by Processor shall be borne by Data Controller, with the time spent by Processor being charged to Data Controller at the hourly rate then applicable to Processor.

## **Article 9. Final Provisions**

1. In case of amendments to the Agreement and/or the Laws and Regulations which affect the (manner of) processing of Personal Data and as a result of which amendment of this Processor Agreement is necessary, the Parties shall enter into consultation and the Parties shall endeavor to reach agreement as soon as possible on the provision(s) to be amended, which shall, where possible, have the same scope and content as the provision(s) it replaces.

2. If any provision of this Processor Agreement is found to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity and enforceability of the remaining provisions of this Processor Agreement. If a provision is not legally valid or unenforceable, Processor and Data Controller shall endeavor to agree on a substitute provision as soon as possible in fairness and reasonableness that is valid and enforceable and which will, as far as possible, have the same scope and content as the provision it replaces.

3. This Processor Agreement and any rights, obligations, and/or agreements arising therefrom shall be interpreted according to and governed by all aspects of Dutch law.

4. Any claims, disputes, differences, or questions arising from this Processor Agreement that the parties cannot resolve amicably among themselves shall be submitted for resolution to the exclusive jurisdiction of the competent (district) court of Rotterdam, the Netherlands.

# Annex 1: Specification of Personal Data, categories of data subjects and processing operations

For illustrative purposes, a list of:

- a. the nature and purpose of the processing;
  - b. the personal data that Processor may process on behalf of data Controller;
  - c. the categories of data subjects to which the processing operations may relate;
- and
- d. the actual processing operations that may take place.

Nature and purpose of processing	Create and send (marketing) e-mail (bulk e-mails) with the online solution "Maileon "
What type(s) of Personal Data are processed ?	<p>[To be specified by Data Controller on the basis of which data will be uploaded or used for email marketing purposes in the Maileon platform]</p> <p><input type="checkbox"/> _____</p> <p><input type="checkbox"/> _____</p> <p><input type="checkbox"/> _____</p>
What categories of Data Subjects does the processing cover?	<p>[To be specified by Data Controller]</p> <p><input type="checkbox"/> Clients</p> <p><input type="checkbox"/> website visitors</p> <p><input type="checkbox"/> employees</p> <p><input type="checkbox"/> _____</p> <p><input type="checkbox"/> _____</p>
In what way will the Data be processed? And what means are used in the process?	<p><input type="checkbox"/> Collection, recording, organization, structuring, storage, updating or modification, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction</p> <p>Clarification: The data shared with Maileon may be processed in any of the above ways, depending on what actions/written instructions the Data Controller executes/issues in Maileon.</p> <p><input type="checkbox"/> Time, facilities, electronic resources and personnel</p> <p>Explanation: In the Maileon platform, data is uploaded (manually or through an automatic link and/or integration) by the user (Data Controller responsible). Maileon hosts this data on its platform and if the user gives an instruction to use this data (e.g. in a mailing or in an automatic flow), this action is performed automatically.</p>

# Annex 2: Sub-processors

Processor shall engage the following Sub-Processors in the performance of the assignment referred to in Article 3:

Sub-Processor	Nature and purpose of processing by the Sub-Processor	Certification
Claranet GmbH Hanauer Landstrasse 196 Frankfurt am Main	Primary Data Center (Hosting)	ISO 27001 en NEN 7510:2013 ISO 9001: 2015 ISAE 3402: 2020
MightyCare Solutions GmbH Josef-Dietzgen-Straße 1 53773 Hennef	Secondary Data Center (Hosting)	ISO 27001 ISAE 3402
Hetzner Online GmbH Sigmundstraße 135 90431 Nürnberg	Data Center (Hosting) voor kleinere applicaties en specifieke scripts	ISO/IEC 27001:2013
XQueue GmbH Christian-Pleß-Str. 11-13D 63069 Offenbach am Main	E-mail marketing automation, sending (personalized) email newsletters (Email service provider)	CSA (Certified Senders Alliance) and in the process of becoming ISO certified certified (expected Q1 2024)

## Annex 3: Security measures

The technical and organizational security procedures and measures will comply with the applicable and generally accepted security standards referred to in the [XQ IT Software Security Standards](#).