

## **Data Processing Agreement (DPA)**

concluded by and between [insert customer, address],

– hereinafter, “Customer”–

and Cluvio GmbH, Friedrichstr. 79, 10117 Berlin, Germany

– hereinafter, “Cluvio”–

on the processing of personal data on behalf of a controller in accordance with Article 28 (3) of the EU General Data Protection Regulation (GDPR).

### **Preamble**

This DPA details the parties’ obligations on the protection of personal data, associated with the processing of personal data on behalf of Customer as a data controller, and Cluvio, for the performance of the Service (“Agreement”).

### **§ 1 Scope, duration and specification of contract processing of Data**

The DPA shall be in effect for the duration of the Agreement. The scope and the detailed stipulations on the type and purpose of Contract Processing shall be governed by the Agreement’s **Attachment A**.

### **§ 2 Scope of application and responsibilities**

(1) Cluvio shall process Data on behalf of Customer (Contract Processing”). Such Contract Processing shall include all activities detailed in the Agreement. Within the scope of this DPA, Customer shall be solely responsible for compliance with the applicable statutory requirements on data protection, including, but not limited to, the lawfulness of disclosing Data to Cluvio and the lawfulness of having Data processed on behalf of Customer. Customer shall be the »controller« in accordance with Article 4 no. 7 of the GDPR.

(2) Customer’s individual instructions on Contract Processing shall, initially, be as detailed in the Agreement. Customer shall, subsequently, be entitled to, in writing or in a machine-readable format (in text form\*), modifying, amending or replacing such individual instructions by issuing such instructions to the point of contact designated by Cluvio. Instructions not foreseen in or covered by the Agreement shall be treated as requests for changes to the statement of work. Customer shall, without undue delay, confirm in writing or in text form any instruction issued orally.

### **§ 3 Cluvio’s obligations**

(1) Except where expressly permitted by Article 28 (3)(a) of the GDPR, Cluvio shall process data subjects’ Data only within the scope of the Agreement and the instructions issued by Customer. Where Cluvio believes that an instruction would be in breach of applicable law, Cluvio shall notify Customer of such belief without undue delay. Cluvio shall be entitled to suspending performance on such instruction until Customer confirms or modifies such instruction.

(2) Cluvio shall, within Cluvio’s scope of responsibility, organise Cluvio’s internal organisation so it satisfies the specific requirements of data protection. Cluvio shall implement technical and organisational measures to ensure the adequate protection

of Customer's Data, which measures shall fulfil the requirements of the GDPR and specifically its Article 32, as set out in **Attachment B**.

(3) Customer is familiar with these technical and organisational measures, and it shall be Customer's responsibility that such measures ensure a level of security appropriate to the risk. Cluvio reserves the right to modify the measures and safeguards implemented, provided, however, that the level of security shall not be less protective than initially agreed upon.

(4) Cluvio shall support Customer, insofar as is agreed upon by the parties, and where possible for Cluvio, in fulfilling data subjects' requests and claims, as detailed in chapter III of the GDPR and in fulfilling the obligations enumerated in Articles 33 to 36 of the GDPR. Cluvio may charge its standard rates when fulfilling this obligation.

(5) Cluvio warrants that all employees involved in Contract Processing of Customer's Data and other such persons as may be involved in Contract Processing within Cluvio's scope of responsibility shall be prohibited from processing Data outside the scope of the instructions. Furthermore, Cluvio warrants that any person entitled to process Data on behalf of Controller has undertaken a commitment to secrecy or is subject to an appropriate statutory obligation to secrecy. All such secrecy obligations shall survive the termination or expiration of such Contract Processing.

(6) Cluvio shall notify Customer, without undue delay, if Cluvio becomes aware of breaches of the protection of personal data within Cluvio's scope of responsibility. Cluvio shall implement the measures necessary for securing Data and for mitigating potential negative consequences for the data subject; the Cluvio shall coordinate such efforts with Customer without undue delay.

(7) Cluvio shall correct or erase Data if so instructed by Customer and where covered by the scope of the instructions permissible. Where an erasure, consistent with data protection requirements, or a corresponding restriction of processing is impossible, Cluvio shall, based on Customer's instructions, and unless agreed upon differently in the Agreement, destroy, in compliance with data protection requirements, all carrier media and other material or return the same to Customer. Cluvio may charge its standard rates when fulfilling this obligation.

(8) Cluvio shall, upon termination of Contract Processing and upon Customer's instruction, delete all Data, carrier media and other materials of Customer. Cluvio may charge its standard rates when fulfilling this obligation, and it will charge any extra cost caused by deviating requirements in returning or deleting data.

(9) Where a data subject asserts any claims against Customer in accordance with Article 82 of the GDPR, Cluvio shall support Customer in defending against such claims, where possible. Cluvio may charge its standard rates when fulfilling this obligation.

#### **§ 4 Customer's obligations**

(1) Customer shall notify Cluvio, without undue delay, and comprehensively, of any defect or irregularity with regard to provisions on data protection detected by Customer in the results of Cluvio's work.

(2) Section 3 para. 10 above shall apply, mutatis mutandis, to claims asserted by data subjects against Cluvio in accordance with Article 82 of the GDPR. Cluvio may charge its standard rates when fulfilling this obligation.

#### **§ 5 Enquiries by data subjects**

(1) Where a data subject asserts claims for rectification, erasure or access against Cluvio, and where Cluvio is able to correlate the data subject to Customer, based on the information provided by the data subject, Cluvio shall refer such data subject to Customer. Cluvio shall forward the data subject's claim to Customer without undue delay. Cluvio shall support Customer, where possible, and based upon Customer's instruction insofar as agreed upon. Cluvio shall not be liable in cases where Customer fails to respond to the data subject's request in total, correctly, or in a timely manner.

## **§ 6 Options for documentation**

(1) Cluvio may document and prove to Customer Cluvio's compliance with the obligations agreed upon in this exhibit by appropriate measures, including but not limited to

- conducting an own self-audit
- internal compliance regulations including external proof of compliance with these regulations
- certifications on data protection and/or information security (e.g. ISO 27001)
- codes of conduct approved in accordance with Article 40 of the GDPR
- certifications in accordance with Article 42 of the GDPR

## **§ 7 Subcontractors (further processors on behalf of Customer)**

(1) Customer hereby consents to Cluvio's use of subcontractors as set out in **Attachment C**. Cluvio shall, before adding or replacing subcontractors, inform Customer thereof, in any suitable way, e.g. by e-Mail or by posting the change on the Cluvio Website.

(2) Customer shall be entitled to contradict any change notified by Cluvio within 14 days, for materially important reasons. Where Customer fails to contradict such change within such period of time, Customer shall be deemed to have consented to such change. Where a materially important reason for such contradiction exists and failing an amicable resolution of this matter by the parties, Customer shall be entitled to terminating the Agreement.

(3) Where Cluvio commissions subcontractors, Cluvio shall be responsible for ensuring continued fulfillment of Cluvio's obligations on data protection.

## **§ 8 Obligations to inform, mandatory written form, choice of law**

(1) Where the Data becomes subject to search and seizure, an attachment order, confiscation during bankruptcy or insolvency proceedings, or similar events or measures by third parties while in Cluvio's control, Cluvio shall notify Customer of such action without undue delay. Cluvio shall, without undue delay, notify to all pertinent parties in such action, that any data affected thereby is in Customer's sole property and area of responsibility, that data is at Customer's sole disposition, and that Customer is the responsible body in the sense of the GDPR.

(2) No modification of this annex and/or any of its components – including, but not limited to, Cluvio's representations and warranties, if any – shall be valid and binding unless made in writing or in a machine-readable format (in text form), and furthermore only if such modification expressly states that such modification applies to the regulations of this annex. The foregoing shall also apply to any waiver or modification of this mandatory written form.

(3) In case of any conflict, the data protection regulations of this annex shall take precedence over the regulations of the Agreement. Where individual regulations of this

annex are invalid or unenforceable, the validity and enforceability of the other regulations of this annex shall not be affected. The DPA follows the same law and jurisdiction as applicable to the Agreement.

### **§ 9 Liability and damages**

The regulations on the parties' liability contained in the Agreement shall be valid also for the purposes of Contract Processing, unless expressly agreed upon otherwise.

## **Attachment A to the Data Processing Agreement**

### **Subject matter & duration of processing:**

- User information, such as first name, last name, email, IP address of a person that created Customer's Cluvio account as well as any users invited to the Customer's account by the Customer's account admins. This information is stored for the duration of the Agreement.
- Metadata (database structure, such as schema, table and column names, number of rows for the tables) for any databases that the Customer connects to and saves as a datasource on the Cluvio account. This information is stored for the duration of the Agreement.
- Results of any queries executed by any user on the Customer account, as a result of running a SQL / R query in the query editor, SQL alert or custom filter editor, or accessing a dashboard. This information is stored only in a cache for up to 24 hours after the corresponding query is executed.

### **Type and purpose of the processing:**

- User information is transmitted over HTTP/S connection to the logged-in clients for the purpose of identifying the users who create assets on the Cluvio account and to give the ability to manage users and their role and access permissions.
- User IP address is collected and stored for auditing and security purposes.
- The database metadata is transmitted over HTTP/S connection to the logged-in users with admin or analyst roles for the purpose of helping with report creation and data exploration.
- The query results are transmitted over HTTP/S connection to the clients, who are either logged-in users or are accessing via a sharing link. The data is transmitted for the purpose of providing the core analytics service (i.e. the query results and their visualization is the primary purpose of the Cluvio Service).

### **Type of personal data:**

- The user data contain the following information:
  - First name
  - Last name
  - Email address
  - IP address from which Cluvio account is accessed
- The database metadata contains the following information
  - Database server access information (host, port, user name and password, etc.)
  - Server version and name
  - List of schemas, tables and column names
  - Number of rows for each of the tables
- The cached query results contains the following information:
  - Result metadata - column names and query performance measurements
  - Actual query results

**Categories of data subjects:**

Data categories depend on the actual data stored in Customer's database.

**Deletion of data:**

The data deletion policy is as follows:

- User information is deleted when the Agreement is terminated on a Customer request
- Database metadata is deleted when the Agreement is terminated on a Customer request
- Query results are automatically purged/deleted from cache within 24 hours of the query execution

**Attachment B to the Data Processing Agreement**

The security overview of Cluvio can be accessed here: <https://www.cluvio.com/security.html>

**Attachment C to the Data Processing Agreement**

The current list of Subprocessors can be accessed here:  
<https://www.cluvio.com/subprocessors.html>

Customers with an active account on Cluvio will be notified about any changes to the list.