

# PARTNER DATA SUB-PROCESSING ADDENDUM

## 1 BACKGROUND

- 1.1 The EU Data Protection Directive 95/46/EC (the “Directive”), and the EU General Data Protection Regulation 2016/679 (the “GDPR”) which replaces the Directive as from May 25, 2018, require a written agreement between a processor, processing personal data on behalf of a controller, and a sub-processor in order to allow the processing of personal data by the sub-processor as sub-contractor to the processor.
- 1.2 This Partner Sub-Processing Addenda (“DSPA”) is offered by Teleopti to all Partners subject to the GDPR and forms an integral part of the Teleopti Partner Agreement.
- 1.3 All defined terms shall have the meaning assigned in section 2 below or in the Partner Agreement.

## 2 DEFINITIONS

- 2.1 “**Teleopti Affiliate**” means any legal entity that is directly or indirectly controlled by or under common control of Teleopti.
- 2.2 “**Contracting Party(ies)**” means the Partner and Teleopti.
- 2.3 “**Contractual Clauses**” means the European Commission’s decision (C(2010)593) Standard Contractual Clauses and (C(2010)87) Protection Clauses for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection.
- 2.4 “**Customer**” means the Partners customers to which Partner supplies Services.
- 2.5 “**Data Incident**” means any accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to Personal Data.
- 2.6 “**Data Protection Laws**” means the laws and regulations applicable to the Processing of Personal Data under the Agreement, of the European Union, the European Economic Area and their member states, Switzerland (and the United Kingdom), including but not limited to the Directive and the GDPR.
- 2.7 “**Data Subject**” has the meaning described in Article 4 (1) GDPR.
- 2.8 “**Data Subject Request**” means the Data Subject’s request for its right under Chapter III of the GDPR.
- 2.9 “**EEA**” means the European Economic Area.
- 2.10 “**Order**” means an order or work order under the PA.
- 2.11 “**Partner Agreement**” or “**PA**” shall mean the Partner Agreement entered into by Partner and Teleopti.
- 2.12 “**Personal Data**” means and include any data or information falling within the definition of “personal data” under Article 4 (1) GDPR.
- 2.13 “**Privacy Shield Framework**” means the EU-U.S. and Swiss-U.S. Privacy Shield Frameworks designed by the U.S. Department of Commerce and the European Commission and Swiss Administration to provide companies on both sides of the Atlantic with a mechanism to comply with data protection requirements when transferring personal data from the European Union and Switzerland to the United States in support of transatlantic commerce.
- 2.14 “**Processing**” or “**to Process**” has the meaning described in Article 4 (2) GDPR.
- 2.15 “**Service(s)**” means the services performed by Teleopti as sub-contractor to Partner under the PA.
- 2.16 “**Supervisory Authority**” means anybody under the Data Protection Laws that has the authority to impose legal sanctions under the Data Protection Laws.
- 2.17 “**Teleopti**” means the Teleopti legal entity being a party to the PA.

- 2.18 “Teleopti Sub-processor”** means any third party sub-processor engaged by Teleopti or a member of the Teleopti Group to Process Personal Data as sub-contractor to Teleopti.
- 2.19 “Teleopti Information Security Overview”** describes Teleopti’s security governance process, Personal Data protection as well as technical and organizational security measures offered by Teleopti for the Teleopti products and services. The Teleopti Information Security Overview is adjusted from time to time in order to reflect Teleopti’s information security offer, which is continuously improved. The Teleopti Information Security Overview is incorporated by reference and forms an integral part of this DSPA.
- 2.20 “Teleopti Products”** have the meaning described in the PA.

### **3 DATA PROCESSING**

#### **3.1 Scope**

- 3.1.1 Partner and Teleopti agrees to comply with and abide by the Data Protection Laws and Partner shall ensure that the Customers likewise shall comply and abide by the Data Protection Laws.
- 3.1.2 The parties acknowledge and agree that with regard to the Processing of Personal Data, Customer is the “Controller”, Partner is the “Processor” and Teleopti is the “Sub-processor” and that Teleopti and/or Teleopti Affiliates will engage Teleopti Sub-processors pursuant to the requirements set forth in Section 8, “Teleopti Sub-processors” below.
- 3.1.3 Partner acknowledges and agrees that if Partner elects to agree to additional terms and conditions regarding the Processing of Personal Data with Customers, to the terms and conditions stipulated in this DSPA, such terms and conditions shall not apply to Teleopti without the prior written consent of Teleopti. Teleopti shall be under no obligation to agree to any such additional terms and conditions unless required to so under the Data Protection Laws.

#### **3.2 Partner’s Obligations**

- 3.2.1 Partner shall, and shall ensure that Customers shall, in their use of the Services, Process Personal Data, in accordance with the requirements of Data Protection Laws. For the avoidance of doubt, Partner shall ensure that the Customers shall have sole responsibility for the accuracy, quality, and legality of Personal Data and the means by which Customer acquired Personal Data.

#### **3.3 Teleopti’s Obligations**

- 3.3.1 Teleopti shall only Process Personal Data on behalf of and in accordance with Partner’s documented instructions and solely for the performance of the Services pursuant to the PA. The duration of the Processing, the types of Personal Data and categories of Data Subjects Processed under this DSPA are further specified in Appendix A, “Details of the Processing” to this DSPA.
- 3.3.2 Teleopti shall inform Partner if, in Teleopti’s opinion, an instruction infringes applicable Data Protection Laws. If so, Teleopti is not obliged to follow such instruction unless Partner has clarified or amended the instruction to remove Teleopti’s concerns relating to compliance with the Data Protection Laws.
- 3.3.3 All Processing of Personal Data pursuant to this DSPA shall be subject to the Non- Disclosure provisions of the PA.

### **4 TELEOPTI PERSONNEL**

- 4.1** Teleopti shall ensure that its personnel engaged in the Processing of Personal Data are informed of the confidential nature of the Personal Data, have received appropriate training on their responsibilities and have executed written confidentiality agreements. Teleopti shall ensure that such confidentiality obligations survive the termination of the personnel engagement.
- 4.2** Teleopti shall take commercially reasonable steps to ensure the reliability of any Teleopti personnel engaged in the Processing of Personal Data. Teleopti shall ensure that Teleopti’s

access to Personal Data is limited to those personnel performing Services in accordance with the PA.

## **5 SECURITY**

- 5.1** Teleopti have implemented and will continue to improve and implement appropriate technical and organizational security measures to protect the Personal Data in accordance with the provisions of the PA, this DSPA and Data Protection Laws.
- 5.2** The Partner confirms and shall ensure that the Customer confirms, that the security measures, as described in the Teleopti Information Security Overview, meets the Partner's and the Customer's obligations under the Data Protection Laws for the actual Processing of the Personal Data performed through the Services.

## **6 CHANGE REQUESTS**

- 6.1** Any request made by Partner for change to the instructions stated in Section 3.3 or request for change in Teleopti's security measures described in Section 5, "Security" above, due to changes in the Data Protection Laws or otherwise, shall be made in writing by Partner and shall require the written consent by Teleopti.
- 6.2** If Teleopti informs Partner that Teleopti cannot meet Partner's amended instructions or request for change and if such amended instructions were requested by Partner strictly to ensure compliance with Data Protection Laws Partner shall be entitled to terminate the PA or the Order for the affected Service in writing by at least 30 and maximum 60 days' notice period.

## **7 DATA INCIDENT MANAGEMENT, NOTIFICATION AND ASSISTANCE**

- 7.1** Teleopti shall maintain adequate procedures designed to detect and respond to any Data Incidents, including procedures for preventive and corrective actions, and also to avoid recurrence of any Data Incidents. These procedures shall be established by Teleopti in such a manner that both Teleopti and Partner will be able to meet their notification and documentation duties in relation to Data Incidents under Data Protection Laws.
- 7.2** Upon discovery or reasonable suspicion of a Data Incident, Teleopti shall take adequate recovery measures. Furthermore, Teleopti shall provide reasonable or requested feedback to Partner and provide effective support to Partner and (possibly) affected Data Subjects. The feedback and support should include at least:
  - 7.2.1** a description of the nature and the scope of the Data Incident, including an estimation of the number of Data Subjects (possibly) affected, an indication of the types of the Personal Data concerned and whether or not such Personal Data are (appropriately) encrypted, or otherwise secured or made unintelligible or inaccessible;
  - 7.2.2** a description of the anticipated consequences of the Data Incident;
  - 7.2.3** a description of the preventive and corrective measures taken and to be taken, planned and recommended to minimize possible harm, including an emergency plan, and the expected resolution and work-around time.
- 7.3** Teleopti shall implement appropriate technical and organizational measures to assist Partner in the fulfillment of Data Subjects Requests. Teleopti's obligations under this Section shall apply only to the extent possible and to the extent that the nature of the Processing requires it.
- 7.4** Upon Partner's request made within 30 days after the effective date of termination or expiration of Teleopti's Services to a Customer, Teleopti will make the Personal Data of such Customer available for export or download during 10 days. After download, Personal Data is presented in BACPAC (Azure SQL database backup) format or any other format decided by Teleopti from time to time. This service is charged to Partner at the then current price list for Professional Services. After such 30-day period, Teleopti will have no obligation to maintain or provide any Personal Data, and will thereafter delete or destroy all copies of the Customer's Personal Data in Teleopti's systems or otherwise in Teleopti's possession or control, unless legally prohibited.

**7.5** Upon Partner's request, and in addition to the provisions of Section 5, "Security", Teleopti shall provide Partner with reasonable cooperation and assistance needed to fulfil Partner's obligation under the Data Protection Laws to carry out a data protection impact assessment related to Customer's use of the Services, to the extent Partner does not otherwise have access to the relevant information, and to the extent such information is available to Teleopti. Teleopti shall further provide reasonable assistance to Partner in the cooperation or prior consultation with the Supervisory Authority in the performance of its tasks relating to this DSPA, to the extent required under the Data Protection Laws.

## **8 SUB-PROCESSING**

**8.1** Appointment of Sub-Processors. Partner acknowledge and agrees, and shall ensure that each Customer acknowledges and agrees, that Teleopti and/or Teleopti's Affiliates may be retained as Sub-processors; and Teleopti and Teleopti's Affiliates respectively may engage third-party Teleopti Sub-processors in connection with the provision of the Services. The Teleopti Sub-processors engaged by Teleopti with Partner's consent at the execution of this DSPA, the location of the Teleopti Sub-processor and a description of the Processing carried out by the Teleopti Sub-processor are listed in Appendix B, if not otherwise agreed in an Order.

**8.2** Teleopti Sub-Processors Protective Terms. Teleopti or a Teleopti Affiliate has entered into a written agreement with each Teleopti Sub-processor containing data protection obligations not less protective than those in this DSPA with respect to the protection of Personal Data to the extent applicable to the nature of the Services provided by such Teleopti Sub-processor.

**8.3** Teleopti Sub-Processors Located outside the EU/EEA

8.3.1 Upon Partner's request Teleopti will agree not to store Personal Data in a location outside of the EEA. However, to be able to provide Partner with Support and Maintenance of the Service (as such terms are defined in the PA), such Support and Maintenance might be performed by Teleopti Affiliates and/or Teleopti Sub-processors located outside EEA.

8.3.2 Teleopti ensures that any Teleopti Sub-processor has an adequate level of protection and that appropriate safeguards have been put in to place fulfilling the requirements of the Data Protection Laws, either under the Contractual Clauses or having been certified under an approved certification mechanism, such as the Privacy Shield Framework or any approved certification mechanism replacing the Privacy Shield Framework.

8.3.3 To the extent that the selected legal ground for processing is declared invalid by a competent court or authority Teleopti shall cooperate with Partner in finding an alternative legal ground for the adequate protection of the Personal Data Processed under the Services to Partner.

**8.4** General Consent to Sub-processors. Partner hereby gives Teleopti a general consent to engage Teleopti Sub-processors for Processing of Personal Data on behalf of Partner. Teleopti's Sub-processors are listed in Appendix B. Teleopti shall inform Partner before transferring any Personal Data to a new Teleopti Sub-processor. Following receipt of such information Partner shall notify Teleopti if Partner objects to the new Teleopti Sub-processor. If Partner does not object to the Teleopti Sub-processor within 30 days of receiving the information, Partner shall be deemed to have accepted the Teleopti Sub-processor. If Partner is raising an objection to the new Teleopti Sub-processor based upon a specific Customer's reasonable objection to the new Teleopti Sub-processor, Partner shall have the right to, within 30 days from receiving notice of information of a new sub-processor, terminate the PA or the specific Order under the PA to such Customer, with a 30 days' notice period. During the termination period, Teleopti is not allowed to transfer any Personal Data to the Teleopti Sub-processor. If the Order or the PA has not been terminated by Partner within 30 days from receiving notice of the information of the new Teleopti Sub-processor, Personal Data may be transferred to the new Teleopti Sub-processor.

- 8.5** Liability for Sub-processors. Teleopti shall enter into appropriate written agreements with all Teleopti Sub-processors on terms which in all materially respects correspond to the obligations as set out in this DSPA. Teleopti shall remain fully liable to Partner for the performance or non-performance of the Sub-processor's obligations, subject to Section 12, "Liability and Limitation of Liability".

## **9 DISCLOSURE OF PERSONAL DATA**

- 9.1** Teleopti shall not disclose Personal Data covered by this DSPA to a Data Subject or third party, unless required by this DSPA or by law, court- or governmental order. In cases where Teleopti must disclose such information due to law, court- or governmental order, Teleopti shall notify Partner, unless prohibited by law, court- or governmental order.
- 9.2** Teleopti shall promptly notify Partner if Teleopti receives a Data Subject Request and refer the Data Subject to Partner.
- 9.3** Teleopti and its representatives, are obliged to cooperate with the Data Protection Authority in the case of enforcement measures, if requested by the Data Protection Authority. Teleopti undertakes to notify Partner without delay of requests from the Data Protection Authority or any other regulatory authority that specifically relates to the Processing of Personal Data under this DSPA. Teleopti shall not be entitled to represent Partner or act on behalf of Partner in such requests.

## **10 SECURITY REPORTS AND AUDITS**

- 10.1** Upon Partner's request, and subject to the confidentiality obligations set forth in the PA, Teleopti shall make available to Partner, or a third party appointed by Partner that is not a competitor of Teleopti, or Partner's independent, third-party auditor, information regarding Teleopti's compliance with the obligations set forth in this DSPA, as described in the then current Teleopti Information Security Overview.
- 10.2** Partner may contact Teleopti to request an audit of the architecture, systems and procedures relevant to the protection of Personal Data at locations where Personal Data is processed.
- 10.3** Before the commencement of any such audit, Partner and Teleopti shall mutually agree upon the scope, method, auditor, timing, and duration of the audit and, if relevant, to what extent any Sub-processors shall be audited. Partner shall promptly notify Teleopti with information regarding any non-compliance discovered during an audit.

## **11 COMPENSATION**

- 11.1** Teleopti shall have the right to claim compensation for any time expended by the Teleopti Group or its third-party Teleopti Sub-processors for any on-site audit pursuant to section 10.
- 11.2** In addition hereto, Teleopti shall have the right to claim compensation for any written requests from Partner for activities to be performed under this DSPA unless such request falls within the obligations of Teleopti pursuant to the Services to be performed under the PA.

## **12 LIABILITY AND LIMITATION OF LIABILITY**

- 12.1** If Teleopti Processes Personal Data in breach of Partner's lawful instructions, this DSPA or Data Protection Laws, Teleopti shall indemnify and hold Partner harmless for any loss, cost or damage, including but not limited to claims by a Data Subject and any financial penalties imposed by Supervisory Authorities or other competent authorities, due to Teleopti's (or Teleopti Sub-processors) Processing of Personal Data.
- 12.2** If Partner or Customer Processes Personal Data in breach of this DSPA or Data Protection Laws, Partner shall indemnify and hold Teleopti harmless for any loss, cost or damage, including but not limited to claims by a Data Subject, financial penalties imposed by Supervisory Authorities or other competent authorities, due to Partner and/or Customer's Processing of Personal Data.
- 12.3** In case of claims by a Data Subject or financial penalties imposed by Supervisory Authorities or other competent authorities, each party shall: (a) notify the other party promptly in writing of any

such potential or pending claims or penalties; (b) use reasonable endeavors to reduce or avoid such claims or penalties; (c) allow the other party to comment on any response, settlement, defense or appeal in relation to such claim; and (d) to a reasonable extent provide the other party with information in relation to the same.

- 12.4** A Party's maximum total aggregate liability under this Addendum (regardless of the form of action, whether in contract, tort, or otherwise and howsoever caused including by negligence) for;
- (i) Partner's damages caused by damage claims from a Customer; a maximum of one hundred percent (100%) per calendar year of the amount actually paid by Partner to Teleopti under the PA regarding the Customer and the series of related events to which such specific claim relates, during the calendar year.
  - (ii) Partner's damage not caused by a damage claim from a Customer; a maximum of one hundred percent (100%) per calendar year of the amount actually paid by Partner to Teleopti under the PA for the Service causing the damage regarding the series of related events to which such specific claim relates, during the calendar year.
  - (iii) Teleopti's damages caused by Partner's breach of the terms and conditions of this Addendum; a maximum of one hundred percent (100%) per calendar year of the amount payable by Partner to Teleopti under the PA.

- 12.5** For the avoidance of doubt, Teleopti's and the Teleopti Affiliates total liability for all claims from Partner arising out of or related to this DSPA shall only be handled under the terms and conditions of this DSPA and shall not be considered as a claim under the PA.

### **13 TERM AND EFFECT OF TERMINATION**

- 13.1** This DSPA shall be effective from the date of its execution and shall continue until the PA is terminated or expired in accordance with its terms and until all Personal Data is erased.
- 13.2** Any obligation arising from this DSPA that by nature has post-contractual effect shall continue to be in effect after the termination of this DSPA.
- 13.3** Teleopti and Partner shall herewith in advance consent to amendments to this DSPA that due to changed circumstances are necessary to maintain compliance with the Data Protection Law or any required changes due to an opinion, order, warning or other decision or action by a Supervisory Authority.

### **14 GENERAL PROVISIONS**

- 14.1** Governing Law and Dispute Resolutions. This DSPA shall be governed by PA's provisions for "Governing Law and Dispute resolution", but for the avoidance of doubt, for all substantive regulations with respect to the subject matter of this DSPA, the Data Protection Laws shall apply.
- 14.2** Severability. In the event that any provision of this DSPA shall be held by a court of competent jurisdiction or an administrative authority of either international or national jurisdiction, to be invalid or unenforceable, the remaining portions of this DSPA shall remain in full force and effect and be construed so as to best effectuate the intention of the Contracting Parties.

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**Partner accept this DSPA through signing and returning this DSPA to legal@teleolpti.com.**

**The effective date of this DSPA shall be the date when both parties have signed this DSPA as described herein.**

TELEOPTI .....

Partner .....

DATE: .....

DATE: .....

SIGNATURE: .....

SIGNATURE: .....

NAME: .....

NAME: .....

## **APPENDIX A – Details of the Processing**

### **1 NATURE AND PURPOSE OF PROCESSING**

The Teleopti Products and the Subscription Services offers flexibility as to what type of Personal Data Customer can store, use and Process in the Teleopti Products and Subscription Services and which Partner can instruct Teleopti to Process in the Services. Partner shall ensure that the Customer, in its sole discretion, shall make a balanced decision regarding what purpose and which legal grounds the Customer has for such Processing.

Teleopti will Process Personal Data solely as instructed by Partner as described below and as necessary to supply, maintain and support the Services pursuant to the PA.

### **2 DURATION OF PROCESSING AND DELETION OF PERSONAL DATA**

Subject to Section 13 of the DSPA, Teleopti will Process Personal Data for the duration of the PA, unless otherwise agreed upon in writing.

Following termination of the Processing (in connection with termination of the PA, the DSPA or earlier if requested by Partner), Teleopti shall, except as required by law, delete all Personal Data.

### **3 CATEGORIES OF DATA SUBJECTS**

Partner shall ensure that the Customer only submit Personal Data to the Services which may include, but is not limited to Personal Data relating to the following categories of data subjects:

- Employees, agents, advisors, freelancers of Customer (who are natural persons)
- Employees of Customer's business partners and vendors

### **4 TYPE OF PERSONAL DATA**

Partner shall ensure that the Customer only submit Personal Data to the Services, which may include, but is not limited to the following categories of Personal Data:

- Employee ID or another identifier
- First and Last name
- Title, Position, and Organizational belonging
- Competence
- Data related to scheduling and reporting
- Contact information (company, email, phone, physical business address)



## APPENDIX B – Sub-processors

Teleopti Sub-processor (country)	Description of the provided services and processing activities
Teleopti AB (Sweden). If applicable	Implementation, consulting, support and maintenance in accordance with MSA
Teleopti Inc.(US). If applicable	Implementation, consulting, support and maintenance in accordance with MSA
Teleopti China Co. Ltd (China)	Support and maintenance
Microsoft Ireland Operations Ltd (Ireland)	Providing and Supporting Infrastructure as a Service (IaaS)
Microsoft Corporation (US)	Providing and Supporting Infrastructure as a Service (IaaS)