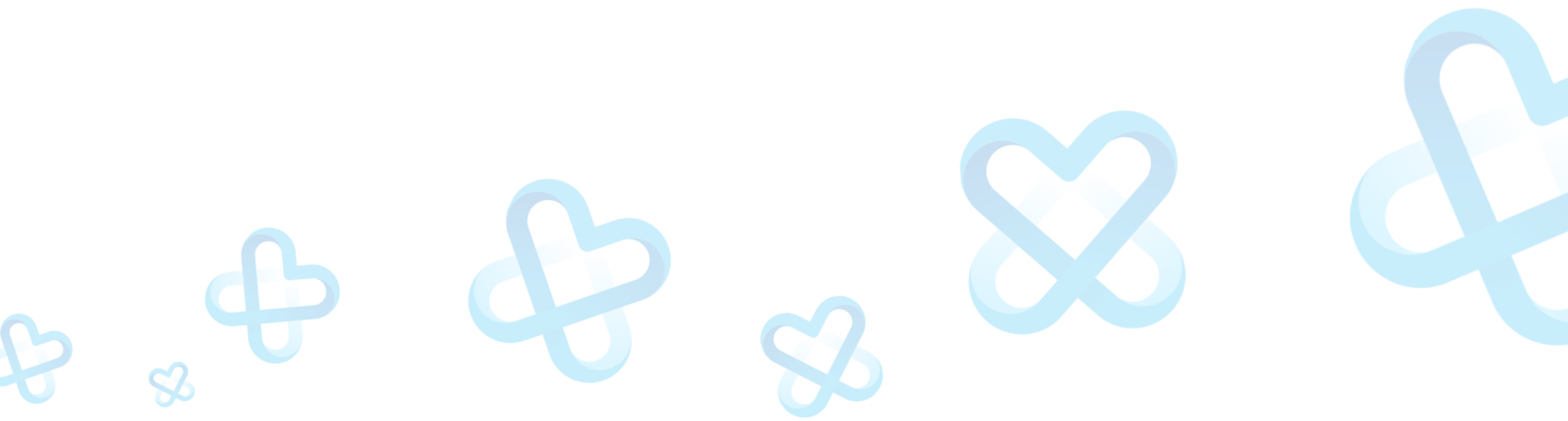




# Data Processing Agreement





pursuant to Art 28 et seq. General Data Protection Regulation ("GDPR")

## 1. Subject Matter of the Processing

- 1.1. XUND (as defined in the General Terms and Conditions) as the Processor processes personal data of the data subjects as referred to in Section 2 of Schedule 1 ("**data subjects**") on behalf of the Customer (as defined in the General Terms and Conditions) as the Controller in the scope of the activities according to Schedule 1 (Section 1) of this Agreement.
- 1.2. This processing will be performed on the basis of the Offer or Order as defined in the General Terms and Conditions ("**main contract**"). Other data, especially functions that were collected and not defined by the corresponding main contract or data processed in a different manner, are explicitly not included in the instruction of the Controller.

## 2. Conditions for the Processing of Personal Data

- 2.1. The Processor uses the personal data according to the instructions of the Controller only as long as:
  - (i) the relevant main contract is not terminated or expired, and the processing is necessary for the completion of the activities described and instructed in Schedule 1 (Section 1) of this Agreement,
  - (ii) this Agreement has not been terminated according to Pt 4.2., or
  - (iii) the authorization to process personal data according to this Agreement or its part wasn't withdrawn by the Controller.
- 2.2. Further conditions for the processing according to this Agreement, especially the processing purpose as determined by the Controller, the categories of personal data, and the categories of the data subjects, are defined in Schedule 1 of this Agreement.

## 3. Rights and Obligations of the Controller

- 3.1. The Controller is in a position of a "**Controller**" in the meaning of Art 4 lit 7 GDPR with respect to any kind of information according to Schedule 1 to this Agreement relating to the identified or identifiable persons as defined in Art 4 lit 1 GDPR ("**personal data**") and committed to the Processor as "**Processor**" pursuant to Art 4 lit 8 GDPR in course of the activities according to Schedule 1 (Section 1) of this Agreement.
- 3.2. The Controller has the right and obligation to make decisions about the purposes and means of the processing of personal data.
- 3.3. The Controller shall be responsible, amongst others, for ensuring that the processing of personal data, which the Processor is instructed to perform, has a legal basis.



## 4. Rights and Obligations of the Processor

### 4.1. General

- 4.1.1. The Processor is in a position of a “**Processor**” in the meaning of Art 4 lit 8 GDPR with respect to any kind of information according to Schedule 1 to this Agreement relating to the identified or identifiable persons as defined in Art 4 lit 1 GDPR (“**personal data**”) in course of the activities according to Schedule 1 (Section 1) of this Agreement. The Processor shall refrain from any action contradicting its position as processor and is bound by diligent compliance with the obligations of the applicable laws – especially but not exclusively according to the GDPR.
- 4.1.2. The Processor is obliged to demonstrable document the personal data processing according to the provisions of the GDPR. The Processor shall, in particular, keep records of processing activities as required according to Art 30 para 2 GDPR. The personal data processing shall be monitored by the person which was entrusted with such monitoring at the Processor.

### 4.2. Instructions of the Controller

- 4.2.1. The Processor is obliged to use the personal data and any processing results in course of performance of the activities according to Schedule 1 (Section 1) of this Agreement exclusively according to the Controller's documented instructions unless required to do so by Union or national law to which he is subject to. Such instructions are basically agreed in the main contract.
- 4.2.2. Subsequent instructions can also be given by the data controller throughout the duration of the processing of personal data but shall always be documented and kept in writing, including electronically, in connection with the main contract and this Agreement. The Processor hereby agrees that he may use the personal data processed solely on behalf of the Controller for his own purposes only with the consent of the Controller, while the Controller already agrees that the Processor is allowed to use anonymized data for its own purposes.
- 4.2.3. The Processor shall immediately inform the Controller if instructions given by the Controller, in the opinion of the Processor, contravene the GDPR or other applicable national data protection provisions.

### 4.3. Confidentiality

- 4.3.1. The Processor shall grant access to persons only on a need-to-know basis. He confirms that all persons engaged in any processing of data (direct or indirect access) or having potential access to data have been bound prior to accessing the data to confidentiality obligation pursuant to Art 28 Para 3 lit b GDPR and Section 6 DSG. In particular, this confidentiality obligation shall persist even upon termination of their engagement and/or their professional relationship with the Processor.



#### **4.4. Security of Processing**

4.4.1. The Processor declares that adequate preventive measures, in particular as prescribed in Art 32 GDPR, have been implemented to especially prevent data from being used contrary to regulations or that data will be made accessible to third parties. Furthermore, the Processor confirms that he possesses appropriate guarantees that the appropriate technical and organizational measures are conducted as described under <https://xund.ai/technical-and-organizational-measures> so that the processing is in accordance with the requirements of the GDPR and the protection of the rights of the data subjects is safeguarded.

#### **4.5. Subcontractors**

4.5.1. Hereby the Controller provides the Processor a general written authorization in accordance with Art 28 Para 2 GDPR to engage third parties to conduct processing ("**Subcontractor**"). Thus, the Processor shall inform the Controller in due time of any engagement or replacement of a Subcontractor in order to enable the Controller to object to its engagement pursuant to Art 28 Para 2 GDPR within 14 days, together with a clear description of the reasons for the objection. Moreover, the Processor shall enter into a written agreement with the Subcontractor pursuant to Art 28 Para 4 GDPR and shall impose on each Subcontractor obligations at the same level of standard as within this Agreement.

4.5.2. The Subcontractors outside of the EEA region can, in any case, just be engaged if (i) they are located in a third country that possesses an appropriate level of data protection rules that is accepted by a resolution of the EU-commission (decision of adequacy) or (ii) they have agreed upon EU-standard contractual clauses or equal contract templates that were issued by the EU-commission as appropriate guarantees pursuant to Art 46 para 2 lit c and d GDPR.

#### **4.6. Data Subjects' Rights**

4.6.1. The Processor confirms that technical and organizational measures were enacted enabling the Controller to secure the data subjects' rights, in particular the right to information (Art 13 and 14 GDPR), the right of access (Art 15 GDPR), the right to rectification and to erasure (Art 16 and 17 GDPR), right to restriction of processing (Art 18 GDPR) and the right to data portability (Art 20 GDPR) within statutory deadlines. The Processor will provide the Controller with the information required for this purpose.

4.6.2. The Processor shall immediately inform the Controller of any request received from a data subject. He shall not respond to the request himself unless he has been explicitly instructed to do so by the Controller. The Processor shall assist the Controller in fulfilling the Controller's obligation to respond to requests from data subjects to exercise their rights. In doing so, the Processor shall follow the instructions of the Controller.

#### **4.7. Data Breaches**



4.7.1. The Processor shall immediately – without undue delay – inform the Controller if committed personal data is systematically and seriously misused and the data subject may suffer damages ("**data breach**"). The Processor confirms that technical and organizational measures enabling the Controller to comply with an obligation to notify the data subject and/or the supervisory authority according to Art 33 and 34 GDPR within statutory deadlines are in place. The Processor will provide the Controller with any information required for this purpose. If and to the extent that all such information cannot be provided at the same time, the initial notification shall contain the information available at that time, and additional information shall be provided thereafter without unreasonable delay as it becomes available.

#### **4.8. Erase and Return of Data**

4.8.1. The Processor shall delete any processed personal data after a maximum of 90 days upon termination. Alternatively, exclusively upon the Controller's documented instruction, the Processor may provide the Controller with a copy of the processed personal data.

#### **4.9. Cooperation and Assistance**

4.9.1. With regard to the in this Agreement defined activities, the Processor will cooperate with all competent authorities and with the Controller in particular as regards any mandatory notification and/or approval proceedings, as well as data protection impact assessment according to Art 35 GDPR and prior consultation according to Art 36 GDPR.

4.9.2. The Processor is obliged to comply with any request from the Data Protection Authority or other competent authorities and to adapt its internal data processing operations accordingly, regardless of whether such requests are made directly by the authority or through the Controller.

#### **4.10. Audit and Inspection**

4.10.1. The Processor regularly conducts audits by selected third-party auditors. The Controller shall have the right to request the provision of any audit reports relevant to the specific processing activity as agreed in the Agreement.

4.10.2. In case any additional audit by the Controller or its competent supervisory authority is legally required, the Controller shall have the right - against additional remuneration - to inspect or audit personal data processing devices as regards the processing of the personal data processed on his behalf. Any audit conducted by the Controller or its competent supervisory authority shall be done during the agreed business hours and with minimal impact on the business operations of the Processor.

4.10.3. Pursuant to Art 28 Para 3 lit h GDPR, the Processor is obliged to provide any information necessary to control the adherence to the duties set out in this Agreement.



## 5. Final Provisions

- 5.1. This Agreement shall be governed by Austrian law, to the exclusion of its conflict of law rules.
- 5.2. This Agreement becomes effective as of the date of both parties' signature of the main contract and is concluded for the validity period of the respective contract. Considering the subject matter and nature of this Agreement, the parties agree that every termination or expiry of the validity of the main contract also leads to a termination of this Agreement and is accompanied by similar consequences. This is not applicable to provisions whose content or nature implicate that they shall still be valid after the termination of the Agreement. The right to terminate this Agreement for good cause remains unaffected. In any case, any processing of personal data carried out on behalf of the Processor must be stopped immediately on the date on which the termination takes effect.
- 5.3. The Processor shall be entitled to terminate the Contract if the Controller insists on the fulfillment of its instructions after having been notified by the Processor that its instructions violate applicable legal requirements pursuant to clause 4.2.3. In any case, any Processing of Personal Data carried out under the Order must cease immediately as of the effective date of the termination.
- 5.4. In case of any discrepancies between this Agreement and the provisions of the main contract, resp. any other previous Agreements concerning data protection between the Controller and the Processor relating to activities pursuant to Schedule 1 (Section 1) of this Agreement, the provisions of this Agreement shall prevail.
- 5.5. The following Schedules constitute an integral part of this Agreement:

Schedule 1: Further conditions of the processing



## SCHEDULE 1

### “FURTHER CONDITIONS OF THE PROCESSING”

1. The processing of the personal data according to this agreement follows in the scope of the activities of the Processor according to the main contract, in particular:
  - Partner Platform where personnel authorized by the Controller are assigned user accounts and have the possibility to configure the operation of the processing.
2. Description of categories of personal data which the Processor is entitled to process in the scope of this agreement and of data subjects and processing purposes concerned:

Processing purpose	Categories of data subjects	Categories of personal data
<b>Authentication to the Partner Platform</b>	Personnel authorized by Controller to use Partner Platform	Email address, password, TOTP authentication secret
<b>Permission configuration for Partner Platform users</b>	Personnel authorized by Controller to use Partner Platform	Company, job role, permissions