

Controller-Processor Agreement pursuant to Art. 28(3) GDPR

between

Contracting Partner
(hereinafter „Controller“)

und

solute GmbH
Zeppelinstraße 15
76185 Karlsruhe
(hereinafter „Processor“)

Preamble

The Controller wishes to commission the Processor with the services specified in section 3.

The processing of personal data is part of implementation of the agreement. In particular, Article 28 GDPR sets certain requirements for such order processing. In order to comply with these requirements, the parties are entering into the following agreement for which no separate remuneration will be due unless this is expressly agreed.

1. Definitions

The terms used in this agreement, which are defined in Art. 4, 9 and 10 GDPR, are intended to be understood in the sense of these statutory definitions.

2. Representatives within the European Union:

The Controller and the Processor are located in the European Union.

3. Subject of the agreement

1.

The Processor will provide push messaging services for the Controller on the basis of the main agreement which is based on the time of registration. For this the Processor will be given access to personal data and will process them exclusively on behalf of and in accordance with the instructions of the Controller, unless the Processor has a duty to process them in another manner under the law of the European Union or of the Member States to which it is subject. The scope and purpose of the data processing by the Processor are set out in the main agreement (and, if applicable, in the related technical specifications) and in section 4 of this agreement. The Controller alone is responsible for assessing the lawfulness of the data processing in accordance with Art. 6(1) GDPR.

solute GmbH

Managing Directors:
Dr. Thilo Gans, Bernd Vermaaten
www.solute.de
info@solute.de

head office

Zeppelinstraße 15
D-76185 Karlsruhe
Phone: +49 721 98993-0
Fax: +49 721 98993-66

commercial register

Amtsgericht Mannheim
HRB 110579
St-Nr. 35008/07229
UST-IdNr. DE234663798

bank account

HypoVereinsbank München
IBAN-Nr.: DE75 7002 0270 0667 3454 05
BIC (SWIFT-Code): HYVEDEMM

brands of solute

billiger.de


2.

The parties are entering into this agreement in order to specify the rights and obligations of both parties under data protection law. In the case of any doubt, the provisions in this agreement will take priority over the provisions in the main agreement.

3.

The provisions in this agreement apply to all activities related to the main agreement and in connection with which the Processor and its employees or agents commissioned by the Processor come into contact with personal data originating from or which have been collected on behalf of the Controller or which are processed in another manner on its behalf.

4.

The term of this agreement is the same as the term of the main agreement unless further-reaching obligations or rights of termination arise from the following provisions.

5.

The performance of the contractually agreed data processing will take place exclusively in a Member State of the European Union or another contracting state of the Agreement on the European Economic Area (Decision 94/1/EC). Any transfer of parts of the service or the entire service to a third country requires the prior approval of the Controller in written form or documented electronic format and may only take place if the special conditions set out in Art. 44ff. GDPR are met.

4. Subject-matter, duration and specification of the order processing

The main agreement sets out the subject-matter and duration of the order processing as well as the nature and the purpose of the processing. These data do not include any special categories of personal data. The following data are part of the data processing:

1. Data subjects

The personal data transmitted relates to the following categories of data subjects:

- Website visitors
- App users

2. Category of data processed

The processed personal data belong to the following categories of data:

- Website/domain or tokens for mobile apps (if the user grants push permission)
- IP address (in order to achieve a level of granularity at country and city level through geo IP lookup)
- Operating system and version
- Browser or version of the mobile app
- Subscribed topics
- Time zone

solute GmbH

Managing Directors:
Dr. Thilo Gans, Bernd Vermaaten
www.solute.de
info@solute.de

head office

Zeppelinstraße 15
D-76185 Karlsruhe
Phone: +49 721 98993-0
Fax: +49 721 98993-66

commercial register

Amtsgericht Mannheim
HRB 110579
St-Nr. 35008/07229
UST-IdNr. DE234663798

bank account

HypoVereinsbank München
IBAN-Nr.: DE75 7002 0270 0667 3454 05
BIC (SWIFT-Code): HYVEDEMM

brands of solute

billiger.de
 SHOPPING.DE

- Location
- Date, time and duration of sessions/usage
- Feedback of received messages (e.g. notification of opening)
- Variable in-app events for segmentation (if applicable)
- Variable user attributes for segmentation and personalisation (if applicable)

The personal data processed belong to the following special categories of personal data:

- None

3. Duration of the processing

- Maximum of 13 months and limited to the term of the agreement.
- Also specified in more detail the main agreement and the terms and conditions of use

4. Scope, nature and purpose of the processing

- Sending the push message and in-app messages
- Segmented and targeted delivery of push messages and in-app messages to user groups
- Personalisation of push notifications and in-app message content

§5 Right to issue instructions

1.

The Processor may only collect, use or otherwise process data within the framework of the main agreement and in accordance with the instructions of the Controller; this applies in particular to transmitting personal data to a third country or to an international organisation. If the Processor has a duty under the law of the European Union or of the Member States to which he is subject to carry out further processing, it must inform the Controller of these legal requirements before carrying out the processing.

2.

The instructions of the Controller are initially being defined by this agreement and can subsequently be changed, supplemented or replaced by the Controller by way of individual instructions in written form or in documented electronic format (individual instructions). The Controller is entitled to issue corresponding instructions at any time. These include instructions regarding the rectification, erasure and blocking of data. The following persons are authorised to issue instructions:

On behalf of the Controller: Contracting partner in accordance with the main agreement.

On behalf of the Processor: Julian Sarbacher, Online Marketing Manager, jsa@solute.de If the person specified should change or be preventing from carrying out his activity for a lengthy period of time, the Contracting Partner must be notified without undue delay of his successor or the person covering for him in text form.

solute GmbH

Managing Directors:
Dr. Thilo Gans, Bernd Vermaaten
www.solute.de
info@solute.de

head office

Zeppelinstraße 15
D-76185 Karlsruhe
Phone: +49 721 98993-0
Fax: +49 721 98993-66

commercial register

Amtsgericht Mannheim
HRB 110579
St-Nr. 35008/07229
UST-IdNr. DE234663798

bank account

HypoVereinsbank München
IBAN-Nr.: DE75 7002 0270 0667 3454 05
BIC (SWIFT-Code): HYVEDEMM

brands of solute

billiger.de
 SHOPPING.DE

3.

All instructions must be documented by both the Controller and the Processor and kept for the duration of their validity and for three further full calendar years thereafter. Instructions which go beyond the service agreed in the main agreement will be treated as a request for a change to the service. Provisions regarding any remuneration for additional expenses which arise from supplementary instructions issued by the Controller to the Processor remain unaffected.

4.

If the Processor is of the opinion that an instruction issued by the Controller violates data protection regulations, it must inform the Controller without undue delay. The Processor is entitled to suspend performance of the instruction concerned until it has been confirmed or modified by the Controller. The Processor may refuse to carry out instructions which are clearly illegal.

§6 Protective measures of the Processor

1.

The Processor has a duty to observe the statutory data protection regulations and not to pass on the information from the Controller's area to third parties or to suspend their access. Documents and data must be secured against access by unauthorised persons taking account of the state of the art.

2.

Within its area of responsibility, the Processor will design the internal organisation in such a way that it meets the special requirements of data protection and will ensure that it has taken all of the necessary technical and organisational measures for the purpose of ensuring appropriate protection of the Controller's data in accordance with Art. 32 GDPR, in particular at least the measures listed under www.solute.de/eng/tom/. If special categories of personal data are also processed, the Processor will also take the appropriate and specific measures resulting from section 22(2) German Federal Data Protection Act (BDSG). At the request of the Controller the Processor will disclose the detailed circumstances used to define and implement the measures. The Processor reserves the right to change the security measures taken, ensuring that the contractually agreed level of protection is not fallen short of.

3.

At the Processor the following person is appointed as the prescribed data protection officer:

Thomas Stegemann
dacuro GmbH
Otto-Hahn Straße 3
69190 Walldorf
E-mail: datenschutz@solute.de

4.

The persons responsible for data processing at the Processor are prohibited from collecting, processing or using personal data without authorisation. The Processor will impose a corresponding duty on all persons entrusted by it with the processing and performance of this agreement („Employees“) (duty to observe confidentiality, Art. 28(3) b) GDPR) and inform them about the special data protection obligations arising from this agreement as well as the binding nature of instructions and purpose limitation and ensure compliance with the aforementioned obligation with due care. These obligations must be worded in such a way that they remain in force even after this agreement or the employment relationship between the Employee and the Processor has come to an end. The fact that the obligations have been imposed must be proven to the Controller in a suitable manner on request.

solute GmbH

Managing Directors:
Dr. Thilo Gans, Bernd Vermaaten
www.solute.de
info@solute.de

head office

Zeppelinstraße 15
D-76185 Karlsruhe
Phone: +49 721 98993-0
Fax: +49 721 98993-66

commercial register

Amtsgericht Mannheim
HRB 110579
St-Nr. 35008/07229
UST-IdNr. DE234663798

bank account

HypoVereinsbank München
IBAN-Nr.: DE75 7002 0270 0667 3454 05
BIC (SWIFT-Code): HYVEDEMM

brands of solute

billiger.de
 SHOPPING.DE

5.

The processing of data, which are the subject of this agreement, in private homes (remote working and working from home by Employees of the Processor) is only permitted with the Controller's consent. Where data are processed in a private home, access to the property of the Employee by the employer for inspection purposes must be ensured by way of an agreement. Compliance with the protective measures referred to in section 6(1) and (2) of this agreement and with the measures of Art. 32 GRPR must also be ensured in this case.

§ 7 Information duties of the Processor

1.

In the event of disruptions, a suspicion of data protection breaches or violations of contractual obligations of the Processor, a suspicion of security-relevant incidents or other irregularities in the processing of personal data by the Processor, persons employed by it within the scope of the order or third parties, the Processor will inform the Controller in written or documented electronic form without undue delay. The same applies to inspections of the Processor by the data protection supervisory authority. The notification of a personal data breach must, as far as possible, contain the following information:

- a) a description of the nature of the personal data breach, where possible stating the categories and the number of data subjects, the categories concerned and the number of sets of personal data concerned;
- b) a description of the likely consequences of the breach and
- c) a description of the measures taken or proposed by the Processor to remedy the breach and, where appropriate, measures to mitigate its possible adverse effects.

2.

The Processor must take the necessary measures to secure the data and to reduce the possible adverse effects for the data subject(s) without undue delay, inform the Controller accordingly and request further instructions.

3.

The Processor also has a duty to provide the Controller with information at all times where its data are affected by a breach pursuant to (1).

4.

The Processor will assist the Controller where necessary with compliance with the duties of the Controller under Art. 33 and 34 GDPR (Art. 28(3) second sentence letter f) GDPR). Notifications for the Controller according to Art. 33 or 34 GDPR may only be carried out by the Processor after prior instructions from the Controller in accordance with section 5 of this agreement.

5.

If the data of the Controller at the Processor are endangered owing to a seizure or confiscation, insolvency or settlement proceedings or other events or measures of third parties, the Processor must inform the Controller about this without undue delay unless this is prohibited by court or official order. In this connection the Processor will inform all competent bodies without undue delay that the decision-making power over the data lies exclusively with the Controller as the „Controller“ in the sense of the GDPR.

6.

The Processor must inform the Controller without undue delay of any significant changes to the security measures in accordance with section 6 (2) of this agreement.

solute GmbH

Managing Directors:
Dr. Thilo Gans, Bernd Vermaaten
www.solute.de
info@solute.de

head office

Zeppelinstraße 15
D-76185 Karlsruhe
Phone: +49 721 98993-0
Fax: +49 721 98993-66

commercial register

Amtsgericht Mannheim
HRB 110579
St-Nr. 35008/07229
UST-IdNr. DE234663798

bank account

HypoVereinsbank München
IBAN-Nr.: DE75 7002 0270 0667 3454 05
BIC (SWIFT-Code): HYVEDEMM

brands of solute

billiger.de
 SHOPPING.DE

7.

The Controller must be informed without undue delay if the data protection officer changes.

8.

The Processor and, where appropriate, its representative must keep a list of all categories of processing activities carried out on behalf of the Controller which records all information required by Art. 30(2) GDPR. The list must be made available to the Controller on request.

9.

The Processor must assist to a reasonable extent with drawing up the list of processing activities by the Controller and preparing a data protection impact assessment according to Art. 35 GDPR and, where appropriate, with the prior consultation with the supervisory authorities in accordance with Art. 36 GDPR. It must provide the Controller with the necessary information in an appropriate manner.

§8 Monitoring rights of the Controller

1.

The Controller will convince itself before data processing commences and thereafter on a regular basis of the technical and organisational measures of the Processor. For this purpose, the Controller can, for example, obtain information from the Processor, require the submission of existing attestations by experts, certifications or internal tests or inspect the technical and organisational measures of the Processor in person during normal working hours and after making a prior arrangement or have them inspected by a competent third party providing that this person is not a competitor of the Processor. The Controller will only carry out the inspections necessary and will not unreasonably interfere with the Processor's operating procedures.

2.

The Processor undertakes to provide the Controller, further to its verbal request or a request in written or electronic form, with all information and evidence necessary to inspect the technical and organisational measures of the Processor within a reasonable period of time.

3.

The Controller will document the result of the inspection and inform the Processor of this. In the event of errors or irregularities which the Controller finds in particular when inspecting the results, it must inform the Processor immediately. If, during the inspection, circumstances are identified, the future avoidance of which require changes to be made to the instructed course of procedure, the Controller will inform the Processor of the process changes necessary without undue delay.

4.

The Processor will provide the Controller on request with a comprehensive and up-to-date data protection and security concept for order processing as well as about persons authorised to access the data.

5.

On request the Processor will prove to the Controller that it has imposed the obligations required by section 6 (4) on its Employees.

6.

The Controller will reimburse the Processor for the costs it incurs in the framework of the inspection.

solute GmbH

Managing Directors:
Dr. Thilo Gans, Bernd Vermaaten
www.solute.de
info@solute.de

head office

Zeppelinstraße 15
D-76185 Karlsruhe
Phone: +49 721 98993-0
Fax: +49 721 98993-66

commercial register

Amtsgericht Mannheim
HRB 110579
St-Nr. 35008/07229
UST-IdNr. DE234663798

bank account

HypoVereinsbank München
IBAN-Nr.: DE75 7002 0270 0667 3454 05
BIC (SWIFT-Code): HYVEDEMM

brands of solute

billiger.de
 SHOPPING.DE

§9 Use of subcontractors

1.

The contractually agreed services or the part-services described below will be performed using the sub-processors named below.

The following sub-processors will be deemed to have been approved upon conclusion of this agreement:

Firma, Adresse	Ort der Datenverarbeitung	Auftrag / Art der Datenverarbeitung
Kumulos, Dundee One, River Court, 5 West Victoria Dock Road, Dundee DD1 3JT UK	Scotland	Software licence agreement for sending push messages
Digital Ocean Interxion (FRA8) Hanauer Landstr. 302 60314 Frankfurt am Main	Germany	IT service provider, web hosting
Hetzner Online GmbH, Industriestr. 25 91710 Gunzenhausen	Germany	Web hosting on request

2.

Within the scope of its contractual obligations, the Processor is authorised to establish further sub-processing relationships with sub-processors („Sub-processing Relationship“) provided that it notifies the Controller in advance and that the latter has agreed to the commissioning of the sub-processor in writing or in documented electronic format. The Processor must select sub-processors carefully on the basis of their suitability and reliability. The Processor must commission sub-processors in accordance with the provisions of this agreement and ensure that the Controller can exercise its rights under this agreement (in particular its inspection and control rights) directly as against the subprocessors. If sub-processors are to be involved in a third country, the Processor must ensure that an appropriate level of data protection is ensured at the respective subprocessor (e.g. by concluding an agreement based on the EU standard data protection clauses). On request the Processor will prove to the Controller that the above-mentioned agreements have been concluded with its sub-processors.

3.

A Sub-processing Relationship within the meaning of these provisions does not exist if the Processor commissions third parties with services which must be regarded as mere ancillary services. These include, for example postal services, transport and shipping services, cleaning services, telecommunications services without specific reference to services provided by the Processor on behalf of the Controller and surveillance services. Maintenance and inspection services are Sub-processing Relationships which are subject to approval, insofar as these are provided for IT systems which are also used in connection with the provision of services for the Controller.

§10 Enquiries and rights of data subjects

1.

Where possible the Processor will assist the Controller with appropriate technical and organisational measures in

solute GmbH

Managing Directors:
Dr. Thilo Gans, Bernd Vermaaten
www.solute.de
info@solute.de

head office

Zeppelinstraße 15
D-76185 Karlsruhe
Phone: +49 721 98993-0
Fax: +49 721 98993-66

commercial register

Amtsgericht Mannheim
HRB 110579
St-Nr. 35008/07229
UST-IdNr. DE234663798

bank account

HypoVereinsbank München
IBAN-Nr.: DE75 7002 0270 0667 3454 05
BIC (SWIFT-Code): HYVEDEMM

brands of solute

billiger.de


connection with the performance of its obligations under Articles 12 - 22 and 32 and 36 GDPR.

2.

If a data subject asserts rights, such as rights to information, rectification or erasure of its data, directly against the Processor, the latter must not respond independently but must refer the data subject to the Controller without undue delay and await its instructions.

§ 11 Liability

1.

The Controller and the Processor will be liable to data subjects in accordance with the provision in Art. 82 GDPR. The Processor will agree any fulfilment of liability claims with the Controller

2.

The Processor will indemnify the Controller on its first request from all claims which data subjects bring against the Controller on grounds of a breach of a duty imposed on the Processor under the GDPR or non-compliance with or breach of an instruction issued by the Controller under this Controller-Processor Agreement or separately.

3.

The parties will release one another from liability respectively if/to the extent that a party proves that it is not responsible in any way for the circumstance causing damage to a data subject. In all other respects, Article 82(5) GDPR applies.

4.

Unless otherwise specified above, the liability under this agreement will be the same as under the main agreement.

§12 Extraordinary right of termination

The Controller may terminate the main agreement in full or in part without notice if the Processor fails to fulfil its obligations under this agreement, breaches provisions of the GDPR or other applicable data protection regulations intentionally or through gross negligence, or cannot or does not want to carry out an instruction of the Controller or the Processor opposes the inspection rights of the Controller in breach of this agreement. Non-compliance with the duties agreed in this agreement and those arising from Art. 28 GDPR will especially be regarded as serious breaches.

§13 Termination of the main agreement

1.

The Processor will return to the Controller after the main agreement has come to an end or at its request all documents, data and data carriers provided to it or – at the request of the Controller, unless there is an obligation to save the personal data under EU law or the law of the Federal Republic of Germany – erase them. This also applies to any data back-up copies saved at the Processor. The Processor must keep documented proof of the fact that it has properly erased all remaining data.

2.

The Controller has the right to check the complete and contractual return or erasure of the data at the Processor in a suitable manner or to have this checked by a competent third party, provided that this third party is not a competitor of the Processor.

solute GmbH

Managing Directors:
Dr. Thilo Gans, Bernd Vermaaten
www.solute.de
info@solute.de

head office

Zeppelinstraße 15
D-76185 Karlsruhe
Phone: +49 721 98993-0
Fax: +49 721 98993-66

commercial register

Amtsgericht Mannheim
HRB 110579
St-Nr. 35008/07229
UST-IdNr. DE234663798

bank account

HypoVereinsbank München
IBAN-Nr.: DE75 7002 0270 0667 3454 05
BIC (SWIFT-Code): HYVEDEMM

brands of solute

billiger.de
 SHOPPING.DE

3.

The Processor must treat the data that has become known to it in connection with the main agreement confidentially even after the end of the main agreement. This agreement will remain in force beyond the end of the main agreement for as long as the Processor has personal data which has been provided to it by the Controller or which it has collected on behalf of the Controller.

§14 Final provisionsn

1.

The parties agree that the Processor's right to raise the defence of the right of retention within the meaning of section 273 German Civil Code (BGB) with regard to the data to be processed and the associated data carriers is excluded.

2.

Amendments and additions to this agreement must be in writing. This also applies to a waiver of this written form requirement. Replacing the written form by the electronic form (sections 126(3), 126 a German Civil Code (BGB)) or the text form (section 126 b German Civil Code (BGB)) is excluded.

3.

Should individual provisions of this agreement be or become invalid or unenforceable in whole or in part, this will not affect the validity of the remaining provisions.

4.

This agreement is subject to German law. Exclusive place of jurisdiction is Karlsruhe.

solute GmbH

Managing Directors:
Dr. Thilo Gans, Bernd Vermaaten
www.solute.de
info@solute.de

head office

Zeppelinstraße 15
D-76185 Karlsruhe
Phone: +49 721 98993-0
Fax: +49 721 98993-66

commercial register

Amtsgericht Mannheim
HRB 110579
St-Nr. 35008/07229
UST-IdNr. DE234663798

bank account

HypoVereinsbank München
IBAN-Nr.: DE75 7002 0270 0667 3454 05
BIC (SWIFT-Code): HYVEDEMM

brands of solute

billiger.de
 SHOPPING.DE