

# Special Terms and Conditions for the Processing of Personal Data in conjunction with Cloud Services

Issued by IT&Telekomföretagen 2017

These Special Terms and Conditions are intended to apply together with the General Terms and Conditions for Cloud Services issued by the Swedish IT and Telecom Industries if the supplier processes personal data on behalf of the customer in relation to the provision of such a service. Any processing of Customer Data that does not include the processing of personal data shall only be governed by the General Terms and Conditions for Cloud Services issued by the Swedish IT and Telecom Industries.

These Special Terms and Conditions constitute an appendix to the Agreement. These Special Terms and Conditions shall have precedence over any conflicting terms in the General Terms and Conditions for Cloud Services issued by the Swedish IT and Telecom Industries. The Agreement shall have precedence over any conflicting terms in these Special Terms and Conditions.

The customer is the controller of personal data and the supplier is the processor for the processing of personal data under these Special Terms and Conditions.

The parties shall ensure, before signing the Agreement which includes these Special Terms and Conditions, that the Appendix 'Specification of the Processing of Personal Data' has been correctly filled in. The Appendix 'Specification of the Processing of Personal Data' shall, among other things, specify the subject matter of the processing, the duration, nature and purpose of the processing, the type of personal data and categories of data subjects.

## 1. DEFINITIONS

### Applicable Data Protection Legislation

'Applicable Data Protection Legislation' means, unless otherwise agreed separately, the General Data Protection Regulation, the Data Protection Act in Sweden and the binding regulations and decisions issued by the Data Protection Authority that apply to the processing of personal data under the Data Processing Agreement.

### The Data Processing Agreement

These Special Terms and Conditions and the Appendix 'Specification of the Processing of Personal Data' together with any amendments to these that the parties have agreed upon in the Agreement.

### The General Terms and Conditions

The General Terms and Conditions for

Cloud Services issued by the Swedish IT and Telecom Industries that constitute an appendix to the Agreement.

### Other terms

Terms with initial capital letters in these Special Terms and Conditions shall have the meaning specified in the General Terms and Conditions. Other terms in these Special Terms and Conditions shall be interpreted in accordance with Applicable Data Protection Legislation.

## 2. APPLICABILITY

2.1 The Data Processing Agreement becomes applicable from and including 25 May 2018, unless otherwise agreed between the parties, and thus replaces the General Terms and Conditions' terms regarding the processing of personal data (Clause 14 (Personal Data), and any references to and from this clause).

- 2.2 Clause 14 (Personal Data), and any references to and from this clause, in the General Terms and Conditions shall apply between the parties up until 25 May 2018, unless otherwise agreed.

### **3. PROCESSING OF PERSONAL DATA**

#### **3.1 Instructions**

- 3.1.1 The customer is, in its capacity as controller of personal data, responsible for personal data being processed in accordance with Applicable Data Protection Legislation. The customer is responsible for the supplier not processing any categories of personal data other than those specified in the Appendix 'Specification of the Processing of Personal Data' and to the extent specified therein.
- 3.1.2 The supplier, and each person authorised to perform work on its behalf, undertakes to only process personal data in accordance with the customer's documented instructions, unless the supplier is obligated to process the personal data pursuant to Swedish or European legislation. In such event, the supplier shall inform the customer about this obligation before the processing begins, to the extent that this is permissible under applicable rules. Each party shall ensure that the other party is entitled to process contact details and any other personal data of employees if and to the extent that this is necessary to facilitate the performance of the Service.
- 3.1.3 Without limiting the scope of Sub-clause 3.1.2 above, the supplier may not process personal data for its own purposes or any purpose other than those stated in the Agreement. The supplier shall be entitled to process personal data for the purposes of providing, maintaining and delivering support in relation to the Service. The supplier shall also be entitled to process personal data for the purposes of developing and improving the Service, provided that this is expressly indicated by the Appendix 'Specification of the Processing of Personal Data'.
- 3.1.4 The Data Processing Agreement, including the Appendix 'Specification of the Processing of Personal Data', constitutes the customer's complete instructions for the processing of personal data under the Data Processing Agreement, with the exception of any written instructions that the custo-

mer is obliged to provide during the term of the Agreement in order to comply with Applicable Data Protection Legislation. Any other amendments shall be agreed separately. Any amendment that constitutes an amendment of the Appendix 'Specification of the Processing of Personal Data' shall be documented. The supplier shall be entitled to reasonable compensation for abiding by the amended written instructions. If the supplier notifies the customer within a reasonable time that the supplier cannot fulfil the customer's amended instructions for complying with Applicable Data Protection Legislation, the supplier shall not be bound by the amended instructions and the customer shall be entitled to terminate the Agreement for the Service affected in writing subject to a notice period of at least 30 but no more than 60 days. The supplier shall reimburse the customer for any charges paid for the period following expiry of the termination period.

#### **3.2 Security measures**

- 3.2.1 The supplier shall implement the organisational and technical measures required pursuant to Applicable Data Protection Legislation and those stated in the Appendix 'Specification of the Processing of Personal Data' and also those that may otherwise be stipulated in the Agreement in order to protect the personal data processed against personal data breaches ('**security measures**').
- 3.2.2 When performing the Service, the supplier shall abide by the security measures specified in the Appendix 'Specification of the Processing of Personal Data' and as may be stipulated in the Agreement and otherwise its internal security regulations. After signing of the Agreement, the supplier may amend its internal security regulations in accordance with the terms of the Agreement, provided that the amendment is compliant with Applicable Data Protection Legislation.
- 3.2.3 The customer is responsible for ensuring that the security measures agreed in accordance with Sub-clause 3.2.1 complies with the customer's data security obligations pursuant to the Applicable Data Protection Legislation as regards the personal data processed. If the customer requests an amendment of the security measures,

the same provisions as apply for the customer's instructions according to Sub-clause 3.1.4 shall apply to such a request. The provisions of Sub-clause 3.2.4 shall apply if the supplier requests amended security measures.

- 3.2.4 If the supplier discovers that the security measures agreed in accordance with Sub-clause 3.2.1 wholly or in part conflict with Applicable Data Protection Legislation, the supplier shall notify the customer in writing within a reasonable time and await the customer's written instructions on appropriate security measures as set forth in Sub-clause 3.1.4. In order to comply with Applicable Data Protection Legislation, the supplier is entitled to implement any reasonable and necessary security measures at the cost of the customer if the customer fails to provide new instructions within a reasonable time despite being asked to do so.

### **3.3 Reporting personal data breaches**

- 3.3.1 The supplier shall notify the customer without undue delay after becoming aware of a personal data breach.
- 3.3.2 Taking into account the nature of the processing and the information that the processor has available, such a notification shall:
- a) describe the nature of the personal data breach and, where possible, the categories and approximate number of data subjects concerned and the categories and approximate number of personal data records concerned,
  - b) describe the likely consequences of the personal data breach, and
  - c) describe the measures taken or proposed to be taken to address the personal data breach or mitigate its possible adverse effects.
- 3.3.3 Where, and insofar as, it is not possible to provide the information at the same time, the information may be provided in phases without further undue delay.
- 3.3.4 If the customer, in violation of Applicable Data Protection Legislation, does not inform the data subject of a personal data breach and the Data Protection Authori-

ty orders the supplier to do so in its stead, the customer shall compensate the supplier for the costs incurred by the supplier when complying with the Data Protection Authority's decision.

### **3.4 Sub-processors and transfers to third countries**

- 3.4.1 Unless otherwise stated in the Agreement, the supplier shall be entitled to engage sub-processors within and outside the EU/EEA for the processing of personal data. The supplier shall ensure that sub-processors are bound by written agreements that impose the same obligations when processing personal data as those obligations laid down in the Data Processing Agreement. Where the sub-processor fails to fulfil its obligations under such a contract, the supplier shall remain fully liable to the customer for the performance of the sub-processor's obligations. By entering into this Data Processing Agreement, the customer accepts that personal data may be processed by the sub-processors, including group companies, specified in the Appendix 'Specification of the Processing of Personal Data' and in those countries stated in the same Appendix. 'Group companies' shall mean companies that at any given time control, are controlled by or are jointly controlled with the supplier.
- 3.4.2 The supplier shall notify the customer if the supplier intends to replace or engage a new sub-processor. The supplier shall then state the sub-processor's name and details of the location of the processing and, at the customer's written request, information about the processing activity to be undertaken by the sub-processor on behalf of the supplier. The customer shall be entitled to object to such changes in writing within 30 days of the supplier's notice. If the supplier still intends to replace or engage a new sub-processor despite the customer's objection, the customer shall be entitled to terminate the Agreement for the Service affected within 30 days of the supplier's notice of the change. Notice of termination shall be given in writing, and the notice period shall be at least 30 days but no more than 60 days. The supplier shall then reimburse the customer for any charges paid for the period after the expiry of the notice period. If the customer has a justifiable reason for its objec-

tion, the supplier may not, for the Service affected, engage the new sub-processor for the processing of the customer's personal data during the customer's notice period. If the customer does not have a justifiable reason for its objection, the customer's notice shall be regarded as a premature notice of termination without cause, whereby the customer shall pay the compensation stated in the Agreement for such termination and otherwise an amount corresponding to 25% of the remaining monthly charges for the Service from the expiry of the notice period. A 'justifiable reason' shall in this Sub-clause mean circumstances on the part of the sub-supplier that significantly affect, or are likely to affect, the protection of the data subject's personal data, e.g. where the new sub-processor does not satisfy the requirements on processors in Applicable Data Protection Legislation.

3.4.3 The supplier shall ensure a legal ground for transfers of personal data to, or access from, a location outside the EU/EEA, for example by using the European Commission's standard contractual clauses for transfer of personal data to a third country or any provisions succeeding these. The supplier shall be entitled to enter into such standard contractual clauses with sub-processors on behalf of the controller.

### **3.5 Obligation to assist the customer**

3.5.1 The supplier shall, in addition to the provisions of Sub-clause 3.2 (Security measures), implement appropriate technical and organisational measures in order to, at the customer's written request, assist the customer in fulfilling the customer's obligation to respond to the requests for exercising the data subject's rights laid down in Chapter III of the General Data Protection Regulation, such as transparency and modalities, information and access to personal data, rectification and erasure and the right to object and automated individual decision-making. The supplier shall only be required to perform its obligations as set forth in this Sub-clause insofar as it is possible and to the extent the nature of the processing requires it.

3.5.2 Taking into account the nature of processing and the information available to the supplier, the supplier shall also be obliged at the written request of the customer to

assist the customer in ensuring compliance with the customer's obligations in respect of security for processing, personal data breaches, data protection impact assessments and prior consultation in accordance with Applicable Data Protection Legislation.

3.5.3 Unless otherwise agreed in writing, the supplier shall be entitled to reasonable compensation for the supplier's assistance in accordance with Sub-clause 3.5.

### **3.6 Disclosure of personal data**

3.6.1 The supplier shall not disclose or otherwise reveal any personal data covered by the Data Processing Agreement to a data subject or third party, unless otherwise stated in the Agreement or required by law or a court or official authority's decision. In the event that the supplier must disclose such data due to law or a court or official authority's decision, the supplier shall notify the customer of the disclosure, unless this is prohibited by applicable law or a court or official authority's decision.

3.6.2 The supplier shall notify the customer without undue delay if a data subject requests information relating to the processing of its personal data under the Data Processing Agreement, and also refer the data subject to the customer. The supplier shall help the customer to respond to such enquiry in accordance with Sub-clause 3.5.

3.6.3 Pursuant to Applicable Data Protection Legislation, the supplier and its representatives are obliged to cooperate with the Data Protection Authority upon its request when the authority exercises its supervisory powers. The supplier undertakes to notify the customer without undue delay about any enquiries from the Data Protection Authority or another supervisory authority that refer specifically to the processing of personal data under the Data Processing Agreement. The supplier shall not be entitled to represent the customer or act on the customer's behalf in case of any enquiries. The supplier shall be entitled to reasonable compensation for any requested cooperation that refers specifically to the processing of the customer's personal data and that is not a consequence of the supplier being in breach of its obligations under the Data Processing Agreement regarding the processing of personal data.

#### **4. AUDIT**

4.1 The supplier shall make available to the customer all information necessary to demonstrate compliance with the Applicable Data Protection Legislation's requirements on processors and allow for and contribute to audits, including inspections, conducted by the customer or another auditor mandated by the customer. In the event that the customer wishes to conduct an inspection, the customer shall provide the supplier with reasonable prior notice and shall at the same time specify the content and scope of the inspection. The supplier may charge the customer for any reasonable costs incurred in conjunction with the audit.

4.2 The supplier shall immediately inform the customer if the supplier considers that information, including inspections, in accordance with Sub-clause 4.1, is not required or infringes Applicable Data Protection Legislation. An inspection may only be conducted if an audit cannot according to Applicable Data Protection Legislation be met by the supplier providing information.

4.3 A precondition for an audit under Sub-clause 4.1 is that the customer, or auditor mandated by the customer, has entered into necessary confidentiality undertakings and complies with the supplier's security regulations at the location where the inspection is to be performed, including that the inspection will be performed without any risk of it hindering the supplier's business or the protection of other customers' information. Information collected as part of the inspection shall be erased after the audit has been completed or when it is no longer needed for the purpose of the audit.

#### **5. CONFIDENTIALITY**

The supplier's processing of the customer's personal data under the Data Processing Agreement is covered by the confidentiality provisions included in the General Terms and Conditions.

#### **6. REMUNERATION FOR WORK PERFORMED**

In addition to what is otherwise stated in the Data Processing Agreement, the supplier shall be entitled to reasonable remuneration for complying with the customer's written instructions, provided that the action requested is not specified in

the Agreement. If the supplier is entitled to remuneration for work performed, the price list applicable in the Agreement shall apply to such work and, in the absence of such, the supplier's current price list.

#### **7. LIABILITY ACCORDING TO APPLICABLE DATA PROTECTION LEGISLATION**

7.1 If the supplier becomes the party liable to pay damages to the data subject under Applicable Data Protection Legislation, and the customer was involved in the same processing that constitutes the ground for the data subject's claim, the customer shall reimburse the supplier for such part of the compensation that the supplier is according to law obliged to pay to the data subject that exceeds the compensation that the supplier is lawfully obligated to pay to the data subject if the supplier has not complied with the General Data Protection Regulation's obligations specifically directed to the supplier as processor or where the supplier has acted outside or contrary to the lawful instructions issued by the customer in its capacity as controller. The customer shall also reimburse the supplier's reasonable and proportional (in relation to the customer's responsibility) costs, including compensation for litigation costs that the supplier has become obliged to pay to the data subject, for defending itself against such claims.

7.2 If the customer becomes the party liable to pay damages to the data subject under Applicable Data Protection Legislation, and the supplier was involved in the same processing that constitutes the ground for the data subject's claim, the supplier shall reimburse the customer for such part of the compensation that the customer is according to law obliged to pay to the data subject that corresponds to the compensation the supplier is lawfully obligated to pay if the supplier has not complied with the General Data Protection Regulation's obligations specifically directed to the supplier as processor or where the supplier has acted outside or contrary to the lawful instructions issued by the customer in its capacity as controller and the supplier cannot prove that the supplier is not responsible in any way for the event giving rise to the damage. The supplier shall also reimburse the customer for its reasonable and proportional (in relation to the supplier's

responsibility) costs, including compensation for litigation costs that the customer has become liable to pay to the data subject, for defending itself against such claims. The supplier's overall responsibility under the Data Processing Agreement in accordance with Sub-clause 7.2 is limited to an amount corresponding to 150% of the first 12 months' fees for the Service affected, except in the case of intent or gross negligence.

7.3 A Party's obligation to reimburse the other party under this Clause 7 shall survive the termination and expiration of the Agreement.

7.4 A party receiving a claim from a data subject shall within a reasonable time notify the other party in writing about such a claim when the party deems it likely that a claim against the other party as set forth in Sub-clauses 7.1 and 7.2 may be pursued, allow the other party to review the data subject's and the party's documentation in such proceedings and to provide its comments. No later than within six months from when the party became liable to pay damages to the data subject shall the party make a claim for reimbursement as set forth in Clause 7.

7.5 A party's liability for other types of damages than what is expressly governed by this Clause 7 shall be exclusively governed by the General Terms and Conditions.

## **8. TERM OF AGREEMENT AND MEASURES UPON TERMINATION OF THE AGREEMENT**

8.1 The Data Processing Agreement is valid for as long as the supplier is processing personal data on behalf of the customer.

8.2 Upon the termination of the Agreement, the supplier shall, at the customer's request that shall be made no later than 60 days after the termination of the Agreement, unless the parties have agreed upon another time limit, and at the option of the customer delete or promptly return all personal data to the customer or to the party nominated by the customer, and the personal data available electronically shall, if the customer so requests, be submitted in electronic form in accordance with the customer's instructions, provided this is reasonable.

The supplier may delete existing copies following expiry of the above-mentioned period, unless Swedish or European legislation requires otherwise. After transferring the customer's personal data, or if no such transfer has been requested by the customer after the expiration of the period mentioned in the preceding paragraph, the supplier shall delete the customer's personal data within a reasonable time, but no later than within six months from the termination of the Agreement. After the termination of the Agreement the supplier must not process personal data for other purposes than to delete or protect the customer's personal data from personal data breaches, unless Swedish or European legislation requires otherwise. The supplier shall be entitled to reasonable compensation for any work as set forth in this Sub-clause 8.2 in accordance with the supplier's current price list. The supplier shall, upon request, provide written information about what measures have been taken in conjunction with the termination of the Agreement or, alternatively, confirm that the supplier has taken the measures required to comply with this Sub-clause 8.2.