

**Processing of the data**

of the **Jena University Hospital**

represented by the Board of Directors

 Kastanienstraße 1

 07747 Jena

- hereinafter referred to as “Jena **University Hospital**” -

by **Contractor**

represented by xxx

 Street House Number

 Post code town/city

- hereinafter referred to as “the **Contractor**” -

**Preamble**

The present ‘**Data Processing Agreement**’ sets out the parties’ obligations under data protection law that arise from the processing described in the **main agreement**.

All the obligations set out in the present Data Processing Agreement shall apply to all activities connected with the main agreement and in which employees of the Contractor or third parties commissioned by the Contractor come into contact or may come into contact with Jena University Hospital`s personal data.

**§ 1**

**Definitions**

The definitions according to Article 4 GDPR shall apply.

The following definitions shall also apply:

Subcontractor

A service provider commissioned by the Contractor who performs specific data processing activities on behalf of Jena University Hospital within the framework of the present Data Processing Agreement.

Commissioned data processing

Commissioned data processing is the processing of personal data by a contractor on behalf of Jena University Hospital.

Instruction

An instruction is a written order by Jena University Hospital aimed at a specific area of the protection of personal data (for example anonymization, blocking, erasure, publication) by the Contractor. Instructions are initially set out by a main agreement and may subsequently be amended, supplemented or replaced by individual written instructions (individual instructions) by Jena University Hospital.

**§ 2**

**Subject matter of the contract**

The Contractor shall process personal data on behalf of Jena University Hospital. This includes activities set out in the main agreement and the performance specification contained therein. In particular, the data processing shall include the following data:

|  |  |  |
| --- | --- | --- |
| Type of data | Purpose of the data processing | Data subjects |
| xxx | xxx | xxx |

**§ 3**

**Services provided by the Contractor**

The Contractor shall provide the following services for Jena University Hospital in relation to the data specified in § 2:

xxx

**§ 4**

**Responsibility**

1. Under the present Data Processing Agreement, Jena University Hospital is responsible for the compliance with the statutory provisions, in particular for the lawfulness of the data processing.
2. The contents of the present Data Processing Agreement shall apply accordingly if the Contractor is inspecting or maintaining automated procedures or data processing systems and access to personal data cannot be ruled out in the process.
3. Jena University Hospital and the Contractor must guarantee that the individuals authorised to process personal data are bound by a confidentiality obligation or are subject to an appropriate statutory duty of non-disclosure. In addition, anyone who is contractually able to access Jena University Hospital personal data must commit to data secrecy and be instructed about their data protection obligations if they are not already subject to an appropriate statutory duty of non-disclosure. Each party is responsible for ensuring compliance by their own staff. Furthermore, the persons employed must be advised that the data secrecy shall continue even after their activity has ceased.
4. Jena University Hospital and the Contractor shall be responsible for complying with the relevant data protection legislation with regard to data that is to be processed.

**§ 5**

**Term of the contract**

The term of the present Data Processing Agreement shall be based on the term of the main agreement, unless otherwise specified in the provisions of the present Data Processing Agreement.

**§ 6**

**Jena University Hospital`s authority to issue instructions**

1. Data shall be handled solely within the framework of the agreements that have been entered into. An exception to this shall be situations where processing is imposed on the Contractor for mandatory legal reasons. Insofar as possible and legally permissible in such situations, the Contractor shall inform Jena University Hospital of the corresponding legal requirements before the start of the data processing. Within the framework of the performance specification laid down in this agreement, Jena University Hospital reserves a comprehensive right to issue instructions regarding the nature, scope and procedure of the data processing, which can be firmed up by individual instructions.
2. Jena University Hospital shall confirm verbal instructions in writing or by e-mail (in text form) without delay. The Contractor shall make a note of the date, the time and the person who issued the verbal instruction as well as the reason why it was not possible for a written instruction to be given.
3. The Contractor shall inform Jena University Hospital immediately if it believes that an instruction issued by Jena University Hospital breaches statutory regulations. The Contractor is entitled to suspend performance of the instruction in question until it has been confirmed or amended by Jena University Hospital.
4. The contacts (persons authorised to issue instructions) at Jena University Hospital shall be:

The corresponding *department head and team leader (amend as applicable)* of the Information Technology Business Area.

**§ 7**

**Place of performance**

1. The Contractor shall perform its contractual services in the European Union (EU), in the European Economic Area (EEA) or in a third country. This shall apply similarly to any subcontractors. The places of performance agreed at the time at which the contract is awarded are set out in **Appendix 1**. The Contractor shall only undertake the data processing in a third country if the requirements of Art. 44 ff. GDPR are met.
2. Jena University Hospital hereby agrees to a place of performance being moved within the country of performance for which an agreement is in place if the new place of performance verifiably has the same level of security and there are no statutory provisions applicable to Jena University Hospital that oppose this move. The burden of proof in this respect shall lie with the Contractor.
3. Jena University Hospital shall be informed in writing in the event of the place of performance being moved to countries that are members of the EU/EEA and have a verified level of data protection that satisfies the present agreement.
4. If the Contractor wishes to provide the services owed, in part or in full, from a location outside the EU/EEA in a so-called ‘third country’ or is planning to relocate its performance there, the Contractor shall obtain the written consent of Jena University Hospital in advance.
5. In the event of performance in a secure third country, Jena University Hospital shall not unreasonably refuse its consent. The Contractor shall guarantee compliance with the requirements of GDPR in this respect.
6. Where data can be processed in accordance with the present agreement and the statutory requirements for the commissioned processing of personal data or for the transmission of personal data abroad outside Germany, the Contractor shall ensure compliance with and implementation of the statutory requirements for ensuring an adequate level of data protection when changing locations and in the event of cross-border data traffic.

**§ 8**

**Obligations of the Contractor**

1. The Contractor shall only collect, process or use data within the framework of its contract and the instructions of Jena University Hospital.
2. Within its sphere of responsibility, the Contractor shall arrange the internal organisation such that it meets the particular requirements for data protection. It shall take technical and organisational measures to appropriately protect the data of Jena University Hospital from misuse and loss according to the provisions of Article 32 GDPR. On request, the Contractor must provide Jena University Hospital and any supervisory authorities with evidence of these measures. In particular, this evidence shall include implementation of measures resulting from Article 32 GDPR. The technical and organisational measures shall be subject to technical progress and development. In this respect, the Contractor shall be permitted to implement alternative, verifiably appropriate measures. It is necessary to ensure that the measures do not fall short of the contractually agreed level of protection. Significant changes must be documented. These technical and organisational measures are illustrated in **Appendix 2** to this agreement.
3. The Contractor shall provide Jena University Hospital, at the latter’s request, with a conclusive and up-to-date data protection and security concept for this data processing.
4. The Contractor shall itself keep a record of data processing activities undertaken in terms of Article 30 (2) GDPR. At the request of Jena University Hospital, it shall provide the details that are necessary for the overview in accordance with Article 30 GDPR. It addition, it shall make the record available to the supervisory authorities upon request.
5. The Contractor shall support Jena University Hospital with its data protection impact assessment with all the information at its disposal and in consideration of the type of processing. The Contractor shall also support Jena University Hospital where prior consultation with the relevant supervisory authority is required.
6. The maintenance of telecommunications secrecy in accordance with Section 3 of the German Telecommunications-Telemedia Data Protection Act (TTDSG) shall be guaranteed by the Contractor to the extent and for as long as the Contractor obliged to do so pursuant to Section 3 Subsection 2 of the German TTDSG.

In addition, the Contractor must bind to telecommunications secrecy all persons who are able to access Jena University Hospital data by means of telecommunications hardware and software such as telephone or email, and instruct them about the resulting specific confidentiality obligations.

1. The Contractor shall treat as confidential all knowledge of trade secrets and data security measures of Jena University Hospital that are obtained within the framework of the contractual relationship.
2. In addition, all of the Contractor’s employees must be bound by obligations to protect the business and trade secrets of Jena University Hospital.
3. The Contractor’s Data Protection Officer is currently

[Name, contact details]

Jena University Hospital must be informed immediately and in writing of a change in the Data Protection Officer. The Contractor guarantees that the requirements for the Data Protection Officer and their activities pursuant to Article 38 GDPR are met. If the Contractor does not appoint a Data Protection Officer, the Contractor shall inform Jena University Hospital of a contact who is responsible for data protection.

1. The Contractor shall inform Jena University Hospital immediately in the event of a personal data breach (Article 4 No. 12 GDPR). If such a breach falls within the Contractor’s area of responsibility, the latter shall take the required measures to protect the data and to reduce possible adverse consequences for the data subjects, and shall come to an agreement about this with Jena University Hospital without delay. The Contractor shall support Jena University Hospital in complying with the duty to inform the relevant supervisory authority or the data subjects affected by a personal data breach in accordance with Articles 33 and 34 GDPR.
2. If a data subject contacts the Contractor directly for the purpose of rectifying or erasing their data, the Contractor shall forward this request to Jena University Hospital immediately.
3. Data media provided, as well as all copies or reproductions made of these, shall remain the property of Jena University Hospital. The Contractor shall keep these safe so that they are not accessible to third parties. The Contractor is obligated to provide Jena University Hospital with information at any time as far as its data and documents are concerned.
4. If Jena University Hospital has an obligation to a data subject, on the basis of applicable data protection legislation, to provide information about the collection, processing or use of this person’s data, the Contractor shall support Jena University Hospital in providing this information, provided that Jena University Hospital has so requested the Contractor in writing.
5. The Contractor shall inform Jena University Hospital without delay about controls and measures by supervisory authorities or if a supervisory authority is investigating the Contractor, insofar as this is legally permissible.
6. If the data of Jena University Hospital that is in the Contractor’s possession is put at risk by attachment or seizure, insolvency or settlement proceedings, or by other incidents or measures taken by third parties, the Contractor shall inform Jena University Hospital of this without delay. The Contractor shall immediately inform all the controllers in this context that sovereignty and title to the data lie exclusively with Jena University Hospital as the controller in terms of GDPR.
7. The Contractor shall use the data provided for no other purpose than performing the contract and shall employ no resources that have not previously been approved by Jena University Hospital.
8. If the Contractor is bound by the law of the EU or member states to process the data in another way, the Contractor shall inform Jena University Hospital of these legal requirements before processing the data. This communication can be omitted if the relevant national legislation prohibits such a communication due to substantial public interest.
9. Compliance with the aforementioned obligations must be monitored and documented and appropriate evidence thereof must be provided to Jena University Hospital on request.

**§ 9**

**Remote access during the inspection/maintenance of a system or**

**other services via remote access**

The following additional rights/obligations of Jena University Hospital/the Contractor shall apply to the execution of remote access during the inspection and/or maintenance of automated procedures or data processing systems or in the case of remote access for other services:

1. Remote access as part of inspection and/or maintenance work on workstations shall only be executed after the authorised persons / the competent employees of Jena University Hospital have approved it.
2. Remote access as part of inspection and/or maintenance work on automated procedures or data processing systems shall, unless access to personal data can confidently be ruled out in this context, only be executed with the consent of Jena University Hospital.
3. Employees of the Contractor shall use appropriate identification and encryption procedures.
4. Before executing remote access, Jena University Hospital and the Contractor shall agree any necessary data security measures in their respective areas of responsibility.
5. Remote access as part of inspection and/or maintenance work shall be documented and logged. Jena University Hospital is entitled to monitor inspection and maintenance work before, during and after performance. With remote access, Jena University Hospital is entitled, as far as technically possible, to track this work from a control screen and to abort it at any time.
6. The Contractor shall only make use of access rights which it has been granted to Jena University Hospital`s automated procedures or data processing systems (in particular IT systems, applications) to the extent necessary – including from a temporal perspective – for the proper performance of the commissioned maintenance and inspection work.
7. The Contractor shall obtain the prior consent of Jena University Hospital if fault analysis activities which require cognizance of (e.g. including read access) or access to Jena University Hospital’s working data (production/live data) are necessary during performance.
8. Fault analysis activities where working data needs to be extracted require the prior consent of Jena University Hospital. When working data is extracted, the Contractor shall delete these copies once the fault has been rectified in accordance with data protection legislation and regardless of the medium used. Working data may only be used for the purpose of fault analysis and solely on the equipment of Jena University Hospital with the prior consent of Jena University Hospital. Working data may not be copied to mobile storage devices (PDAs, USB sticks or similar devices) without the consent of Jena University Hospital.
9. Remote access as part of inspection and/or maintenance work as well as all the activities required in this context, in particular activities such as erasure, data transfer or fault analysis, shall be executed in consideration of technical and organisational measures for protecting personal data. In this context, the Contractor shall take the technical and organisational measures described in **Appendix 2**.

**§ 10**

**Obligations of Jena University Hospital**

1. Jena University Hospital shall be solely responsible for assessing the reliability of the data processing and for protecting the rights of the data subjects. Within its area of responsibility, Jena University Hospital shall ensure that the legally necessary conditions are created (e.g. by obtaining declarations of consent for the data processing) to allow the Contractor to provide the agreed services without infringing any law.
2. Jena University Hospital must inform the Contractor immediately and in full if it identifies errors or irregularities with regard to the data protection regulations whilst examining the results.
3. With regard to procedures employed by the Contractor and approved by Jena University Hospital for the automated processing of personal data, Jena University Hospital shall be responsible under data protection legislation and, alongside the Contractor’s own obligation, is obligated to keep a record of the processing activities.
4. Jena University Hospital is bound by the obligations under Articles 33 and 34 GDPR to inform the supervisory authority or the data subjects affected by a personal data breach.
5. Jena University Hospital shall specify the measures for returning the provided data media and/or erasing the stored data after the end of the contract either contractually or through an instruction.
6. Jena University Hospital shall treat as confidential all knowledge of trade secrets and data security measures of the Contractor that are obtained within the framework of the contractual relationship.
7. Jena University Hospital shall, for its part, ensure compliance with the requirements resulting from Article 32 GDPR with regard to the security of processing. In particular, this shall apply to remote access by the Contractor to datasets of Jena University Hospital.

**§ 11**

**Control rights of Jena University Hospital**

1. Jena University Hospital has chosen the Contractor because the latter provides sufficient guarantees of performing suitable technical and organisational measures in such a way that data processing in accordance with the requirements of GDPR and the protection of the rights of data subjects is guaranteed. It shall document the results of its choice.

In this respect it may, for example,

* take data protection-specific certification or data protection seals and marks into consideration,
* obtain written self-disclosures from the Contractor,
* have a certificate from an expert submitted or
* personally assure itself of the compliance with the agreed rules or have this confirmed by a competent third party who is not in competition with the Contractor with prior notice during the usual business hours, without disrupting operations.
1. If the Contractor or persons employed by the Contractor within the framework of the contract infringe regulations for the protection of Jena University Hospital’s personal data or the specifications set out in the agreement, this may be examined without prior notice. Disruption to the Contractor’s operations should be avoided as far as possible in the process.
2. Contract control by means of regular checks by Jena University Hospital with regard to performance or execution of the agreement, in particular compliance with and any necessary adjustment of regulations and measures for executing the contract, shall be supported by the Contractor. The Contractor particularly undertakes to provide, within a reasonable period, all the information that is necessary to carry out checks, when requested to do so in writing.
3. Jena University Hospital shall inform the Contractor immediately and in full if it identifies errors or irregularities with regard to the data protection regulations.

**§ 12**

**Rectification, restriction of processing, erasure and return of data media**

1. During an ongoing contract, the Contractor is only entitled to rectify, erase or block contractual data on the instruction of Jena University Hospital.
2. If destruction has to be undertaken during the ongoing contract, the Contractor shall only destroy data media and other material in a manner that verifiably complies with data protection legislation on the basis of a corresponding individual order from Jena University Hospital. This shall not apply if a corresponding provision is already in place in the main agreement.
3. In particular cases to be determined by Jena University Hospital, the data shall be stored or handed over.
4. Following the completion of the contractual work (or earlier on request by Jena University Hospital), the Contractor shall
5. return all the documents or data media in its possession that were obtained as part of the contract,
6. all the processing results created,
7. and all the datasets associated with the contractual relationship to Jena University Hospital, on the instruction of Jena University Hospital, erase, or destroy them in accordance with the data protection legislation, unless there is a statutory storage obligation. The record of the erasure must be presented upon request.
8. Prior written agreement about the assumption of costs is required if additional costs arise due to differing requirements for the surrender or erasure of the data.
9. If the transportation of the storage medium is indispensable, the Contractor shall take appropriate measures to protect it, in particular against misappropriation, unauthorised reading, copying or modification. The measures and the erasure procedures to be applied shall be agreed in detail in addition to the performance specifications where necessary.
10. Documentation which serves to provide evidence that the data processing takes places properly and as ordered must be stored by the Contractor beyond the end of the agreement, in accordance with the respective storage periods. It can hand this documentation over to the Jena University Hospital in its defence at the end of the agreement.
11. Jena University Hospital is able at any time, i.e. both during and after the end of the agreement, to demand that the Contractor rectify, erase, restrict processing of (block) and return data, provided that the Contractor is able to meet this request.
12. The Contractor shall rectify, erase or block the contractual data if instructed to do so by Jena University Hospital. The Contractor shall destroy data media and other material in a manner that complies with the data protection legislation based on an individual order from Jena University Hospital, unless otherwise agreed in the agreement. In particular, cases to be determined by Jena University Hospital, the data shall be stored or handed over. If a data subject contacts the Contractor directly for the purpose of rectifying or erasing their data, the Contractor shall forward this request to Jena University Hospital immediately.
13. The Contractor shall inform Jena University Hospital in good time in writing if it is not possible to return the data to Jena University Hospital. The Contractor is then entitled to erase personal data on behalf of Jena University Hospital.
14. In the event of test and scrap materials, an individual order relating to an erasure is not necessary; these must be erased.

**§ 13**

**Subcontractors**

1. The Contractor shall not use subcontractors without the prior explicit or general written approval of Jena University Hospital. This shall apply similarly in the event of further subcontracting relationships being established by subcontractors. The Contractor shall ensure that corresponding client approval is in place for all further subcontractors used in connection with contractual data processing.
2. In the event of general written approval, the Contractor shall always inform Jena University Hospital about any intended change with regard to the involvement or replacement of subcontractors, whereby Jena University Hospital shall be given the option of raising an objection to such changes. If Jena University Hospital refuses to give its consent by raising an objection for anything other than good cause, the Contractor is entitled to terminate the agreement at the time of the planned deployment of the subcontractor.
3. At the time of the conclusion of the present agreement, the companies listed in **Appendix 1** shall be active as subcontractors for partial services for the Contractor and shall process and/or use the data of Jena University Hospital directly in this context. Consent to the involvement of these subcontractors shall be deemed to be granted.
4. The Contractor must conscientiously select subcontractors with particular consideration for their suitability with respect to the performance of the technical and organisational measures agreed between Jena University Hospital and the Contractor.
5. If the Contractor is authorised in terms of the present agreement to avail itself of the services of a subcontractor to perform specific processing activities on behalf of Jena University Hospital, the same obligations as are set out in the present agreement between Jena University Hospital and the Contractor shall be imposed on this subcontractor by way of a contract, in particular with respect to the requirements for confidentiality, data protection and data security between the parties to the present agreement, as well as the control and inspection rights of Jena University Hospital described in the present Data Processing Agreement. In addition, sufficient guarantees must be provided that suitable technical and organisational measures will be performed in such a way that the data processing takes place in accordance with the requirements of GDPR.
6. A written request shall entitle Jena University Hospital to obtain information about the data protection obligations of the subcontractor, including by viewing the relevant contractual documents if necessary.
7. A subcontracting relationship requiring approval shall not exist if the Contractor commissions third parties for a service that is ancillary to the main service, such as HR, postal and shipping services. However, in order to also guarantee the protection and security of the data of Jena University Hospital in the event of ancillary services provided by third parties, the Contractor shall enter into appropriate contractual agreements in accordance with the law, and shall take control measures. Ancillary services must be specified in detail in advance.
8. If the subcontractor fails to comply with its data protection obligations, the Contractor shall be liable to Jena University Hospital for the subcontractor’s compliance with the obligations.

**§ 14**

**Right of retention**

A right of retention to the contractual data or to any existing data media may not be pleaded on any legal grounds whatsoever.

**§ 15**

**Liability**

1. Jena University Hospital and the Contractor shall be jointly liable in the external relationship with the data subject for damages caused by data processing that does not comply with GDPR.
2. The Contractor shall be solely liable for damages due to data processing performed by it where
3. it failed to comply with obligations resulting from GDPR that are specifically imposed on processors, or
4. it failed to observe instructions that were lawfully issued by Jena University Hospital, or
5. it acted contrary to instructions that were lawfully issued by Jena University Hospital.
6. Insofar as Jena University Hospital is obliged to provide compensation to the data subject, it reserves the right of recourse against the Contractor.
7. In the internal relationship between Jena University Hospital and the Contractor, however, the Contractor shall only be liable for damages caused by data processing if it
8. failed to comply with obligations that were specifically imposed upon it by GDPR, or
9. it failed to comply with instructions that were issued by Jena University Hospital or acted contrary to these instructions.
10. Further liability claims in accordance with general legislation shall remain unaffected.

**§ 16**

**Written form requirement**

Amendments of and additions to the present agreement and all of its constituent parts – including any assurances by the Contractor – must be agreed in writing, explicitly indicating that this is an amendment of or addition to these provisions. The requirement for the written form shall also apply to a waiver of this requirement.

**§ 17**

**Severability clause**

If a provision of the present, agreement is or becomes invalid, in part or in full, this shall not affect the validity of the remaining provisions of the present agreement. The invalid provision shall be replaced by the legally permissible provision that comes closest to what was intended. This shall also apply in the event of an unintended loophole.

**§ 18**

**Choice of law, place of jurisdiction**

1. German law shall apply.
2. The place of jurisdiction shall be the location of the Jena University Hospital.

**Appendices**

Appendix 1 - The Contractor’s places of performance and subcontracting relationships at the time of the contract being awarded

Appendix 2 - Evidence of general technical and organisational measures

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The Contractor hereby agrees to changes to the terms for the processing of the data of the Jena University Hospital.

Place, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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First Name Surname Role Signature

**Appendix 1 - The Contractor’s places of performance and subcontracting relationships at the time of the contract being awarded**

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| --- |
| **Contractor’s place of performance** |
| xxx |

|  |  |  |
| --- | --- | --- |
| **Name and address of the****subcontractor** | **Description of the partial services** | **Place of performance** |
| xxx | xxx | xxx |

**Appendix 2 - Technical and organisational measures**