

**Order processing agreement
of subreport Verlag Schawe GmbH
in accordance with Article 28 Paragraph 3 GDPR
(As of: 8 September 2021)**

Between

subreport Verlag Schawe GmbH
Buchforststr. 1-15
D-51101 Cologne

hereinafter referred to as “order processor”

and

the user of the services offered online:

demo.subreportCAMPUS.de, demo.subreport-ELViS.de,
www.subreportCAMPUS.de, www.subreport-ELViS.de

hereinafter referred to as “controller”

Preamble

The controller uses the following services provided online by the order processor (demo.subreportCAMPUS.de, www.subreportCAMPUS.de, demo.subreport-ELViS.de and www.subreport-ELViS.de) in order to carry out tender processes. In order to properly carry out the online tender process via the said services that are being provided, the order processor will also be granted access to personal data amongst others in this context, which it will process on behalf of the controller. In order to guarantee the lawful handling of the said personal data, the parties are hereby agreeing as follows:

1. Subject matter and term of the agreement

The subject matter of this agreement is the processing of personal data by the order processor on behalf of the controller in accordance with Article 4 Number 2 and Article 28 of the European General Data Protection Regulation 2016/679 (GDPR) dated 27.04.2016 in line with the provisions of this agreement.

This concerns personal data which will be processed by the order processor in connection with the use of the services provided online by the order processor (www.demo.subreportCAMPUS.de, www.subreportCAMPUS.de, www.demo.subreport-ELViS.de and www.subreport-ELViS.de) in the following concrete cases:

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- The provision of tender data
- The performance of the tender process for orders (including the retention of the documents/data generated during the award process)
- The provision of communication support between applicants/bidders and tenderers

The contractually agreed services will be provided solely in a Member State of the European Union or in a Member State of the European Economic Area. Any outsourcing of the services or partial work in relation to these to a third country requires the prior agreement of the controller and may only take place if the special requirements of Article 44 ff GDPR (for example reasonableness resolution of the European Commission, standard data protection clauses, approved behavioural rules) are fulfilled.

Duration of the order

The agreement is hereby being concluded indefinitely. Notice periods for termination are set out in Section A, §1 of the general terms and conditions of business of subreport Verlag Schawe GmbH.

2. Type and purpose of the processing, type of personal data and categories of data subjects

Purpose of the processing

- Provision of tender data
- Carrying out of the awards process in relation to orders
- Data processing in order to support the communication between applicants/bidders and tenderers

Type of processing

The type of processing includes all manners of processing in accordance with Article 4 Number 2 GDPR.

Type of personal data

This concerns all types of personal data which the order processor will process on behalf of the controller. In concrete terms, these include:

- Contact data (in particular title, first name, surname, address and position of the data subject at the controller/third-party)
- Information concerning professional qualifications/CV's/references of the applicants/bidders/interested parties and their employees

Categories of data subjects

- Employees, officials or representatives of the controller
- Applicants/bidders/interested parties in relation to award proceedings and their employees
- Reference partners of the applicants/bidders/interested parties and their employees

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3. Rights and obligations, powers of instruction of the controller

The controller is solely responsible for assessing the lawfulness of the processing in accordance with Article 6 Paragraph 1 GDPR, as well as for safeguarding the rights of the data subjects in accordance with Articles 12 to 22 GDPR.

Changes to the object of the processing and procedural changes shall be agreed jointly between the controller and the order processor in writing or in a documented electronic format.

The controller shall generally issue all orders, partial orders and instructions in writing or in a documented electronic format. Oral instructions must be confirmed by the controller immediately in writing or in a documented electronic format.

As set out in Section 4, the controller shall be entitled to reasonably inspect compliance with the technical and organisational measures taken by the order processor, as well as the obligations set out in this contract, both prior to the start of the processing and at regular intervals thereafter.

The controller shall immediately inform the order processor should it observe irregularities during such inspections.

The controller shall be obliged to maintain strict confidentiality in relation to all knowledge of business secrets and data security measures of the order processor which it obtains within the framework of the contractual relationship. This obligation shall also continue to apply following termination of this agreement.

4. Obligations of the order processor

The order processor shall only process personal data within the framework of the agreements that have been concluded and in accordance with the instructions of the controller, unless it is subject to other processing in accordance with the law of the European Union or Member States to which the order processor is subject (for example investigations of prosecution or national security authorities); in such a case, the order processor shall inform the controller of such legal requirements, unless the law concerned prohibits such a notification due to an important public interest (Article 28 Paragraph 3 Sentence 2 Letter a GDPR).

The order processor shall not use the personal data handed over for the processing for other purposes, in particular its own. Copies or duplicates of the personal data shall not be created without the knowledge of the controller.

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In the area of the processing of personal data in accordance with the order, the order processor shall ensure that all agreed measures are implemented in accordance with the contract. It shall provide an undertaking that the data processed for the controller is kept strictly separate from other data inventories.

When fulfilling the rights of the data subjects in accordance with Articles 12 to 22 GDPR on the part of the controller, when creating the processing activities directories and during necessary data protection consequence assessments of the controller, the order processor must co-operate to the necessary extent and reasonably support the controller as far as possible (Article 28 Paragraph 3 Sentence 2 Letters e and f GDPR). Following a request, the order processor must forward the necessary information in this respect on to the controller. Any costs for such support services can be billed to the controller by the order processor to a reasonable amount.

The order processor shall immediately make the controller aware if an instruction that has been issued by the controller breaches legal regulations (Article 28 Paragraph 3 Sentence 3 GDPR). The order processor shall be entitled to suspend the carrying out of the instruction concerned, until it is amended by the controller in such a way that it no longer breaches legal regulations.

The order processor must rectify or erase or suspend the processing of personal data under the engagement, should the controller request such by means of an instruction and provided that no legitimate interests of the order processor prevent this.

The order processor may only provide information relating to personal data under the engagement to third-parties or the data subject with the prior instructions of the controller or with its advance agreement.

The order processor hereby declares its agreement that following the prior setting of a date and time, the controller may inspect compliance with the data protection and data security regulations to an extent that is reasonable and necessary either by itself or by using a third-party that has been engaged by it, in particular by obtaining information and viewing the saved data and data programs, as well as by carrying out assessments and on-site inspections (Article 28 Paragraph 3 Sentence 2 Letter h GDPR). Advance notice of at least 10 working days must be provided to the order processor in case inspections are to be carried out at its premises.

The order processor shall ensure that it co-operates and provides support during such inspections where necessary. The order processor has the right to reasonably charge any expenses which it incurs as a result of any inspections.

The order processor shall be obliged to maintain confidentiality during the processing of the personal data of the controller under the engagement. The above obligation shall also continue to apply following termination of the agreement.

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The order processor is hereby providing an undertaking that it will make the employees involved in the performance of the work aware of the data protection provisions that apply to them prior to commencing their tasks and that a suitable confidentiality undertaking is placed on them, both during the work and following the end of their employment relationships (Article 28 Paragraph 3 Sentence 2 Letter b and Article 29 GDPR). The order processor shall monitor compliance with the data protection law regulations at its company.

The data protection officer at the order processor can be contacted as follows:

subreport Verlag Schawe GmbH
FAO the data protection officer
Buchforststraße 1-15
51103 Cologne
Telephone: +49 (0) 221/98578-85
Email: datenschutz@subreport.de

5. Notification obligations of the order processor in case of disruptions to the processing and in case of breaches of the protection of personal data

The order processor shall immediately inform the controller in case of a suspicion of data protection breaches or irregularities during the processing of personal data of the controller. This also applies above all to any reporting and notification obligations of the controller in accordance with Articles 33 and 34 GDPR. The order processor is hereby providing an undertaking that it will support the controller in its obligations in accordance with Articles 33 and 34 GDPR in a reasonable manner where necessary (Article 28 Paragraph 3 Sentence 2 Letter f GDPR). Notifications in accordance with Articles 33 or 34 GDPR for the controller may only be carried out by the order processor following prior instructions in accordance with Section 3 of this agreement.

6. Sub order relationships with subcontractors (Article 28 Paragraph 3 Sentence 2 Letter d GDPR)

The engagement of subcontractors for the processing of personal data of the controller is only permitted on the part of the order processor with the approval of the controller, which must take place via one of the communication channels referred to above (Section 3), with the exception of cases where permission is granted orally. The agreement can only be issued if the order processor notifies the controller of the name and address of the subcontractor, as well as the work that is intended to be carried out. In addition, the order processor must ensure that it carefully selects the subcontractor, taking the suitability of the technical and organisational measures implemented by the subcontractor in accordance with Article 32 GDPR into account in particular. The relevant inspection documents in this respect must be provided to the controller on request.

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Subcontractors in third countries may only be engaged if the special requirements of Article 44 ff GDPR are fulfilled (for example reasonableness resolution of the European Commission, standard data protection clauses, approved behavioural rules).

The order processor must ensure by means of a contract that the agreed regulations between the controller and the order processor also apply vis a vis subcontractors. It must be set out in concrete terms in the contract with the subcontractor that the responsibilities of the order processor and of the subcontractor are clearly separated from one another. Should multiple subcontractors be used, the above also applies to the responsibilities between them. In particular, the controller must be entitled where necessary to carry out reasonable checks and inspections of the subcontractors or to have such checks and inspections carried out by engaged third-parties, also on site.

The contract with the subcontractor must be drawn up in writing, which can also take place in an electronic format (Article 28 Paragraphs 4 and 9 GDPR).

The data may only be passed on to the subcontractor if the subcontractor has fulfilled the obligations in accordance with Article 29 and Article 32 Paragraph 4 GDPR in relation to its employees.

The order processor must monitor compliance with the obligations of the subcontractor(s). The results of the inspections must be documented and made available to the controller on request.

The order processor shall incur liability vis a vis the controller in relation to the subcontractor complying with the data protection obligations imposed on it contractually by the order processor in accordance with this section of the agreement.

The subcontractors working for the order processor are listed in the enclosure "subcontractor List of subreport Verlag Schawe GmbH in accordance with Article 28 Paragraph 2 GDPR" with name, address and order content concerning the processing of personal data to the extent specified therein. The controller hereby declares its agreement to their engagement.

The order processor shall inform the controller of any intended change in relation to the engagement of new subcontractors or the replacement of existing subcontractors. The controller has the right to raise an objection to such changes (§ 28 Paragraph 2 Sentence 2 GDPR) by terminating the order processing agreement and the underlying contract in compliance with a notice period of two weeks from the time of receipt of notification of the intended change. At the time of termination of the order processing agreement, the principal contract with the following services that are provided online will also be terminated at the same time: www.demo.subreportCAMPUS.de, www.demo.subreport-ELViS.de, www.subreportCAMPUS.de and www.subreport-ELViS.de. The controller will not have any further claims in such a case.

Subcontracting relationships as defined in this contractual provision do not include services which the order processor obtains from third-parties as an ancillary service to support the performance of the order.

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For example, these include telecommunications services, postal and transportation services, maintenance and user services, cleaners, auditors or the disposal of data carriers, as well as measures to ensure the confidentiality, availability, integrity and durability of the hardware and software of data processing systems. However, in order to ensure the protection and security of the data of the controller, the order processor shall also enter into reasonable and lawful contractual agreements and take control measures in the case of the engagement of ancillary services from third-parties.

7. Technical and organisational measures in accordance with Article 32 GDPR (Article 28 Paragraph 3 Sentence 2 Letter c GDPR)

A level of protection that is reasonable in light of the risk to the rights and freedoms of the data subjects affected by the processing shall be ensured for the concrete processing carried out by the order processor. For this purpose, the protection objectives of Article 32 Article 1 GDPR, such as confidentiality, integrity and availability of the systems and services, as well as their durability in relation to the type, scope, circumstances and purpose of the processing operations shall be taken into account in such a way that the risk is permanently contained by means of suitable technical and organisational remedial measures.

The order processor must regularly review, assess and evaluate the effectiveness of the technical and organisational measures in order to ensure the security of the processing (Article 32 Paragraph 1 Letter d GDPR).

The technical and organisational measures are subject to technical progress and further development. To this extent, the order processor is entitled to implement alternative, adequate measures. During this process, the security level of the determined measures may not be fallen below. Key changes must be documented and shown to the controller on request.

The measures implemented by the order processor are documented in the enclosure "technical and organisational measures (TOM) for data and IT security of subreport Verlag Schawe GmbH in accordance with Article 32 GDPR" and form part of this agreement.

8. Obligations of the order processor following completion of the engagement - Article 28 Paragraph 3 Sentence 2 Letter g GDPR

Following the completion of the contractual work, the order processor must hand over to the controller all data, documents and processing or use results that have come into its possession or into that of subcontractors and that are related to the order relationship. Alternatively, with the prior agreement of the controller, it shall destroy these or have these destroyed in accordance with data protection laws.

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The deletion or destruction shall be confirmed to the controller in writing or in a documented electronic format, stating the date.

9. Liability

Reference is hereby being made to Article 82 GDPR. In case of joint liability of the order processor and the controller vis a vis third-parties in accordance with Article 82 GDPR, then in accordance with its share of the responsibility and in addition to the reclaim in the internal relationship in accordance with Article 82 Paragraph 4 GDPR, the controller shall reimburse the order processor all other losses in connection with the processing concerned, including any fines, and shall release it from the costs of defending all claims.

Otherwise, the provisions in Section A, § 5 of the general terms and conditions of business of subreport Verlag Schawe GmbH shall apply.

10. Other

Agreements concerning technical and organisational measures, as well as control and audit documents (also relating to subcontractors) shall be kept by both contracting parties for their period of validity and for three full calendar years thereafter.

In relation to ancillary agreements, written form or a documented electronic format are generally necessary.

Should the ownership of the personal data of the controller to be processed by the order processor be endangered by third-party measures (such as attachment or seizure), due to insolvency or settlement proceedings or as a result of other events, the order processor shall immediately notify the controller.

In relation to the personal data to be processed for the controller and the associated data carriers, the plea of right of retention in accordance with § 273 of the German Civil Code (BGB) is hereby being excluded.

Should any individual parts of this agreement be invalid, this shall not affect the validity of the remainder of the contract.

Date: 08.09.2021