Data Processing Agreement
in accordance with Article 28 General Data Protection Regulation (GDPR)

Version 9 / June 2021

CWA GmbH, 28865 Lilienthal, Germany

- Contractor - hereinafter referred to as Contractor

This Agreement on Data Processing pursuant to Art. 28 (3) of the General Data Protection Regulation (GDPR) specifies the obligations of the contracting parties under data protection law. This contract is a supplement to the General Terms and Conditions of the Contractor, and is accepted by the Customer together with the General Terms and Conditions upon acceptance of an offer or an order for the maintenance of software and for the operation of a SaaS application.

1. Subject and duration of the order

(1) The object of the order for data handling is the performance of the following tasks by the contractor: Maintenance of the CWA SmartProcess software and, in the case of a SaaS solution, operation for the CWA SmartProcess software.

(2) The duration of this order (term) corresponds to the term of the ordered maintenance and the ordered SaaS operation for the CWA SmartProcess software.

2. Concretization of the order content

(1) Nature and purpose of the intended processing of data:

- Remote maintenance and support of the CWA SmartProcess software

- Helpdesk and Support - On demand access to the CWA SmartProcess software via remote software

- With a cloud version (SaaS), the CWA SmartProcess software is hosted for the client.

The provision of the contractually agreed data processing takes place exclusively for customers from Europe in a member state of the European Union or in another contracting state of the Agreement on the European Economic Area. For clients from Europe, the cloud version (SaaS) CWA SmartProcess is hosted in Europe. For customers from the USA, the cloud version (SaaS) CWA SmartProcess is hosted in the USA. Any relocation to a third country requires the prior consent of the customer.

(2) Type of data

The subject of the processing of personal data are the following data types/categories (enumeration/description of the data categories)

- User data for the system such as user name, title, first name, last name, position, company, department, role, telephone, mobile phone, FAX, e-mail, company address, cost center

- Operations with user-defined fields and data defined by the customer.

- Company documents and company information, which are individually set or stored by the customer.

(3) Categories of data subjects

The categories of data subjects covered by the processing operation:

- Customers
- Interested parties
- Employees
- Suppliers

3. Technical-organizational measures

(1) The Contractor shall document the implementation of the technical and organizational measures described and required in the run-up to the award of the contract prior to the start of processing, in particular with regard to the concrete execution of the contract, and shall hand them over to the Customer for inspection upon request. Insofar as the examination of the customer reveals a need for adjustment, this shall be implemented by mutual agreement.

(2) The contractor shall provide the security in accordance with Art. 28 para. 3 lit. c, 32 GDPR, in particular in connection with Art. 5 para. 1, para. 2 GDPR. All in all, the measures to be taken are data security measures and measures to ensure a level of protection appropriate to the risk with regard to the confidentiality, integrity, availability and resilience of the systems. The state of the art, the implementation costs and the nature, scope and purposes of the processing as well as the varying probability of occurrence and severity of the risk to the rights and freedoms of natural persons within the meaning of Article 32 (1) GDPR must be taken into account.

(3) The technical and organizational measures are subject to technical progress and further development. In this respect the contractor is permitted to implement alternative adequate measures. In doing so, the safety level of the specified measures may not be undercut. Significant changes shall be documented.

4. Correction, restriction and deletion of data

(1) The Contractor may not correct, delete or restrict the processing of the data processed on behalf of the Customer, but only after documented instructions from the Customer. If a person concerned directly contacts the contractor in this respect, the contractor shall forward this request to the customer without delay.

5. Quality assurance and other obligations of the contractor

In addition to complying with the provisions of this contract, the contractor has statutory obligations pursuant to Art. 28 to 33 GDPR; in this respect, the contractor guarantees in particular compliance with the following requirements:

a) Written appointment - if required by law - of a data protection officer. His contact details will be provided to the client on request.

b) The maintenance of confidentiality in accordance with Art. 28 para. 3 sentence 2 lit. b, 29, 32 para. 4 GDPR. In carrying out the work, the contractor shall only use employees who are bound to confidentiality and who have been previously familiarized with the provisions on data protection relevant to them. The contractor and any person subordinate to the contractor who has access to personal data may process such data exclusively in accordance with the instructions of the customer, including the powers granted in this agreement, unless they are legally obliged to process such data.

c) The implementation of and compliance with all technical and organizational measures required for this contract in accordance with Art. 28 para. 3 sentence 2 lit. c, 32 GDPR.

d) The Customer and the Contractor shall, upon request, cooperate with the Supervisory Authority in the performance of its tasks.

e) The immediate information of the client about control actions and measures of the supervisory authority, as far as they relate to this contract. This shall also apply if a competent authority investigates in the course of administrative or criminal proceedings relating to the processing of personal data in connection with the processing of the contract at the contractor.

f) If the customer, for his part, is subject to an inspection by the supervisory authority, administrative offence or criminal proceedings, a liability claim by a data subject or third party or any other claim in connection with the processing of the order with the contractor, the contractor shall assist him to the best of his ability.

g) The Contractor shall regularly check the internal processes and the technical and organizational measures to ensure that the processing in its area of responsibility is carried out in accordance with the requirements of the applicable data protection law and that the protection of the rights of the data subject is guaranteed.

h) Verifiability of the technical and organizational measures taken vis-à-vis the customer within the scope of his powers of control according to clause 7 of this contract.

6. Subcontracting relationships

(1) Subcontracting relationships within the meaning of this provision shall be understood to be those services which are directly related to the provision of the main service. This does not include ancillary services which the Contractor uses, e.g. as telecommunications services, newsletter mailing service, postal/transport services, user service or the disposal of data carriers or other measures to ensure the confidentiality, availability, integrity and resilience of the hardware and software of data processing systems. However, the Contractor is obliged to take appropriate and legally compliant contractual agreements and control measures to ensure data protection and data security of the Customer's data, even in the case of outsourced ancillary services.

(2) The Contractor may only commission subcontractors (further processors) with the prior express written or documented consent of the Customer.

The Client consents to the engagement of the following subcontractors subject to the condition of a contractual agreement in accordance with Article 28 (2-4) of the GDPR:

Company Subcontractor	Address/Country	Performance
Amazon Web Services (AWS)	Germany and USA	Hosting of the CWA SmartProcess application **With a cloud version (SaaS), the software is hosted for the client at AWS.**
TeamViewer GmbH	Jahnstr. 30, 73037 Göppingen, Germany	Remote software for online presentations and for remote maintenance after prior consent and activation by the customer Not applied to a cloud version (SaaS).

The change of the existing subcontractor is permissible, provided that a contractual agreement is based on the provisions of Art. 28 para. 2-4 GDPR. The client will be informed in case of a change of subcontractor.

(3) The passing on of personal data of the Customer to the subcontractor and the first time that the subcontractor takes action shall only be permitted once all requirements for subcontracting have been met.

(5) Further outsourcing by the subcontractor is not permitted.

7. Control rights of the client

(1) The customer has the right to carry out inspections in consultation with the contractor or to have them carried out by inspectors to be appointed in individual cases. He shall have the right to convince himself of the contractor's compliance with this agreement in his business operations by means of spot checks, which as a rule must be notified in good time.

(2) The contractor shall ensure that the customer can satisfy himself of the contractor's compliance with his obligations under Art. 28 GDPR. The contractor undertakes to provide the customer with the necessary information on request and in particular to provide evidence of the implementation of the technical and organisational measures.

8. Notification in case of violations by the contractor

(1) The Contractor shall support the Client in complying with the obligations regarding the security of personal data as set out in Articles 32 to 36 of the GDPR, reporting obligations in the event of data breaches, data protection impact assessments and prior consultations. This includes, among other things

a) Ensuring an adequate level of protection through technical and organizational measures that take into account the circumstances and purposes of the processing as well as the predicted probability and severity of a possible breach of rights due to security vulnerabilities and allow for the immediate detection of relevant breach events

b) The obligation to report violations of personal data immediately to the client

c) The obligation to support the client within the scope of his duty to inform the person concerned and to provide him with all relevant information in this context without delay

d) Support of the client for its data protection impact assessment

e) The support of the client in the context of prior consultations with the supervisory authority

9. Authority of the client

(1) Verbal instructions shall be confirmed by the customer without delay (at least in text form).

(2) The contractor shall inform the customer without delay if he believes that an instruction violates data protection regulations. The contractor shall be entitled to suspend the execution of the relevant instruction until it is confirmed or amended by the customer.

10. Deletion and return of personal data

(1) Copies or duplicates of the data will not be made without the knowledge of the client. Excluded from this are back-up copies, insofar as they are necessary to ensure proper data processing, as well as data which is required in order to comply with statutory storage obligations.

(2) Upon completion of the contractually agreed work or earlier upon request by the Customer - at the latest upon termination of the service agreement - the Contractor shall hand over to the Customer all documents, generated processing and usage results as well as data stocks which have come into his possession and which are in connection with the contractual relationship, or destroy them in accordance with data protection laws upon prior consent. The same applies to test and reject material. The protocol of the deletion must be presented on request.

(3) Documentation that serves as proof of the proper processing of data in accordance with the order shall be kept by the Contractor beyond the end of the contract in accordance with the respective retention periods. He can hand them over to the customer at the end of the contract for his own relief.

11. Liability and right to compensation

Liability is governed by the provisions of Art. 82 GDPR.