

# Data Processing Agreement

Between

The Data Controller

Fancyskirts.dk  
Helle Boldt  
Sejersvej 30  
3700 Rønne  
Denmark

Organization Number: DK36668199

and

The Data Processor

Gigahost ApS  
Gammeltorv 8  
1457 Copenhagen K  
Denmark

Organization Number: DK31154715

## 1. Data Processing Agreement preamble

1. This Data Processing Agreement sets out the rights and obligations that apply to the Data Processor's handling of personal data on behalf of the Data Controller.
2. This Agreement has been designed to ensure the Parties' compliance with Article 28, subsection 3 of Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 (General Data Protection Regulation), which sets out specific requirements for the content of data processing agreements.
3. The Data Processor's processing of personal data shall take place for the purposes of fulfilment of the parties' "Master Agreement", the Gigahost Terms of Service, commencing on .
4. The Data Processing Agreement and the "Master Agreement" shall be interdependent and cannot be terminated separately. The Data Processing Agreement may however – without termination of the "Master Agreement" – be replaced by an alternative valid data processing agreement.
5. This Data Processing Agreement shall take priority over any similar provisions contained in other agreements between the Parties, including the "Master Agreement".
6. Appendix A and Appendix B are attached to this Data Processing Agreement. The Appendices form an integral part of this Data Processing Agreement.
7. Appendix A of the Data Processing Agreement contains details about the processing as well as the purpose and nature of the processing, type of personal data, categories of data subject and duration of the processing.
8. Appendix B of the Data Processing Agreement contains the Data Controller's terms and conditions that apply to the Data Processor's use of Sub-Processors and a list of Sub-Processors approved by the Data Controller.

9. This Data Processing Agreement and its associated Appendix shall be retained in writing as well as electronically by both parties.
10. This Data Processing Agreement shall not exempt the Data Processor from obligations to which the Data Processor is subject pursuant to the General Data Protection Regulation or other legislation.
2. The rights and obligations of the Data Controller
  1. The Data Controller shall be responsible to the outside world (including the data subject) for ensuring that the processing of personal data takes place within the framework of the General Data Protection Regulation and the Danish Data Protection Act.
  2. The Data Controller shall therefore have both the right and obligation to make decisions about the purposes and means of the processing of personal data.
  3. The Data Controller shall be responsible for ensuring that the processing that the Data Processor is instructed to perform is authorised in law.
3. The Data Processor acts according to instructions
  1. The Data Processor shall solely be permitted to process personal data on documented instructions from the Data Controller unless processing is required under EU or Member State law to which the Data Processor is subject; in this case, the Data Processor shall inform the Data Controller of this legal requirement prior to processing unless that law prohibits such information on important grounds of public interest, cf. Article 28, sub-section 3, para a.
  2. The Data Processor shall immediately inform the Data Controller if instructions in the opinion of the Data Processor contravene the General Data Protection Regulation or data protection provisions contained in other EU or Member State law.
4. Confidentiality
  1. The Data Processor shall ensure that only those persons who are currently authorised to do so are able to access the personal data being processed on behalf of the Data Controller. Access to the data shall therefore without delay be denied if such authorisation is removed or expires.
  2. Only persons who require access to the personal data in order to fulfil the obligations of the Data Processor to the Data Controller shall be provided with authorisation.
  3. The Data Processor shall ensure that persons authorised to process personal data on behalf of the Data Controller have undertaken to observe confidentiality or are subject to suitable statutory obligation of confidentiality.
5. Security of processing
  1. The Data Processor shall take all the measures required pursuant to Article 32 of the General Data Protection Regulation which stipulates that with consideration for the current level, implementation costs and the nature, scope, context and purposes of processing and the risk of varying likelihood and severity for the rights and freedoms of natural persons, the Data Controller and Processor shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk.
  2. The above obligation means that the Data Processor shall perform a risk assessment and thereafter implement measures to counter the identified risk. Depending on their relevance, the measures may include the following:
    - a. Pseudonymisation and encryption of personal data
    - b. The ability to ensure ongoing confidentiality, integrity, availability and resilience of processing systems and services.
    - c. The ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident.

- d. A process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.
6. Use of Sub-Processors
  1. The Data Processor shall meet the requirements specified in Article 28, sub-section 2 and 4, of the General Data Protection Regulation in order to engage another processor (Sub-Processor).
  2. The Data Processor shall therefore not engage another processor (Sub-Processor) for the fulfilment of this Data Processing Agreement without the prior specific or general written consent of the Data Controller.
  3. In the event of general written consent, the Data Processor shall inform the Data Controller of any planned changes with regard to additions to or replacement of other data processors and thereby give the Data Controller the opportunity to object to such changes.
  4. The Data Controller's requirements for the Data Processor's engagement of other sub-processors shall be specified in Appendix B to this Data Processing Agreement.
  5. The Data Controller's consent to the engagement of specific sub-processors, if applicable, shall be specified in Appendix B to this Data Processing Agreement.
  6. When the Data Processor has the Data Controller's authorisation to use a sub-processor, the Data Processor shall ensure that the Sub-Processor is subject to the same data protection obligations as those specified in this Data Processing Agreement on the basis of a contract or other legal document under EU law or the national law of the Member States, in particular providing the necessary guarantees that the Sub-Processor will implement the appropriate technical and organisational measures in such a way that the processing meets the requirements of the General Data Protection Regulation.
  7. The Data Processor shall therefore be responsible – on the basis of a sub-processor agreement – for requiring that the sub-processor at least comply with the obligations to which the Data Processor is subject pursuant to the requirements of the General Data Protection Regulation and this Data Processing Agreement and its associated Appendices.
  8. If the Sub-Processor does not fulfil his data protection obligations, the Data Processor shall remain fully liable to the Data Controller as regards the fulfilment of the obligations of the Sub-Processor.
7. Transfer of data to third countries or international organisations
  1. The Data Processor shall solely be permitted to process personal data on documented instructions from the Data Controller, including as regards transfer (assignment, disclosure and internal use) of personal data to third countries or international organisations, unless processing is required under EU or Member State law to which the Data Processor is subject; in such a case, the Data Processor shall inform the Data Controller of that legal requirement prior to processing unless that law prohibits such information on important grounds of public interest, cf. Article 28, sub-section 3, para a.
8. Assistance to the Data Controller
  1. The Data Processor, taking into account the nature of the processing, shall, as far as possible, assist the Data Controller with appropriate technical and organisational measures, in the fulfilment of the Data Controller's obligations to respond to requests for the exercise of the data subjects' rights pursuant to Chapter 3 of the General Data Protection Regulation.
  2. The Data Processor shall assist the Data Controller in ensuring compliance with the Data Controller's obligations pursuant to Articles 32-36 of the General Data

Protection Regulation taking into account the nature of the processing and the data made available to the Data Processor, cf. Article 28, sub-section 3, para f.

This entails that the Data Processor should, taking into account the nature of the processing, as far as possible assist the Data Controller in the Data Controller's compliance with:

- a. the obligation to implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk associated with the processing
- b. the obligation to report personal data breaches to the supervisory authority (Danish Data Protection Agency) without undue delay and, if possible, within 72 hours of the Data Controller discovering such breach unless the personal data breach is unlikely to result in a risk to the rights and freedoms of natural persons
- c. the obligation – without undue delay - to communicate the personal data breach to the data subject when such breach is likely to result in a high risk to the rights and freedoms of natural persons
- d. the obligation to carry out a data protection impact assessment if a type of processing is likely to result in a high risk to the rights and freedoms of natural persons
- e. the obligation to consult with the supervisory authority (Danish Data Protection Agency) prior to processing if a data protection impact assessment shows that the processing will lead to high risk in the lack of measures taken by the Data Controller to limit risk

#### 9. Notification of personal data breach

1. On discovery of personal data breach at the Data Processor's facilities or a sub-processor's facilities, the Data Processor shall without undue delay notify the Data Controller in order to enable the Data Controller to comply with his obligation, if applicable, to report the breach to the supervisory authority within 72 hours.
2. According to Clause 8.2., para b, of this Data Processing Agreement, the Data Processor shall – taking into account the nature of the processing and the data available – assist the Data Controller in the reporting of the breach to the supervisory authority. This may mean that the Data Processor is required to assist in obtaining the information listed below which, pursuant to Article 33, sub-section 3, of the General Data Protection Regulation, shall be stated in the Data Controller's report to the supervisory authority:
  - a. the nature of the personal data breach, including, if possible, the categories and the approximate number of affected data subjects and the categories and the approximate number of affected personal data records
  - b. probable consequences of a personal data breach
  - c. measures which have been taken or are proposed to manage the personal data breach, including, if applicable, measures to limit its possible damage

#### 10. Erasure and return of data

1. On termination of the processing services, the Data Processor shall be under obligation, at the Data Controller's discretion, to erase or return all the personal data to the Data Controller and to erase existing copies unless EU law or Member State law requires storage of the personal data.

#### 11. Inspection and audit

1. The Data Processor shall make available to the Data Controller all information necessary to demonstrate compliance with Article 28 of the General Data Protection Regulation and this Data Processing Agreement, and allow for and contribute to

audits, including inspections performed by the Data Controller or another auditor mandated by the Data Controller.

2. The Data Processor shall be required to provide the supervisory authorities, which pursuant to applicable legislation have access to the Data Controller's and Data Processor's facilities, or representatives acting on behalf of such supervisory authorities, with access to the Data Processor's physical facilities on presentation of appropriate identification.

#### 12. Commencement and termination

1. This Data Processing Agreement shall become effective on the date of both parties' signature to the agreement, and shall apply as long as the processing is performed. Irrespective of termination, this Data Processing Agreement shall remain in force until the termination of the processing and the erasure of the data by the Data Processor and any sub-processors.

## 1 Signatures

For the Data Controller:

For the Data Processor (Gigahost ApS):



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Helle Boldt  
Rønne, 2018-05-22

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Christian Flintrup  
Copenhagen, 2018-05-22

# **Appendix A: Information about the processing**

**The purpose of the Data Processor's processing of personal data on behalf of the Data Controller is:**

- that the Data Controller is able to use the Gigahost shared web hosting and email services, to upload content provided by the Data Controller, and which may or may not contain information about the Data Controller's employees, business partners, contacts or any other persons as submitted by the Data Controller.
- That the Data Controller is able to use the Gigahost SMS gateway to send messages, containing the phone number of the recipient and the SMS message contents.

**The Data Processor's processing of personal data on behalf of the Data Controller shall mainly pertain to (the nature of the processing):**

- that the Data Processor makes the Gigahost hosting services available to the Data Controller and hereby could store personal data about the Data Controller's employees, business partners, contacts or any other persons as determined by the Data Controller on its servers.
- That the Data Processor makes the Gigahost SMS gateway available to the Data Controller and hereby could process and store personal data (including the recipient phone number) on its servers.

**The processing includes the following types of personal data about data subjects:**

- Any information uploaded by the Data Controller, the extent of which is determined and controlled by the Data Controller in its sole discretion. Data uploaded by the Data Controller may include special categories of personal data according to article 9 of the General Data Protection Regulation.

**Processing includes the following categories of data subject:**

- Any data subject chosen by the Data Controller in its sole discretion.

**The Data Processor's processing of personal data on behalf of the Data Controller may be performed when this Data Processing Agreement commences. Processing has the following duration:**

- Processing shall not be time-limited and shall be performed until this Data Processing Agreement is terminated or cancelled by one of the Parties.

# Appendix B: Terms of the Data Processor's use of sub-processors and list of approved sub-processors

## 2 Terms of the Data Processor's use of sub-processors

The Data Processor shall solely engage sub-processors with the prior explicit written agreement of the Data Controller. The Data Processor's request for such engagement shall be submitted to the Data Controller a minimum of 3 months prior to the engagement of sub-processors or amendments coming into force. The Data Controller shall solely refuse consent if the Data Controller has reasonable and specific grounds for such refusal.

The Data Controller will be notified on the email address registered with the account, in case of engagement with new sub-processors.

## 3 Approved sub-processors

The Data Controller shall on commencement of this Data Processing Agreement approve the engagement of the following sub-processors:

Name	VAT no.	Address	Description of processing
CLX Communications ApS	DK26361710	Vermundsgade 38A, st. th, 2100 Copenhagen Ø, Denmark	Delivery of SMS messages
Link Mobility ApS	DK30077520	Birkemose Allé 37, 6000 Kolding, Denmark	Delivery of SMS messages

The Data Controller shall on the commencement of this Data Processing Agreement specifically approve the use of the above sub-processors for the processing described for that party. The Data Processor shall not be entitled – without the Data Controller's explicit written consent – to engage a sub-processor for 'different' processing than the one that has been agreed or have another sub-processor perform the described processing.