Agreement on order processing

in accordance with Art. 28 GDPR

Agreement

between the

The company

Address

represented by

- Responsible -

- hereinafter referred to as the "**Client**" -

and the

Heylog FlexCo
Wiedner Gürtel 13
Icon Tower 24, 3 Regus
1100 Vienna
Austria

represented by the managing director

- Processor -

- hereinafter referred to as "**Contractor"** -

(both together hereinafter referred to as "Contracting Parties")

PREAMBLE

In order to specify the rights and obligations arising from the order processing relationship in accordance with the legal obligation under Art. 28 GDPR, the contracting parties conclude the following agreement. The Client has commissioned the Contractor to provide services in this area.

This agreement on commissioned processing (hereinafter "Agreement") specifies the obligations of the contracting parties under data protection law, which arise in particular from Art. 28 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation - GDPR). The agreement applies to all activities in which the contractor or subcontractors (subcontractors) commissioned by the contractor and approved in advance by the client may process or come into contact with the client's personal data.

1. SECTION I

1.1. PURPOSE AND SCOPE OF APPLICATION

(1) These Standard Contractual Clauses (hereinafter "Clauses") are intended to ensure compliance with [select applicable option:

☒ OPTION 1: Article 28(3) and (4) of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)] or

☐ OPTION 2: Article 29(3) and (4) of Regulation (EU) 2018/1725 of the European Parliament and of the Council of October 23, 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC].

2. The controllers and processors listed in Annex I have agreed to these clauses in order to ensure compliance with Article 28(3) and (4) of Regulation (EU) 2016/679 and/or Article 29(3) and (4) of Regulation (EU) 2018/1725.

(3. These clauses shall apply to the processing of personal data in accordance with Annex II.

(4) Annexes I to IV are an integral part of the clauses.

(5) These clauses are without prejudice to the obligations to which the controller is subject under Regulation (EU) 2016/679 and/or Regulation (EU) 2018/1725.

(6) These clauses do not in themselves ensure that the obligations relating to international data transfers under Chapter V of Regulation (EU) 2016/679 and/or Regulation (EU) 2018/1725 are fulfilled.

1.2.   UNALTERABILITY OF THE CLAUSES

(1) The parties undertake not to amend the Clauses except to supplement or update the information provided in the Annexes.

(2) This shall not prevent the parties from incorporating the standard contractual clauses set out in these clauses into a more comprehensive contract (main contract) and adding further clauses or additional guarantees, provided that these do not directly or indirectly conflict with the clauses or infringe the fundamental rights or freedoms of the data subjects.

1.3.   INTERPRETATION

(1) Where terms defined in Regulation (EU) 2016/679 or Regulation (EU) 2018/1725 are used in these clauses, those terms shall have the same meaning as in that Regulation.

(2) These clauses shall be interpreted in the light of the provisions of Regulation (EU) 2016/679 and Regulation (EU) 2018/1725.

(3. Those clauses shall not be interpreted in a way that is contrary to the rights and obligations provided for in Regulation (EU) 2016/679 or Regulation (EU) 2018/1725 or in a way that restricts the fundamental rights or freedoms of data subjects.

1.4.   PRIORITY

In the event of any conflict between these clauses and the provisions of any related agreements existing or subsequently entered into or concluded between the parties, these clauses shall prevail.

1.5.   OPTIONAL TYING CLAUSE

(1. An entity that is not a party to these Clauses may, with the consent of all parties, accede to these Clauses as a controller or processor at any time by completing the Annexes and signing Annex I.

2. After completing and signing the annexes referred to in point (a), the acceding entity shall be treated as a party to these clauses and shall have the rights and obligations of a controller or processor in accordance with its designation in Annex I.

(3) No rights or obligations arising from these clauses shall apply to the acceding entity for the period prior to its accession as a party.

2. SECTION II OBLIGATIONS OF THE PARTIES

2.1. DESCRIPTION OF THE PROCESSING

The details of the processing operations, in particular the categories of personal data and the purposes for which the personal data are processed on behalf of the controller, are set out in Annex II

2.2. OBLIGATIONS OF THE PARTIES

2.2.1. INSTRUCTIONS

(1. The processor shall process personal data only on documented instructions from the controller, unless the processor is required to do so by Union law or by the law of a Member State to which the processor is subject. In such a case, the processor shall inform the controller of these legal requirements prior to processing, unless the law in question prohibits this due to an important public interest. The controller may issue further instructions for the entire duration of the processing of personal data. These instructions must always be documented.

(2) The processor shall inform the controller immediately if it believes that instructions issued by the controller violate Regulation (EU) 2016/679, Regulation (EU) 2018/1725 or applicable Union or national data protection provisions.

2.2.2. EARMARKING

The processor shall process the personal data only for the specific purpose(s) set out in Annex II, unless it receives further instructions from the controller.

2.2.3. DURATION OF THE PROCESSING OF PERSONAL DATA

The data shall only be processed by the processor for the duration specified in Annex II.

2.2.4. SAFETY OF PROCESSING

(1. The processor shall implement at least the technical and organizational measures listed in Annex IV to ensure the security of the personal data. This shall include the protection of data against a breach of security leading to the destruction, loss, alteration, unauthorized

disclosure of or access to the data, whether accidental or unlawful (hereinafter "personal data breach"). In assessing the appropriate level of protection, the parties shall take due account of the state of the art, the costs of implementation, the nature, scope, context and purposes of the processing and the risks presented to the data subjects.

(2) The Processor shall grant its personnel access to the personal data subject to processing only to the extent strictly necessary for the performance, management and monitoring of the Contract. The Processor shall ensure that the persons authorized to process the personal data received have committed themselves to confidentiality or are subject to an appropriate statutory duty of confidentiality.

2.2.5. SENSITIVE DATA

(1) If the processing concerns personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, or containing genetic data or biometric data for the purpose of uniquely identifying a natural person, data concerning an individual's health, sex life or sexual orientation, or data relating to criminal convictions and offenses (hereinafter "sensitive data"), the Processor shall apply specific restrictions and/or additional safeguards.

(2) In the context of confidentiality in accordance with Article 40.90 GDPR, a separate confidentiality agreement is also signed, which applies with this agreement.

2.2.6. DOCUMENTATION AND COMPLIANCE WITH THE CLAUSES

(1) The parties must be able to prove compliance with these clauses.

(2) The Processor shall process requests from the Controller regarding the processing of data in accordance with these Clauses promptly and appropriately.

(3) The processor shall provide the controller with all information necessary to demonstrate compliance with the obligations set out in these Clauses and arising directly from Regulation (EU) 2016/679 and/or Regulation (EU) 2018/1725. At the request of the Controller, the Processor shall also allow and contribute to an audit of the processing activities covered by these Clauses at appropriate intervals or where there are indications of non-compliance. When deciding on an inspection or audit, the controller may take into account relevant certifications of the processor.

(4. The controller may carry out the audit itself or engage an independent auditor. The audits may include inspections of the processor's premises or physical facilities and shall be carried out with reasonable prior notice where appropriate.

(5) The parties shall make the information referred to in this clause, including the results of audits, available to the competent supervisory authority or authorities upon request.

2.2.7.   USE OF SUBCONTRACTED PROCESSORS

(1)   PRIOR SPECIFIC AUTHORIZATION: The Processor shall not subcontract any of its processing operations that it carries out on behalf of the Controller pursuant to these Clauses to a subprocessor without the prior separate written consent of the Controller.

(2)   The processor shall submit the request for the separate authorization 8 weeks prior to the engagement of the relevant sub-processor together with the information required by the controller to decide on the authorization.

(3)   The list of sub-processors approved by the Controller can be found in Annex III. The Parties shall keep Annex III up to date.

(4)   Where the Processor engages a sub-processor to carry out certain processing activities (on behalf of the Controller), such engagement shall be by way of a contract which imposes on the sub-processor substantially the same data protection obligations as those applicable to the Processor under these Clauses. The Processor shall ensure that the Sub-Processor complies with the obligations to which the Processor is subject under these Clauses and under Regulation (EU) 2016/679 and/or Regulation (EU) 2018/1725.

(5)   The Processor shall provide the Controller with a copy of any such subcontracting agreement and any subsequent amendments at the Controller's request. To the extent necessary to protect trade secrets or other confidential information, including personal data, the Processor may redact the wording of the agreement before providing a copy.

(6)   The Processor shall be fully liable to the Controller for ensuring that the Sub-Processor fulfills its obligations under the contract concluded with the Processor. The Processor shall notify the Controller if the Sub-Processor fails to fulfill its contractual obligations.

(7)   The processor agrees a third-party beneficiary clause with the sub-processor, according to which the controller - in the event that the processor no longer exists in fact or in law or is insolvent - has the right to terminate the subcontracting agreement and instruct the sub-processor to delete or return the personal data.

(8)   The Processor shall be entitled to engage the subcontractors listed in Annex A3 to perform the contractual tasks. If the Processor intends to engage new subcontractors, it

must inform the Controller with a lead time of 4 weeks. If the Controller objects, the Processor may not use the subcontractor.

2.2.8.   INTERNATIONAL DATA TRANSFERS

(1. Any transfer of data by the processor to a third country or an international organization shall be carried out exclusively on the basis of documented instructions from the controller or to comply with a specific provision under Union law or the law of a Member State to which the processor is subject and shall comply with Chapter V of Regulation (EU) 2016/679 or Regulation (EU) 2018/1725.

(2) The Controller agrees that in cases where the Processor uses a Sub-Processor pursuant to Clause 7.7 for the performance of certain processing activities (on behalf of the controller) and where such processing activities involve a transfer of personal data within the meaning of Chapter V of Regulation (EU) 2016/679, the processor and the sub-processor may ensure compliance with Chapter V of Regulation (EU) 2016/679 by using standard contractual clauses adopted by the Commission pursuant to Article 46(2) of Regulation (EU) 2016/679, provided that the conditions for the application of such standard contractual clauses are met.

2.2.9.   SUPPORT OF THE PERSON RESPONSIBLE

(1. The processor shall inform the controller without undue delay of any request received from the data subject. It shall not respond to the request itself unless it has been authorized to do so by the controller.

(2) Taking into account the nature of the processing, the processor shall assist the controller in fulfilling the controller's obligation to respond to requests from data subjects to exercise their rights. In fulfilling its obligations under points (a) and (b), the processor shall follow the instructions of the controller.

(3) In addition to the Processor's obligation to assist the Controller pursuant to Clause 8(b), the Processor shall also assist the Controller in complying with the following obligations, taking into account the nature of the data processing and the information available to the Processor:

1) **Obligation to carry out an assessment of** the impact of the envisaged processing operations on the protection of personal data (hereinafter "data protection impact assessment") if a form of processing is likely to result in a high risk to the rights and freedoms of natural persons;

2) **Obligation to consult the competent supervisory authority(ies)** prior to processing if a data protection impact assessment indicates that the processing would result in a high risk, unless the controller takes measures to mitigate the risk;

3) **Obligation to ensure** that the personal data is accurate and up to date by the processor informing the controller immediately if it discovers that the personal data it is processing is inaccurate or out of date;

4) Obligations pursuant to

    ☒   Article 32 of Regulation (EU) 2016/679] or

    ☐   Article 33 and Articles 36 to 38 of Regulation (EU) 2018/1725].

(4. The Parties shall specify in Annex IV the appropriate technical and organizational measures for the Processor to assist the Controller in the application of this Clause and the scope and extent of the assistance required.

2.2.10.   NOTIFICATION OF PERSONAL DATA BREACHES

(1)   In the event of a personal data breach, the Processor shall cooperate with and assist the Controller to enable the Controller to comply with its obligations under Articles 33 and 34 of Regulation (EU) 2016/679 or, where applicable, Articles 34 and 35 of Regulation (EU) 2018/1725, taking into account the nature of the processing and the information available to the Processor.

(2)   If employees or customers of the client are affected, the office of the data protection officer gdpr@heylog.com is always informed and the procedure discussed before the affected parties are notified.

2.2.10.1.   VIOLATION OF THE PROTECTION OF DATA PROCESSED BY THE CONTROLLER

(1)   In the event of a personal data breach in connection with the data processed by the controller, the processor shall assist the controller as follows:

    a. in notifying the personal data breach to the competent supervisory authority(ies) without undue delay after the controller becomes aware of the personal data breach, where relevant (unless the personal data breach is unlikely to result in a risk to the rights and freedoms of natural persons);

    b. in obtaining the following information, which is required under

    ☒   Article 33(3) of Regulation (EU) 2016/679] or

☐ Article 34(3) of Regulation (EU) 2018/1725] in the controller's notification, which shall include at least the following information:

1) the nature of the personal data, where possible, indicating the categories and approximate number of data subjects concerned and the categories and approximate number of personal data records concerned;

2) the likely consequences of the personal data breach;

3) the measures taken or proposed to be taken by the controller to address the personal data breach and, where appropriate, measures to mitigate its possible adverse effects.

(2. If and to the extent that not all such information can be provided at the same time, the initial notification shall contain the information available at that time and further information shall be provided thereafter without undue delay as soon as it becomes available;

in complying with the obligation pursuant to

☐ Article 34 of Regulation (EU) 2016/679] or

☒ Article 35 of Regulation (EU) 2018/1725] to notify the data subject without undue delay of a personal data breach where the personal data breach is likely to result in a high risk to the rights and freedoms of natural persons.

2.2.11. BREACH OF THE PROTECTION OF DATA PROCESSED BY THE PROCESSOR

(1) In the event of a personal data breach in connection with the data processed by the Processor, the Processor shall notify the Controller without undue delay after becoming aware of the breach. This notification must contain at least the following information:

   a. a description of the nature of the breach (if possible, specifying the categories and approximate number of data subjects affected and the approximate number of data records affected);
   b. Contact details of a contact point where further information about the personal data breach can be obtained;
   c. the likely consequences and the measures taken or proposed to address the personal data breach, including measures to mitigate its possible adverse effects.

(2)   If and to the extent that not all such information can be provided at the same time, the initial notification will contain the information available at that time and further information will be provided as it becomes available without undue delay thereafter.

(3)   The Parties shall set out in Annex III any other information that the Processor must provide to assist the Controller in fulfilling the Controller's obligations under

☐   Articles 33 and 34 of Regulation (EU) 2016/679] or

☒   Articles 34 and 35 of Regulation (EU) 2018/1725].

3. SECTION III FINAL PROVISIONS

3.1.   BREACHES OF THE CLAUSES AND TERMINATION OF THE CONTRACT

(1)   Without prejudice to the provisions of Regulation (EU) 2016/679 and/or Regulation (EU) 2018/1725, if the Processor fails to comply with its obligations under these Clauses, the Controller may instruct the Processor to suspend the processing of personal data until it complies with these Clauses or the contract is terminated. The processor shall inform the controller immediately if, for whatever reason, it is unable to comply with these clauses.

The controller is entitled to terminate the contract insofar as it relates to the processing of personal data in accordance with these clauses if

1) the controller has suspended **the processing of personal data** by the processor in accordance with point (a) and compliance with these clauses has not been restored within a reasonable period and in any event within one month of the suspension;

2) the processor materially or persistently breaches these clauses or fails to comply with its obligations under Regulation (EU) 2016/679 and/or Regulation (EU) 2018/1725

3) the Processor fails to comply with **a binding decision of a competent court** or competent supervisory authority(ies) relating to its obligations under these Clauses, Regulation (EU) 2016/679 and/or Regulation (EU) 2018/1725.

(2)   The Processor shall be entitled to terminate the Contract insofar as it relates to the Processing of Personal Data under these Clauses if the Controller insists on the fulfillment of its instructions after being informed by the Processor that its instructions violate applicable legal requirements under Clause 7.1(b).

(3)   Upon termination of the contract, the processor shall, at the choice of the controller, erase all personal data processed on behalf of the controller and certify to the controller

that this has been done, or return all personal data to the controller and erase existing copies, unless there is an obligation to retain the personal data under Union or Member State law. Until the deletion or return of the data, the processor shall continue to ensure compliance with these clauses.

3.2.   LIABILITY

(1)   The Contractor shall be liable to the Client for all damage caused by the Contractor, its employees, its vicarious agents, persons commissioned by it to perform the work or subcontractors in connection with the provision of the services in accordance with this Agreement.

(2)   Insofar as the Client and the Contractor are liable for damages as joint and several debtors in the external relationship and the Contractor is liable in the internal relationship, the Contractor shall indemnify the Client on first demand against all third-party claims for which the Contractor is liable in the internal relationship.

(3)   The Contractor declares that it is aware that non-compliance with data protection obligations may result in the imposition of sanctions in addition to liability for damages. (see Art. 82, 83, 84 GDPR)

3.3.   MISCELLANEOUS

(1)   Should provisions from the service agreement dated DATE contradict those from this agreement with regard to the processing of data relevant under data protection law, the provisions of this agreement shall take precedence.

(2)   This agreement on the order agreement pursuant to Art. 28 GDPR shall enter into force upon signature by both parties.

(3)   The duration of the agreement is based on that of the main contract. This agreement therefore ends with the termination of the main contract.

(4)   The defense of the right of retention is excluded with regard to the processed data and the associated data carriers.

(5)   The law of the Federal Republic of Austria shall apply to the exclusion of the UN Convention on Contracts for the International Sale of Goods and other conflict of laws provisions. The place of jurisdiction for all disputes in connection with this agreement is the place of jurisdiction agreed in the main contract.

A1 ANNEX I LIST OF PARTIES

Controller(s): [*Name and contact details of the controller(s) and, if applicable, of the controller's data protection officer*]

Name:

Address:

Name, function and contact details of the contact person:

Signature and date of accession:

....

Processor: [*name and contact details of the processor(s) and, if applicable, of the processor's data protection officer*]

Name:

Address:

Name, function and contact details of the contact person:

Signature and date of accession:

....

A2 ANNEX II DESCRIPTION OF PROCESSING

Categories of data subjects whose personal data are processed

- **Employees and contracted transport companies**
- **Customers**

Categories of personal data that are processed

The processing operations to be carried out by the processor in this context relate to those personal data that are necessary for the performance of the main contract. Data subjects are employees of the controller and transport companies commissioned by the controller and their employees as well as customers to whom goods are delivered.

This includes in particular the following categories of personal data:

Employees and contracted transport companies

- Name and contact details
- Usage data (e.g. input data, log files, communication metadata)

Customer data

- Name, date of birth if applicable
- Address
- Other data to be disclosed as part of the services to be transported

Sensitive data processed (if applicable) and restrictions or safeguards applied that take full account of the nature of the data and the risks involved, e.g. strict purpose limitation, access restrictions (including access only for employees who have undergone specific training), records of access to the data, restrictions on onward transfers or additional security measures

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Type of processing

Digital processing of data in the Heylog system.

Purpose(s) for which the personal data are processed on behalf of the controller

The processor was commissioned by the controller to operate the Heylog solution. The Heylog solution includes a cloud-based communication system that enables easy communication between logistics companies and drivers via existing communication systems such as WhatsApp. Further details on the processing operations can be found in Heylog's General Terms and Conditions.

Enabling and simplifying communication with drivers and dispatchers for ordering, controlling and monitoring routes and deliveries.

Duration of processing

The data will be processed as long as the main contract is in force and the processing is necessary for the fulfillment of the obligations arising from this contract or as long as another legal basis is fulfilled and as long as the controller does not issue documented instructions to stop the processing.

In the case of processing by (sub)processors, the object, type and duration of the processing must also be stated.

ANNEX   A3   LIST   OF   SUB-PROCESSORS
APPENDIX A4 TECHNICAL AND ORGANIZATIONAL MEASURES

ANNEX A5 GENERAL TERMS AND CONDITIONS