

## XX. DATA PROCESSING ADDENDUM

This Data Processing Addendum is part of the General Terms of Service provided by memoQ Translation Technologies Ltd., acting as the Data Processor under the scope of this Data Processing Addendum.

Data Processor Details:

**memoQ Translation Technologies Ltd.**

registered seat: Mester u. 12. 1/1., Budapest, 1095 Hungary

EU VAT ID: HU25429356

Data Protection Officer / Chief Information Security Officer contact:

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**94.** This Data Processing Addendum shall apply to Customer as well as to the Service Agreement between Customer and Provider if

- a) Customer uses the memoQ cloud service, Language Terminal, or the memoQ server hosting service provided by Provider (see Chapters V, VI, and XVIII), or
- b) Customer sends project data to Provider's Helpdesk, where the project data includes protected personal data, and Customer notifies Provider of the fact, and
- c) Customer resides in the European Union or collects or processes personal data of EU citizens.

**95. Purpose and scope of this Addendum:** This addendum applies to personal data collected by Customer and eventually processed by Provider. This addendum does *not* apply to the personal data of Customer or representatives of Customer, collected by Provider.

**96. Processor and Controller:** In this Data Processing Addendum, Provider shall be called Processor, whereas Customer shall be called Controller.

**97. Definitions:** The terms used in this Addendum shall have the meanings set forth in this Addendum. Terms not otherwise defined herein shall have the meanings given to them in the General Terms of Service. Except as modified below, the terms of General Terms of Service shall remain in full force and effect.

In this Addendum, the following terms shall have the meanings set out below and cognate terms shall be construed accordingly:

- a) **Authorised Sub-processor:** (a) The Sub-processors set out in the Sub-processing section; and (b) any additional Sub-processors consented to in writing by Controller in accordance with the Sub-processing section.
- b) **Sub-processor:** Any Data Processor (including any third party) appointed by the Processor to process Controller Personal Data on behalf of the Controller.
- c) **Process/Processing/Processed, Data Controller, Data Processor, Data Subject, Personal Data, Special Categories of Personal Data** and any further definition not included under this Agreement or the General Terms of Service shall have the same meaning as in EU General Data Protection Regulation 2016/679 of the European Parliament and of the Council (GDPR).
- d) **Data Protection Laws:** The EU General Data Protection Regulation 2016/679 of the European Parliament and of the Council (GDPR) as well as any local data protection laws.
- e) **Erasure:** Removal or destruction of Personal Data such that it cannot be recovered or reconstructed.
- f) **EEA:** The European Economic Area.
- g) **Third country:** Any country outside the EU or the EEA, unless the country is the subject of a valid adequacy decision by the European Commission on the protection of Personal Data in Third Countries.
- h) **Controller Personal Data:** Data described in the Details of processing of controller personal data section and any other Personal Data processed by Processor on behalf of the Controller, pursuant to or in connection with the General Terms of Service.
- i) **Personal Data Breach:** An event leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Controller Personal Data transmitted, stored or otherwise processed.
- j) **Services:** Services to be provided by Processor to Controller, pursuant to the General Terms of Service.
- k) **Products:** means the products to be supplied by the Processor to the Controller pursuant to the General Terms of Service.
- l) **Standard Contractual Clauses:** Standard contractual clauses for the transfer of personal data to Processors established in third countries,

as approved by the European Commission Decision 2010/87/EU, or any set of clauses approved by the European Commission which amends, replaces or supersedes these.

**98. Details of processing of controller personal data:** This section includes certain details of the Processing of Controller Personal Data as required by Article 28(3) GDPR.

- a) Subject matter and duration of the Processing of Controller Personal Data: *The subject matter and duration of the Processing of the Controller Personal Data are set out in the General Terms of Service and this Addendum.*
- b) Nature and purpose of the Processing of Controller Personal Data: *Providing storage and software functionality as a service for language translation services.*
- c) Types of Controller Personal Data to be Processed: *Name, address, telephone number, e-mail address, other personal data in text to be translated.*
- d) Categories of the Data Subjects to whom the Controller Personal Data relates: *Customers, clients, co-workers (server users), and data subjects referred to in the text to be translated.*

**99. Main purpose of service is not personal data processing:** Controller acknowledges and accepts that the main purpose of the service provided by Processor is not the processing of personal data. Processor will store the personal data, and whenever they need processing, Processor will process them as text, not as personal data. Controller acknowledges and accepts that, following from the General Terms of Service, Processor may not have the means or the right to access the Personal Data, and may not be able to identify the Data Subjects or the Controller Personal Data that need protecting.

**100. Personal data in documents to translate:**

- a) If Controller receives such documents from their customer, Controller's role shall be Processor, and Processor's role shall be Sub-Processor. In this case, the data controller is the customer of Controller.
- b) Controller acknowledges and accepts that Processor may not be aware of the presence of protected Controller Personal Data in the documents unless explicitly instructed by Controller. In this case, the responsibility of protecting such Controller Personal Data remains with Controller.
- c) Controller agrees to remove protected Controller Personal Data from documents before importing them in Processor's systems, whenever such removal (anonymization or pseudonymization) is possible and feasible.

**101. Data Processing Terms:** While providing the Services and/or Products to the Controller pursuant to the General Terms of Service, Processor may process Controller personal data on behalf of Controller as per the terms of this Addendum. Processor agrees to comply with the following provisions with respect to any Controller personal data.

- a) To the extent required by applicable Data Protection Laws, Processor shall obtain and maintain all necessary licenses, authorizations and permits necessary to process personal data.
- b) Processor shall maintain all the technical and organizational measures to comply with the requirements set forth in the Addendum.

**102. The Processing of Controller Personal Data:** Processor shall not process Controller Personal Data for any purposes other than those set forth in the General Terms of Service or required by applicable law.

- a) Processor shall not process, transfer, modify, amend or alter the Controller Personal Data, or disclose or permit the disclosure of Controller personal data to any third parties, unless instructed so by Controller's documented instructions, or unless processing is required by EU or Member State law to which Processor is subject.
- b) Processor shall, to the extent permitted by law, inform Controller of that legal requirement before processing the Personal Data and comply with the Controller's instructions to minimize, as much as possible, the scope of the disclosure.

**103. Reliability and Non-Disclosure:** Processor shall take reasonable steps to ensure the reliability of any employee, agent or contractor who may have access to Controller personal data, ensuring in each case that access is strictly limited to those individuals who require access to the relevant Controller Personal Data.

Processor must ensure that all individuals that have a duty to process controller personal data:

- a) are informed of the confidential nature of the Controller Personal Data and are aware of Processor's obligations under this Addendum

and the General Terms of Service in relation to the Controller Personal Data;

- b) have undertaken appropriate training/certifications in relation to the Data Protection Laws or any other training/certifications requested by Controller;
- c) are subject to confidentiality undertakings or professional or statutory obligations of confidentiality; and
- d) are subject to user authentication and logon processes when accessing the Controller Personal Data in accordance with this Agreement, the General Terms of Service and the applicable Data Protection Laws.

**104. Personal Data Security:** Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, the Processor shall implement appropriate technical and organizational measures to ensure a level of Controller Personal Data security appropriate to the risk, including but not limited to:

- a) operating an audited ISO 27001 ISMS;
- b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
- c) the ability to restore the availability and access to Controller Personal Data in a timely manner in the event of a physical or technical incident; and
- d) a process for regularly testing, assessing and evaluating the effectiveness of technical and organizational measures for ensuring the security of the Processing.

In assessing the appropriate level of security, Processor shall take into account the risks that are presented by processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to Controller Personal Data transmitted, stored or otherwise processed.

**105. Access control by Controller:** Controller acknowledges and accepts that the service provided by Processor allows Controller to grant access to third parties without Processor’s prior knowledge or consent. Following from the General Terms of Service herein, this is Controller’s right. However, Controller agrees that this manner of granting access shall not constitute a data processing instruction towards Processor, and it shall be entirely Controller’s responsibility to ascertain that granting such access does not violate applicable laws and regulations.

**106. Sub-Processing:** As of the Addendum Effective Date, Controller hereby authorises Processor to engage the following Sub-Processors:

No.	Subprocessor name	Processing activity	Location of service center(s)
1	Hetzner Online GmbH	server hosting	Nuremberg, Germany
2	HostEurope GmbH (Server-Loft)	server hosting	Strasbourg, France
3	APH Inc. d/b/a Codero	server hosting	Dallas or Phoenix, United States
4	Microsoft Corp. (Azure Cloud)	server hosting	EU or USA

Processor shall not engage any Data Sub-Processors to Process Controller Personal Data other than the Subprocessors listed above, without the prior written consent of Controller, which Controller may refuse with absolute discretion.

With respect to each Sub-processor, Processor shall:

- a) Provide Controller with full details of the Processing to be undertaken by each Sub-processor.
- b) Carry out adequate due diligence on each Sub-Processor to ensure that it can provide the level of protection for Controller Personal Data, including without limitation, sufficient guarantees to implement appropriate technical and organisational measures in such a manner that Processing will meet the requirements of GDPR, this Agreement, the General Terms of Service and the applicable Data Protection Laws.
- c) Include terms in the contract between Processor and each Sub-processor which are the same as those set out in this Addendum. Upon request, Processor shall provide a copy of its agreements with Sub-Processors to Controller for its review.

- d) Insofar as that contract involves the transfer of Controller Personal Data outside of the EEA, incorporate the Standard Contractual Clauses or such other mechanism as directed by the Controller into the contract between Processor and each Sub-Processor to ensure the adequate protection of the transferred Controller Personal Data.
- e) Remain fully liable to Controller for any failure by each Sub-Processor to fulfil its obligations in relation to the Processing of any Controller Personal Data.

**107. Data Subject Rights:** Taking into account the nature of the Processing, Processor shall assist Controller by implementing appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of Controller's obligation to respond to requests for exercising Data Subject rights as laid down in EU GDPR.

Processor shall promptly notify Controller if it receives a request from a Data Subject, the Supervisory Authority and/or other competent authority under any applicable Data Protection Laws with respect to Controller Personal Data.

Processor shall cooperate as requested by Controller to enable Controller to comply with any exercise of rights by a Data Subject under any Data Protection Laws with respect to Controller Personal Data and comply with any assessment, enquiry, notice or investigation under any Data Protection Laws with respect to Controller Personal Data or this Agreement, which shall include:

- a) the provision of all data requested by Controller within any reasonable timescale specified by Controller in each case, including full details and copies of the complaint, communication or request and any Controller Personal Data it holds in relation to a Data Subject;
- b) where applicable, providing such assistance as is reasonably requested by Controller to enable Controller to comply with the relevant request within the timescales prescribed by the Data Protection Laws;
- c) implementing any additional technical and organisational measures as may be reasonably required by Controller to allow Controller to respond effectively to relevant complaints, communications or requests.

**108. Personal Data Breach:** Processor shall notify Controller without undue delay and, in any case, within twenty-four (24) hours upon becoming aware of or reasonably suspecting a Personal Data Breach. Processor will provide Controller with sufficient information to allow Controller to meet any obligations to report a Personal Data Breach under the Data Protection Laws. Such notification shall as a minimum:

- a) describe the nature of the Personal Data Breach, the categories and numbers of Data Subjects concerned, and the categories and numbers of Personal Data records concerned;
- b) communicate the name and contact details of Processor's Data Protection Officer, Privacy Officer or other relevant contact from whom more information may be obtained;
- c) describe the estimated risk and the likely consequences of the Personal Data Breach; and
- d) describe the measures taken or proposed to be taken to address the Personal Data Breach.

Processor shall co-operate with Controller and take such reasonable commercial steps as are directed by Controller to assist in the investigation, mitigation and remediation of each Personal Data Breach.

In the event of a Personal Data Breach, Processor shall not inform any third parties without first obtaining Controller's prior written consent, unless notification is required by EU or Member State law to which Processor is subject, in which case Processor shall, to the extent permitted by such law, inform Controller of that legal requirement, provide a copy of the proposed notification and consider any comments made by Controller before notifying the Personal Data Breach.

**109. Data Protection Impact Assessment and Prior Consultation:** Processor shall provide reasonable assistance to Controller with any data protection impact assessments which are required under Article 35 of GDPR and with any prior consultations to any supervisory authority of Controller which are required under Article 36 of GDPR, in each case solely in relation to Processing of Controller Personal Data by Processor on behalf of Controller and considering the nature of the processing and information available to the Processor.

**110. Erasure or return of Controller Personal Data:** Processor shall promptly and, in any event, within 90 (ninety) calendar days of the earlier of: (i) cessation of Processing of Controller Personal Data by Processor; or (ii)

termination of the General Terms of Service, at the choice of Controller (such choice to be notified to Processor in writing) either:

- a) return a complete copy of all Controller Personal Data to Controller by secure file transfer in such format as notified by Controller to Processor, and securely erase all other copies of Controller Personal Data Processed by Processor or any Authorised Sub-processor; or
- b) securely wipe all copies of Controller Personal Data Processed by Processor or any Authorised Sub-processor, and in each case, provide a written certification to Controller that it has complied fully with the requirements of section Erasure or Return of Controller Personal Data.
- c) Processor may retain Controller Personal Data to the extent required by Union or Member State law, and only to the extent and for such period as required by Union or Member State law, and always provided that Processor shall ensure the confidentiality of all such Controller Personal Data and shall ensure that such Controller Personal Data is only Processed as necessary for the purpose(s) specified in the Union or Member State law requiring its storage and for no other purpose.

**111. Audit rights:** Processor shall make available to Controller, upon request, all information necessary to demonstrate compliance with this Addendum and allow for, and contribute to audits, including inspections by Controller or another auditor mandated by Controller. Processor shall provide full cooperation to Controller with respect to any such audit and shall, at the request of Controller, provide Controller with evidence of compliance with its obligations under this Addendum. Processor shall immediately inform the Controller if, in its opinion, an instruction pursuant to this section Audit (Audit Rights) infringes the GDPR or other EU or Member State data protection provisions.

Audit rights must be exercised in a manner so as not to infringe or violate the rights of other Controllers and customers that have a similar contract with Processor.

**112. International Transfers of Controller Personal Data:** Processor shall not process Controller Personal Data nor permit any Authorised Sub-processor to process the Controller Personal Data in a Third Country other than those recipients in Third Countries (if any) listed in Sub-processing section, unless authorized in writing by Controller in advance.

Controller, using the capabilities of the service provided by Processor, may grant access to another Processor or Sub-Processor without Processor's prior knowledge or agreement. Such a manner of granting access shall constitute a transfer performed or permitted by Controller, and not by Processor. In this case, Controller shall take the entire responsibility

for ascertaining for the transfer not to violate applicable data protection laws.

When requested by Controller, Processor shall promptly enter into (or procure that any relevant Sub-processor of Processor enters into) an agreement with Controller including Standard Contractual Clauses and/or such variation as Data Protection Laws might require, in respect of any processing of Controller Personal Data in a Third Country, which terms shall take precedence over those in this Addendum.

**113. Codes of Conduct and Certification:** At the request of Controller, Processor shall comply with any Code of Conduct approved pursuant to Article 40 of GDPR and obtain any certification approved by Article 42 of EU GDPR, to the extent that they relate to the processing of Controller Personal Data.

**114. General Terms:**

- a) Subject to this section, Parties agree that this Agreement and the Standard Contractual Clauses shall terminate automatically upon termination of the General Terms of Service or expiry or termination of all service contracts entered into by Processor with Controller, pursuant to the General Terms of Service, whichever is later.
- b) Any obligation imposed on Processor under this Addendum in relation to the Processing of Personal Data shall survive any termination or expiration of this Addendum.
- c) This Addendum, excluding the Standard Contractual Clauses, shall be governed by the governing law of the General Terms of Service for so long as that governing law is the law of a Member State of the European Union.
- d) Any breach of this Addendum shall constitute a material breach of the General Terms of Service.
- e) With regard to the subject matter of this Addendum, in the event of inconsistencies between the provisions of this Addendum and any other agreements between the parties, including but not limited to the General Terms of Service, the provisions of this Addendum shall prevail with regard to the parties' data protection obligations for Personal Data of a Data Subject from a Member State of the European Union.
- f) Should any provision of this Addendum be invalid or unenforceable, then the remainder of this Addendum shall remain valid and in force. The invalid or unenforceable provision shall be either (i) amended as necessary to ensure its validity and enforceability, while preserving the parties' intentions as closely as possible or, if this is not possible, (ii) construed in a manner as if the invalid or unenforceable part had never been contained therein.