#Data processing agreement

(hereinafter referred to as contract) concerning the processing of personal data in the order (order processing according to Art. 28 GDPR)

between

El cliente

- “Controller” -

and

Gender-API.com
Markus Perl IT Solutions
Hermann-Mayrhofer-Str. 3
94036 Passau, Germany

- “Processor” –

1. Subject and term of the Agreement

The following services are commissioned: Operational processing of personal data within the context of service provision

Processor will process personal data for Controller within the meaning of Art. 4 (2) and Art. 28 GDPR on the basis of this Agreement. The contracted service will be provided exclusively in a member state of the European Union or the European Economic Area. Any transfer of the service or partial work to a third country requires the prior consent of Controller and may only take place if the special requirements of Art. 44 et seq. GDPR are fulfilled (adequacy decision by the Commission, standard data protection clauses, approved codes of conduct, etc.).

Term of the commission: The contract period is based on the main contract.

2. Purpose, extent and nature of the processing, type of personal data and categories of data subjects

The commissioned processing of personal data may only take place for a specific purpose. The purpose, scope and nature of the data are as follows (as defined in Art. 4 No. 2 GDPR): The subject of the contract results from the services ("packages") selected by the client on the website GenderAPI.com. The services offered are SaaS (Software as a Service) solutions for gender determination and the processing of personal data. The services are performed either immediately via an API interface or, in the case of bulk processing, as a batch process via an encrypted interface

Categories of data subjects (as defined in Art. 4 (1) GDPR): * Customers, Leads, Vendors

Type of personal data (as defined in Art. 4 (1), (13), (14) and (15) GDPR):

- Person master data
- Communication data (e.g. email)

- Contract master data
- Log data
- Client login and profile data
- API interface: title, first name, last name, email, country, email address, IP address, locale of the data provided by the client
- Bulk processing as batch process: title, first name, last name, email, country, email address, IP address, locale of the data provided by the client

3. Rights and obligations as well as instructions of Controller

Controller alone is responsible for assessing the admissibility of processing in accordance with Art. 6 (1) GDPR as well as for protecting the rights of data subjects in accordance with Art. 12 to 22 GDPR. Nevertheless, Processor must forward all such inquiries, provided that they are identifiably directed exclusively to Controller, immediately to Controller. Subject to applicable law, changes to the processed data and procedural changes must be agreed jointly between Controller and Processor and must be set down in writing or in a documented electronic format. Generally, Controller will issue all processing requests, partial requests and instructions in writing or in a documented electronic format. Verbal instructions must be confirmed immediately in writing or in a documented electronic format. Controller has the right, as stated in number 5 below, prior to the start of the processing and thereafter on a regular basis, to verify the compliance of the technical and organizational measures taken by Processor as well as Processor's compliance with the obligations specified in this Agreement. Controller must inform Processor immediately if it detects any errors or irregularities in verifying the results of the processing. Controller must handle with confidentiality all knowledge of Processor's business secrets and data security measures obtained as part of the contractual relationship. This obligation remains valid even after termination of this Agreement.

4. Controller employees authorized to give instructions and Processor employees authorized to receive instructions

The following Controller employees are authorized to give instructions: The managing directors of the client Contractor's agents authorized to receive instructions: Here, the instruction recipient (person or function) specified by the processor is entered. The managing directors of the contractor Communication channels to be used for giving instructions: It is entered here via which channels the client has to issue the instructions.

- by mail to the following address: Markus Perl IT Solutions – Gender-API.com, Hermann-Mayrhofer-Str. 3, 94036 Passau
- by email to the following address: contact@gender-api.com

In the event of a change in or long-term unavailability of a point of contact, the parties must notify each other immediately and in writing or electronically of the replacement or alternate point of contact. Instructions are to be kept on file for the remainder of their validity and thereafter for three full calendar years.

5. Obligations of Processor

Processor must process personal data only in accordance with prior arrangements and the instructions of Controller, unless required to otherwise process the data by European Union or Member State law to which Processor is subject (such as investigations by law enforcement or national security agencies); in such a case, Processor must inform the Controller of these legal requirements prior to processing the data, unless the relevant law prohibits such information on important grounds of public interest (Article 28 (3) sentence 2 (a) GDPR). Processor may not use the personal data provided for processing for any other purpose, particularly for its own purposes. Copies or duplicates of the personal data must not be created without Controller's knowledge. Processor guarantees performance of all the agreed measures for commissioned processing of personal data. Processor guarantees that the data processed for Controller will be strictly separated from other data. Processor must carry out, at a minimum, the following controls on all data processing performed on Controller's behalf: Here the duties of the processor are entered. If the processor processes the data (on his systems), then the top and, if necessary, the middle selection should be ticked. If the processor processes the data on the client's system, then the middle selection should be ticked. Additional obligations can be defined in the lower selection, as long as the type of data processing requires it. However, this is usually not mandatory.

- Data availability control through, at a minimum, daily data backups
- Plausibility control of processing results

The result of these controls must be documented.

Processor must cooperate to the extent necessary and adequately assist Controller as much as possible in fulfilling the rights of the data subjects per Art. 12 to 22 GDPR, preparing directories of processing activities and conducting the required data protection impact assessments (Article 28 (3) sentence 2 (e) and (f) GDPR). Processor must forward all information required for these purposes immediately to the following parties at the Controller: The authorized instruction giver named in section 4.

Processor must notify Controller immediately if, in its opinion, an instruction given by Controller violates legal provisions (Article 28 (3) sentence 3 GDPR). Processor has the right to suspend the execution of the relevant instruction until it has been confirmed or changed by Controller after verification. Processor must correct, delete or limit the processing of personal data under the contractual relationship if Controller instructs Processor to do so and doing so does not go against the legitimate interests of Processor. Processor may only share information about personal data under the contractual relationship with third parties or the data subject after prior instruction or approval by Controller. Processor hereby agrees that Controller is entitled, generally by appointment, to check compliance with the provisions on data protection and data security as well as the contractual agreements, or to hire a third party to do so, to the appropriate and necessary extent, including but not limited to by obtaining information and access to the stored data and data processing programs as well as through on-site audits and inspections (Art. 28 (3) sentence 2 (h) GDPR). Processor assures that it will support such checks to the extent necessary. The processing of data in private homes (remote/home-office employees of Processor) is permitted only with the consent of Controller. To the extent that data is processed in a private home, access to the employee's home for control purposes by the employer must first be contractually secured. The measures under Art. 32 GDPR are to be ensured in this case as well. Processor confirms that it is aware of the data protection rules of the GDPR relevant to commissioned data processing. Processor also agrees to observe the following secrecy protection rules relevant to this Agreement, which are the responsibility of Controller:

- Telecommunications secrecy according to the German Telecommunications Act (TKG) and the Telemedia Act (TMG)

Processor agrees to maintain confidentiality in the commissioned processing of Controller's personal data. This obligation continues after the end of the Agreement. Processor guarantees that it will familiarize employees involved in the execution of the work with the data protection rules relevant to their job before commencing the activity and require them to maintain confidentiality during as well as after termination of their employment (Art. 28 (3) sentence 2 (b) and Art. 29 GDPR). Processor will supervise compliance with the data protection regulations within its operation.

The following person is the designated data protection officer for Processor:

Dr. Sebastian Kraska
IITR Datenschutz GmbH, Marienplatz 2, 80331 München
+49 89 1891 7360
email@iitr.de

Any changes in the identity of the data protection officer are to be communicated to Controller immediately.

6. Notification obligations of Processor in case of processing disruptions and personal data breaches

Processor must inform Controller immediately of any disruptions, violations by Processor or persons employed by Processor of data protection provisions or provisions established in processing requests, and any suspected data breaches or irregularities in the processing of personal data. This applies especially to any reporting or notification obligations of Controller under Art. 33 and Art. 34 GDPR. Processor agrees to adequately support Controller in performing its duties under Art. 33 and 34 GDPR if necessary (Art. 28 (3) sentence 2 (f) GDPR). Notifications pursuant to Art. 33 or 34 GDPR on behalf of Controller may be issued by Processor only after prior instruction in accordance with section 4 of this Agreement.

7. Relationships with subcontractors for core services (Article 28 (3) sentence 2 (d) GDPR)

Processor may engage future subcontractors for processing controller data without separate approval from Controller (Art. 28 (2) sentence 2 GDPR). Processor must ensure that the subcontractor is carefully selected with due regard for the suitability of the technical and organizational measures taken by the subcontractor in accordance with Art. 32 GDPR. The relevant audit documentation is to be made available to Controller on request. In this case, Processor must always inform Controller of any intended changes concerning the addition or replacement of other processors.

Subcontractors in third countries may only be engaged if the special requirements of Article 44 et seq. GDPR are met (adequacy decision of the Commission, standard data protection clauses, approved codes of conduct, etc.).

Processor must contractually ensure that the rules agreed between Controller and Processor also apply to subcontractors. The subcontractor agreement must be worded in such a way that the responsibilities of Processor and the subcontractor are clearly separated. If several subcontractors are used, this also applies to the responsibilities between these subcontractors. In particular, Controller must be entitled, if necessary, to carry out, or hire third parties to carry out, appropriate audits and inspections, including on-site, of subcontractors. The subcontractor agreement must be in writing, including in electronic form (Article 28 (4) and (9) DS-GVO). Data may be forwarded to the subcontractor only if the subcontractor has fulfilled the obligations under Art. 29 and Art. 32 (4) GDPR with regard to its employees. Processor must verify compliance with the obligations of the subcontractor(s) as follows: These two check boxes should always be enabled, as these are the minimum requirements for the engineer when subcontractors are used. Regular examination of the privacy policy of the subcontractor (at least every 2 years) This selection should be additionally selected if there is a risk to the rights and freedoms of the parties involved in the subcontractor's order processing. This can e.g. in the processing of bank data, credit card data, pay data, health data, etc.

The result of these checks must be documented and made available to Controller upon request.

Processor is liable to Controller for the subcontractor’s compliance with the data protection obligations contractually imposed by Processor in accordance with this section. Currently, the subcontractors listed in Annex 1 are engaged by Processor for the processing of personal data to the extent specified therein. Processor must always inform Controller of any intended changes concerning the addition or replacement of subcontractors. Controller will be given the opportunity to object to such changes, provided that the technical and organizational measures agreed to date and promised by Processor cannot be fully guaranteed (Article 28 (2) sentence 2 GDPR). In this case, the intended change is not allowed.

8. Technical and organizational measures according to Art. 32 GDPR (Article 28 (3) sentence 2 (c) GDPR)

A level of security appropriate to the risk for the rights and freedoms of natural persons whose data is subject to processing must be guaranteed. For this purpose, the protection objectives of Art. 32 (1) GDPR, such as the confidentiality, integrity and availability of the systems and services and their resilience in terms of the nature, extent, circumstances and purpose of the processing, must be taken into account in such a way that appropriate technical and organizational remedial measures are taken to permanently reduce the risk. An appropriate and comprehensible methodology that takes into account the likelihood and severity of the risks to the rights and freedoms of the data subjects must be used to assess the risk of the commissioned processing of personal data.

The data protection policy described in Annex 2 details the minimum requirements of the technical and organizational measures appropriate to the identified risk, taking into account the protection objectives based on current technology and with special consideration of the IT systems and processes used by Processor. It also describes the procedure for periodically auditing, measuring and evaluating the effectiveness of the technical and organizational measures to ensure compliance with data protection standards.

The following options for demonstrating compliance through certification exist: Processor must audit, measure and evaluate the effectiveness of its technical and organizational measures to ensure the safety of the processing as needed but at least annually (Article 32 (1) (d) GDPR). The results, along with the complete audit report, must be

communicated to Controller. Security-relevant decisions regarding the organization of data processing and the procedures used must be agreed upon between Processor and Controller. If the measures taken by Processor do not meet the requirements of Controller, Processor must inform Controller immediately. The measures taken by Processor may be adapted to technical and organizational developments over the course of the contractual relationship but must not fall below the agreed standards. Significant changes must be agreed upon between Processor and Controller in documented form (printed or electronic). Such arrangements are to be kept on file for the duration of this Agreement.

9. Obligations of Processor after the end of commissioned processing (Art. 28 (3) sentence 2 (g) GDPR)

Upon completion of the contractual work, all data, records and processing or use results related to the contractual relationship either in the possession of Processor or its subcontractors shall be deleted or destroyed or have destroyed in accordance with data protection requirements as follows:

- Automatic deletion, using a predefined and versioned algorithm

10. Miscellaneous

Any special arrangements regarding technical and organizational measures as well as control and audit documentation (including with regard to subcontractors) must be kept on file by both contracting parties for the remainder of their validity and thereafter for three full calendar years. Collateral agreements must generally be set down in writing or a documented electronic format. The court of jurisdiction is the local competent court of Controller. Should the ownership or the personal data of Controller to be processed by Processor become endangered as a result of third-party measures (such as seizure or attachment), bankruptcy or settlement proceedings or other events, Processor must notify Controller immediately. Processor may not invoke the right of retention within the meaning of section 273 of the German Civil Code (BGB) with regard to data processed for Controller or the associated data carriers. Should individual parts of this Agreement be ineffective, this does not affect the validity of the rest of the Agreement.

Annex 1 – Subcontractors

Currently, the following subcontractor relationships exist in connection with the commissioned processing: https://gender-api.com/en/privacy-policy/subcontractors

Annex 2 – Technical and organizational measures/data protection policy

Processor guarantees that it complies with the minimum requirements described below as part of its data protection policy. The policy describes the measures that Processor must take with regard to commissioned processing to ensure the safe the handling of personal data. This data protection policy is based on the EU General Data Protection Regulation (GDPR) and other measures that may be requested by the interested parties. Processor is primarily guided by the requirements of Articles 24, 25 and 32 GDPR. Processor must verify compliance upon request.

1. Confidentiality

1.1 Entry control

The rooms in which personal data are processed or data processing systems are installed may not be freely accessible. They must be locked when employees are away. Entry authorizations must be assigned in a regulated procedure on a need-to-know basis and are generally monitored in terms of whether they are necessary. Rooms in which data processing systems (datacenter, server, network distributor, etc.) are located must have particular entry protections and may be accessible only to employees in IT administration (management, if necessary). Alternately, the devices must be stored in suitable and locked cabinets. Visitors and non-company individuals must be registered in a documented procedure and monitored while visiting the offices.

1.2. Access control

For every network user, a personally assigned user must be set up with a minimum 10-digit password featuring both uppercase and lowercase letters, numbers, and special characters. The system must require users to change passwords at least every 90 days. Network users are to be required to comply with the user access policy in a manner subject to documentation. Creating, changing, and removing access authorizations must occur in a documented procedure. The establishment, modification and withdrawal of system access authorization must follow a documented procedure. Established system access authorizations must be regularly reviewed for their necessity and the review documented. Network access must be monitored and logged, including unsuccessful login attempts.

1.3 Usage control

A documented, role-based authorization concept must be provided for use of personal data which limits the use so that only authorized individuals can use the personal data necessary for their task (De Minimis Principal). The password rules for access control must also be followed for usage control. Administrative activities must be limited to a small group of administrators. Administrator activities must be monitored and logged to the extent that the effort involved is technically supportable.

1.4 Pseudonymization

Evaluations must be pseudonymized in so far as the connection to the individual is not absolutely necessary for the result.

1.5 Separation control

Separation of personal data must be ensured through different storage locations or client separation.

2. Integrity

2.1 Transfer control

Transfer control requires that only authorized individuals can inspect the personal data. For transmission by email, appropriate protective measures (e.g., encryption of communication between the email servers) are required. Mobile devices or mobile storage media must be encrypted if personal data are stored on them.

2.2 Input control

It must be possible to assign the input, change, and deletion of personal data to the acting employee. The system must limit the change and deletion of datasets in order to effectively prevent accidental change or deletion.

2.3 Commissioned processing control

As part of commissioned processing control, commissioned data processing operations can only be carried out on the instructions of Controller. For this purpose, employees tasked with data processing must be trained and instructed on how to perform this task. Commissioned processing must be monitored through internal controls. The results of the controls must be documented. Subcontractors may only be hired on the basis of the rules agreed upon with Controller. Transmission or access to personal data may not take place until the subcontractor has signed a commissioned processing agreement in accordance with Article 28 GDPR and has confirmed compliance with the data protection policy. Processor’s obligation to audit its subcontractors results from the commissioned processing agreement established with Controller.

3. Availability and reliability

Personal data must be processed on data processing systems that are subject to regular and documented patch management. No systems may be linked on the network that are outside of the manufacturer’s maintenance cycles (especially not any Windows XP, Windows Server 2003, etc.). Security-related patches must be installed within 72 hours after being announced. Continuous availability of personal data must be guaranteed by means of redundant storage media and backups according to the latest technical standards. Data centers and server rooms must be state of the art (temperature control, fire protection, water penetration, etc.). Servers must have uninterrupted power supply (UPS) ensuring controlled shutdown without any loss of data.

4. Procedures for periodic auditing, measurement and evaluation

A procedure must be implemented for reviewing data protection in the company. It must include the obligation of employees to maintain data secrecy, training and education of employees, and regular auditing of data processing procedures. The processing procedure performed for the Controller must also be documented before data processing begins. A complete reporting and management process must be introduced for data breaches and the protection of data subjects’ rights. It must also include notification of the Controller.