

DATA PROCESSING AGREEMENT
KAIWA

The undersigned

1. Zilverline B.V., a limited liability company under the laws of the Netherlands, with its registered offices at Cruquiusweg 109F, 1019 AG Amsterdam, the Netherlands, hereinafter referred to as “**Processor**”

and

2. The Customer, hereinafter referred to as “**Controller**”

hereinafter jointly referred to as “**Parties**”

Whereas

- Controller and Processor have entered into an agreement pursuant to which the Processor provides an online platform for private social networking for a private group as defined by Controller (“**the Agreement**”);
- For the execution of the Agreement the Controller wants the Processor to execute certain types of processing which can i.a. include Personal Data of representatives of Controller and of members of the private group as defined by Controller;
- The Controller has determined the purpose of and the means for the processing of Personal Data as governed by the terms and conditions referred to herein;
- Parties therefore wish to enter into this data processing agreement with respect to the processing of Personal Data (hereinafter: “**the DPA**”);
- Parties have undertaken to comply with the DPA and their obligations pursuant to EU Regulation 2016/679 (the General Data Protection Regulation, hereinafter: “**the GDPR**”) as well as any local legislation based thereon.

Hereby agree as follows:

Article 1 - Definitions

In this Agreement the following words and phrases shall have the following meanings:

- a. **Personal Data:** any information processed by Processor on behalf of Controller pursuant to this DPA or the Agreement and relating to an identified or identifiable natural person (“**Data Subject**”) as further defined in article 4(1) GDPR;
- b. **Processing of Personal Data:** any operation or set of operations which is performed upon Personal Data, whether or not by automatic means, such as collection, recording, organization, storage, adaptation or alternation, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction;
- c. **Data Subject:** the natural person to whom Personal Data relates;
- d. **Goals:** the goals for which the Personal Data is to be processed as specified in the Agreement;
- e. **Agreement:** the agreement between parties with respect to services to be rendered by the Processor to the Controller, consisting of an online platform for private social networking regarding a group of users as defined by the Controller, e.g. employees, co-workers, family and/or friends.

Article 2 - Processing of Personal Data / warranties

- 2.1 Annex 1 to this DPA sets out certain information regarding the Processors' processing of the Personal Data as required by article 28(3) of the GDPR (and, possibly, equivalent requirements of other data protection laws). Nothing in Annex 1 confers any right or imposes any obligation on any party to this DPA.
- 2.2 Controller hereby instructs the Processor (and authorises the Processor to instruct each Subprocessor) to process Personal Data and represents and warrants that:
 - a. Controller is authorized to have the Personal Data processed in conformity with this DPA for the realization of the Goals, and

- b. the conditions for lawfulness of processing as set out in article 6 GDPR are met, and
- c. the conditions for consent of Data Subjects as set out in article 7 and 8 GDPR are met, and
- d. it shall ensure that if Personal Data related to any special category of Personal Data as meant in article 9 GDPR is processed, this will either be on the basis of consent of the Data Subject, or will relate to Personal Data which are manifestly made public by the Data Subject, and
- e. more in general Controller will comply with all of Controller's obligations pursuant to the GDPR and applicable data protection laws.

2.3 Processor represents and warrants that:

- a. Processor will only process the Personal Data for the realization of the Goals and in conformity with applicable Data Protection laws in the EU member state where the Processor is located,
- b. Processor shall not process Personal Data other than on the Controller's documented instructions unless processing is required by applicable laws to which the Processor is subject, in which case Processor shall to the extent permitted by applicable laws inform Controller of that legal requirement before the relevant processing of that Personal Data
- c. more in general Processor will comply with all of Processor's obligations pursuant to the GDPR and applicable data protection laws.

Article 3 - Term and termination

- 3.1 This DPA is valid during the term of the Agreement and this DPA will terminate by way of law as per the date as of which the Agreement is terminated.

Article 4 - Processor Personnel

- 4.1 Processor shall take reasonable steps to ensure the reliability of any of its employees, agents or contractors who may have access to the Company Personal Data, ensuring in each case that access is strictly limited to those individuals who need to know / access the relevant Personal Data, as strictly necessary for the purposes of the Agreement, and to comply with applicable laws in the context of that individual's duties to the Processor, ensuring that all such individuals are subject to confidentiality undertakings or professional or statutory obligations of confidentiality.

Article 5 - Security

- 5.1 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, Processor shall in relation to the Personal Data implement appropriate technical and organizational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1) of the GDPR.
- 5.2 In assessing the appropriate level of security, Processor shall take account in particular of the risks that are presented by Processing, in particular from a Personal Data Breach.

Article 6 - Subprocessing

- 6.1 Controller authorises Processor to appoint (and permit each Subprocessor appointed in accordance with this section 6 to appoint) Subprocessors in accordance with this Article 6 -and any restrictions in the Agreement.
- 6.2 Processor may continue to use those Subprocessors already engaged by Processor as at the date of this DPA, subject to Processor in each case as soon as practicable meeting the obligations set out in section 6.3.
- 6.3 Controller hereby generically authorizes Processor to appoint Subprocessors. Processor shall give Controller prior written notice of the appointment of any new Subprocessor, including full details of the processing to be undertaken by the

Subprocessor. If, within 14 days of receipt of that notice, Controller notifies Processor in writing of any objections (on reasonable grounds) to the proposed appointment:

- a. Processor shall work with Controller in good faith to make available a commercially reasonable change in the provision of the services which avoids the use of that proposed Subprocessor; and
- b. where such a change cannot be made within 14 days from Processor's receipt of Controller's notice, notwithstanding anything in the Agreement, Processor may by written notice to Controller with immediate effect terminate the Agreement to the extent that it relates to the services which require the use of the proposed Subprocessor.

6.4 Processor shall ensure that each Subprocessor accepts the obligations under article 2.3a, 2.3b, 2.3c, 4.1, 5.1, 5.2, 7.1, 8.2, 9.1 and 11.1 as they apply to processing of Personal Data carried out by that Subprocessor, as if it were party to this DPA in place of Processor.

6.5 Processor will not make use of Subprocessors, datacentres or servers located outside the European Union.

Article 7 - Data Subject Rights

7.1 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 the Controller's obligations, as reasonably understood by Controller, to respond to requests to exercise Data Subject rights under the Data Protection Laws.

7.2 Controller is aware, and shall make the users of its private group aware, that due to the nature of the services pursuant to the Agreement it may not be possible to delete or rectify all information, documents, etc. upon a Data Subject's request (e.g. when messages are quoted in a reply by another Data Subject).

7.3 Processor shall:

- a. promptly notify Controller if it receives a request from a Data Subject under any data protection law in respect of Personal Data; and
- b. ensure that Processor does not respond to that request except on the documented instructions of Controller or as required by applicable laws to which the Processor is subject, in which case Processor shall to the extent permitted by applicable laws inform Controller of that legal requirement before the Processor responds to the request.

Article 8 - Personal Data Breach

- 8.1 Processor shall notify Controller without undue delay upon Processor becoming aware of a Personal Data Breach affecting Personal Data, providing Controller with sufficient information to allow Controller to meet any obligations to report or inform Data Subjects of the Personal Data Breach under the data protection laws.
- 8.2 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 such Personal Data Breach.

Article 9 - Data Protection Impact Assessment and Prior Consultation

- 9.1 Processor shall provide reasonable assistance to Controller with any data protection impact assessments, and prior consultations with Supervising Authorities or other competent data privacy authorities, which Controller reasonably considers to be required of any Controller by article 35 or 36 of the GDPR or equivalent provisions of any other data protection law, in each case solely in relation to processing of Personal Data by, and taking into account the nature of the processing and information available to, Processor.

Article 10 - Deletion or return of Personal Data

- 10.1 Any Personal Data provided to Processor may be kept during the duration of the Agreement.
- 10.2 Subject to paragraph 10.3 and 10.4 Processor shall promptly and in any event within two months of the date of cessation of any services involving the processing of Personal Data (the "**Cessation Date**"), delete and procure the deletion of all copies of those Personal Data.
- 10.3 Subject to paragraph 10.4, Controller may in its absolute discretion by written notice to Processor within 14 days of the Cessation Date require Processor to (a) return a complete copy of all Personal Data to Controller by secure file transfer in such format as is reasonably notified by Controller to Processor; and (b) delete and procure the deletion of all other copies of Personal Data Processed by any Contracted Processor. Processor shall comply with any such written request within 45 days of the Cessation Date.
- 10.4 Processor may retain Personal Data to the extent required by applicable laws and only to the extent and for such period as required by applicable laws and always provided that Processor shall ensure the confidentiality of all such Personal Data and shall ensure that such Personal Data is only processed as necessary for the purpose(s) specified in the applicable laws requiring its storage and for no other purpose.

Article 11 - Audit rights

- 11.1 Processor shall make available to Controller on request all information necessary to demonstrate compliance with this DPA and article 28(3)(h) of the GDPR,
- 11.2 Subject to paragraphs a through c and article 11.3, Processor shall allow for and contribute to audits, including inspections, by an auditor mandated by Controller in relation to the processing of the Personal Data by Processor.
- a. The auditor shall be an independent professional third party ICT auditor who shall be obliged to observe confidentiality in this regard.

- b. Any such audit will follow the Processor's reasonable security requirements, and will not interfere unreasonably with the Processor's business activities. The costs of the audit will be for the account of Controller.
- c. Any audit will be limited to the Personal Data processed on behalf of Controller pursuant to this DPA.
- d. Processor need not give access to its premises for the purposes of such an audit or inspection:
 - (i) to any individual unless he or she produces reasonable evidence of identity and authority.;
 - (ii) outside normal business hours at those premises, unless the audit or inspection needs to be conducted on an emergency basis and Controller undertaking an audit has given notice to Processor that this is the case before attendance outside those hours begins; or
 - (iii) for the purposes of more than one audit or inspection, in any period of 12 months, except for any additional audits or inspections which the Controller is required or requested to carry out by Data Protection Law, a Supervisory Authority or any similar regulatory authority responsible for the enforcement of data protection laws in any country or territory.

11.3 For the provision of the services under the Agreement, and thus for the processing of Personal Data, Processor may use hardware and infrastructure owned by, or under the control of third parties, such as servers in a datacentre. Any audit with respect to such hardware and infrastructure shall be subject to the requirements and conditions of such third party.

Article 12 - Miscellaneous

12.1 This DPA may be amended or supplemented only if agreed in writing by the Controller and the Processor.

12.2 Processor shall propose any variations to this DPA which Processor reasonably considers to be necessary to address the requirements of any data protection law or change therein. In such case the parties shall promptly discuss the proposed variations

and negotiate in good faith with a view to agreeing and implementing those or alternative variations designed to address the requirements as soon as is reasonably practicable. If parties cannot reach agreement on such variations, the Agreement shall terminate.

12.3 If any provision in this DPA conflicts with the applicable statutory provisions, the provision will be regarded as severable and will not affect the validity of the other provisions in the DPA under any circumstances. The parties will replace the conflicting provision by a valid provision that comes as close as possible to the parties' original intentions.

12.4 This DPA is entered into pursuant to the Agreement. In case of conflict between this DPA and the Agreement, the Agreement shall prevail.

Article 13 - Liability

13.1 Any liability of Processor with respect to the subject matter of this DPA and the execution of the Agreement is limited in conformity with the liability arrangement in the Agreement.

Article 14 - Applicable law and competent court

14.1 Without prejudice to the applicability of the Data Protection laws applicable in the EU member state where the Personal Data is located, this Agreement will be governed by Dutch law.

14.2 The Dutch courts shall have exclusive competence to judge any disputes between the parties arising from or relating in any way to this Agreement. In first instance disputes shall be submitted exclusively to the District Court of Amsterdam.

Thus acknowledged and agreed

Zilverline B.V. and its Customer

ANNEX 1: DETAILS OF PROCESSING OF PERSONAL DATA

This Annex 1 includes certain details of the processing of Personal Data as required by Article 28(3) GDPR.

Subject matter and duration of the Processing of Company Personal Data

The subject matter and duration of the Processing of the Company Personal Data are set out in the Agreement and this DPA.

The nature and purpose of the Processing of Company Personal Data

Use of the services pursuant to the Agreement which entails access to an online platform for private social networking. On this platform a group of users as defined and controlled by the Controller (such as employees, co-workers, family or friends) can communicate and share files such as documents and pictures within the private group.

The types of Personal Data to be Processed

Contact details, (user)names, relationship with the private group, as well as any information, documents and pictures that the users of the private group submit while using the services (which could include special categories of Personal Data)

The categories of Data Subjects to whom the Personal Data relates

The group of users of the private group as defined and controlled by the Controller (such as employees, co-workers, family or friends)

The obligations and rights of Controller

The obligations and rights of Controller are set out in the Agreement and this DPA.