Order processing agreement AVV

between

Customers of AGILITA AG

As the person responsible (hereinafter client)

and

AGILITA AG, Neue Winterthurerstrasse 99, 8304 Wallisellen

As a processor (hereinafter contractor)

Preamble

A. The client and the contractor have an existing contractual relationship for the provision of IT services in the SAP environment. The services to be provided are specified in the respective individual contracts and the further documents such as the General Terms and Conditions.

B. For the purpose of fulfilling the main contract, the contractor may have access to personal data that is disclosed or otherwise made available to the contractor by the client directly or by third parties on his behalf (hereinafter **personal data**).

C. The Parties wish to ensure the processing of personal data carried out by the contractor on behalf of the client, either directly or through third parties, under the main contract complies with the applicable data protection laws and, in doing so, agree on certain conditions for said data processing, which are set out in this data protection Addendum (Controller - Processor) (hereinafter the **contract**) are defined.
Having said this, the parties agree as follows:

1. Definitions of Terms

1.1. **Applicable Data Protection Laws** means Regulation (EU) 2016|679 of the European Parliament and of the Council of April 27, 2016 on the protection of natural persons with regard to the processing of personal data, on the free movement of data and repealing Directive 95/46/EC (hereinafter DSGVO), the new Swiss Federal Law on Data Protection (nDSG), the Swiss Ordinance on the Federal Law on Data Protection (DSV) and any other applicable data protection decrees.

1.2. **The person responsible** is the natural or legal person who, alone or together with others, decides on the purposes and means of processing personal data (Article 4 (7) DSGVO; Article 5 lit. j nDSG).

1.3. **The Processor** is the natural or legal person who processes personal data on behalf of the person responsible (Article 4 Para. 8 DSGVO; Article 5 lit. k nDSG).

1.4. **Personal data** refers to any information that relates to an identified or identifiable natural or legal person (hereinafter data **subject**); an identifiable natural person is one who can be identified, directly or indirectly, in particular by association with an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person. (Article 4 Para. 1 DSGVO; Article 5 lit. a DSG).

1.5. **Processing** is any procedure carried out with or without the help of automated processes or any such series of processes in connection with personal data such as collection, recording, organization, filing, storage, adaptation or alteration, reading, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, deletion or destruction. (Article 4 Para. 2 DSGVO; Article 5 lit. d DSG).

2. Scope and subject matter

2.1. Scope
The present contract applies to any form of processing of personal data for the client by the contractor.

2.2. Subject, duration, nature and purpose
The subject and duration as well as the type and purpose of the processing result from the main contract and the associated service description .

2.3. Type of personal data/categories of data subjects
The type of personal data and the categories of data subjects are specified in the main contract resp. sufficiently specified in the service description.

3. Contractor Obligations

3.1. Processing according to instructions
The contractor undertakes to process the data exclusively for the purposes of the main contract, including this contract, and in accordance with the client's documented instructions. This also applies in particular to the transfer of data to a third country or to an international organization. If the contractor is required to carry out further processing by the law of the European Union, the member states or a non-EU member state to which it is subject, it shall notify the client of these legal requirements prior to the processing.

The client can issue new instructions, supplement them, or change existing instructions at any time. This also includes instructions regarding the correction, deletion and blocking of personal data. All instructions issued must be documented in writing by both the client and the contractor.

If the contractor is of the opinion that an instruction of the client violates data protection regulations, he must inform the client immediately. The contractor is entitled to suspend the implementation of the instruction in question until it is confirmed or amended by the client. The contractor may refuse to carry out an instruction that is obviously unlawful.

Otherwise, the obligations that arise directly for the contractor from the applicable data protection laws, such as the creation of a list of the present order processing in accordance with Article 30 Para. 2 DSGVO, remain unaffected by this contract.

3.2. Duty of confidentiality
The contractor undertakes and guarantees that it has committed all persons entrusted with data processing, including vicarious agents, to confidentiality in writing before starting the activity or that they are subject to an appropriate statutory obligation of confidentiality, and that the confidentiality obligation of the persons entrusted with data processing remains in force even after termination of their activity with the contractor. The contractor is liable for any violations of the persons entrusted with data processing, including vicarious agents, as for its own conduct.

3.3. Protective measures by the contractor
The contractor undertakes and guarantees that he has taken and maintains all necessary measures to ensure the security of processing in accordance with Article 32 DSGVO resp. Article 7 DSG in order to prevent unauthorized processing, loss or damage to personal data.

3.4. Support obligations
The contractor is obliged to support the client upon request in complying with the applicable data protection laws at all times and to the extent possible.

a. Requests and rights of data subjects
The contractor undertakes to support the client with suitable technical and organizational measures so that the client can fulfill their obligation to respond to requests to exercise the rights of the data subjects set out in Chapter III of the DSGVO (in particular information, access, correction and deletion, data portability, objection as well as automated decision-making in individual cases) resp. Article 8 et seq. DSG within the statutory time limits, and shall provide the Client with all information necessary and available to it for this purpose.

If a corresponding request is made to the contractor, the contractor must immediately forward the request to the client. The contractor must leave the answering of such requests to the client, unless he is legally obliged to do so. In any case, the parties agree to mutually coordinate the response to such requests.

b. Further information and support obligation
The contractor undertakes to support the client, taking into account the information available to him, in complying with the obligations specified in Article 32 to 36 DSGVO resp. Article 7 DSG (data security measures, reports of violations of the protection of personal data to the supervisory authority, notification of the data subject of a personal data breach, data protection impact assessment and prior consultation).

The contractor undertakes to notify the client immediately in the event of (i) any actual or suspected data protection violations (this also applies to violations of the main contract including this contract and any other data protection violations in accordance with the DSGVO resp. DSG), stating all the data available to the contractor available information in accordance with Article 33 para. 3 of the DSGVO, (ii) any actual or impending impairments or defects on the part of the contractor that prevent compliance with the provisions of the main contract including this contract, (iii) the existence of any requests for access as well as the actual access to personal data by public authorities, unless such notification is prohibited by law for important reasons of public interest.

3.5. Return or obligation to delete upon contract termination
After termination of the main contract including this contract and at the request of the client, the contractor undertakes to return all personal data to the client at his option, subject to statutory retention requirements within the EU/EEA or Switzerland, or to delete them without keeping a copy, and to confirm the deletion to the client accordingly. The deletion, including the deletion of individual personal data, must be made in writing with an original signature. The contractor reserves the right to hold consultations with authorized signatories of the client .

3.6. Control rights of the client
The contractor undertakes to provide the client with all information necessary to demonstrate the contractor's compliance with this contract and to enable verifications, including inspections, by the client itself, an auditor commissioned by the client or by the supervisory authority and to actively support. Inspections at the contractor shall be carried out without avoidable disruptions to business operations.

4.   **Place of execution of the data processing**

Data processing is only carried out at the locations that are defined in the relevant main contract and in the contracts of the business partners (e.g. cloud providers).

The contractor undertakes not to transmit any personal data, not even partially, to a third country without the prior written consent of the client. This does not apply to transmissions of data necessary for the fulfillment of the order within the scope of service and support requests to the cloud provider.

If the data processing activities are carried out by cloud providers outside the EU, even if only partially, the level of data protection is ensured by the respective provider.

5.   **Use of sub-processors**

The contractor is not entitled to use a sub-processor without obtaining the prior written consent of the client.

Intended changes to the sub-processor must be notified to the client in writing on time so that he can prohibit them if necessary. The contractor shall conclude the necessary written confidentiality and data protection agreements with the sub-processor, which must be at least as strict as the provisions of the main contract, including this contract. In doing so, the contractor must ensure in particular that the sub-processor enters into the same obligations and, in particular, also takes the technical and organizational measures that the contractor is responsible for based on this contract.

The contractor is liable to the client for compliance with the obligations of the sub-processor as for its own conduct.

6. Execution of Additional Agreements

The contractor agrees, at the request of the client, to conclude further agreements with the client on the processing of personal data within the framework of the existing contracts, provided that the client reasonably considers this to be necessary for compliance with applicable data protection law.

7. Extraordinary right of termination

The client can terminate the contract at any time without notice if the contractor has seriously violated data protection regulations or the provisions of this contract, the contractor cannot or does not want to carry out an instruction from the client or the contractor refuses the client's control rights in violation of the contract. In particular, non-compliance with the obligations agreed in this contract and derived from Article 28 of the DSGVO resp. Article 10a of the DSG represents a serious violation.

8. Reference to existing contracts

8.1. If any provision contained in this contract conflicts with the main contract, the provision contained in this contract shall prevail.

8.2. The provisions of this agreement shall continue to apply after the termination of the main contract for as long as the contractor is in possession of the client's personal data.

8.3. In the case of AGILITA's own solutions and AGILITA products (e.g. apps), the data processing is recorded in the corresponding solution concept and accepted accordingly when used by the customer. When using the AGILITA apps, at least subaccounts, user data (name, first name, e-mail address), user settings, configurations, database schemes, device information, user details, login details, app usage, performance and general logs are backed up and processed for the purpose of functionality.

8.4. The service shall be provided by the processor itself and in cooperation with the defined cloud and solution providers. Further sub-processors are only included by the processor in consultation with the client. In the event of any future need for sub-processors, the client will inform the processor about the desired partner and agree to the cooperation and cross-company data processing.

9. Final Provisions

9.1. Changes and additions to this contract must be in writing. This also applies to the waiver of this formal requirement.

9.2. Should individual provisions of this contract be or become invalid in whole or in part, this shall not affect the effectiveness of the remaining provisions. The parties agree to replace the ineffective provision with an effective provision that comes as close as possible to the economic sense and purpose of the ineffective provision.

9.3. This contract is subject to Swiss law to the exclusion of International Private Law (IPRG). The exclusive place of jurisdiction for disputes arising from this contract or in connection with the interpretation and application of this contract is the registered office of the contractor.