





DATA PROCESSING AGREEMENT

Belonging to the World-class Workplace agreement

WHEREAS:

- (A) Effactory B.V. ('**Effactory**' or the '**Processor**') carries out surveys for employee feedback for its client (the '**Client**'), which results in processing of personal data by Effactory.
- (B) The Client determines the substance and scope of the surveys and, hence, the purpose and means of the processing of the personal data in the context of the survey, so that the Client should be deemed to be the controller (the '**Controller**') within the meaning of Article 4(7) of the General Data Protection Regulation ('**GDPR**').
- (C) Effactory carries out the survey for the Controller and should, therefore, be deemed to be the Processor within the meaning of Article 4(8) GDPR.
- (D) The provisions of this agreement jointly constitute the data processing agreement within the meaning of Article 28(3) GDPR (the '**Data Processing Agreement**').

1. Definitions

- 1.1. Agreement: the agreement for World Class Workplace ("**WCWP**") between Effactory and the Client for the provision of Services, including but not limited to offers, partnership or project proposals, quotations and agreements for (online) services.
- 1.2. Client: Effactory's contracting party to this Agreement.
- 1.3. Controller: the Client and/or its relevant Participant(s) instructing the Processor to provide the Services.
- 1.4. Data Breach: a Personal Data breach within the meaning of Article 4(12) GDPR.
- 1.5. Data Processing Agreement: this Data Processing Agreement between the Processor and the Controller within the meaning of Article 28(3) GDPR.
- 1.6. Data Subject(s): the person or persons to whom the Personal Data relate.
- 1.7. Effactory: Effactory B.V., having its registered office and principal place of business at Singel 126-130 in (1015 AE) Amsterdam, the Netherlands, listed in the Dutch Commercial Register under number 72541644, with email address legal@effactory.com.
- 1.8. GDPR: the General Data Protection Regulation (EU) 2016/679.
- 1.9. Participant(s): one or more of the Client's group companies.
- 1.10. Personal Data: any information relating to an identified or identifiable natural person to be Processed for purposes of the Services as included in the Agreement.
- 1.11. Processing: any operation or set of operations which is performed on Personal Data or on sets of Personal Data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data.
- 1.12. Processor: Effactory B.V.
- 1.13. Sub-processor(s): any third party or third parties to be engaged by the Processor for the Processing of Personal Data, without being subject to the direct authority of the Processor.



- 1.14. Services: the WCWP survey as carried out by the Processor on the instructions of the Client.
- 1.15. Third Party or Third Parties: any party or parties not being the Client, a Sub-processor or a Data Subject.

2. Applicability

- 2.1. This Data Processing Agreement will apply to Personal Data collected for purposes of the Services carried out by or on behalf of Effectory for the Client and/or any Participant(s).
- 2.2. This Data Processing Agreement may be deviated from only by written agreement between Effectory and the Client.

3. Obligations of the Processor

- 3.1. The Processor will Process the Personal Data in accordance with its obligations under the law, this Data Processing Agreement, the Agreement, and any reasonable written instructions from the Controller or the Participant(s) in respect of the Processing.
- 3.2. The Processor will implement appropriate technical and organizational measures to protect the Personal Data against any kind of loss, unauthorized access, unauthorized modification or unauthorized disclosure of/to Personal Data, as well as to maintain the resilience of the information systems used by it, including in any event:
 - a) the use of pseudonymized survey identities;
 - b) the encrypted storage of personal details and responses;
 - c) the use of secure connections;
 - d) the encryption of data on laptops and mobile devices; and
 - e) requiring Effectory employees to be bound by confidentiality and a Certificate of Good Conduct.
- 3.3. On request, the Processor shall provide its reasonable cooperation in any audits or inspections in order to determine the extent to which it complies with provisions of this Data Processing Agreement. Any such audit or inspection will be carried out by the Controller or an independent expert bound by a confidentiality obligation, at such time as the Controller and the Processor may mutually agree. The Controller will pay the costs relating to the foregoing, unless the inspection reveals that the Processor has materially failed to comply with its obligations pursuant to this Data Processing Agreement.
- 3.4. The Processor will not provide the Personal Data to any Third Parties, save on the written instruction of the Controller or pursuant to a legal obligation. In the latter situation, the Processor will, if and to the extent possible, notify the Controller in advance of disclosure of the proposed disclosure, and reasonably give the Controller and/or the Participant the opportunity to protect its reasonable interests.
- 3.5. Where it learns of a Data Breach incurred by the Processor or its Sub-processors, the Processor will notify the Controller without unreasonable delay¹ of such Data Breach and provide all reasonable cooperation in the performance of the Controller's obligations under Articles 33 and 34 GDPR.

¹ This legal term follows from Article 33, paragraph 2 of the GDPR. For the sake of completeness: the term within which the Controller is to file a notification, (72 hours) if applicable, does not commence until after the Controller has been notified by the Processor of a Data Breach. The term for the Processor will, therefore, not affect the term for the Controller. See also 'EDPR Guideline on personal data breach notification, February 2018.' Note that this term can never be deviated from for purposes of Effectory's internal security policies.



- 3.6. The Processor will not transfer Personal Data to any country without an adequate level of protection, save (i) on the instructions of the Controller or (ii) to a Sub-processor, provided that the Processor has implemented one of the measures referred to in Article 46 GDPR. In such event, the Processor will notify the Controller of the nature of the transfer and the measures implemented.
- 3.7. The Processor will not store Personal Data made available in the context of the Agreement any longer than necessary for (i) the performance of the Agreement; or (ii) compliance with any of its legal obligations. The Processor will retain the Personal Data for an period of six (6) months and in accordance with the below:
 - a) Personal data, project documents and survey results are irreversibly removed after the agreed retention period has expired, irrespective of whether Controller has downloaded these or whether the Agreement is terminated. The retention period is therefore independent of the duration of the Services and starts at the end of the period to which the survey instrument relates. Controller is responsible for collecting the survey data within this retention period;
 - b) For the duration of the Agreement, Parties agree on one (1) retention period; and
 - c) Controller shall provide the required data for the performance of Services to the Processor with a frequency and process to be agreed upon between the Parties.
- 3.8. Upon termination of the retention period, the Processor will securely destroy the Personal Data, unless the Controller timely extends this period or requests that the Personal Data as provided by the Controller shall be returned in a commonly used format.

4. Obligations of the Controller and/or the Participant(s)

- 4.1. The Controller and/or the Participant(s) undertake to comply with the applicable laws and regulations for the purpose of the Services, as well as (to the extent applicable) employment and employee participation legislation.
- 4.2. The Controller and/or the Participant(s) are required to provide the Personal Data to the Processor through the designated secure communication channels. Any damage caused by non-compliance with this provision shall be exclusively for the account of the Controller and/or the Participant.
- 4.3. Prior to the provision of the Services, the Controller will notify the Processor about any relevant legal obligations which may apply to the Personal Data, to the extent these are more strict than this Data Processing Agreement, as well about any other obligations under any commitment to or arrangement with the Controller's Works Council, or any privacy statement applicable to the Services. Costs to be incurred by the Processor as a result of deviating obligations are for the account of the Controller.
- 4.4. If the Controller has locations/branches outside the EEA that are included in the Services, it shall guarantee Effectory compliance with the applicable laws and regulations regarding international forwarding of Personal Data between Effectory, on the one hand, and the Client and/or Participant, on the other hand, in any case including the relevant provisions and guarantees referred to in chapter 5 of the GDPR. The Controller informs Effectory about the nature of the guarantees and the possible effects these may have on the performance of the Services.

5. Data Subjects

- 5.1. The Processor and the Controller will provide each other full cooperation in compliance with a request from a Data Subject for access, rectification, completion, erasure or



restriction of Personal Data, and implementation of any objection filed against the processing of the Personal Data within the statutory terms.

- 5.2. The Controller will open a point of contact for Data Subjects to submit any questions, complaints or requests that they may have in respect of the exercise of their rights relating to the Processing for purposes of the Services, and expressly communicate this to the Data Subjects. To promote a smooth provision of the Services, the Processor will make an additional helpdesk available (<https://support.effectory.com/>) to handle any questions, complaints or requests that are relevant to the provision of the Services by the Processor, for the duration of the respective survey. After the measurement period has ended, the Processor will forward such requests directly to Controller.
- 5.3. The Controller or the Participant will provide the Data Subject(s) with the information relating to the Processing as referred to in Articles 13 and 14 GDPR. At the Controller's request, the Processor will make a template privacy statement available.

6. Sub-processors

- 6.1. The Processor will not engage any Sub-processors other than in accordance with the provisions of this article, and the Controller hereby agrees to the engagement of the Sub-processors listed in Annex 1 to this Data Processing Agreement. The Processor will require any such Sub-processors to implement appropriate technical and organizational measures to protect the Personal Data, and will require them to be bound by any other obligations in respect of Processing that are equivalent to its own obligations pursuant to this Data Processing Agreement.
- 6.2. If it is proposed to engage a new Sub-processor, the Processor will notify the Controller in writing and in advance, and give the latter the opportunity to object. Failing the Controller's objection within one (1) month, it will be deemed to agree to the engagement of the relevant Sub-processor.
- 6.3. If the Controller objects to the engagement of a new Sub-processor, the Processor and the Controller will consult to find a reasonable alternative for the relevant Processing. Any additional costs incurred in the agreed alternative will be payable by the Controller.

7. Benchmark

The Controller hereby grants, also on behalf of the Participant(s), the Processor the right to use the Personal Data in pseudonymized form for purposes of preparation of trend analyses and benchmarks,² provided that the Processor implements the necessary safeguards to protect the (privacy) interests of the Data Subjects, including pseudonymizing Personal Data and aggregating survey results. For any such use of the Personal Data, the Processor will be deemed to be the Controller within the meaning of the GDPR vis-à-vis the Data Subject.

8. Liability

- 8.1. In the event of any shortcomings attributable to Processor in the performance of the services the liability of Processor shall be limited to direct damage suffered by the Controller, up to the amount covered by its insurance and for payment in the covered by its insurance and eligible for payment. The aforementioned limitation of liability lapses if and insofar as the damage is the result of deliberate intent, gross negligence or gross negligence.

² This Processing is a compatible ancillary purpose pursuant to Article 89 GDPR: Recital 50 in conjunction with Article 5(1)(b) GDPR.



8.2. The Controller will be liable for any and all costs and claims of one or more Data Subjects as a result of damage or harm due to non-compliance with the GDPR by the Controller.

9. Final provisions

9.1. The recitals will form an integral part of this Data Processing Agreement.

9.2. In the event that any provisions of this Data Processing Agreement are null and void or nullifiable, the other provisions will remain in full force and effect.

9.3. The Agreement and this Data Processing Agreement will be governed by the laws of the Netherlands. Any disputes about or in connection with this Data Processing Agreement will be decided by the competent judge of the Amsterdam District Court.



ANNEX 1 – SUB-PROCESSORS

Effectory uses the following Sub-processors for the Processing of Personal Data:

1 – MICROSOFT	
Name Sub-processor	Microsoft Ireland Operations Ltd.
Address	Atrium Block B Carmenhall Road, Sandyford Industrial Estate, Dublin 18, Ireland
Nature of Processing	Hosting of the software in which the survey data is processed
Location of Processing	The Netherlands or Ireland (EEA)
Applicable agreement	Microsoft Online Service Terms

2 – MAILJET	
Name Sub-processor	Mailjet SAS
Address	Rue de l'Áubrac, 13-13 bis, Paris, France
Nature of Processing	Tool for sending bulk invitation e-mails to Data Subjects
Location of Processing	France (EEA)
Applicable agreement	Processing Agreement