Data Processing Agreement (DPA) – Annex 1 to the Terms, enclosure to the Cloud Pilot Terms

Version 1.1 of 11 November 2026 (replaces 1.0 of 28 October 2026). The German version prevails.

DRAFT 1.1 · 11 November 2026 · not reviewed by a lawyer, no legal advice, no warranty – review by a legal professional pending.

1 Subject matter and roles

1.1 This agreement governs the processing of personal data by Firnkern GmbH in formation, Bosenhaldenweg 26, 4125 Riehen, Switzerland, represented by Marco Grieshaber, founder and managing director («Firnkern», the «Processor»), on behalf of the customer or pilot company (the «Customer», the «Controller») in:

a) the operation of an instance of the Firnkern Server software by Firnkern – in the pilot as «Firnkern Cloud (pilot)» under the Cloud Pilot Terms 1.0, after the start of sales as cloud operation under Part C of the Terms;

b) «AI via Firnkern» (relay service ki.firnkern.com), in the pilot under the addendum «AI via Firnkern in the pilot» 1.0;

c) support with access to content where the Customer requests this in an individual case.

1.2 It fulfils Art. 9 of the Swiss Federal Act on Data Protection (FADP) and, where applicable, Art. 28 GDPR. The terms of the FADP («personal data», «process», «processor») correspond to those of the GDPR.

1.3 When operated in the Customer's company network with its own AI account, Firnkern does not process any content of the Customer; this agreement then does not apply. For data that Firnkern processes as an independent controller (setting up the instance, consent log, feedback via the reporting service, licence and activation, billing), Firnkern's privacy notice applies.

2 Nature, purpose and duration of the processing

Item	Content
Purpose	Cloud: operation of a separate instance of the Software for the Customer (store, display, transmit, back up, restore, export, delete). AI via Firnkern: forwarding of audio for transcription and of pseudonymised text extracts to language models. Support: access in individual cases on request.
Nature of processing	Hosting, storage, backup, restoration, export, deletion; pass-through to AI providers without storing content
Categories of data and data subjects	see Annex 3
Sensitive personal data	not intended; the Customer avoids it in content. If it nevertheless captures such data, it is responsible for doing so.
Location	Switzerland (Annex 2). Disclosure to the USA only takes place if the admin switches on level 3 of «AI via Firnkern».
Duration	Term of the cloud pilot or cloud contract and of «AI via Firnkern», plus the periods under section 8

3 Instructions

3.1 Firnkern processes personal data only on documented instructions from the Customer. Instructions are this agreement, the Cloud Pilot Terms or the contract, the settings the admin selects in the Software (for example AI

levels, reporting service), and instructions in text form (e-mail to marco@firnkern.com) from authorised persons of the Customer. This also applies to disclosure abroad: level 3 (USA) is only used if the admin switches it on.

3.2 If Firnkern is required by law to carry out other processing, Firnkern informs the Customer beforehand, unless the law prohibits such information.

3.3 If Firnkern considers an instruction to be unlawful, it informs the Customer without delay and may suspend its execution until the Customer confirms or changes the instruction.

3.4 Firnkern does not use the data for its own purposes, in particular not for training AI models, and only passes it on in accordance with this agreement.

4 Confidentiality

4.1 Persons at Firnkern who could have access to data are bound to confidentiality in writing, also after the end of their activity.

4.2 Firnkern does not view content unless the Customer requests it in an individual case (for example for support) or it is unavoidable for export, restoration, deletion or to avert an acute security threat. Firnkern informs the Customer in such a case.

5 Data security

5.1 Firnkern takes the technical and organisational measures set out in Annex 1 (Art. 8 FADP, Art. 32 GDPR) and keeps them at a level appropriate to the risk. Firnkern may change them as long as the level of protection does not decrease; Firnkern informs the Customer of significant changes.

5.2 Annex 1 openly states what has not yet been implemented, in particular the second location for backups.

6 Sub-processors

6.1 The Customer authorises the sub-processors listed in Annex 2 (general authorisation). Sub-processors for AI are only engaged if the admin switches on the corresponding function.

6.2 Firnkern informs the Customer by e-mail at least 30 days before engaging or replacing a sub-processor. The Customer may object for good cause within this period; in the pilot it may then end the cloud pilot with immediate effect (export and deletion under section 8), otherwise terminate the affected contract as of the date of the change.

6.3 Firnkern contractually binds sub-processors to equivalent data protection obligations and remains responsible to the Customer for their performance.

6.4 Disclosure abroad only takes place to countries with adequate data protection or with appropriate safeguards (Art. 16 FADP; Art. 46 GDPR), for example standard contractual clauses. In the cloud pilot, the content is stored in Switzerland.

7 Assistance to the Customer

7.1 Data subject rights: Firnkern supports the Customer with the functions of the Software (export, correct, delete) and, on request, with requests from data subjects. If a data subject contacts Firnkern directly, Firnkern forwards the request to the Customer without delay and only answers it on the Customer's instructions.

7.2 Data security breach: Firnkern notifies the Customer of a breach affecting its data without undue delay, at the latest within 48 hours of becoming aware of it (cf. Art. 24(3) FADP; Art. 33(2) GDPR), by e-mail to the admin or contact person. The notification contains, as far as known: nature of the breach, categories of data concerned and approximate number of data subjects, likely consequences, measures taken or proposed, contact point. Firnkern provides missing information on an ongoing basis.

7.3 Note: as controller, the Customer reports a breach likely to result in a high risk to the Swiss FDPIC as soon as possible (Art. 24(1) FADP); where the GDPR applies, it reports it to the supervisory authority without undue delay and, where feasible, within 72 hours (Art. 33(1) GDPR). The period under section 7.2 is intended to make this possible.

7.4 Data protection impact assessment: Firnkern provides the Customer with the necessary information (this agreement with annexes, description of the Software, information sheet for works councils) and, on request, supports it with an impact assessment or consultation of the authority (Art. 22 FADP; Art. 35, 36 GDPR).

7.5 In the pilot, assistance is free of charge. After the start of sales, the parties agree on effort going beyond the functions of the Software separately.

8 Return and deletion

8.1 The Customer can export its data at any time.

8.2 Cloud pilot: at the end, the Customer receives a final export. Firnkern then deletes the instance, the data volume and all backups (including at the second location once set up), at the latest 30 days after the end, earlier as soon as the Customer confirms receipt of the final export. Firnkern logs the deletion and confirms it by e-mail on request.

8.3 Cloud operation after the start of sales: after the end of the contract, the Customer can export its data for 30 days; Firnkern then deletes the data including backups within a further 30 days (Terms section C3).

8.4 «AI via Firnkern»: the relay service does not store content. Only time, customer, service, quantity, cost and status are stored; to avoid double billing, a checksum of an audio file for 24 hours, never the audio itself. Firnkern deletes this usage data 12 months after the end of the pilot or of the credit.

8.5 Where a statutory retention obligation exists, Firnkern restricts the data concerned and uses it only for that purpose.

9 Evidence and audits

9.1 Firnkern provides the Customer with the information necessary to demonstrate compliance with these obligations, in particular this agreement with annexes, the extract from the record of processing activities and extracts from the logs (backup, monitoring, deletion) without data of other customers.

9.2 Audits by the Customer or by a person mandated by it and bound to confidentiality are possible by agreement, no more than once a year, with 30 days' notice and at the Customer's expense, unless there is a justified suspicion of a breach. For the data centres of sub-processors, their evidence applies. Data of other customers remains protected.

10 Liability

In the pilot, liability is governed by the Pilot Agreement (section 8) and the Cloud Pilot Terms, otherwise by Firnkern's Terms. Mandatory provisions of data protection law remain reserved.

11 Conclusion, term and final provisions

11.1 Conclusion: The Customer accepts this agreement when the admin agrees in the Software – when setting up the instance or before switching on «AI via Firnkern» – by ticking «I have read and agree to the terms and the data processing agreement» and «I am authorised to agree on behalf of the company». Firnkern stores version, name, login and time in a log and provides the Customer with an extract on request. Firnkern accepts by providing the instance or the service. On request, the parties additionally sign.

11.2 Form: Where the GDPR applies, this agreement must be in writing, which may also be in electronic form (Art. 28(9) GDPR). Consent in the Software with a log is intended to meet this requirement.

11.3 Term: This agreement applies as long as Firnkern processes personal data on behalf of the Customer. Sections 4, 8 and 9 survive termination.

11.4 Precedence: In data protection matters, this agreement takes precedence over the Terms, the Pilot Agreement and the Cloud Pilot Terms. The addendum «AI via Firnkern in the pilot» 1.0 specifies it.

11.5 Company in formation: until its entry in the commercial register, Marco Grieshaber acts for the company; after registration, Firnkern GmbH assumes this agreement.

11.6 Swiss law applies; place of jurisdiction according to the Pilot Agreement or the Terms. Where the GDPR applies, its mandatory provisions remain reserved. The German version prevails.

Area	Measure	Status
Data centre	Server Infomaniak VPS Cloud (Infomaniak Network SA, Geneva), data centre in Switzerland; physical security by Infomaniak	in operation (according to Infomaniak)
Separation	own container, own data volume and own network per company; instances cannot reach each other	in operation
Transmission	TLS with Let's Encrypt certificates (via Caddy); address per company https://<name>.app.firnkern.com	in operation
Login	password and mandatory two-factor authentication (TOTP) or passkey (WebAuthn); rights by role in the Software; passwords and sessions stored only as hashes	in operation
Firnkern admin access	only via SSH key; only persons designated by management and bound to confidentiality	in operation
Network	firewall; only ports 22 (SSH), 80 (redirect, certificate) and 443 (HTTPS) open	in operation
Updates	automatic security updates of the operating system; Software updates by Firnkern	in operation
Monitoring	check every 10 minutes	in operation
Backup	daily at 02:30, encrypted with age (public key on the server, private key only offline at Firnkern), kept for 30 days	in operation
Second location	Infomaniak Swiss Backup (Switzerland)	IN PROGRESS – until then backups are on the same server
Restoration	test of restoration from backup: at least quarterly, first test before real pilot data is taken in	open
Data at rest	backups encrypted; encryption of the data volume: not additionally encrypted (protected by server access restrictions)	partly
Logs	Firnkern's operations log (betrieb.log) without personal data; logs within the instance (for example logins) are part of the Customer's content	in operation
Availability	no commitment in the pilot; Infomaniak commits 99.99% to Firnkern (applies only between Infomaniak and Firnkern)	–

Area	Measure	Status
AI via Firnkern	only after being switched on by the admin; pseudonymisation of text before levels 2 and 3 where the Software provides for this; audio only with consent; no storage of content in the relay service; log of transmissions on the page «AI and data protection»	in operation (pilot)
Export and deletion	export at any time; final export; deletion of instance, volume and backups with deletion log (geloescht.log)	built
Organisation	incident procedure (assessment within 4 hours, notification to customers under section 7.2); internal AI policy: no content from instances in Firnkern's development or AI tools	draft in force

Provider	Service	Location	Basis	When engaged
Infomaniak Network SA, Geneva	Firnkern Cloud server (VPS Cloud), data volume, backup on the server	Switzerland («hosted in Switzerland», according to Infomaniak)	Swiss law; Infomaniak data processing agreement (filed 10 Nov 2026)	always in the cloud pilot
Infomaniak Network SA, Geneva	Swiss Backup – second backup location	Switzerland	as above	once set up (notice under section 6.2)
Infomaniak Network SA, Geneva	server of the relay service ki.firnkern.com	Switzerland (Infomaniak, data centre in Switzerland)	as above	only with «AI via Firnkern»
Infomaniak Network SA, Geneva	language model (model Mistral) and transcription, level 2	Switzerland (according to Infomaniak, processed end-to-end in Switzerland)	as above	only if the admin switches on «AI via Firnkern»
Anthropic, PBC, San Francisco	language model, level 3; pseudonymised text extracts	USA	Standard Contractual Clauses in Anthropic's Data Processing Addendum (effective 24 Feb 2025, with Swiss Addendum; filed 10 Nov 2026)	only if the admin switches on level 3 (off by default)

Category	Examples	Data subjects
User data	name, login, e-mail (optional), role, rights; login credentials (password only as hash, data for two-factor and passkey)	employees, managers, learners, students, mentors, other persons authorised by the Customer
Knowledge content	knowledge and dossiers on roles, task sheets, questions and answers, documents, transcripts	knowledge holders, successors, reviewers; third parties named in content (for example customer or supplier contacts)
Audio and images	audio recordings, photos, videos – only with the consent of the person concerned	persons recorded
Communication	messages between employees in the Software	senders and recipients
Learning and onboarding	learning progress, onboarding status, releases and reviews of handovers (no assessment of persons by the Software)	learners, successors, mentees
Logs within the instance	logins, changes, releases, transmissions to AI providers (time, login, IP address where logged)	users
AI via Firnkern	audio for transcription and pseudonymised text extracts (passed through only); usage data (time, customer, service, quantity, cost)	users and persons named in content
Sensitive personal data	not intended; only if the Customer captures it itself (then under its responsibility)	–

Requirement	Where in this agreement
Art. 28(3) GDPR introduction: subject matter, duration, nature, purpose, types of data, categories of data subjects, obligations and rights of the controller	sections 1, 2, Annex 3

Area	Measure	Status
(a) processing only on documented instructions, including transfers to third countries		section 3
(b) confidentiality of authorised persons		section 4
(c) measures under Art. 32 GDPR		section 5, Annex 1
(d) conditions for engaging other processors		section 6, Annex 2
(e) assistance with data subject rights		section 7.1
(f) assistance with Art. 32–36 GDPR		sections 5, 7.2–7.4
(g) deletion or return after the end of the services		section 8
(h) information and audits		section 9
Art. 28(9) GDPR: in writing, including in electronic form		sections 11.1, 11.2
Art. 9(1) FADP: processing only as the controller itself would be permitted to		section 3
Art. 9(2) FADP: controller ensures data security		section 5, Annex 1, section 9
Art. 9(3) FADP: transfer to third parties only with prior authorisation		section 6
Art. 24(3) FADP: notification to the controller as soon as possible		section 7.2