

# Data Processing Agreement (DPA) in accordance with Art. 28 GDPR

between  
**operators of sports and wellness facilities**  
(hereinafter referred to as the "**studio**")

and

**Magicline GmbH, Raboisen 6, 20095 Hamburg**  
(hereinafter referred to as „**Magicline**“)

Version: 12/2021

## Preamble:

The studio and Magicline have entered into an agreement entitling the studio to use the Magicline management software as a service (SaaS) as well as other services ("**main agreement**").

The fulfillment of the services owed on the basis of the main agreement on the behalf of Magicline requires that Magicline handle personal data of the studio (hereinafter also "**contract data**"). Magicline will process the contract data on behalf of the studio in compliance with Art. 28 of the EU General Data Protection Regulation ("GDPR"). This contract specifies the data protection rights and obligations applicable to both parties.

## § 1 Subject of the contract, type of data, group of data subjects

(1) Magicline shall provide the studio the services owed under the main agreement, in particular:

(i) Carrying out the processing operations owed under the main agreement within the meaning of Art. 4 para. 2 GDPR, within the scope of the contractual use of the Magicline management software within the respective software functionalities used by the studio. The Magicline management software can be used by the studio for the following purposes in particular:

- management of member data
- collection of members' training-relevant data
- planning of appointments and classes
- communication with members via various channels (in particular, email, post, SMS, push messages)
- technical support for access control of members and users to studio facilities (including locker use, etc.)
- support in the creation of billing data
- dunning and debt collection support
- processing of online payments by members
- enterprise resource planning system with connected cash register system
- support in acquiring new customers through marketing campaigns
- management of employee data and technical support in personnel scheduling
- technical support in task management and planning for employees
- evaluation of various key business figures

Magicline collects and stores contract data provided by the studio, the respective customer of the studio, including persons with a potential interest in acquiring a membership with the studio (hereinafter collectively "**members**") as well as by other third parties ("**users from other studios**")

in the Magicline management software. As the studio uses the functionalities of the Magicline management software, the contract data, depending on the user application selected by the studio, will be compared in the Magicline management software, linked, disclosed according to the specifications of the main agreement and deleted again, in compliance with all data protection requirements and with the help of processes established at Magicline.

(ii) Processing of contract data managed for the studio via Magicline management software to produce anonymized market analyses. The contract data relevant for the respective analyses (e.g., rate plans, contract start and end dates, payment data, check-ins, training data, marketing data, etc.) will be transferred from the customer-specific area of the Magicline management software to the general data processing area of Magicline for further processing together with other studios' anonymized data in a way that will not allow personal identification of individual members or users from other studios. After a transfer to the general data processing area, the data will also no longer be linked to the specific studio.

(2) Magicline is obligated to store all of the contract data to which it gains access in the course of fulfilling the services owed under this contract as well as the main agreement in logically distinct areas with different access rights and to encrypt such data with a customer-specific key. This will allow each studio's data to be processed and deleted separately from any data held by Magicline and any data held by third parties.

(3) Data from the following groups of people may be affected by order data processing:

(i) studio owners and employees and

(ii) members of the studio.

(iii) As far as part of the studio's range of services:

Users, i.e., persons who, as a contractually bound member of another studio, would like to make use of the services offered by the studio (hereinafter referred to as "**guest access**")

Without exception, this involves the following personal data from the aforementioned group of data subjects:

(i) Regarding the owner(s) of the studio:

- Company and organizational data of the studio (commercial register number, management details, bank details, address details, etc.)
- Internal business figures of the studio (number of members, number of contracts, cancellation rate, chargeback rate, etc.)

(ii) Regarding employees of the studio:

- Name, address, contact details, payment data (IBAN, BIC) of the respective employee
- Date of birth of the respective employee
- Photo of the respective employee
- Data relating to the employment relationship with the studio and recorded in the Magicline management software (contract duration, payment terms, hourly rates, working hours, etc.).
- Logins to the system
- Appointments and class bookings by the respective employee

- As well as any other information entered by the studio into the Magicline management software ("**free text**") about the respective employee

(iii) Regarding members of the studio:

- Name, address, contact data, payment data (IBAN, BIC, direct debit mandate), membership number, UID of the membership cards, legal representative of the respective member
- Date of birth of the respective member
- Photo of the respective member
- Contract duration and payment modalities of the respective member
- Consent to marketing campaigns
- Participation in referral and customer loyalty programs
- Outstanding balances, payments, as well as dunning or collection status of the respective member
- Data on the type and scope of use by the member of the services offered by the studio (type, frequency and duration of use by the member, including check-ins)
- Information derived from the use of the services offered by the studio (e.g., training schedules, member's class dates, locker usage, vending machine usage, and other personal information)
- Health data (e.g., COVID vaccination status, COVID test results, height, weight, body fat, and other personal information)
- Communication with the member via various channels (letter, email, SMS, etc.)
- As well as any other information about the member entered by the studio and/or the member in the Magicline management software ("free text")

(iv) As far as part of the studio's range of services:

- Regarding users given guest access to the studio:
- Name of the user
- Membership number, UID of the user's member's card
- Name of the studio with which the user has a membership contract, including the end date of the contract
- Data on the type and scope of use of the services offered by the studio (type, frequency and duration of use)
- Information derived from the use of services offered by the studio (e.g., class/equipment use, locker use, vending machine use)
- - as well as all other information entered by the studio into the Magicline management software ("free text field") about the user

- (4) The purpose of processing the contract data is, on the one hand, to support the studio in the administration of the contracts concluded with the members of the studio (member administration), to support the access control to services of the studio and to create billing data. On the other hand, the purpose is to serve as the basis for internal and external market data in anonymized form that the studio can use for its internal and market analyses. Finally, the purpose of processing employee data is to provide technical support to the studio with respect to personnel management.
- (5) Processing operations of the kind described in Art. 4 para. 2 GDPR are carried out. This means that the contract data will be collected, recorded, organized, stored, adjusted and modified, read,

queried, used and disclosed through transmission. contract data will also be compared, linked and deleted as required

## **§ 2 studio responsibilities and authority to issue instructions**

- (1) The studio is solely responsible for the permissibility of the data processing in accordance with Art. 6 GDPR and for safeguarding the rights of the persons whose data are processed (the data subjects) in accordance with Art. 12 to 22 GDPR.
- (2) Magicline shall cooperate to the necessary extent in the studio's fulfillment of the rights vis-à-vis the data subjects pursuant to Articles 12 to 22 GDPR, in the creation of directories of processing activities and in any necessary data protection impact assessments of the studio and shall provide the studio with appropriate support to the extent possible (Article 28 para. 3 clause 2 lit. e and f GDPR). Magicline will immediately forward all inquiries from data subjects to the studio, provided that they are recognizably directed exclusively to the studio.
- (3) Magicline processes the contract data exclusively in accordance with the provisions of the main agreement concluded with the studio and within the scope of the instructions issued by the studio, unless an exceptional case arises within the meaning of Art. 28 para. 3 lit. a GDPR. Magicline will not use the contract data provided for data processing for any other purpose and will not keep it for longer than the studio determines.
- (4) As a rule, the studio shall issue all instructions using special functionalities of the Magicline management software set up for this purpose. The use of the functionalities for issuing instructions by the studio is documented by Magicline. Outside of the Magicline management software, the studio usually issues instructions by email or in writing.
- (5) If Magicline is of the opinion that an instruction of the studio violates the GDPR or other regulations on data protection, Magicline shall immediately notify the studio thereof. Magicline is authorized to suspend implementation of the corresponding instruction until it is confirmed or modified by the responsible personnel of Magicline following examination.
- (6) The studio shall inform Magicline immediately if it detects any errors or irregularities in the inspection of the processing results.

## **§ 3 Magicline data protection officer, list of processing activities**

- (1) Magicline has appointed the company's data protection officer:  
Marc Althaus, DS Extern GmbH, Frapanweg 22, 22589 Hamburg, <https://www.dsextern.de/anfragen>
- (2) The data protection officer shall ensure the implementation of GDPR and other data protection regulations with regard to the contractual relationship. To this end, the data protection officer shall carry out regular checks. A record of the checks shall be kept. If the data protection officer discovers any irregularities in the data processing within the scope of his duties, he shall inform Magicline's management without delay. A change of data protection officer shall be communicated to the studio without delay.

## **§ 4 Confidentiality**

- (1) Magicline may not, unless otherwise expressly provided in this contract (cf. §1 clause 1), without the instruction or consent of the studio, disclose the contract data to third parties or the data subject or provide information about it.
- (2) Magicline is obliged to treat all records, documents and other information storage media provided within the scope of this contractual relationship as confidential. This also applies to all other information that Magicline becomes aware of when carrying out this order. This obligation shall

apply – subject to deviating legal provisions, judicial or official orders – during and also after termination of this contract.

- (3) When processing personal data for the customer, Magicline undertakes to maintain confidentiality within the meaning of Art. 28 para. 3 b) GDPR. The contractor warrants that it will familiarize the employees engaged in the performance of the work with the provisions of data protection applicable to them
- (4) before they commence their activities and that they will be obliged to maintain confidentiality in an appropriate manner for the duration of their activities and after the termination of the employment relationship. The contractor shall monitor compliance with data protection regulations in its operations.
- (5) The studio is obligated to treat all knowledge of Magicline's trade secrets and data security measures obtained within the scope of this contractual relationship as confidential. This obligation shall survive any expiration or termination of this contract.

## **§ 5 Correction, deletion, restriction of the processing of data**

Magicline must correct, delete or restrict the processing of the contract data if the studio requests this by means of an instruction and Magicline's legitimate interests do not conflict with this. Irrespective of this, Magicline must correct, delete or restrict the processing of the contract data if the instruction of the studio is based on a legitimate claim of the data subject under Art. 16, 17 and 18 GDPR. If a data subject should contact Magicline directly with regard to correction, deletion or restriction of the processing of his/her data, Magicline will forward this request to the studio without delay.

## **§ 6 Third country transfer, subcontracting relationships**

- (1) The provision of the contractually agreed data processing shall take place without exception on servers whose location is within a member state of the European Union or in another state that is party to the Agreement on the European Economic Area. Data processing in third countries results exclusively from subcontracting relationships with subcontractors in third countries (see below para. 2). Details can be found in Appendix 1.
- (2) At the time of the conclusion of this contract, the companies listed in Appendix 1 act as subcontractors for partial services for Magicline and also directly process the contract data in this context. The version of Appendix 1 valid at the time the contract was concluded is enclosed with this contract. For the subcontractors named therein, the consent to act shall be deemed to have been given. Subcontractors in third countries may only be engaged if the special requirements of Art. 44 et seq. GDPR are met (e.g., adequacy decision of the Commission, standard data protection clauses including Transfer Impact Assessment (TIA), approved codes of conduct).
- (3) Magicline shall inform the studio of any intended change to the subcontractors referred to in Appendix 1, whether it involves the addition of further subcontractors or the replacement of existing subcontractors, stating the name and address as well as the intended activity of the subcontractor concerned, and shall make the intended change to the version of Appendix 1 available online at <https://public.sportalliance.com/magicline/en/dpa/ssp>. This shall give the studio the opportunity to object to the change concerned within one week of receipt of the notification. Magicline will inform the studio of this deadline in the notification. If the studio does not object, the version available online at <https://public.sportalliance.com/magicline/en/dpa/ssp> will replace the previously existing version of Appendix 1.
- (4) If the studio raises an objection for reasons without good cause, Magicline may terminate this contract as well as the main agreement with the studio at the time of the planned use of the subcontractor without notice, without the studio being entitled to any claims for damages or other

payments against Magicline in this connection. An important reason for an objection on the part of the studio exists in particular if the use of the services of the subcontractor violates the provision in Art. 28 para. 3 clause 2 lit. d) GDPR.

- (5) Magicline must contractually ensure that the agreed regulations between the studio and Magicline also apply to subcontractors. The contract with the subcontractor shall specify the information in such a specific manner as to clearly delineate the responsibilities of Magicline and the subcontractor. If several subcontractors are used, this shall also apply to the responsibilities between these subcontractors.
- (6) Magicline shall verify the compliance of the respective subcontractor with the obligations relevant to data protection. By written request, the studio is entitled to obtain information from Magicline about the subcontractor's obligations relevant to data protection, if necessary, also by inspecting the relevant contractual documents. Under the conditions laid down in §7 of this contract, on-site inspections of the subcontractor by the studio or third parties commissioned by the studio must be possible.
- (7) The contract with the subcontractor must be drawn up in writing, which can also be in an electronic format (Art. 28 para. 4 and para. 9 GDPR).
- (8) The forwarding of data to the subcontractor is only permitted after the subcontractor has fulfilled the obligations pursuant to Art. 29 and Art. 32 para. 4 GDPR regarding its employees.
- (9) Magicline shall be liable to the studio for the subcontractor's compliance with the data protection obligations contractually imposed on it by Magicline in accordance with this section of the contract.
- (10) A subcontractor relationship requiring approval does not exist if Magicline commissions third parties for the main service as part of an ancillary service, such as personnel, postal, and dispatch services. However, Magicline is obligated to enter into appropriate and legally compliant contractual agreements and to take control measures to ensure the protection and security of personal data arising from this contractual relationship, also in the case of ancillary services contracted out to third parties. The ancillary services are to be specified in detail at the request of the studio.

## **§ 7 Inspection by the studio and obligations to cooperate and acquiesce**

- (1) The studio shall be entitled, through an authorized representative bound to secrecy, to check compliance with the technical and organizational measures for data protection and data processing of Magicline and its subcontractors before the start of the service and regularly throughout the duration of the service at reasonable intervals. The studio will give reasonable notice of on-site inspections and will be considerate of Magicline's business and operations when conducting them. Persons or third parties entrusted by the studio with the inspection shall be demonstrably obligated to maintain confidentiality upon commissioning. Third parties within the meaning of this provision may not be representatives of Magicline's competitors or their group companies. Any costs incurred by Magicline for an on-site inspection shall be borne by the studio.
- (2) The studio declares that it will exercise the inspection rights described in paragraph 1 by instructing Magicline, instead of an on-site inspection, to provide evidence of compliance with the technical and organizational measures by submitting a suitable current audit report by independent persons (e.g., auditors, data protection officers or quality auditors) or suitable certification by IT security or data protection audit – e.g., in accordance with BSI-Grundschutz – ("audit report"). The audit report shall enable the studio to satisfy itself in an appropriate manner that the technical and organizational measures have been complied with.
- (3) If the studio comes to the conclusion that the information provided by Magicline pursuant to paragraph 2 gives cause for an on-site inspection, in particular, because it is incomplete, contradictory or otherwise incorrect, or if the studio deems an on-site inspection necessary for

other reasons, it may amend the instruction described in paragraph 2 by giving written instructions to Magicline. If Magicline refuses to comply with such instruction from the studio regarding audits or inspections, the studio is entitled to terminate the main agreement and this contract with immediate effect.

## **§ 8 Definition of technical and organizational measures**

- (1) Magicline shall take appropriate technical and organizational measures to ensure a level of protection appropriate to the risk to the rights and freedoms of data subjects. In this context, the state of the art, the implementation costs and the nature, scope and purposes of the processing, as well as the varying likelihood and severity of the risk within the meaning of Art. 32 para. 1 GDPR shall be taken into account. The specific technical and organizational measures taken by Magicline are listed in Appendix 2. Appendix 2 is available online in its currently valid version at <https://public.sportalliance.com/magicline/de/dpa/tom>.
- (2) Magicline shall inform the studio of any change made to Appendix 2. Since the technical and organizational measures are subject to technical progress and technological development, Magicline may implement other and equivalent measures, provided that in doing so, the security level of the measures specified in Appendix 2 is not compromised. Decisions significant for security concerning the organization of data processing and the applied procedures, which are likely to reduce the level of security, shall be agreed with the studio in advance in a documented form (in writing, electronically). Such agreements are to be retained for the duration of this contract.
- (3) Magicline supports the studio with its technical and organizational measures to comply with its obligation to respond to requests to exercise the rights of data subjects referred to in Art. 12 et seq. GDPR.

## **§ 9 Communication and support obligations of the contractor in the event of data security incidents**

- (1) Magicline shall support the studio to the extent required by law in fulfilling its obligations under Art. 32 to 36 GDPR.
- (2) Magicline shall inform the studio without undue delay if Magicline or a person employed by Magicline has violated regulations on the protection of personal data, stipulations under this contract or an instruction issued by the studio, if there are indications that a third party – for whatever reason – may have gained unlawful knowledge of contract data or if a threat to the integrity or confidentiality of the contract data has occurred in any other way ("data security incident").
- (3) The information about the data security incident shall contain information about the time and nature of the incident (including information about which order data is affected and in what form), the IT system affected, the data subject, the time of discovery, any conceivable adverse consequences of the data security incident as well as the measures taken by Magicline and any other information specified in Art. 33 para. 3 GDPR. Magicline must also specifically state whether a breach of the protection of the contract data is likely to result in a risk to the rights and freedoms of natural persons within the meaning of Art. 33 para. 1 clause 1 GDPR and whether the risk is likely to be high within the meaning of Art. 34 para. 1 GDPR.
- (4) The studio must be informed immediately, and a specific notification must be made within 24 hours of becoming aware of the data security incident. To the extent that Magicline is unable to provide all information pursuant to paragraph para. 3 above within 24 hours, such information shall be provided on a step-by-step basis without unreasonable further delay.
- (5) After becoming aware of a data security incident, Magicline will immediately take all reasonable measures to minimize and eliminate the resulting threats to the integrity or confidentiality of the

contract data, to secure the contract data and to prevent possible adverse consequences for data subjects or to limit their effects as far as possible.

- (6) In the event of a data security incident, Magicline is obliged to support the studio in its related clarification, remedial actions, including all actions to fulfill legal obligations, upon first request, to the extent reasonable.
- (7) Magicline is obliged to carry out an analysis of the causes immediately after becoming aware of a data security incident, to document it and to hand over the documentation to the studio upon request. If Magicline determines in the course of the analysis that the technical and organizational measures taken to date to protect the contract data are not sufficient to provide an adequate level of protection, Magicline will implement any additional technical and organizational measures required at its own expense.
- (8) Magicline is obliged to inform the studio immediately about investigations, inspections and measures by the supervisory authorities, as far as contract data is concerned.

## **§ 10 Term of this contract**

- (1) This contract commences upon signature and is concluded for the duration of the validity of the main agreement (subsequent limitation).
- (2) This shall not affect the parties' right to terminate the contract without notice. The studio shall be entitled to terminate this contract without notice in the event of a serious breach by Magicline of the applicable data protection regulations or of obligations under this contract, if Magicline cannot or does not intend to execute the studio's instructions or if Magicline refuses to exercise inspection rights by the studio in breach of the contract.
- (3) Each Party is entitled to terminate this contract with a notice period of two weeks to the end of a calendar month if the execution of the main agreement and/or the execution of this contract is objected to by a competent supervisory authority (in particular the competent data protection authority) and a deadline set by this authority to remedy defects expires without success or if at least one of the parties is prohibited by the competent authority from further execution of the main agreement and/or this contract.
- (4) Any notice of termination must be in writing.
- (5) With regard to the contract data stored at the time of termination of this contract, Magicline undertakes to comply with Art. 28 para. 3 lit. g GDPR. Magicline shall be entitled to retain such documentation beyond the termination of this contract as Magicline requires for the purpose of proving that the data processing has been carried out in accordance with the order and the regulations. Upon expiration of the respective retention periods, Magicline is also obliged in this respect to delete the data in accordance with data protection regulations.

## **§ 11 Miscellaneous**

- (1) Should Magicline's ownership or the contract data be endangered by measures of third parties (such as seizure or attachment), by insolvency or composition proceedings or by other events, Magicline shall notify the studio immediately.
- (2) The right of retention within the meaning of §273 of the German Civil Code (BGB) is excluded with respect to the contract data and the associated data storage devices.
- (3) No additional verbal agreements have been made. Amendments and supplements to this Agreement require the form regulated in §28 para. 9 GDPR. This also applies to a change in the form requirement itself.
- (4) Should a provision of the contract be or become invalid, the parties undertake to replace the invalid provision with a valid provision that comes as close as possible to the economic will of the parties. The same applies in the event of a loophole.



- (5) The exclusive place of jurisdiction for all disputes arising from and in connection with this contract is Hamburg. The parties agree to the application of German law.

Hamburg, December, 1, 2021

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place, date

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magicline.com  
info@magicline.com

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Magicline GmbH (contractor)