

Agreement on Commissioned Data Processing in the SIP Archive

between

- hereinafter referred to as “Principal” or “Party Responsible” -

and

Leibniz-Institute for Applied Geophysics
Stilleweg 2
D-30655 Hannover

- hereinafter referred to as “Contractor” or “Processor” -

- both jointly referred to hereinafter as “Contracting Parties” -

the following agreement on commissioned data processing is concluded:

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Preamble

The Contracting Parties wish to enter into a commissioned data processing relationship. In order to finalise the resulting rights and obligations in accordance with the requirements of the Federal Data Protection Act (BDSG), the Lower Saxony Data Protection Act (NDSG) and future legal requirements, the Contracting Parties enter into the following agreement.

One of the aims of this agreement is to facilitate legally secure collaboration of both Contracting Parties that is also compliant with the data protection laws, for the period until the European General Data Protection Regulation (Directive (EU) 2016/679 of the European Parliament and Council dated 27 April 2016, for the protection of natural persons in the processing of personal data, for the free movement of data and repeal of Directive 95/46/EG - DSGVO (General Data Protection Regulation)) on 25 May 2018 and beyond. The agreement substantively follows the regulations of DSGVO, and therefore collaboration is possible on the basis of this agreement also after the Directive comes into force on 25 May 2018¹.

¹The DSGVO is a directly applicable law as of 25 May 2018, in accordance with Art. 99, Para. 2; the BDSG/NDSG, each in the version valid until 25 May 2018, is no longer applicable where the DSGVO stipulates different rules or provides for flexibility clauses which will be utilised by the national legislature for a follow-up regulation to the BDSG, as the DSGVO takes precedence.

Clause 1 Area of Application

The agreement applies to the storage, transmission, processing and deletion (hereinafter: Processing) of geophysical measurement data and personal data (hereinafter: Data) which are specified in Clause 2 or which arise or become known to the Contractor during the course of their implementation. Data of the Contractor's staff do not fall within the area of application insofar as they relate exclusively to the employment relationship with the Contractor.

Clause 2 Specification of the Order Content

(1) The object of the commissioned data processing as well as extent, type and purpose of the intended services includes the following works and services:

The SIP archive is a web-based application for the storage and exchange of geophysical measurement data between the participating establishments, accessible only for a closed user group (access only after user registration). The Contractor provides a web-based application which enables the participating registered users to independently store and describe their geophysical measurement data with the associated descriptive metadata (samples and measurements) in a researchable format, as well as independently transmit these upon request to other registered users.

(2) The following types and categories of data are the object of the processing by the Contractor:

- geophysical measurement data:
 - primary text files in ASCII format
 - associated metadata on samples
 - associated metadata on measurements

- user data:
 - last name
 - first name
 - academic title
 - full name
 - title
 - language
 - establishment
 - telephone number
 - e-mail address
 - password
 - login name
 - order history (yes/no)
 - status (activated yes/no)
 - role (contact person yes/no)

(3) The circle of the parties affected by the handling of their data are the establishments participating in the SIP archive and their users registered in the SIP archive.

Clause 3 Responsibility and Authority to issue Instructions

(1) The Contractor is the responsible body or party within the meaning of the national data protection laws or of the General Data Protection Regulation for the processing of data by proxy by the Contractor.

(2) The Contracting Parties are responsible for the compliance of the applicable data protection provisions. The Principal may request the release, correction, adjustment, deletion and restriction of the data processing at any time.

(3) In order to safeguard the protection of the rights of the affected parties, the Contractor shall take reasonable steps to support the Principal, in particular by guaranteeing suitable technical and organisational measures.

(4) If an affected party addresses the assertion of a right of affected parties directly to the Contractor, the Contractor shall immediately refer this request to the Principal.

(5) The Contractor is permitted to process data only within the scope of the instructions of the Principal. An instruction is the written order of the Principal regarding the specific handling of data by the Contractor.

(6) The Contractor shall immediately notify the Principal if he believes that an instruction breaches data protection regulations. The Contractor is entitled to suspend the execution of the relevant instruction until such time as the Principal confirms or amends it.

(7) Changes to the subject of the processing with process changes must be jointly agreed upon and documented. The Contractor may not provide any information to third parties or to the persons concerned without the prior express written consent of the Principal. The Contractor shall not use the data for any other purposes and is, in particular, not entitled to pass the data on to third parties. Copies and duplicates shall not be created without the Principal's knowledge.

(8) The Principal provides the process description in accordance in Section 4g (2), Sentence 2 of the BDSG or Section 8 of the NDSG (from May 2018: Directory of processing activities within the meaning of Art. 30 DSGVO). The Contractor provides information to the Principal for inclusion in the directory upon the Principal's request. The Contractor maintains a directory on all categories of activities carried out on behalf of the Responsible Party, in accordance with the requirements of Art. 28, Para. 2 DSGVO from no later than 25 May 2018.

(9) The processing of the data on behalf of the Principal shall take place exclusively on the territory of the Federal Republic of Germany. A transfer to a country outside the territory named in Sentence 1 requires the Principal's prior express written consent. The fundamental requirements for the legality of the processing remain unaffected.

(10) The Principal and the Contractor shall ensure that the natural persons under their control who have access to data only process these in accordance with the instructions of the Principal

(11) The Principal nominates the persons authorised to issue instructions (contact persons) who are listed in Appendix 2 "Persons Authorised to Issue and Receive Instructions".

The issue of instructions in the SIP archive extends to

- the activation, deactivation and deletion of user accounts of the own establishment
- the release/transfer of measurement data of the own establishment to users of outside establishments
- the refusal to transfer measurement data of the own establishment to users of outside establishments

These instructions are provided within the application in an area which can only be accessed by the contact persons or representatives, in the form of programme functions for carrying out the relevant tasks.

In the event that there is a change on the part of the Principal in the persons entitled to issue instructions, the Principal shall immediately notify the Contractor in writing by way of an updated Appendix 2 "Persons Authorised to Issue and Receive Instructions".

(12) The Contractor nominates the persons authorised to receive instructions who are listed in Appendix 2 "Persons Authorised to Issue and Receive Instructions". Their names and contact data are accessible to the contact persons within the application in the programme area of staff management.

In the event that there is a change on the part of the Contractor in the persons entitled to receive instructions, the Contractor shall immediately notify the Principal in writing by way of an updated Appendix 2 "Persons Authorised to Issue and Receive Instructions". The details in the programme area of staff management are updated accordingly.

Clause 4 Compliance with Mandatory Legal Obligations of the Contractor

(1) The Contractor shall ensure that the persons authorised to process the data have undertaken to keep the data confidential or that they are subject to an appropriate legal duty of confidentiality and verifies the same to the Principal upon request.

(2) The Contracting Parties provide mutual support in the verification and documentation of their accountability duties regarding the principles of proper data processing (Art. 5, Para. 2 of the DSGVO). For this purpose, the Contractor shall provide the corresponding information to the Principal when required.

(3) The Contractor notifies the Principal immediately of controls and measures by the supervisory authorities, or if a supervisory authority raises questions with the Contractor, conducts investigations or makes other enquiries within the scope of their competence.

Clause 5 Technical and Organisational Measures and their Control

(1) The Contracting Parties agree to the specific technical and organisational safety measures stipulated in Appendix 1 "Technical and organisational measures" enclosed with this agreement. The Appendix is the subject of this agreement.

(2) Technical and organisational measures are subject to technical progress. In this respect, the Contractor is permitted to implement alternative adequate measures. In doing so, the safety level must not fall below those measures specified in Appendix 1 "Technical and Organisational Measures". Significant changes are to be documented.

(3) The Contractor shall provide the Principal with all the information necessary for the verification of compliance with the stipulations made in this agreement and the legal requirements. In particular, the Contractor shall facilitate checks/inspections carried out by the Principal or another inspector instructed by the Principal and support their implementation. The proof that such measures, which do not only concern the specific order, have been implemented may also be provided by the submission of a current certificate, reports of sufficiently qualified and independent entities (e.g. auditors, reviews, data protection officers, IT security department, data protection auditors) or a relevant certification by IT security or data protection audit (e.g. in accordance with BSI basic protection).

(4) For testing purposes, the Principal may satisfy himself that the measures for compliance with the legal requirements or the technical and organisational requirements necessary to execute the agreement are appropriate, by visiting the business premises of the Contractor after arranging an appointment with the Contractor.

(5) In addition, the Contractor provides the Principal with all the information required by the Principal for assessing the impact of the intended processing procedures for the protection of the data (data protection impact assessment within the meaning of Art. 35 of the DSGVO).

(6) The Contractor must take all necessary measures to protect the data and/or the processing, in particular also in consideration of the state of the art, as well as for the mitigation of possible adverse effects on the parties concerned.

Clause 6 Notifications of Infringements by the Contractor

The Contractor shall notify the Principal immediately of any serious disruptions to the operations, if breaches of this agreement as well as data protection regulations are suspected or have taken place, or in case of other irregularities during the processing of the Principal's data. The Contractor fully supports the Principal in fulfilling reporting and notifying duties in respect of the supervising authority or parties concerned, which arise in the course of the execution of this agreement.

Clause 7 Deletion and Return of Data

(1) Data carriers and data sets provided remain the property of the Principal.

(2) After conclusion of the contractually agreed services, or earlier if requested by the Principal, however no later than upon termination of the service agreement, the Contractor shall hand over to the Principal all documents in the possession of the Contractor, prepared processing and utilisation results, as well as data files (also copies and duplicates of these), which are connected to the agreement, or destroy them in compliance with data protection requirements after obtaining the Principal's prior consent. The same applies to test and waste material. A deletion protocol must be presented to the Principal upon request.

(3) The Contractor is permitted to retain documentation which serves as proof of the proper data processing in accordance with the order, corresponding to the relevant retention periods up to their end also beyond the end date of the agreement. Alternatively, the Contractor may hand them over to the Principal at the end of the contract for the purpose of discharge on the part of the Contractor. After the end of the retention period, the obligations under Paragraph 2 apply to the data retained under Sentence 1.

(4) The complete return of the data to the Principal is to be confirmed by the latter in writing.

Clause 8 Transfer of Data to new Owners

(1) The Principal is entitled to arrange the complete transfer of the geophysical data to a third party. This includes all rights and duties regarding the corresponding data set. In doing so, the Principal loses all claims and rights to the data. The instructions for the transfer must be given in writing. The third party must agree to the transfer in writing.

(2) The complete transfer of data to new owners must be confirmed in writing by the latter with the previous owner and the Contractor.

Clause 9 Subcontractors

(1) Orders to third parties, such as other companies, authorities, other bodies or freelance staff (subcontractors), by the Contractor may only be issued with the prior express written consent of the Principal.

(2) If subcontractors are hired by the Contractor, the Contractor must ensure that his contractual agreements with the subcontractor are worded in a way that ensures that the level of data protection is at least as high as the corresponding agreement between the Principal and the Contractor and that all contractual and legal requirements are complied with; this also applies in particular with regard to the implementation of appropriate technical and organisational measures to guarantee an appropriate level of security during processing.

(3) The contractual agreement with the subcontractor must grant the Principal rights of control and inspection corresponding to those in this agreement. Upon written request to the Contractor, the Principal also has

the right to obtain information on the contents of the agreement concluded with the subcontractor and the implementation of the subcontractor's obligations that are relevant to data protection.

(4) Should the subcontractor not comply with its obligations according to data protection regulations, the Contractor shall be liable to the Principal for the fulfilment of the subcontractor's obligations. In this case, the Contractor must, at the request of the Principal, terminate the employment of the subcontractor either fully or partially, or terminate the agreement with the subcontractor, if and insofar as this is not disproportionate.

Clause 10 Remuneration

The commissioned data processing is carried out without charge to the Principal.

Clause 11 Data Protection Monitoring

The Contractor confirms his agreement that the Principal has the right to monitor compliance with the provisions on data protection and the contractual agreements to the required extent, either himself or via third parties. The Principal has, in particular, the right to obtain information and inspect the stored data and the data processing programmes as well as carry out other controls on-site, subject to arranging dates for such controls. The Contractor gives his assurances that he will cooperate in such controls as far as this is required.

Clause 12 Duration of the Agreement

(1) The agreement shall commence on _____ and is concluded for an indefinite period.

(2) It can be terminated subject to three months' notice to the end of the quarter.

(3) The Principal may terminate the agreement at any time, without giving notice, in the event of a serious breach of the applicable data protection regulations or the contractual duties by the Contractor, if the Contractor is unable or unwilling to carry out an instruction of the Principal, or if the Contractor refuses access to the Principal or the competent supervisory authority, contrary to the agreement.

Clause 13 Final Provisions

(1) Amendments and supplements to this agreement require a written agreement and express reference to the fact that this is an amendment or supplement to these conditions. This also applies to the waiver of this requirement for the written form.

(2) Appendix 1 "Technical and Organisational Measures" forms a part of this agreement.

(3) Appendix 2 "Persons Authorised to Issue and Receive Instructions" forms a part of this agreement.

(4) If any individual provision of this agreement is or becomes invalid or unenforceable, this shall not affect the validity of the remaining provisions. The invalid or unenforceable provision shall be replaced with a valid and enforceable provision, the effect of which comes closest to achieving the objective the Contracting Parties were seeking to achieve with the invalid or unenforceable provision. The above-mentioned provisions apply in the event that the agreement is found to be incomplete.

Date, place

Date, place

Signature (Principal)

Signature (Contractor)

Surname Name Function

Surname Name Director LIAG

Appendix 1 “Technical and Organisational Measures”

to the Agreement on Commissioned Data Processing in the SIP Archive dated
between the Leibniz-Institute for Applied Geophysics, Stilleweg 2, D-30655 Hannover
and

Clause 5 of the Agreement on Commissioned Data Processing refers to the specification of the technical and organisational data protection measures in this appendix.

Clause 1 Technical and Organisational Security Measures

The Contracting Parties have an obligation to carry out appropriate technical and organisational measures in such a way that the processing of the data takes place in accordance with the legal requirements and the protection of the rights of the affected person is guaranteed in an appropriate form.

Clause 2 Internal Regulatory or Operational Organisation of the Contractor

The Contractor shall design his internal regulatory or operational organisation in such a way that the special requirements of data protection are met. In doing so, particular measures must be taken that are appropriate depending on the type of the personal data or data categories.

Clause 3 Specification of the Individual Measures

(1) The following measures are defined in detail, which serve the implementation of the requirements of Art. 32 of DSGVO from 25 May 2018 onwards:

No.	Measure	Implementation of the Measure
1.	Entry control Unauthorised persons shall be refused access to data processing systems with which personal data is processed.	<i>Closed rooms are required with special locking authorisation (computer centre).</i>
2.	Access control The use of data processing systems by unauthorised persons shall be prevented.	<i>Access is only possible for registered users. For further details, see procedure description, non-public part.</i>
3.	Data access control It is necessary to ensure that the persons authorised to use a data processing system may only access the data which is subject to their access authorisation and that, during their processing, personal data cannot be read, copied, modified or deleted without authorisation.	<i>The registered users are assigned to a system of authorisations and roles.</i>

Appendix 1 "Technical and Organisational Measures"
to the Agreement on Commissioned Data Processing in the SIP Archive

4.	<p>Transfer control</p> <p>It is necessary to ensure that, during electronic transmission or during transport or storage on data carriers, personal data cannot be read, copied, modified or deleted without authorisation, and that it can be checked and established at which points a transmission of personal data via data transfer facilities is intended.</p>	<p><i>This takes place in accordance with instructions from the Principal within the scope of the commissioned data processing.</i></p>
5.	<p>Input control</p> <p>It is necessary to ensure that it can be verified and determined subsequently, whether and by whom personal data has been input into the data processing system, modified or deleted.</p>	<p><i>The input of data is carried out independently by the Principal.</i></p>
6.	<p>Order control</p> <p>It is necessary to ensure that personal data and geophysical measurement data processed by order, can only be processed in accordance with the instructions of the Principal.</p>	<p><i>The commissioned data processing is carried out by the Contractor, subject to the instructions of the Principal.</i></p>
7.	<p>Availability control</p> <p>It is necessary to ensure that personal data is protected against accidental deletion or loss.</p>	<p><i>The data is stored in the computer centre, which is protected against malfunction, unauthorised access and damage according to the current state of the art. Data is backed up regularly.</i></p>
8.	<p>Separation control</p> <p>It is necessary to ensure that data collected for different purposes can be processed separately.</p>	<p><i>The entire database is broken down according to clients (multi-client capable). The production system is separated from the test and development system.</i></p>

(2) A process must be established, whereby the Contracting Parties are able to carry out regular reviews, assessments and evaluations of the effectiveness of the technical and organisational measures carried out. Such process must be implemented no later than from 25 May 2018 onwards.

Date, place

Date, place

Signature (Principal)

Signature (Contractor)

Surname Name Function

Surname Name Director LIAG

Appendix 2 “Persons Authorised to Issue and Receive Instructions”

to the Agreement on Commissioned Data Processing in the SIP Archive dated
between the Leibniz-Institute for Applied Geophysics, Stilleweg 2, D-30655 Hannover
and

Clause 3 of the Contract on Commissioned Data Processing refers to this appendix regarding the specification of the authority to issue instructions and determination of the responsible contact persons on the part of the Principal, as well as the specification of the persons authorised to receive instructions on the part of the Contractor.

Clause 1 Persons Authorised by the Principal to Issue Instructions

The Principal names the following persons who are authorised to issue instructions (contact persons) in connection with participation in the SIP archive:

1. Main Contact Person	
Name:	
First name:	
Academic title:	
Establishment:	
Office address:	
Telephone number:	
Email address:	

1. Representative (optional)	
Name:	
First name:	
Academic title:	
Establishment:	
Office address:	
Telephone number:	
Email address:	

Clause 2 Persons Authorised by the Contractor to Receive Instructions

The Contractor names the following persons who are authorised to receive instructions at LIAG:

1. Specialist contact person:
Dr. Matthias Halisch, 0511-643 2331, Matthias.Halisch@leibniz-liag.de
2. Technical contact person
Jens Gramenz, 0511-643 3516, Jens.Gramenz@leibniz-liag.de
Klaus Krause, 0511-643 3453, Klaus.Krause@leibniz-liag.de

The names and contact data of the persons who are authorised to receive instructions at LIAG are accessible to the contact persons also within the application in the programme area of staff management.

Date, place

Date, place

Signature (Principal)

Signature (Contractor)

Surname Name Function

Surname Name Director LIAG