

Studytube Data Processing Agreement

Studytube offers an online, automated system, with which organisations can offer their employees education, courses, training and other forms of learning, can trace the progress of employees, and can manage the offer of learning content. To do this, Studytube shall have to process Personal Data of these employees. Studytube shall thereby act as Processor within the meaning of the applicable laws and regulations and Client as Controller. This Data Processing Agreement contains the terms and conditions, under which Studytube shall act for Client in the capacity of Processor and as an appendix constitutes an inseparable part of the Agreement. All provisions of the Agreement and of the Terms of Use are fully applicable to this Data Processing Agreement, unless they are deviated from in this Data Processing Agreement.

Article 1 Definitions and Interpretation

1.1 In this Data Processing Agreement, the following definitions apply:

Agreement: the agreement between Parties as referred to above.

Controller: the natural or legal person, public authority, agency or any other body which determines the purposes and means of the Processing of Personal Data (art. 4 section 7 GDPR).

Data Breach: a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise processed (art. 4 section 12 GDPR).

Data Processing Agreement: this data processing agreement inclusive of attached annexes, as well as any modification, replacement, update or later version thereof.

Data Subject: the person to whom Personal Data concerns (art. 4 section 1 GDPR).

GDPR: the European General Data Protection Regulation (2016/679).

Personal Data: all information obtained from Client for the purpose of the execution of the Agreement, on an identified or identifiable User (art. 4 section 1 GDPR).

Processing: an operation or an set of operations which is performed upon Personal Data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction (art. 4 section 2 GDPR).

Processor: the party that processes Personal Data on behalf of Controller, without being subject to his direct authority (art. 4 section 8 GDPR).

Sub-Processor: a third party that is involved by Studytube, to process Personal Data on behalf of Client, without being subject to the direct authority of Studytube.

1.2 Definitions that are written in this Data Processing Agreement with a first letter in capital, but that have not been defined in this article, shall have the meaning as attributed to it in the Agreement or the Terms of Use.

Article 2 General

2.1 During the execution of the Agreement, Studytube shall process Personal Data on behalf of Client. An overview of the Processing, that shall take place for the purpose of the Agreement, the Personal Data processed thereby and the purposes and means of the Processing, is established in Annex A attached to this Data Processing Agreement.

2.2 Studytube shall act as Processor and Client as Controller .

2.3 Studytube warrants that it shall solely process Personal Data on behalf of Client, insofar this is necessary for the execution of the Agreement. Other Processing shall solely take place based on written instructions of Client or if a legal obligation to that effect exists, after informing of and under responsibility of Client. Studytube shall not process Personal Data for own purposes, except for insofar it can be regarded as Controller for the concerned Processing.

2.4 Studytube shall comply with all reasonable instructions of Client in connection with the Processing of Personal Data. Studytube shall notify Client immediately, if in its opinion, instructions are in violation of applicable laws and regulations.

2.5 Studytube shall process the Personal Data in a transparent manner, in a legal and careful manner and in accordance with the obligations resting on it as Processor.

2.6 Studytube shall maintain a register of all categories of processing activities that it executes for Client, such in accordance with the requirements set forth in article 30 section 2 and section 3 GDPR.

Article 3 Rights of Data Subjects

3.1 Studytube shall by means of appropriate technical and organisational measures, insofar as is possible, provide assistance to Client to comply with its obligations pursuant to the GDPR, more in particular the compliance with requests of Data Subjects pursuant to the GDPR, such as a request to provide access to

Personal Data concerning him/her, to remove Personal Data, to the rectification of Personal Data and/or to demonstrate that Personal Data has been removed or rectified, to limit the Processing of the Personal Data of and/or to the transfer of the Personal Data to another Controller.

Article 4 Security of Personal Data and Control

4.1 Notwithstanding the security measures that Parties have agreed in another manner, Studytube shall protect the Processing of Personal Data in accordance with article 32 GDPR, among others by taking the appropriate technical and organisational security measures that in view of the present state of technique and the related costs are in line with the nature of the Personal Data to be processed, the scope, context and purposes of the Processing, as well as the risk varying according to probability and seriousness for the rights and freedoms of Data Subjects. These measures encompass, where suitable, in any case:

4.1.1 the capability to warrant on a permanent basis the confidentiality, integrity, availability and resilience of the processing systems and services;

4.1.2 the capability to, upon a physical or technical incident, timely restore the availability of and access to the Personal Data;

4.1.3 a procedure for the testing, assessment and evaluation on set times of the efficiency of the technical and organisational measures for the security of the Processing.

4.2 Parties acknowledge that security requirements change constantly and that an effective security, requires frequent evaluation and improvement of security measures. Studytube shall therefore on set times test, assess and evaluate, extend and/or improve the security procedure, in order to continue to maintain compliance with the obligations under this article.

4.3 Studytube's information security policy (ISP) and management system (ISMS) are ISO 27001 certified. In this context, Studytube's information security system is subject to several audits every year.

4.4 If Client requests so in writing, Studytube shall take special measures for the protection and/or the confidentiality of the (categories of) Personal Data identified thereby. If this leads to higher costs for Studytube, then Client shall compensate these costs.

Article 5 Obligation to Report Data Breaches

5.1 As soon as a Data Breach with regard to the Processing of Personal Data occurs or has occurred, then Studytube shall report this to Client without unreasonable delay, after it has taken knowledge thereof.

5.2 Studytube shall take all reasonably required measures, to prevent or to limit (further) unauthorised knowledge, to prevent changing and provision or otherwise illegal Processing, and to prevent security breaches and/or Data Breaches as much as possible in the future.

5.3 In the notification referred to in section 1 of this article, Studytube shall provide all relevant information known to it, concerning the nature of the incident, the name and the contact data of the Data Protection Officer or another liaison where more information can be obtained, the probable consequences of the incident and the measures that have been taken, or shall be taken to resolve the incident, or to limit the consequences as much as possible.

5.4 Studytube shall provide all reasonable assistance in case of a possible investigation that is instigated by Client pursuant to the incident and/or to the formulating of a correct response and to the taking of appropriate follow-up steps regarding the incident, including the informing of the Netherlands Data Protection Authority (Autoriteit Persoonsgegevens) and/or the Data Subject(s) .

Article 6 Involvement of Sub-Processors

6.1 Studytube has the right to involve Sub-Processors for activities that (partially) consist of the Processing of Personal Data. The identity and location data of Sub-Processors involved on the moment of signing, are recorded in Annex A attached to this Data Processing Agreement. Studytube shall inform Client about changes concerning the addition of new Sub-Processors or the replacement of Sub-Processors already involved. Client has the right to object thereto.

6.2 Studytube shall impose on the Sub-Processors involved by it, the same or more severe obligations, as derived for itself from this Data Processing Agreement and applicable laws and regulations, and shall supervise the compliance therewith by the Sub-Processors. The concerned agreements with the Sub-Processors shall be recorded in writing.

6.3 Notwithstanding the permission of Client for the involvement of Sub-Processors, Studytube remains fully liable towards Client for the consequences of the outsourcing of activities to a Sub-Processor.

Article 7 International Transfers

7.1 Parties shall ensure that insofar Personal Data will be processed by Studytube outside the European Economic Area (EEA), this only takes place when an appropriate security level will be warranted. If Personal Data will be processed outside the EEA, then this will be indicated in Annex A.

Article 8 Confidentiality

8.1 Notwithstanding any other contractual obligation to confidentiality, that rests on Studytube, Studytube warrants that all Personal Data will be treated with strict confidentiality and that all its employees, representatives and/or subcontractors that are involved in the Processing of the Personal Data, have committed themselves to observe this confidentiality.

Article 9 Assistance to Client

9.1 Studytube shall provide Client upon request all reasonable assistance to the execution of a data protection impact assessment pursuant to article 35 GDPR and to a possible preceding consultation pursuant to article 36 GDPR. Client shall fully compensate all costs that Studytube shall make for such assistance.

Article 10 Provision of Information and Audits

10.1 Studytube shall make available to Client upon request all information, that is reasonably necessary to demonstrate compliance with its obligations based on this Data Processing Agreement. Client shall fully compensate the reasonably made costs that Studytube makes for provision of information.

10.2 Client has the right to execute an audit on the processing activities and the technical and organisational security measures taken, by an independent, renowned auditor. Client shall keep these audits limited to once per calendar year, unless there is an urgent necessity to execute audits more often. Studytube shall provide assistance to the audits and give access to the deployed auditor, so that the audit can actually be executed. The costs of the audit shall be borne by Client. Client shall only let the audit be executed, after a prior notification period to Studytube of two weeks.

Article 11 Indemnity and Liability

11.1 Client warrants to Studytube that Client is fully authorised and entitled to provide and let process Personal Data of Users to Studytube, such as agreed. Client indemnifies Studytube fully against all third-party claims which are in any manner connected to the non or not full compliance with this warranty and against all damage and costs connected therewith, including all lawyer's fees.

11.2 Studytube is neither responsible nor liable for any Processing of Personal Data that falls outside the scope of this Data Processing Agreement, including the collection of Personal Data by Client, Processing for purposes and means that have not been declared by Client to Studytube and/or Processing by third parties.

11.3 Client indemnifies Studytube fully against all third-party claims in connection with the execution of this Data Processing Agreement and for all damage and costs connected therewith, including all lawyer's fees, unless Client demonstrates that these claims are a consequence of an attributable failure of Studytube to perform its obligations pursuant to this Data Processing Agreement or of non-compliance with the regulations that are specifically imposed on to Studytube by or pursuant to the GDPR.

11.4 Studytube is liable towards the Customer for direct damage as a result of a failure attributable to him and demonstrable in the fulfillment of his obligations as resting upon him under the GDPR, with due observance of what the Parties have agreed about liability in the Agreement.

Article 12 Duration and termination

12.1 This Data Processing Agreement is applicable as long as Studytube processes Personal Data in connection with the Agreement.

12.2 After termination of this Data Processing Agreement, the provisions that by their nature are intended to also be in force thereafter, including the provisions concerning the obligation to confidentiality, the indemnity and liability and the applicable law, will remain in force notwithstanding.

Article 13 Terms of Storage, Return and Destruction of Personal Data

13.1 Studytube shall keep and store the Personal Data no longer than strictly necessary (i) for execution of the Agreement, (ii) if a term for storage is agreed between Parties, no longer than this term or (iii) to comply with a statutory obligation incumbent on Studytube.

13.2 Upon termination of this Data Processing Agreement, upon request in writing by Client or, if applicable, to the end of the agreed storage term, Studytube shall, free of charge, erase or return the Personal Data, at the discretion of Client, to Client. Upon request in writing by Client, Studytube shall provide proof of the fact that the Personal Data has been destroyed or removed. If return, destruction or removal is not possible, then Studytube shall notify Client thereof immediately. In that case, Studytube warrants that it shall treat the Personal Data with confidentiality and shall no longer process the Personal Data.

13.3 Studytube makes back-ups of the Platform and of all Personal Data that are present there. It is not possible to remove Personal Data from back-ups already made. Back-ups will be stored for a term of one month. All back-ups of Personal Data shall therefore be destroyed or removed one month after termination of this Data Processing Agreement.

13.4 Studytube has the right to render Personal Data anonymous, and to keep the anonymised data, also after termination of this Data Processing Agreement.

13.5 After termination of this Data Processing Agreement, Studytube shall notify all Sub-Processors and all third parties that have been involved in the Processing of the Personal Data, of the termination of this Data Processing Agreement. The obligations from article 13.2 are equally applicable to these third parties. Studytube shall warrant that all involved Sub-Processors and third parties shall give suite hereto.

Article 14 Final Provisions

14.1 Changes of or additions to this Data Processing Agreement will be agreed between Parties in writing.

14.2 Solely the Laws of the Netherlands are applicable to this Data Processing Agreement. All disputes deriving from or connected with this Data Processing Agreement, shall exclusively be submitted to the court that is competent to take knowledge of disputes concerning the Agreement.

