



# ANNEXE 4: Data Processing as part of registering, renewing, and administering domain names under the .lu domain

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N° contrat (usage interne, ne pas remplir) :

The registrar has concluded a Registry - Registrar Contract (hereinafter referred to as the Contract) with the .lu registry to be able to take part in the registration and management process of domain names under the Top level domain .lu.

The registrar can process certain personal data in a processor capacity on behalf of the .lu registry when registering, renewing, transferring or managing .lu domain names.

The registrar and the .lu registry wish to lay down provisions that shall apply if and to the extent that the registrar acts as a processor on behalf of the .lu registry in its function as controller.

## 1 Definitions

1.1 This Data Processing Annex shall be governed by the terms and conditions set out in the Contract. Capitalized terms that are not defined in this Data Processing Annex shall acquire the meaning given in the Contract, unless the context indicates otherwise.

1.2 In this Data Processing Annex, the following terms shall mean:

Data Processing Annex: the current data processing annex, including any appendices to this data processing annex;

Third country: as indicated in Article 8;

Services: the services that the registrar provides by virtue or in connection with this Contract, namely the registration and management of domain names ending with .lu in the name of the registrants but for the account of the registrar;

Data Protection Legislation: any law, prescriptive act, regulation, regulatory policy, ordinance or secondary legislation concerning the processing, privacy and use of Personal Data, to the extent that they apply to the registrar, the .lu registry and/or the Services, inclusive of:

- The Regulation of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (GDPR) and
- Every corresponding or similar national legislation or regulation in Luxembourg, among others the law on establishment of the National Commission for data protection and and the implementation of Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27th 2016 on the protection of individuals rights with regard to the processing of personal data and the free movement of such data, and repealing the law of August 2nd 2002 on the protection of individuals with regard to the processing of personal data.

Approved contractors: contractors, who are approved by the .lu registry in accordance with Article 7.2;

Contract: the Registrar Contract as indicated in Recital 1 of this Data Processing Annex;

Personal data: the personal data that the registrar or any Approved Subcontractors process in a processor capacity on behalf of the .lu registry in connection with the provision of the Services; "processing" of personal data and "personal data" shall acquire the meaning given thereto in the Data Protection Legislation.

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1.3 The Parties acknowledge and agree that this Data Processing Annex shall constitute an integral part of the Contract. If there is a conflict or contradiction between:

1.3.1 A term from the main section of this Data Processing Annex;

1.3.2 A term from one of the appendices to this Data Processing Annex; and

1.3.3 A term from the Contract and its annexes;

The term of the first category from the foregoing list shall take propriety over the category or categories thereunder.

## 2 Scope and purpose

2.1 The provisions of this Data Processing Annex shall apply to the extent that the registrar and the .lu registry process Personal Data for domain name operations which fall under two categories of processing according to their main respective purposes:

2.1.1 The processing of personal data by the Registrar for the provision of services on the domain names under .lu;

2.1.2 The processing of personal data by the .lu registry for the administrative and technical management of domain names registered under the .lu top-level domain.

2.2. Each of the parties is the data controller for the processing operations that they perform. Each party is also the recipient of personal data processed by the other for the purposes of its own processing operations..

## 3 Compliance with the data protection legislation

3.1 The registrar shall comply with its obligations under all applicable Data Protection Legislation at all times when processing Personal Data, including:

- the implementation of appropriate technical and organizational measures to ensure and be able to demonstrate that the processing is carried out in accordance with the GDPR,
- the obligation to inform the persons concerned and to obtain the consent of the latter when necessary,
- the implementation of means of collection and processing of data that are fair and lawful,
- taking into account the personal rights (rights of access, rectification, opposition, etc.) granted to data subjects,
- data protection from the design stage onwards and the protection of data by default in the implementation of processing,
- the maintenance of the register of processing activities carried out under its responsibility,
- the obligation to ensure the security of personal data with, where appropriate, the carrying out of an impact analysis on data protection or even the prior consultation of the supervisory authority;

3.2 The registrar shall process Personal Data only:

3.2.1 In the way and for the purposes set out in Article 4; and

3.2.2 According to the instructions of the .lu registry.

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## 4 Nature and purpose of the processing and processing instructions

4.1 Personal Data shall be processed by the registrar in order to register, renew, transfer and manage .lu domain names on the technical platform and network of the .lu registry.

The Registrar shall notify the .lu registry of any rectification or deletion of personal data or any limitation of the processing carried out in accordance with the European Data Protection Regulation.

4.2 The .lu registry shall hereby give:

4.2.1 Instructions to the registrar to take such measures which are reasonably necessary to process Personal Data on behalf of the .lu registry; and

4.2.2 Consent to the registrar to give instructions to the Approved Subcontractors and on behalf of the .lu registry which are equivalent to the instructions set out in Article 4.2.1.

## 5 Confidentiality and security

5.1 The registrar undertakes to treat all Personal Data confidentially. Unless required otherwise by the .lu registry, the registrar shall not disclose any Personal Data to a third party other than:

5.1.1 Its own employees, Approved Subcontractors or employees of the Approved Subcontractors for whom such disclosure is reasonably necessary for the provision of the Services; or

5.1.2 Insofar as required by law, by any government body or other regulatory authority, or by a court or other competent body; and

On condition that the persons to whom Personal Data may be disclosed pursuant to Article 5.1.1. are bound by obligations of confidentiality which correspond with those imposed on the registrar by this Data Processing Annex or by the Contract;

5.2 Taking into account the state of technology, the execution costs, as well as the nature, scope, context and purposes for processing Personal Data, the registrar shall take appropriate technical and organizational measures to prevent any accidental or unlawful destruction, loss, modification, unauthorised disclosure of or access to the Personal data..

## 6 Notification of a breach in connection with personal data

6.1 The registrar shall inform the .lu registry by means of written notice as promptly as reasonably possible upon becoming cognizant of a security breach which accidentally or unlawfully leads to the destruction, loss, modification, unauthorized disclosure or access to the Personal Data processed by the registrar.

## 7 Subcontracting and subprocessing

7.1 The registrar may outsource all or part of the Personal Data Processing to subcontractors provided the registrar and the subcontractor have concluded a written processing Contract which imposes obligations that correspond to those stipulated in this Data Processing Annex. It is the responsibility of the registrar to inform its subcontractors about present clause and to ensure procedures are in place to monitor proper execution of the obligations of its own subcontractors.

7.2 The .lu registry shall hereby give its consent for the outsourcing of the Personal Data Processing pursuant to Article 7.1.

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## 8 Transfers of personal data to third countries

8.1 The registrar may transfer Personal Data to a recipient in a country outside the European Economic area (such a country being referred to as a Third Country), provided that:

8.1.1 The EU Commission has taken an adequacy decision concerning that Third Country in accordance with the applicable Data Protection Legislation;

8.1.2 The transfer falls within the scope of the EU-US Privacy Shield programme; or

8.1.3 The recipient has concluded a Contract with the .lu registry which contains model clauses approved by the EU Commission or by another competent governmental authority in accordance with the applicable Data Protection Legislation.

## 9 Audit

9.1 The registrar shall provide the .lu registry with all information that the latter needs to verify that the registrar complies with its obligations under this Data Processing Annex. If the .lu registry so requests, the registrar shall allow the .lu registry or an inspector authorized by the .lu registry to conduct an audit at the registrar to ascertain that the latter complies with its obligations under this Data Processing Annex.

9.2 The registrar shall inform the .lu registry immediately if, in its opinion, an instruction results in a violation of the Data Protection Legislation.

## 10 Assistance in handling requests from data subjects

10.1 The registrar shall cooperate with the .lu registry in:

10.1.1 The handling of requests from data subjects in exercising their rights; and

10.1.2 The performance of a data protection impact assessment in connection with the provision of the Services.

## 11 Term and termination

11.1 This Data Processing Annex shall enter into force on 25 May 2018 and shall remain in force as long as the registrar provides services under the Contract.

## 12 Return/destruction of personal data

12.1 Within 30 (thirty) days after the expiry or termination of this Data Processing Annex, the registrar shall:

12.1.1 According to the choice of the .lu registry:

- Return all personal data in the possession or under the control of the registrar as of the date of expiry or termination to the .lu registry, in a common electronic form at the time; or
- Destroy or remove from the computer systems and files all personal data in the possession or under the control of the registrar as of the date of expiry or termination; and

12.1.2 Provide the .lu registry with a list of Personal Data that the registrar is legally required to keep after the termination or expiry of this Data Processing Annex.

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