Tilo Tech - Data Processing Addendum

This Data Processing Addendum ("**Addendum**"), including its Schedules and Appendices, forms part of the Master Services Agreement or other written or electronic agreement (the "**Agreement**") between Tilo Tech GmbH, Rudi-Dutschke-Straße 23, c/o betahaus, 10969 Berlin, Germany ("**Tilo Tech**") acting on its own behalf and as agent for each Tilo Tech Affiliate and the Customer in its capacity as data controller ("**Customer**") acting on its own behalf and as agent for each Customer Affiliate, as the case may be.

The terms used in this Addendum shall have the meanings set forth in this Addendum. Capitalized terms not otherwise defined herein shall have the meaning given to them in the Agreement. Except as modified below, the terms of the Agreement shall remain in full force and effect.

In consideration of the mutual obligations set out herein, the Parties hereby agree that the terms and conditions set out below shall be added as an Addendum to the Agreement. Except where the context requires otherwise, references in this Addendum to the Agreement are to the Agreement as amended by, and including, this Addendum.

1 Definitions

1.1 In this Addendum, the following terms shall have the meanings set out below and cognate terms shall be construed accordingly:

1.1.1 "**Applicable Laws**" means (a) European Union or Member State laws with respect to any Customer Personal Data in respect of which any Customer Group Member is subject to EU Data Protection Laws; and (b) any other applicable law with respect to any Customer Personal Data in respect of which any Customer Group Member is subject to any other Data Protection Laws;

1.1.2 "**Customer Affiliate**" means an entity that owns or controls, is owned or controlled by or is or under common control or ownership with Customer, where control is defined as the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities, by contract or otherwise;

1.1.3 "**Customer Group Member**" means Customer or any Customer Affiliate;

1.1.4 "**Customer Personal Data**" means any Personal Data Processed by a Contracted Processor on behalf of a Customer Group Member pursuant to or in connection with the Agreement;

1.1.5 "**Contracted Processor**" means Tilo Tech or a Subprocessor;

1.1.6 "**Data Protection Laws**" means EU Data Protection Laws and, to the extent applicable, the data protection or privacy laws of any other country;

1.1.7 "**EEA**" means the European Economic Area;

1.1.8 "**EU Data Protection Laws**" means all laws and regulations applicable to the Processing of Personal Data under the Agreement.

1.1.9 "**GDPR**" means EU General Data Protection Regulation 2016/679;

1.1.10 "**Restricted Transfer**" means:

1.1.10.1 a transfer of Customer Personal Data from any Customer Group Member to a Contracted Processor; or

1.1.10.2 an onward transfer of Customer Personal Data from a Contracted Processor to a Contracted Processor, or between two establishments of a Contracted Processor,

1.1.11 in each case, where such transfer would be prohibited by Data Protection Laws (or by the terms of data transfer agreements put in place to address the data transfer restrictions of Data Protection Laws) in the absence of the Standard Contractual Clauses to be established under Section 5.4.3 or 11 below;

1.1.12 "**Services**" means the services and other activities to be supplied to or carried out by or on behalf of Tilo Tech for Customer Group Members pursuant to the Agreement;

1.1.13 "**Standard Contractual Clauses**" means the contractual clauses entered into regarding a Restricted Transfer;

1.1.14 "**Subprocessor**" means any person (including any third party and any Tilo Tech Affiliate, but excluding an employee of Tilo Tech or any of its sub-contractors) appointed by or on behalf of Tilo Tech or any Tilo Tech Affiliate to Process Personal Data on behalf of any Customer Group Member in connection with the Agreement; and

1.1.15 "**Tilo Tech Affiliate**" means an entity that owns or controls, is owned or controlled by or is or under common control or ownership with Tilo Tech, where control is defined as the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities, by contract or otherwise.

1.2 The terms, "**Commission**", "**Controller**", "**Data Subject**", "**Member State**", "**Personal Data**", "**Personal Data Breach**", "**Processing**" and "**Supervisory Authority**" shall have the same meaning as in the GDPR, and their cognate terms shall be construed accordingly.

1.3 The word "**include**" shall be construed to mean include without limitation, and cognate terms shall be construed accordingly.

2 Processing of Customer Personal Data

2.1 Tilo Tech and each Tilo Tech Affiliate shall:

2.1.1 comply with all applicable Data Protection Laws in the Processing of Customer Personal Data; and

2.1.2 not Process Customer Personal Data other than on the relevant Customer Group Member's documented instructions unless Processing is required by Applicable Laws to which the relevant Contracted Processor is subject, in which case Tilo Tech or the relevant Tilo Tech Affiliate shall to the extent permitted by Applicable Laws inform the relevant Customer Group Member of that legal requirement before the relevant Processing of that Personal Data.

2.2 Each Customer Group Member:

2.2.1 instructs Tilo Tech and each Tilo Tech Affiliate (and authorizes Tilo Tech and each Tilo Tech Affiliate to instruct each Subprocessor) to:

2.2.1.1 Process Customer Personal Data; and

2.2.1.2 in particular, transfer Customer Personal Data to any country or territory,

2.2.2 as reasonably necessary for the provision of the Services and consistent with the Agreement; and

2.2.3 warrants and represents that it is and will at all relevant times remain duly and effectively authorized to give the instruction set out in Section 2.2.1 on behalf of each relevant Customer Affiliate.

2.2.4 Annex 1 to this Addendum sets out certain information regarding the Contracted Processors' Processing of the Customer Personal Data as required by article 28(3) of the GDPR. Customer may make reasonable amendments to Annex 1 by written notice to Tilo Tech from time to time, as Customer reasonably considers necessary to meet those requirements. Nothing in Annex 1 (including as amended pursuant to this Section 2.2.3 confers any right or imposes any obligation on any party to this Addendum.

3 Tilo Tech and Tilo Tech Affiliate Personnel

3.1 Tilo Tech and each Tilo Tech Affiliate shall take reasonable steps to ensure the reliability of any employee, agent or contractor of any Contracted Processor who may have access to the Customer Personal Data, ensuring in each case that access is strictly limited to those individuals who need to know / access the relevant Customer Personal Data, as strictly necessary for the purposes of the Agreement, and to comply with Applicable Laws in the context of that individual's duties to the Contracted Processor, ensuring that all such individuals are subject to confidentiality undertakings or professional or statutory obligations of confidentiality.

4 Security

4.1 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, Tilo Tech and each Tilo Tech Affiliate shall in relation to the Customer Personal Data implement appropriate technical and organizational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1) of the GDPR. Tilo Tech will provide a copy to Customer of its concept regarding the technical and organizations measures upon Customer's request.

4.2 In assessing the appropriate level of security, Tilo Tech and each Tilo Tech Affiliate shall take account in particular of the risks that are presented by Processing, in particular from a Personal Data Breach.

5 Subprocessing

5.1 Each Customer Group Member authorizes Tilo Tech and each Tilo Tech Affiliate to appoint (and permit each Subprocessor appointed in accordance with this Section 5 to appoint) Subprocessors in accordance with this Section 5 and any restrictions in the Agreement.

5.2 Tilo Tech and each Tilo Tech Affiliate may continue to use those Subprocessors already engaged by Tilo Tech or any Tilo Tech Affiliate as at the date of this Addendum, subject to Tilo Tech and each Tilo Tech Affiliate in each case as soon as practicable meeting the obligations set out in Section 5.3.

5.3 Customer may object to Tilo Tech's use of a new Sub-processor by notifying Tilo Tech promptly in writing within ten (10) business days after receipt of Tilo Tech's notice. In the event Customer objects to a new Sub-processor, as permitted in the preceding sentence, Tilo Tech will use reasonable efforts to make available to Customer a change in the Services or recommend a commercially reasonable change to Customer's configuration or use of the Services to avoid Processing of Personal Data by the objected-to new Sub-processor without unreasonably burdening the Customer. If Tilo Tech is unable to make available such change within a reasonable period of time, which shall not exceed thirty (30) days, Customer may terminate the applicable Order Form(s) with respect only to those Services which cannot be provided by Tilo Tech without the use of the objected-to new Sub-processor by providing written notice to Tilo Tech. Tilo Tech will refund Customer any prepaid fees covering the remainder of the term of such Order Form(s) following the effective date of termination with respect to such terminated Services, without imposing a penalty for such termination on Customer.

5.4 With respect to each Subprocessor, Tilo Tech or the relevant Tilo Tech Affiliate shall:

5.4.1 before the Subprocessor first Processes Customer Personal Data (or, where relevant, in accordance with Section 5.2), carry out adequate due diligence to ensure that the Subprocessor is capable of providing the level of protection for Customer Personal Data required by the Agreement;

5.4.2   ensure that the arrangement between on the one hand (a) Tilo Tech, or (b) the relevant Tilo Tech Affiliate, or (c) the relevant intermediate Subprocessor; and on the other hand the Subprocessor, is governed by a written contract including terms which offer at least the same level of protection for Customer Personal Data as those set out in this Addendum and meet the requirements of article 28(3) of the GDPR;

5.4.3   if that arrangement involves a Restricted Transfer, ensure that the Standard Contractual Clauses are at all relevant times incorporated into the agreement between on the one hand (a) Tilo Tech, or (b) the relevant Tilo Tech Affiliate, or (c) the relevant intermediate Subprocessor; and on the other hand the Subprocessor, or before the Subprocessor first Processes Customer Personal Data procure that it enters into an agreement incorporating the Standard Contractual Clauses with the relevant Customer Group Member(s) or with Tilo Tech or the relevant Tilo Tech Affiliate (and Customer shall procure that each Customer Affiliate party to any such Standard Contractual Clauses co-operates with their population and execution, as the case may be); and

5.4.4   provide to Customer for review such copies of the Contracted Processors' agreements with Subprocessors (which may be redacted to remove confidential commercial information not relevant to the requirements of this Addendum) as Customer may request from time to time.

5.5   Tilo Tech and each Tilo Tech Affiliate shall ensure that each Subprocessor performs the obligations under Sections 2.1, 3, 4, 6.1, 7.2, 8 and 10.1, as they apply to Processing of Customer Personal Data carried out by that Subprocessor, as if it were party to this Addendum in place of Tilo Tech.

6   Data Subject Rights

6.1   Taking into account the nature of the Processing, Tilo Tech and each Tilo Tech Affiliate shall assist each Customer Group Member by implementing appropriate technical and organizational measures, insofar as this is possible, for the fulfilment of the Customer Group Members' obligations, as reasonably understood by Customer, to respond to requests to exercise Data Subject rights under the Data Protection Laws.

6.2   Tilo Tech shall:

6.2.1   promptly notify Customer if any Contracted Processor receives a request from a Data Subject under any Data Protection Law in respect of Customer Personal Data; and

6.2.2   ensure that the Contracted Processor does not respond to that request except on the documented instructions of Customer or the relevant Customer Affiliate or as required by Applicable Laws to which the Contracted Processor is subject, in which case Tilo Tech shall to the extent permitted by Applicable Laws inform Customer of that legal requirement before the Contracted Processor responds to the request.

7   Personal Data Breach

7.1   Tilo Tech shall notify Customer without undue delay upon Tilo Tech or any Subprocessor becoming aware of a Personal Data Breach affecting Customer Personal Data, providing Customer with sufficient information to allow each Customer Group Member to meet any obligations to report or inform Data Subjects of the Personal Data Breach under the Data Protection Laws.

7.2   Tilo Tech shall co-operate with Customer and each Customer Group Member and take such reasonable commercial steps as are directed by Customer to assist in the investigation, mitigation and remediation of each such Personal Data Breach.

8   Data Protection Impact Assessment and Prior Consultation

8.1   Tilo Tech and each Tilo Tech Affiliate shall provide reasonable assistance to each Customer Group Member with any data protection impact assessments, and prior consultations with Supervising Authorities or other competent data privacy authorities, which Customer reasonably considers to be required of any Customer Group Member by Article 35 or 36 of the GDPR or equivalent provisions of any other Data Protection Law, in each case solely in relation to Processing of Customer Personal Data by, and taking into account the nature of the Processing and information available to, the Contracted Processors.

9   Deletion or return of Customer Personal Data

9.1   Subject to Sections 9.2 and 9.3 Tilo Tech and each Tilo Tech Affiliate shall promptly and in any event within 30 days of the date of cessation of any Services involving the Processing of Customer Personal Data (the "**Cessation Date**"), delete and procure the deletion of all copies of those Customer Personal Data.

9.2   Subject to Section 9.3, Customer may in its absolute discretion by written notice to Tilo Tech within 30 days of the Cessation Date require Tilo Tech and each Tilo Tech Affiliate to (a) return a complete copy of all Customer Personal Data to Customer by secure file transfer in such format as is reasonably notified by Customer to Tilo Tech; and (b) delete and procure the deletion of all other copies of Customer Personal Data Processed by any Contracted Processor. Tilo Tech and each Tilo Tech Affiliate shall comply with any such written request within 30 days from receipt of the notice from Customer.

9.3   Each Contracted Processor may retain Customer Personal Data to the extent required by Applicable Laws and only to the extent and for such period as required by Applicable Laws and always provided that Tilo Tech and each Tilo Tech Affiliate shall ensure the confidentiality of all such Customer Personal Data and shall ensure that such Customer Personal Data is only Processed as necessary for the purpose(s) specified in the Applicable Laws requiring its storage and for no other purpose.

9.4 Tilo Tech shall provide written certification to Customer that it and each Tilo Tech Affiliate has fully complied with this Section 9 within 30 days from receipt of the notice from Customer.

10 Audit rights

10.1 Tilo Tech and each Tilo Tech Affiliate shall make available to each Customer Group Member on request all information necessary to demonstrate compliance with this Addendum, and shall allow for and contribute to audits, including inspections, by any Customer Group Member or an auditor mandated by any Customer Group Member in relation to the Processing of the Customer Personal Data by the Contracted Processors.

10.2 Information and audit rights of the Customer Group Members only arise under Section 10.1 to the extent that the Agreement does not otherwise give them information and audit rights meeting the relevant requirements of Data Protection Law (including, where applicable, article 28(3) (h) of the GDPR).

10.3 Customer or the relevant Customer Affiliate undertaking an audit shall give Tilo Tech or the relevant Tilo Tech Affiliate reasonable notice of any audit or inspection to be conducted under Section 10.1 and shall make (and ensure that each of its mandated auditors makes) reasonable endeavors to avoid causing (or, if it cannot avoid, to minimize) any damage, injury or disruption to the Contracted Processors' premises, equipment, personnel and business while its personnel are on those premises in the course of such an audit or inspection. A Contracted Processor need not give access to its premises for the purposes of such an audit or inspection:

10.3.1 to any individual unless he or she produces reasonable evidence of identity and authority;

10.3.2 outside normal business hours at those premises, unless the audit or inspection needs to be conducted on an emergency basis and Customer or the relevant Customer Affiliate undertaking an audit has given notice to Tilo Tech or the relevant Tilo Tech Affiliate that this is the case before attendance outside those hours begins; or

10.3.3 for the purposes of more than one audit or inspection, in respect of each Contracted Processor, in any calendar year, except for any additional audits or inspections which:

10.3.3.1 Customer or the relevant Customer Affiliate undertaking an audit reasonably considers necessary because of genuine concerns as to Tilo Tech's or the relevant Tilo Tech Affiliate's compliance with this Addendum; or

10.3.3.2 A Customer Group Member is required or requested to carry out by Data Protection Law, a Supervisory Authority or any similar regulatory authority responsible for the enforcement of Data Protection Laws in any country or territory,

10.3.4 where Customer or the relevant Customer Affiliate undertaking an audit has identified its concerns or the relevant requirement or request in its notice to Tilo Tech or the relevant Tilo Tech Affiliate of the audit or inspection.

11 Restricted Transfers

11.1 Tilo Tech warrants that it has entered into the Standard Contractual Clauses in respect of any Restricted Transfer from Tilo Tech or a Tilo Tech Affiliate to a Contracted Processor.

11.2 The Standard Contractual Clauses shall come into effect under Section 11.1 on the later of:

11.2.1 the data exporter becoming a party to them;

11.2.2 the data importer becoming a party to them; and

11.2.3 commencement of the relevant Restricted Transfer.

11.3 Section 11.1 shall not apply to a Restricted Transfer unless its effect, together with other reasonably practicable compliance steps (which, for the avoidance of doubt, do not include obtaining consents from Data Subjects), is to allow the relevant Restricted Transfer to take place without breach of applicable Data Protection Law.

12 General Terms

12.1 The parties to this Addendum hereby submit to the choice of jurisdiction stipulated in the Agreement with respect to any disputes or claims howsoever arising under this Addendum, including disputes regarding its existence, validity or termination or the consequences of its nullity.

12.2 This Addendum and all non-contractual or other obligations arising out of or in connection with it are governed by the laws of the country or territory stipulated for this purpose in the Agreement.

12.3 Nothing in this Addendum reduces Tilo Tech's or any Tilo Tech Affiliate's obligations under the Agreement in relation to the protection of Personal Data or permits Tilo Tech or any Tilo Tech Affiliate to Process (or permit the Processing of) Personal Data in a manner which is prohibited by the Agreement. In the event of any conflict or inconsistency between this Addendum and the Standard Contractual Clauses, the Standard Contractual Clauses shall prevail.

12.4 Subject to Section 12.3, with regard to the subject matter of this Addendum, in the event of inconsistencies between the provisions of this Addendum and any other agreements between the parties, including the Agreement and including (except where explicitly agreed otherwise in writing, signed on behalf of the parties) agreements entered into or purported to be entered into after the date of this Addendum, the provisions of this Addendum shall prevail.

12.5 Customer may:

12.5.1 by at least 30 (thirty) calendar days' written notice to Tilo Tech from time to time make any variations to the Standard Contractual Clauses (including any Standard Contractual Clauses entered into under Section 11.1), as they apply to Restricted Transfers which are

subject to a particular Data Protection Law, which are required, as a result of any change in, or decision of a competent authority under, that Data Protection Law, to allow those Restricted Transfers to be made (or continue to be made) without breach of that Data Protection Law; and

12.5.2 propose any other variations to this Addendum which Customer reasonably considers to be necessary to address the requirements of any Data Protection Law.

12.6 Should any provision of this Addendum be invalid or unenforceable, then the remainder of this Addendum shall remain valid and in force. The invalid or unenforceable provision shall be either (i) amended as necessary to ensure its validity and enforceability, while preserving the parties' intentions as closely as possible or, if this is not possible, (ii) construed in a manner as if the invalid or unenforceable part had never been contained therein.

ANNEX 1: DETAILS OF PROCESSING OF CUSTOMER PERSONAL DATA

This Annex 1 includes certain details of the Processing of Customer Personal Data as required by Article 28(3) GDPR.

The subject matter and duration of the Processing of the Customer Personal Data are set out in the Agreement and this Addendum.

The nature and purpose of the Processing of Customer Personal Data

[Include description here]

The types of Customer Personal Data to be Processed

[Include list of data types here]

The categories of Data Subject to whom the Customer Personal Data relates

[Include categories of data subjects here]

The obligations and rights of Customer and Customer Affiliates

The obligations and rights of Customer and Customer Affiliates are set out in the Agreement and this Addendum.