

DATA PROCESSING TERMS (ESSENTIAL)

1. INTRODUCTION AND SCOPE

- 1.1 These Data Processing Terms set forth the general terms and conditions for the Supplier's processing of the Customer's Personal Data, as agreed and required under Applicable Law, when supplying the Services under the Agreement. These Data Processing Terms supplement the General Business Terms and constitutes part of the Agreement.
- 1.2 In case of any conflicting terms, these Data Processing Terms shall always take precedence in respect of processing of the Customer's Personal Data.
- 1.3 These Data Processing Terms, as valid from time to time, are made available at www.hypergene.com/terms.
- 1.4 These Data Processing Terms consist of these general legal terms, and the Instructions attached as a Schedule.

2. LAWFUL PROCESSING

- 2.1 The Processor shall, in its capacity as processor, be liable for complying with all legal obligations on processors under Applicable Law, including but not limited to by ensuring that it (i) only processes the Personal Data in connection with its supply of the Services according to the Agreement, and (ii) only processes the Personal Data in accordance with these Data Processing Terms and in accordance with the Controller's Instructions (and noting that any other processing, including by the Processor for its own purposes, is prohibited, except for any possible obligation to process Personal Data which follows from Applicable Law, in which case the Controller shall be informed hereof, where so permitted under Applicable Law).
- 2.2 The Controller shall, in its capacity as controller, be liable for complying with all legal obligations on controllers under Applicable Law, including but not limited to by ensuring that (i) it has provided all required information to the Data Subjects, (ii) all necessary consents from Data Subjects have been procured, or that other valid legal ground for the processing of the Personal Data exists, and (iii) in all other aspects that it has the full legal rights to process the Personal Data and instruct the Processor to process the Personal Data on behalf of the Controller as set out in these Data Processing Terms.
- 2.3 To the extent the supply of Services under the Agreement involves processing of Personal Data not only of the Controller, but also of its Customer Affiliates (or where relevant, any agreed and identified third-party), the Controller represents and warrants that (i) it has the full legal rights to represent such Customer Affiliates (and/or agreed and identified third-party), and (ii) when these Data Processing Terms refer to rights and obligations of the Controller, the Controller shall duly assume and fulfil such rights

and obligations as an authorized representative of the respective Customer Affiliate etc. (implying, but not limited to, that the Processor will fulfil its obligations as a processor under Applicable Law against such Customer Affiliates by performing its obligations hereunder against the Controller).

3. THE CONTROLLER'S INSTRUCTIONS

- 3.1 The Controller shall provide the Processor with written Instructions in relation to the Processor's processing of Personal Data, as required under Applicable Law and with the corresponding obligation on the Processor to process the Personal Data in accordance with said Instructions.
- 3.2 The attached Schedule sets out general Instructions that are general for all customers of the Processor, and any specific additional instructions, or deviations from the general instructions, as instructed by the Controller, shall be set out in the Order Form (and "Instructions" as used herein shall refer to the general instructions in the Schedule, as amended or supplemented by the specific additional instructions, or deviations from the general instructions, as set out in the Order Form).
- 3.3 The Controller confirms that the Instructions contain the Controller's complete and documented instructions to the Processor. The Controller further undertakes not to provide the Processor with Personal Data, or request processing thereof, which violates the Instructions. The Controller is liable for ensuring that all instructions are compliant with Applicable Law, and for ensuring that the Processor's processing of the Personal Data in accordance with the Controller's instructions does not violate Applicable Law.
- 3.4 The Instructions shall be kept updated during the term of the Agreement in case of any agreement by the Parties to amend the Instructions. In case the Controller desires to amend the Instructions during the term of this Agreement, the Processor will not oppose such amendment of the Instructions without reason, provided that the change is technically feasible and, where the change affects the supply of Services or otherwise causes additional costs for the Processor, that the Parties agree on compensation for such additional costs.
- 3.5 In case the Processor (i) lacks Instructions, (ii) considers that new or supplementary Instructions are necessary in order for the Processor to perform its obligations according to these Data Processing Terms, and/or the Agreement and/or Applicable Law, or (iii) considers that the existing Instructions, according to the Processor's assessment, violates Applicable Law (without limiting the Controller's liability according to Section 3.3), the Processor shall inform the Controller hereof without delay and await further instructions before continuing with the processing of the Personal Data.

4. TECHNICAL AND ORGANIZATIONAL SECURITY MEASURES

- 4.1 The Processor shall maintain such technical and organizational security measures as are required under Applicable Law (in particular Article 32 of the GDPR) for its processing of Personal Data in order to safeguard the protection of the rights of the Data Subjects. Such security measures shall, *inter alia*, include that the Processor shall protect the Personal Data, when stored or otherwise processed by the Processor, from accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to the Personal Data. The Processor is certified under the ISO/IEC 27001 standard for information security management systems, and will upon the Controller's request provide information on its information security measures, as applicable from time to time and as further described in the Processor's information security policy.
- 4.2 For clarity, the Processor shall not be liable for the Controller's own processing of Personal Data when using the Services, including the Controller's access control measures in relation to Hypergene SaaS, or any measure taken by any User, or any other circumstance attributable to the Controller.

5. SUB-PROCESSORS

- 5.1 The Controller hereby provides a general authorization for use by the Processor of Sub-Processors in connection with the supply of Hypergene SaaS, including Support and Maintenance. Currently engaged Sub-Processors are set out in the Instructions and shall be deemed to be accepted by the Controller. The Processor shall inform the Controller in writing (including by electronic communication) of planned substantial changes, such as engagement of new, or replacement of, Sub-Processors. The Controller may object to such changes in writing within seven (7) days from the receipt of the communication of such change. Where the Controller does not object to the change within the said time period, the change shall be deemed to be approved.
- 5.2 For supply of Professional Services, the engagement of any Sub-Processors will require the Controller's written approval in each case. Such written approval shall be deemed to be given in respect of (i) all third-party subcontractors set out in a Statement of Work, or other agreed order for supply of Professional Services, and (ii) all Supplier Affiliates.
- 5.3 The Processor shall provide the Controller with information on any suggested or approved Sub-Processor, including details of the company, place of processing (country) and nature of processing.
- 5.4 The Processor shall, in its own name but as a representative of the Controller's interests, enter into a data processing agreement with the Sub-Processor, that imposes on the Sub-Processor obligations which correspond to those of the Processor under these Data Processing Terms (a "**Sub-Processing Agreement**").
- 5.5 The Processor shall take all necessary actions where the Processor has reason to believe that the Sub-Processor processes Personal Data in violation of the Sub-Processing Agreement.
- 5.6 The Processor is liable against the Controller, as for its own actions and omissions, in relation to the Sub-Processor's processing of Personal Data under the Sub-Processing Agreement.

6. TRANSFERS OF PERSONAL DATA TO A THIRD COUNTRY

- 6.1 The Processor may not transfer Personal Data to a Third Country, unless written approval thereto has been obtained from the Controller. This implies, *inter alia*, that the Processor may not process Personal Data on servers and other equipment, which is located in a Third Country, without prior approval by the Controller.
- 6.2 In case the Controller approves that Personal Data is transferred to a Third Country, such approval shall be considered part of the Instructions and the Parties shall ensure that such transfer is legal under Applicable Law, e.g. by use of the Standard Contractual Clauses. In case the legality of the Third Country transfer is based on consents from Data Subjects, the Controller represents and warrants that such valid consents have been obtained from all Data Subjects.

7. ASSISTANCE, COOPERATION AND INFORMATION

- 7.1 Subject to the terms of this Section 7, the Processor shall assist the Controller in ensuring compliance with the obligations of Articles 32-36 of the GDPR, taking into account the nature of the processing and the information available to the Processor.
- 7.2 Hypergene SaaS as provided by the Processor under the Agreement contains the necessary functionality to enable the Controller to fulfil its obligations in relation to Personal Data, such as responding to requests by Data Subjects for exercise of rights, and rectifying, erasing or restricting processing of Personal Data in accordance with Applicable Law. In case the Controller nevertheless needs assistance from the Processor in addition hereto, the Processor shall upon request provide such assistance in accordance with Section 7.4 below.
- 7.3 The Processor undertakes to inform the Controller in writing (including by electronic communication) of any personal data breach (in relation to the Processor's processing of Personal Data under this Agreement) without undue delay, normally at the latest the following workday, from becoming aware of the personal data breach. The information shall include all information of which the Processor is aware, and which is required under Applicable Law in order to enable the Controller to fulfil its reporting-/information obligations in relation to Supervisory Authorities and/or Data Subjects.
- 7.4 Where so requested by the Controller, the Processor may provide assistance to the Controller in relation to fulfilment of the Controller's obligations under Applicable Law in relation to Personal Data, such as data protection impact assessments and prior consultation with Supervisory Authorities. Such assistance will be agreed on a case by case basis and be provided as Professional Services at the Controller's cost.
- 7.5 In case a Data Subject, Supervisory Authority or another third party requests information from the Processor in relation to processing of the Personal Data, the Processor shall immediately refer such request to the Controller and await further instructions.
- 7.6 The Processor shall inform the Controller without delay of any contacts with Data Subjects, Supervisory Authorities or other third-parties in relation to processing of the Personal Data. The Processor is not entitled to represent the Controller or otherwise act

on behalf of the Controller in relation to Data Subjects, Supervisory Authorities or other third parties.

- 7.7 The Processor undertakes to cooperate to a necessary extent in case of any audits or inspections by a Supervisory Authority in relation to processing of the Personal Data by the Processor, and to comply with any decisions taken by the Supervisory Authority on measures to fulfil security requirements or other requirements under Applicable Law in relation to processing of the Personal Data.

8. AUDIT RIGHTS

- 8.1 The Controller, or a third party (external auditor) appointed by the Controller, has the right to audit the processing of Personal Data by the Processor, to the extent necessary to safeguard that the Processor, and any Sub-Processors, fulfil their obligations under these Data Processing Terms and Applicable Law. Such audit may only relate to processing of the Controller's Personal Data.
- 8.2 The Controller shall provide reasonable written notice before undertaking any audit (normally at least 14 Business Days prior notice) and limit the audit to what is strictly necessary for the purposes of the audit. The Controller may not conduct audits more often than once a year, unless there are special circumstances which require more frequent audits. The Controller will bear all costs for the audit.
- 8.3 The Processor undertakes to provide the necessary information and/or assistance in connection with an audit according to this Section 8, to demonstrate compliance with this Agreement and Applicable Law.
- 8.4 A prerequisite for an audit according to this Section 8 is that the Controller, or the third party (external auditor) appointed by the Controller, has entered into necessary confidentiality undertakings and complies with the security regulations of the Processor on the site where the inspection will take place, and that the inspection is made without risking obstructing the Processor's business or the protection for other customers' information. Information which is collected in connection with the audit shall be erased after performance of the audit or where no longer required for the purposes of the audit.
- 8.5 The Controller acknowledges that the Processor may supply relevant information on the processing of Personal Data by the Processor, by way of a third-party audit report from a competent third party which has performed a general audit of the Processor's processing of personal data. In case the Processor provides such audit report, the Controller may rely on such audit report as an alternative to performing its own audit.

9. CONFIDENTIALITY

- 9.1 The Processor shall keep confidential and not disclose Personal Data or other information in relation to the processing of Personal Data to any third party without express instruction or approval from the Controller. The Agreement's regulations on confidentiality shall apply in all other aspects.
- 9.2 The Processor shall ensure that its employees, engaged consultants and other persons processing Personal Data under the Agreement are bound by confidentiality undertakings.

- 9.3 The confidentiality obligations according to this Section 9 do not apply (i) in relation to approved Sub-Processors, provided that the Sub-Processing Agreement contains corresponding confidentiality obligations for the Sub-Processor, or (ii) if the Processor is obliged to disclose Personal Data or other information in relation to the processing of Personal Data on the request of a Supervisory Authority, or where such obligations otherwise follows from Applicable Law, or from a decision by a court or public authority or is necessary for protecting the Processor's interests in case of a legal dispute.

10. LIABILITY

- 10.1 A Party who has paid compensation for damage to Data Subjects or other third parties, in accordance with a final judgment or approved settlement, for breach of Applicable Law and/or these Data Processing Terms, shall have the right to claim back from the other Party all or part of that compensation, subject to the following conditions:
- (a) The other Party shall be liable for a reasonable part of the compensation (including reasonable attorneys' fees and other litigation costs incurred by the first Party), which corresponds to the other Party's responsibility for the damage caused to the Data Subject or other third party, due to the other Party's breach of Applicable Law and/or these Data Processing Terms; and
 - (b) The Processor shall not be liable for payable of compensation according to the foregoing to the extent the breach of Applicable Law and/of these Data Processing Terms has been caused by the Processor processing the personal Data in accordance with the Controller's Instructions; and
 - (c) The Party claiming compensation from the other Party, shall inform the other Party in writing of the Data Subject's or other third-party's claim without delay, and cooperate with the other Party in defending the claim as reasonable under the circumstances; and
 - (d) The Party claiming compensation from the other Party, shall present its final claim for compensation against the other Party under this Section 10.1, at the latest six (6) months after it has been finally established (by final judgment or approved settlement), that the Party is liable for paying compensation to a Data Subject or other third party, however in any event at the latest six (6) months after effective termination of the Agreement; and
 - (e) Each Party's liability under this Section 10.1 shall be subject to the limitations of liability set out in the Agreement.
- 10.2 Each Party is liable for any administrative fines imposed on the Party by a Supervisory Authority due to the Party's breach of Applicable Law (under Art 83 GDPR or other Applicable Law). Such administrative fines are not subject to allocation of liability between the Parties under these Data Processing Terms.

11. TERM AND DISCONTINUATION OF PROCESSING OF PERSONAL DATA

- 11.1 These Data Processing Terms form part of the Agreement and shall apply during the whole time period that the Processor processes Personal Data under the Agreement.
- 11.2 The Processor shall discontinue all processing of Personal Data, upon the expiry or termination of the Agreement, or if so instructed earlier by the Controller.
- 11.3 Upon the termination of the Processor's processing of Personal Data, irrespective of cause, the Processor shall, in accordance with the Controller's written instructions, either (i) transfer all Personal Data to the Controller (or a third-party supplier designated by the Controller) in the Processor's standard format and by supply of a backup of the Personal Data, and if the Parties so agree, also supply agreed Professional Services in connection with such transfer of the Personal Data; or (ii) permanently delete the Personal Data and erase all copies thereof. In connection with the transfer or deletion, as applicable, the Processor shall safeguard that the Personal Data cannot be recreated. Deletion of the Personal Data will in any event take place at the latest sixty (60) days after effective termination of the Agreement.

12. COSTS

- 12.1 The Processor is only entitled to compensation for costs in the situations referred to in Section 12.2. Compensation is, in such situation, payable (i) for Professional Services, in accordance with the fee rates set forth in the Agreement, and (ii) for other costs, for reasonable and proven actual costs.
- 12.2 The Processor is entitled to compensation:
 - (a) Where, due to the Controller's specific configurations/customizations, installation or use of Hypergene SaaS, or due to extensive assistance requirements from the Controller, the Processor will have to provide assistance on a Professional Services basis, in relation to e.g. a request for assistance on data protection impact assessments or prior consultation with a Supervisory Authority, or in relation to an audit; or
 - (b) Where the Controller changes the Instructions in a way, which causes additional costs for the Processor; or
 - (c) Where the Controller has requirements in relation to technical and organizational security measures, which go beyond what is normally applied by the Processor for its customers (and which are in compliance with Applicable Law), and the fulfilment of such security requirements causes additional costs for the Processor; or
 - (d) Where, in connection with termination of the Agreement, the Controller desires to receive the Personal Data in another format than the Processor's standard format, or requests Professional Services from the Processor in relation to return of Personal Data.

13. AMENDMENTS

- 13.1 All amendments and supplements to these Data Processing Terms, including the Instructions, shall be made in writing and be signed by authorized representatives of each Party in order to be valid.
- 13.2 In the event that Applicable Law requires changes to these Data Processing Terms, the Parties shall agree on such changes in good faith.

14. DEFINITIONS

In these Data Processing Terms, the following defined words and phrases shall have the meanings set out below. Other defined words and phrases shall have the meanings set out in Applicable Law.

“Agreement”	means the agreement between the Supplier (Processor) and the Customer (Controller) (or if relevant, between the Customer and a reseller or partner of the Supplier), for supply of the Services, and which includes these Data Processing Terms.
“Applicable Law”	means all laws, statutes and regulations in force from time to time as applicable to the Parties, and in particular for the purposes of these Data Processing Terms, (i) <i>Regulation (EU) 2016/679 of the European Parliament and 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)</i> (“ GDPR ”), or legislation replacing such legislation, (ii) and other applicable legislation in relation to protection and processing of personal data, including the <i>Swedish Act (2018:218) with supplementary provisions to the EU Data Protection Regulation</i> ; and including for each of (i) and (ii) above applicable regulations and guidelines, including guidelines from a competent Supervisory Authority.
“Controller”	means the Customer. In case the Customer instructs the Supplier to process Personal Data of Customer Affiliates, the Customer acts as their representative and is referred to as the Controller also in relation to such Customer Affiliate in these

	Data Processing Terms notwithstanding that the actual controller may be a Customer Affiliate.
“Data Subject”	means an identified or identifiable natural person, whose personal data is included in the Personal Data.
“Instructions”	means the Controller’s instructions for processing of the Personal Data, as further defined in Section 3.2 hereof.
“Personal Data”	means the personal data (as defined in Applicable Law) of the Customer (or its Customer Affiliates), which is transferred to, stored by and otherwise processed by the Supplier when supplying Services under the Agreement.
“Processor”	means the Supplier.
“Standard Contractual Clauses”	means the <i>Commission Implementing Decision (EU) 2021/914 of 4 June 2021 on standard contractual clauses for the transfer of personal data to third countries pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council</i> (or any successor legislation, or other applicable standard contractual clauses under Applicable Law).
“Sub-Processing Agreement”	means a written data processing agreement between the Processor and a Sub-Processor, as referred to in Section 5.4 hereof.
“Sub-Processor”	means a third party (including for clarity also Supplier Affiliates), which is engaged by the Processor for the purposes of processing Personal Data on behalf of the Controller.
“Supervisory Authority”	means a national or EU public authority, which is responsible for the monitoring of processing of personal data according to Applicable Law (in Sweden: The Swedish Authority for Privacy Protection (IMY)).
“Third Country”	means a country outside the European Economic Area (i.e. the European Union and the EFTA member states).

SCHEDULE: INSTRUCTIONS

This Schedule sets out general Instructions that are general for all customers of the Supplier, and any specific additional instructions, or deviations from the general instructions, as instructed by the Controller, shall be set out in the Order Form.

Nature and purpose of the processing of Personal Data	<p>The processing of the Personal Data is made for the purpose of supplying Hypergene SaaS and any related Professional Services, which includes the measures set forth in the Agreement, and typically includes the following measures:</p> <ul style="list-style-type: none">• Storage in the Processor's or its Sub-Processor's datacentre• System operation• Security surveillance and back-up copying• Access in connection with Professional Services• Network communication including transmission of data to and from the Controller• Installation of Updates• Access in connection with corrective measures (operational-, technical- and application support).
Types of Personal Data	<p>The following categories of Personal Data may be included in the processing: The Controller decides itself, when using Hypergene SaaS, what types of Personal Data shall be stored and otherwise processed therein. Data fields for registration of Personal Data are configured by the Processor based on the Controller's requests, in connection with setup and implementation of Hypergene SaaS or separately ordered Professional Services.</p> <p>The Processor may process the following categories of Personal Data on behalf of the Controller:</p> <ul style="list-style-type: none">• Name• Address• Telephone number• E-mail address• Data Subject category

Special categories of Personal Data <i>(also referred to as sensitive Personal Data, Art 9 GDPR)</i>	<p>As set forth above, the Controller decides itself, when using Hypergene SaaS, what categories of Personal Data shall be stored and otherwise processed therein, including any sensitive Personal Data.</p> <p>Any processing of sensitive Personal Data hereunder, shall be specifically set out in the deviation schedule in the Order Form.</p> <p>For clarity, the Controller is always liable for ensuring (whether the Personal Data shall be classified as sensitive or not), that the Controller has the full legal right to process them and to request the Processor to process them in accordance with the Agreement.</p>
Categories of Data Subjects	<p>As set forth above, the Controller decides itself, when using Hypergene SaaS, what Personal Data shall be stored and otherwise processed therein, including what categories of Personal Data and Data Subjects, and decides how data fields shall be configured.</p> <p>Data fields which typically are included in relation to categories of Data Subjects include:</p> <ul style="list-style-type: none"> • Employees • Suppliers • Customers
Location of processing of Personal Data	<p>The Personal Data shall be processed by the Processor (and its Sub-Processor(s)) within the European Economic Area (i.e. the European Union and the EFTA member states), unless the Controller has provided written approval to a transfer to a Third Country.</p> <p>The Processor is located in Sweden, and its Sub-Processors in the countries set out below under Approved Sub-Processors.</p>
Duration of processing of Personal Data	<p>The Personal Data shall be processed by the Processor for the above stated purposes during the term of the Agreement, or until the Controller instructs the Processor to cease with the processing. The Data Processing Terms set out the measures to be undertaken upon the discontinuation of processing of the Personal Data.</p>

Approved Sub-Processors	<ol style="list-style-type: none"> 1. Advania Sverige AB (located in Sweden; providing internal IT infrastructure services to the Processor. 2. Videnca AB (located in Sweden; providing datacentre services for hosting of Hypergene SaaS) 3. Lundatech AB (located in Sweden; provides integration services within Hypergene SaaS). 4. Hypergene GmbH (located in Germany, a company within the Hypergene Group; providing support, maintenance and consultancy services in relation to the Hypergene Project project management tool (if included in the version of Hypergene SaaS selected by the customer) 5. Hetzner Online GmbH (located in Germany; providing datacentre services for hosting of the Hypergene Project project management tool (if included in the version of Hypergene SaaS selected by the customer)
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