Data Processing Agreement

between

as controller (here referred to as „Principal“)

and

BackHub UG (haftungsbeschränkt),
c/o /gebrüderheitz GmbH & Co. KG,
Erbprinzenstraße 18,
79098 Freiburg,
Germany

as order processors (here referred to as „Agent“)

Preamble

The Principal would like to commission the Agent with the services mentioned in § 3. Part of the contract execution is the processing of personal data. In particular, Art. 28 GDPR makes certain demands on such order processing. In order to comply with these requirements, the parties conclude the following agreement, the fulfillment of which is not separately remunerated, unless expressly agreed.

§ 1 Definitions

(1) Responsible is according to Art. 4 (7) GDPR, the body which, on its own or together with other controllers, decides on the purposes and means of processing personal data.

(2) The processor is according to Art. 4 (8) GDPR a natural or legal person, public authority, body or other body that processes personal data on behalf of the controller.

(3) Personal data is according to Art. 4 (1 GDPR, all information relating to an identified or identifiable natural person (hereinafter referred to as "data subject"); a natural person is considered as being identifiable, directly or indirectly, in particular by means of an identifier such as a name, an identification number, location data, an online identifier or one or more special characteristics expressing the physical, physiological, genetic, mental, economic, cultural or social identity of this natural person can be identified.

(4) Personal data requiring special protection is personal data in accordance with Art. 9 GDPR, showing the racial and ethnic origin, political opinions, religious or ideological convictions or the trade union affiliation of data subjects, personal data according to Art. 10 GDPR on criminal convictions and offenses or related security measures as well as genetic data in accordance with Art. 4 (13) GDPR, biometric data according to Art. 4 (14) GDPR, health data according to Art. 4 (15) GDPR as well as data on the sexual life or the sexual orientation of a natural person.

(5) Processing is according to Art. 4 (2) GDPR any process or series of operations performed with or without the aid of automated procedures in connection with personal data such as collecting, recording, organizing, organizing, storing, adapting or modifying, reading out, queries, use, disclosure through transmission, dissemination or other form of provision, matching or linking, restriction, deletion or destruction.

(6) Supervisory authority is according to Art. 4 (21) GDPR one of a Member State according to Art. 51 GDPR established independent state body.

§ 2 Name of the competent data protection supervisory authority

(1) Responsible authority for the Agent

The State Commissioner for Data Protection and Freedom of Information
Königstrasse 10 a
70173 Stuttgart,
Germany

(2) The Principal and the Agent and, where applicable, their representatives shall, upon request, cooperate with the Supervisory Authority in the performance of their duties.

§ 3 Contract

(1) The Agent provides data backup services to the Principal based on the "Terms of Service" of 25/05/2018 ("Main Contract"). In doing so, the Agent gains access to personal data and processes it exclusively on behalf and under the direction of the Principal. The scope and purpose of the data processing by the Agent are set out in the main contract (and the associated service description). The Principal is responsible for assessing the admissibility of data processing.

(2) To clarify the mutual rights and obligations under data protection law, the parties conclude this agreement. The provisions of this Agreement shall prevail over the provisions of the main contract if there is doubt.

(3) The terms of this Agreement shall apply to all activities related to the Main Contract in which the Agent and its employees, or Agent's representative, come into contact with personal data originating from or collected for the Principal.

(4) The term of this contract is based on the duration of the main contract, provided that the following provisions do not result in obligations or termination rights beyond this.

§ 4 Instructional authority

(1) The Agent may only collect, process or use data under the Main Contract and in accordance with the instructions of the Principal. This applies in particular to the transfer of personal data to a third country or to an international organization. If the Agent is required by the law of the European Union or of the Member States to which it is subject to further processing, he shall inform the Principal of these legal requirements prior to processing.

(2) The instructions of the Principal are initially determined by this contract and can then be amended, supplemented or replaced by the Principal in written form or in text form by individual instructions (individual instruction). The Principal is entitled to issue corresponding instructions at any time. This includes instructions regarding the rectification, deletion and blocking of data. The persons authorized to issue instructions are listed in Appendix 5. In the event of a change or a longer-term absence of the named persons, the contracting party

must be notified immediately of the successor or representative in text form.

(3) All instructions given are to be documented by both the Principal and the Agent. Instructions that go beyond the performance agreed in the main contract are treated as an application for a change in performance.

(4) If the Agent considers that a Principal's instruction violates data protection provisions, he must immediately inform the Principal. The Agent shall be entitled to suspend the execution of such instructions until it has been confirmed or amended by the Principal. The Agent may refuse to carry out a manifestly illegal instruction.

§ 5 Type of data processed, circle of data subjects

(1) As part of the execution of the Main Contract, the Agent gains access to the personal information specified in Appendix 1. This data includes the categories of personal information listed and identified as such in Appendix 1.

(2) The circle of those affected by the data processing is shown in Appendix 2.

§ 6 Protective measures of the Agent

(1) The Agent is obliged to comply with the legal provisions on data protection and not to disclose or enable access to the information obtained from the area of the Principal to third parties. Documents and data are to be protected against access by unauthorized persons taking into account the state of the art.

(2) In his area of responsibility, the Agent will design the internal organization in such a way that it meets the special requirements of data protection. He shall take all necessary technical and organizational measures to adequately protect the data of the Principal pursuant to Art. 32 GDPR, in particular at least the measures listed in Appendix 3 regarding

a) physical access control
b) system access control
c) data access control
d) relay control
e) input control
f) order control
g) availability control
h) seperation control

Altering implemented security measures remains reserved to the contractor, ensuring that the contractually agreed level of protection is not undercut

(3) The designated contact person for data protection is : Daniel Heitz (daniel@backhub.co).

(4) Persons employed in data processing by the Agent are prohibited from collecting, processing or using personal data without authorization. The Agent shall accordingly oblige all persons entrusted by him with the processing and performance of this contract (hereinafter referred to as employee) (obligation of confidentiality, Art. 28 (3) lit. b GDPR) and with the necessary care to ensure compliance with this obligation. These obligations must be set up so that they persist even after the termination of this contract or the employment relationship between the employee and the Agent. Upon request, the Principal may demand appropriate proof of mentioned obligations.

§ 7 Notification duties of the Agent

(1) In the event of any disruption, suspected breaches of privacy or breaches of contractual obligations by the Agent, suspected security incidents or other irregularities in the processing of personal data by the Agent, persons employed by the Agent or third parties, the Agent shall promptly inform the Principal in writing or in text form. The same applies to inspections of the Agent by the data protection supervisory authority. The notification of a personal data breach includes at least the following information:

a) a description of the nature of the personal data breach, where possible, stating the categories and the number of persons concerned, the categories concerned and the number of personal records concerned;

b) a description of the remedial action taken or proposed by the Agent and, where appropriate, measures to mitigate its potential adverse effects.

(2) The Agent shall immediately take the necessary measures to safeguard the data and to mitigate the possible adverse consequences of the persons concerned, inform the Principal of this and request further instructions.

(3) Furthermore, the Agent is obliged to provide the Principal with information at any time, if data is compromised according to paragraph 1.

(4) If the Principal's data are endangered by attachment or confiscation, insolvency or settlement proceedings, or by other events or measures by third parties, the Agent shall inform the Principal immediately, unless prohibited by judicial or administrative order. In this connection, the Agent will immediately inform all competent bodies that the decision-making authority over the data lies exclusively with the Principal as "controller" within the meaning of the GDPR.

(5) The Agent must inform the Principal without delay of significant changes to the security measures in accordance with § 6 (2).

(6) The Principal shall be informed of a change in the operational contact person for data protection immediately.

(7) The Agent and, if applicable, his representative shall maintain a list of all categories

of processing activities carried out on behalf of the Principal, containing all information in accordance with Art. 30 (2) GDPR. The directory must be made available to the Principal on request.

(8) The Agent shall cooperate to a reasonable extent in the preparation of the procedural list by the Principal. He must inform the Principal of the information required in each case in a suitable manner.

§ 8 Right of control of the Principal

(1) The Principal convinces itself of the technical and organizational measures of the Agent before the start of data processing and from there on annually. For this he can, for example, obtain information from the agent, have existing certificates issued by experts, certifications or internal audits, or have the technical and organizational measures of the agent checked in person during normal business hours or have them checked by a knowledgeable third party, as long as this entity is not a competitor of the agent. The principal will only carry out will perform controls only to the extent necessary and will not disproportionately disrupt the operations of the agent

(2) The Agent is obligated to provide all information and proof necessary to carry out a control of the technical and organizational measures of the Agent within a reasonable amount of time upon oral or written request by the Principal.

(3) The principal documents the control result and communicates it to the agent. In the case the Principal discovers errors or irregularities, in particular, when examining order results, it must inform the Agent immediately. If, during the control, circumstances are identified whose future avoidance requires changes to the procedural order, the Principal will immediately notify the Agent of the necessary procedural changes.

(4) Upon request, the agent shall notify the Principal of the obligation of the employees in accordance with § 6 (4).

§ 9 Use of Subcontractors

(1) The contractually agreed services or the partial services described below are carried out with the involvement of the Subcontractor mentioned in Appendix 4. The Agent is authorized by Subcontractor ("Subcontractor relationship") to create further subcontracting relationships within the scope of its contractual obligations, insofar as it informs the Principal in advance and has received prior written approval for the Subcontractor. The Agent is required to carefully select a Subcontractor for its suitability and reliability. The Subcontractor is required by the Agent to engage in accordance with the terms of this Agreement and to ensure that the Principal may exercise its rights under this Agreement (including, without limitation, its rights of inspection and control) directly with the Subcontractors. If a Subcontractor incorporated in a third country is to be engaged, the Agent must ensure that the respective Subcon-

tractor has an adequate level of data protection (i.e. by concluding an agreement based on the EU standard data protection clauses). Upon request, the Agent will prove to the Principal the conclusion of the aforementioned agreements with its Subcontractor.

(2) A Subcontractor relationship within the meaning of these provisions does not exist if the Agent entrusts third parties with services that are to be regarded as mere services. These include i.e. postal, transportation and shipping services, cleaning services, telecommunications services without specific reference to services that the Agent provides for the Principal and security services. Maintenance and testing services represent Subcontractor relationships subject to approval, insofar as these are provided for IT systems that are also used in connection with the provision of services for the Principal.

§ 10 Inquiries and affected rights

(1) The Agent shall assist the Principal, as far as possible, with appropriate technical and organizational measures in the fulfillment of its obligations under Articles 12-22 and 32 and 36 GDPR.

(2) If a person concerned asserts rights, such as information, rectification or deletion of his data directly against the Agent, he does not react independently, but immediately refers the person concerned to the Principal and awaits instructions.

§ 11 Liability

(1) In the internal relationship to the Agent, the Principal alone is responsible to the person concerned for compensation for damages suffered by a data subject due to data processing or use as part of order processing that is inadmissible or incorrect under data protection laws.

(2) The parties shall each release each other from liability if a party proves that they are in no way responsible for the circumstances in which the damage occurred to an affected party.

§ 12 Termination of the main contract

(1) The Agent will return to the Principal after the conclusion of the main contract or at any time upon request all documents, data and data carriers entrusted to it, or - at the request of the Principal, unless there is an obligation to store the personal data pursuant to Union law or the law of the Federal Republic of Germany - delete the data. This also applies to any backups with the Agent. The Agent must have the documented proof of the orderly deletion of still existing data. The documents to be disposed of must be destroyed with a shredder according to DIN 32757-1. Media to be disposed of must be destroyed according to DIN 66399.

(2) Due to the backup rotation, the Principal’s data will be permanently deleted from the

Agent's servers only three months after the contract is terminated.

(3) The Agent shall be obliged to treat confidentially the data disclosed to him in connection with the main contract, even after the end of the main contract. This Agreement remains in effect beyond the end of the main contract as long as the Agent has personal data supplied to or collected by the Principal.

§ 13 Final provisions

(1) The parties agree that the plea of retention by the Agent according to § 273 BGB regarding the data to be processed and the associated data carrier is excluded.

(2) Changes and additions to this agreement must be in written form. This also applies to the waiver of this formal requirement. The priority of individual contract agreements remains unaffected.

(3) Should individual provisions of this agreement be or become wholly or partially invalid or unenforceable, this shall not affect the validity of the remaining provisions.

(4) This agreement is subject to German law. Exclusive jurisdiction is Freiburg. In case of difficulties of interpretation, the German text of this contract is the authoritative one.

Signed

On behalf of BackHub UG (haftungsbeschränkt):	On behalf of controller:
Signature	Signature
Daniel Heitz, CEO Erbprinzenstraße 18, 79098 Freiburg, Germany	[Name, Title, Address]
June 15, 2018	
Date	Agreement Effective Date

Appendices

Appendix 1 – Description of data/data categories

- Comments
- User data
- Source code

Appendix 2 – Description of data subjects/data subject groups

- Clients
- Client employees
- Third parties, who enter the notes in the repositories

Appendix 3 – Technical and organizational measures of the Agent

The contractor shall take the following technical and organizational measures for data protection according to Art. 32 GDPR.

No.	Measure	Implementation
1	**Physical access control** Unauthorized persons should be denied access to data processing systems that process or use personal data	**Not applicable** (not operating physical data processing systems)
2	**Electronic access control** It must be prevented that data processing systems can be used by unauthorized persons.	✓ Assignment of user rights ✓ Password assignment ✓ Authentication with user name / password ✓ Create user profiles ✓ Assignment of user profiles to IT systems ✓ Use of VPN technology ✓ Encryption of mobile data carriers ✓ Encryption of data carriers in laptops/notebooks ✓ Use of a software firewall
3	**Access level control** It must be ensured that the persons entitled to use a data processing system can only access the data subject to their authorization and that personal data can not be read, copied, altered or removed without authorization during processing, use and after storage	✓ Create an authorization concept ✓ Number of administrators reduced to "essential only" ✓ Encryption of data carriers ✓ Administration of rights by system administrator ✓ Password policy incl. password length, password change
4	**Relay control** It must be ensured that personal data can not be illegally read, copied, altered or removed during the electronic transmission or during its transport or storage on data carriers, and that it is possible to check and determine to where personal data has been transmitted through systems designed to track this	✓ Facilities of leased lines or VPN tunnels ✓ E-mail encryption

5	**Input control** It must be ensured that it is possible to retroactively check and determine whether and by whom personal data has been entered, changed or removed in data processing systems	✓ Traceability of input, modification and deletion of data by individual user names (not user groups) ✓ Assignment of rights to input, change and deletion of data based on an authorization concept
6	**Order control** It must be ensured that personal data processed in the order can only be processed in accordance with the instructions of the client.	✓ Selection of the contractor with due diligence (especially regarding data security) ✓ Written instructions to the contractor (e.g., by order processing contract) ✓ Obligation of contractor employees regarding data confidentiality
7	**Availability control** It must be ensured that personal data are protected against accidental destruction or loss	✓ Create a backup & recovery concept
8	**Separation control** It must be ensured that data collected for different purposes can be processed separately	✓ Defining database rights ✓ Separation of productive and test system

Appendix 4 – Authorized Subcontractors

The following are authorized Subcontractors according to § 9:

Amazon Web Services, Inc.
410 Terry Avenue North
Seattle, WA 98109
United States

STRATO AG
Pascalstraße 10
10587 Berlin
Germany

Zendesk, Inc.
1019 Market Street
San Francisco, CA 94103
United States

Functional Software, Inc.
dba Sentry
132 Hawthorne Street
San Francisco, CA 94107
United States

The Rocket Science Group, LLC
675 Ponce de Leon Ave NE

Suite 5000
Atlanta, GA 30308 USA
United States

stripe Inc.
185 Berry Street
Suite 550
San Francisco, CA 94107
United States

GitHub Inc.
88 Colin P. Kelly St.
San Francisco, CA 94107
United States

200OK LLC
109 Kingston Street Fl 4
Boston, MA
United States

Google LLC
1600 Amphitheatre Parkway
Mountain View, CA 94043
United States

gandi SAS
63-65 boulevard Massena
75013 Paris
France

Appendix 5 – Persons with instructional authority

The persons of the Principal with instructional authority are

Recipients of instructions for the Agent are

- Christian Schlack (christian@backhub.co)
- Daniel Heitz (daniel@backhub.co)