

**DATA PROCESSING AGREEMENT**  
**(the "AGREEMENT")**

concluded by and between:

**Aether Biomedical spółka z ograniczoną odpowiedzialnością** with its registered office in Poznań, Poland, at Mostowa 11, 61-854 Poznań, entered into the Register of Entrepreneurs of the National Court Register kept by the District Court for Poznań – Nowe Miasto and Wilda, 8th Commercial Division of the National Court Register under KRS number 0000755184, NIP: 7831791083, REGON: 381661137 ("**Aether Biomedical**")

and

the **Partner** being a main user of **Aether Digital Platform ("ADP")**.

WHEREAS:

- (A) by creating a user account in ADP by the Partner, the Parties have entered into an agreement (the "**Principal Agreement**"), the performance of which involves the processing of personal data under this Agreement;
- (B) the purpose of this Agreement is to define terms and conditions under which Aether Biomedical shall perform the personal data processing operations on behalf of the Partner;
- (C) the Partner entrusts Aether Biomedical with the processing of personal data in connection with the use of the ADP and the functionalities available therein (the "**Services**");
- (D) by concluding this Agreement the Parties intend to regulate the processing of personal data in compliance with the requirements of the current legal framework in relation to data processing and with the Regulation (EU) 2016/679 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**");

THE PARTIES AGREE AS FOLLOWS:

- 1. ENTRUSTING THE PROCESSING OF PERSONAL DATA. THE SCOPE AND PURPOSE OF DATA PROCESSING.**
  - 1.1 Subject of the Agreement. [GDPR 28.3]** Pursuant to the provisions of the GDPR, the Partner entrusts Aether Biomedical with the processing of personal data as referred to in Article 4 of the GDPR, on terms and in connection with the implementation and provision of the ADP Services.
  - 1.2 Duration of processing. [GDPR 28.3]** Aether Biomedical processes the data entrusted to it by the Partner in order to provide the Services – i.e. access to ADP and its functionalities.
  - 1.3 Nature and purpose of processing. [GDPR 28.3]** The nature and purpose of data processing result from the Principal Agreement, i.e.:
    - (a) the nature of personal data processing is determined by the role of Aether Biomedical under the Principal Agreement;
    - (b) the purpose of personal data processing is to perform the Principal Agreement properly, inter alia to provide the Partner with an access to ADP and its functionalities.
  - 1.4 Type of personal data. [GDPR 28.3]** Data processing will include the types of personal data indicated below:
    - (a) name(s) and surname(s);
    - (b) functions and positions held;
    - (c) personal identification numbers;
    - (d) details of an identity document;
    - (e) e-mail address;
    - (f) telephone number(s);
    - (g) mailing address;

(h) as well as any other data collected and exported by using the Service.

The Aether Biomedical is not obliged to verify whether the set of personal data provided by the Partner are real and complies with the law.

1.5 **Categories of data subjects. [GDPR 28.3]** The personal data processed by Aether Biomedical hereunder shall refer to:

- (a) Partner's personnel, contractors and employees (including but not limited to clinicians and therapists);
- (b) clients (patients), which are the end users of Aether Biomedical's products, for whom an account has been created in ADP system operated by Aether Biomedical;
- (c) contact persons of the Partner.

## 2. SUB-PROCESSING

2.1 **Data sub-processing. [GDPR 28.2]** Partner hereby authorizes Aether Biomedical to engage another data processor ("**Sub-processor**") of Aether Biomedical's choice for processing of personal data on behalf of Partner under written agreement concluded with such Sub-processor. The scope and purpose of processing the personal data by the Sub-processor shall not exceed the scope and purpose of permitted processing thereof by Aether Biomedical under this Agreement. Such Sub-processors shall include: (i) Aether Biomedical's subcontractors engaged in the performance of the Principal Agreement, and (ii) provider of infrastructure. The Partner agrees to further processing of personal data by entities that provide services and technological solutions supporting the Service and that are indicated in Appendix 1 to this Agreement. Additionally the Partner agrees to entrust the processing of personal data to sub-processors other than those indicated in Appendix 1.

2.2 **Objection right. [GDPR 28.2 sentence 2]** Partner may object to Aether Biomedical's use of a Sub-processor by notifying Aether Biomedical promptly in writing or via e-mail within 7 days after receipt of the notice.

2.3 **Data protection obligations of Sub-processors. [GDPR 28.4]** Sub-processors shall apply the same data protection obligations as set out herein, in particular provide sufficient guarantees of appropriate technical and organizational measures to ensure that the data processing meet the requirements of the GDPR.

## 3. OBLIGATIONS OF AETHER BIOMEDICAL (DATA PROCESSOR)

3.1 **Documented instructions. [GDPR.28.3.a]** Aether Biomedical processes the personal data only in accordance with the manner resulting from the Principal Agreement and the documented (e.g. in writing or e-mail) instructions of the Partner.

3.2 **Transfer of personal data outside the EEA. [GDPR.28.3.a]** Aether Biomedical may transfer or authorize the transfer of personal data to a third country or an international organization outside the European Economic Area ("**EEA**"). If personal data processed under this Agreement is transferred from a country within the EEA to a country outside the EEA, the Parties shall ensure that the personal data are adequately protected. In case of data transfer to a third country or international organization outside the EEA, Aether Biomedical declares that it will apply the measures of protection and procedures provided for by law, in particular Articles 44 to 50 of the GDPR.

3.3 **Confidentiality. [GDPR.28.3.b]** Aether Biomedical ensures that the persons authorized by Aether Biomedical to process personal data have committed themselves to confidentiality or are subject to an appropriate statutory obligation of confidentiality.

3.4 **Proof of competency.** Aether Biomedical ensures that persons authorized by Aether Biomedical to process personal data have received appropriate training on their responsibilities regarding the protection of personal data.

3.5 **Security. [GDPR.28.3.c]** Aether Biomedical ensures the protection of personal data and takes all measures required pursuant to Article 32 of the GDPR, in accordance with the following provisions of this Agreement.

- 3.6 **Data subject request. [GDPR.28.3.e]** Taking into account the nature of the personal data processing, Aether Biomedical shall assist Partner through implementing appropriate technical and organizational measures, insofar as this is possible, in fulfilling Partner's obligation to respond to the requests of the data subjects with respect to the exercise of their rights as referred to in Chapter III of the GDPR. If the data subject transfers the request directly to Aether Biomedical, Aether Biomedical shall immediately inform Partner about the submitted request. Partner is solely responsible for preparing a response to the request of the data subject.
- 3.7 **Security of personal data. [GDPR.28.3.f]** Aether Biomedical shall assist the Partner, insofar as this is possible, in fulfilling the obligations related to ensuring adequate data security of personal data, obligation to report violations of personal data protection or obligation to assess the impact for data protection (resulting from Articles 32-36 of the GDPR).
- 3.8 **Lawfulness of instructions. [GDPR 28.3 sec 2]** In the event of Aether Biomedical's doubts as to conformity of the Partner's instruction with the provisions of law, Aether Biomedical shall immediately inform the Partner in writing or via e-mail of the identified doubt.
- 3.9 **Data protection by design. [GDPR 25.1]** Whenever Aether Biomedical plans to make changes with regard to the processing of personal data, it shall comply with the requirements set out in Article 25(1) of the GDPR (data protection by design).
- 3.10 **Limitation of access. [GDPR 25.2]** Aether Biomedical shall ensure that Aether Biomedical's access to personal data is limited to those of personnel engaged in the performance of the Principal Agreement.
- 3.11 **Records of processing activities. [GDPR 30.2]** If applicable, Aether Biomedical shall maintain a record of processing activities carried out on behalf of Partner as referred to in Article 30(2) of the GDPR and make it available to the Partner upon its request, except for information constituting a trade secret or other customers of Aether Biomedical.
- 3.12 **Confidentiality obligations of persons authorized to process data.** Aether Biomedical shall ensure that persons authorized to process Partner's personal data will (i) process such data only if instructed by the Partner, and (ii) keep such data and the security measures secret, and the obligation of confidentiality shall survive the termination of personnel engagement in such personal data processing.
- 4. OBLIGATIONS OF PARTNER (DATA CONTROLLER)**
- 4.1 **Partner's duties.** Partner shall cooperate with Aether Biomedical with respect to data processing, including providing Aether Biomedical with explanations in the event of doubt as to the conformity of the Partner's instructions with the provisions of law, as well as fulfill Partner's obligations in a timely manner.
- 4.2 **Compliance with principles relating to processing of personal data. [GDPR 5]** Partner represents that the personal data that is entrusted for processing, in particular the basics of the personal data processing, as well as the specific scope, purposes, manner, context and nature of the data processing, is compliant with the GDPR and applicable laws. The Partner is obliged to check on their own the compliance of the data processing with the applicable provisions of law, thus the Partner hereby releases Aether Biomedical from performing such activities.
- 4.3 **The Partner's statement.** Partner represents that it is the controller of the personal data and that it is entitled to process the personal data to the extent that Partner entrusted these data for processing to Aether Biomedical. Only the Partner, as the personal data controller, can decide about the manner and purpose of data processing.
- 5. SECURITY OF PERSONAL DATA**
- 5.1 **Safety measures. [GDPR 32]** Prior to the commencement of the processing of personal data, Aether Biomedical shall implement appropriate technical and organizational measures ensuring an adequate level of security corresponding to the risk related with the processing of personal data, referred to in Article 32 of the GDPR, in order to protect the personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

## **6. NOTIFICATION OF A PERSONAL DATA BREACH**

- 6.1 **Notification of suspected personal data breach.** In the event of suspected personal data breach, Aether Biomedical shall without undue delay shall notify Partner of the personal data breach after becoming aware of it.
- 6.2 **Notification of personal data breach.** The notification of the personal data breach shall be sent to the Partner along with the information as referred to in Article 33(3) of the GDPR, in order to enable Partner to fulfill its obligation to notify the personal data breach to the competent supervisory authority.
- 6.3 **Communication.** The Parties shall determine the methods of communication and designate persons responsible for incident management and notifications in order to report personal data breaches and other incidents in a timely manner pursuant to the GDPR. For this purpose, the Parties designate contact persons indicated in clause 7 below.

## **7. CONTACT PERSONS**

- 7.1 **Contact details.** The contact persons in all matters related to the personal data protection, including the notifications referred to in clause 6.3, shall be same as in the Principal Agreement. The addresses for notices (including e-mail addresses) provided in the Principal Agreement shall apply also for notices under this Agreement.

## **8. CONTROL RIGHTS. AUDITS.**

- 8.1 **Audit rights. [GDPR.28.3.h]** Aether Biomedical shall make available to Partner, on its request, all information necessary to demonstrate compliance with this Agreement and allow for and contribute to audits, including inspections, conducted by Partner or another auditor mandated by Partner in relation to the processing of the Partner's personal data by Aether Biomedical.
- 8.2 **Cooperation with the supervisory authority. [GDPR 31]** Aether Biomedical shall cooperate, on request, with the supervisory authority in the performance of its tasks.
- 8.3 **Notification obligations.** Aether Biomedical shall notify the Partner immediately of:
- (a) initiation of any control, audit or inspection concerning the processing of personal data by Aether Biomedical, in particular conducted by the supervisory authority, as well as of any decisions issued in relation thereto,
  - (b) administrative, judicial or any other proceedings, actual or pending, concerning the processing of the personal data by Aether Biomedical, as well as of any decisions, orders or rulings issued in relation thereto,
  - (c) any requirement to make personal data available to the competent authority, unless provisions of law do not allow for such notification.

## **9. LIABILITY**

- 9.1 **Liability of Aether Biomedical. [GDPR 82.2]** Aether Biomedical shall be liable for the damage caused by processing only if (i) it has failed to comply with the GDPR provisions specifically directed to data processors, or (ii) it has acted without the Partner's lawful instructions, or against those instructions.
- 9.2 **Liability of Sub-processors. [GDPR 28.4]** Where the Sub-processor fails to fulfil its data protection obligations, Aether Biomedical shall remain fully liable to Partner for the performance of that Sub-processor's obligations.

## **10. RETURN AND DELETION OF PERSONAL DATA**

- 10.1 **End of data processing. [GDPR 28.3.g]** Upon termination of this Agreement, Aether Biomedical, subject to the Principal Agreement, shall not have the right to further process personal data and shall be obliged to delete or return personal data to Partner (including all their backups), unless the applicable law requires storage of the personal data.
- 10.2 **Obligation to store the personal data. [GDPR 28.3.g]** If Aether Biomedical cannot delete personal data within the time limit set by the Partner due to laws requiring the storage of personal data, Aether Biomedical shall notify it to Partner.

## **11. FINAL PROVISIONS**

- 11.1 **Entry into force.** The Agreement comes into force upon conclusion of the Principal Agreement without any additional declarations of will of the Parties.
- 11.2 **Term.** The Agreement is entered into for a specified period of provision of the Service by Aether Biomedical and for the term of the Principal Agreement.
- 11.3 **Priority.** In the event of any conflict or inconsistency between this Agreement and the Principal Agreement, the provisions of this Agreement shall prevail.
- 11.4 **Confidentiality.** The content of this Agreement, as well as any personal data or information disclosed in connection with this Agreement shall be treated by the Parties as strictly confidential and shall not be disclosed to third parties.
- 11.5 **Jurisdiction.** Each Party irrevocably agrees to submit to the exclusive jurisdiction of the courts of Poland having jurisdiction over Aether Biomedical's registered office in relation to any claim or matter arising under or in connection with this Agreement.
- 11.6 **Governing Law.** This Agreement shall be governed by the laws of Poland.

## **APPENDIX NO. 1**

### **LIST OF SUBPROCESSORS PROCESSING PERSONAL DATA**

**The third parties Aether Biomedical work with to provide our ADP and Services are :**

- Refericon sp. z o.o. with registered office in Poznań, Poland (KRS: 0000668107) for software development and support services;
- Amazon Web Services (AWS) for hosting Aether Biomedical's servers and data;
- Facebook for single sign on;
- BitBucket stores our source code;
- Firebase (Google) for single sign on;
- Google Analytics for analytics on our websites;
- Logentries for logging and understanding errors;
- Sentry for reporting errors;
- Rollbar for reporting errors;
- ScoutAPM for monitoring usage of our servers;
- Jitsi for online video communication;
- Confluence stores the project documentation;
- Ably for communication between the mobile application and the web application;
- Firebase (Google) for sending push notifications to the mobile application.