

Case study: Trick or Treat

- The *Very Important EU Institution* (VII) needs to buy an IT software and optional connected services for its daily operation, to browse internet, redact, collaborate and ex-change documents, send e-mails
- VII has an old version of license Zombie, so the new software needs to be compatible to ensure business continuity
- VII receives an offer and a standard license agreement from Trick or Treat Ltd (ToT) for an updated version of Zombie
- ToT is based in the United States, has data centres in Armenia and Germany and a centre for helpdesk services in Argentina and Morocco.
- ToT includes in its offer that some data should be collected from users and analysed in their headquarters and by their subcontractors to ensure optimal services to users.

Questions

1. ToT suggests signing its own standard license agreement and terms of use. Your legal department is wondering whether the selected terms are in compliance with Regulation 2018/1725. What would you advise as a DPO?
2. What would you include in the contract with ToT?
3. Do you think that the location of the headquarters, data centres and the helpdesk would have an impact on the contract?

CASE STUDY HAND OUT - QUESTION 1

1. COLLECTION OF DATA AND USE OF SERVICE DATA

Customer acknowledges that Trick or Treat collects only meta data and does not collect any personally identifiable information. Customer is responsible for obtaining user's consent.

Customer acknowledges that in the ordinary operation of the Service, the Service collects and transmits Service Data from Customer's network environment and/or the Internet to Trick or Treat's servers and that Trick or Treat uses such Service Data for all reasonable and necessary purposes required to provide the Service. Customer also grants to Trick or Treat the perpetual, irrevocable right to use, reproduce, modify, and otherwise exploit the Operational Metrics, both during and after the Term, for the purpose of improving and enhancing the Service, monitoring the performance of the Service, and performing internal research and development for the provisioning of Trick or Treat products and services.

Trick or Treat may disclose Customer Data pursuant to an order or requirement of a court, administrative agency, or other governmental body; *provided*, that Trick or Treat provides reasonable notice to the Customer of such, to enable it to contest such order or requirement, unless such Trick or Treat is prevented from doing so by force of law.

2. APPLICABLE LAW

Governing Law and Venue. The Agreement and any action related thereto will be governed and interpreted by and under the laws of the State of California, without giving effect to any conflicts of laws principles that require the application of the law of a different jurisdiction. Customer hereby expressly consents to the personal jurisdiction of, and venue in, the state and federal courts of San Francisco, California. The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to the Agreement.

Local Laws. Trick or Treat and its suppliers make no representation that the Service is appropriate or available for use in locations other than the United States.

3. MODIFICATIONS TO THE AGREEMENT

We may modify this Agreement (including any Policies) at any time by posting a revised version on the Trick or Treat Site or by otherwise notifying you in accordance with Section X;

By continuing to use the Service Offerings after the effective date of any modifications to this Agreement, you agree to be bound by the modified terms. It is your responsibility to check the Trick or Treat Site regularly for modifications to this Agreement. We last modified this Agreement on the date listed at the end of this Agreement

4. LIMITATION OF LIABILITY

In no event will either party be liable for indirect, incidental, special, punitive, or consequential damages, or for loss of use, loss of business information, loss of revenue, or interruption of business, however caused or on any theory of liability.

5. VERIFYING USE OF LICENSE

Trick or Treat has the right, at its expense, to verify compliance with the Products' license terms. Customer must promptly provide the independent auditor with any information the auditor, including access to systems running the Products and evidence of licenses for Products Customer hosts, sublicenses, or distributes to third parties.

6. SUBCONTRACTING

Trick or Treat may ask another subcontractor (hereinafter the "Sub-processor") to carry out specific processing.

Trick or Treat is free to change the list of subcontractors set out in Annex 1. It must however inform the Controller 8 calendar days before any planned change involving adding or replacing Sub-processors.

7. TRANSFERS OF DATA

Personal information collected under this agreement (1) may be transferred, stored and processed in the United States or any other country in which Trick or Treat or its service providers maintain facilities and (2) will be subject to the privacy terms specified in the Use Rights of Trick or Treat.