

# Kloudymail licence for use and general terms and conditions

This Agreement (as defined below) is signed in Italy between WeKloud Srl, hereinafter referred to as WeKloud, Tax and VAT ID No. 03592290989, with registered office in Brescia, Via Aldo Moro 13, in the person of the administrative body, filed at the Chamber of Commerce of Brescia, and Your Company, which accepts this Agreement on-line and off-line.

Your company accepts the accesses to the service in ASP mode (Cloud) by means of username and password, which will be communicated after the acceptance of this software use licence or agreement.

## Whereas

**The Client/PARTNER** needs to request an on-line software service. **WeKloud** meets the necessary requirements to provide the above mentioned service.

**'Acceptance Date'** indicates the date on which this on-line Agreement is accepted by the Client or software user and from which the necessary resources will start to be used and made available.

## THE PARTIES AGREE AND STIPULATE AS FOLLOWS

1. The whereas clauses shall be considered as an integral part of this agreement.
2. WeKloud undertakes to provide the service called 'Kloudymail@', which enables to send newsletters by e-mail and to analyse e-mail messages, as well as to send newsletters by Short Message Service (SMS,) by means of an SAAS (software-as-a-service) application made available by means of Internet connection.
3. The contents of messages sent by the customer and the lists of email addresses used, as well as the telephone numbers indicated, are the exclusive property of the customer, under Decree Law 196/2003 and Regulation (EU) 2016/679. Specially WeKloud commits itself to: not transferring or making the personal lists available to third parties, partially or total, temporary or definitive, if not statistically aggregated; absolutely not to use it, except for aggregate statistical purposes; not to keep a copy, except that essential to the execution of the service and to any backups, and for statistical purposes in the aggregate form.
4. WeKloud may be only elected as External Manager for Processing personal data under the Article 29 of the Code on the processing of personal data and Article 28 of the Regulation (EU) 2016/679. The customer can not give evidence about his information to the interested in the role of WeKloud as Data Processor. WeKloud will be a provider of the communication service to the recipients of the customer and on behalf of the customer only as an external data processor, without any responsibility for the management of the data themselves. In regards to this data processing activity, WeKloud undertakes to: (a) use specially IT and / or online tools with CPU allocated in the Italian territory or abroad to avoid any bureaucratic need for cross-border data processing adopting logic strictly correlated to the performance features that WeKloud has to return to the customer and in strict compliance with the applicable provisions, also with regard to data security; (b) take appropriate measures as a follow-up of the carrying out of the risk analysis as set out in Article 32; c) to have a Data Protection Manager. If WeKloud receives a valid order to let be known the customer's information issued by a Judicial or Administrative Authority, will notify the customer immediately, unless otherwise established by the Judicial or Administrative Authority. Therefore WeKloud will be authorized to execute the order.
5. Obtaining the consent for data processing from the addressees of the messages, whether they are addressees of e-mail messages or addressees of SMS messages, shall therefore be under the Client's responsibility; in addition, the Client undertakes to communicate and receive acceptance of its privacy statement to the addressees. Such privacy statement may expressly indicate the fact that, in order to send the messages, external services have been used, including the one offered by WeKloud, in addition to the fact that - in relation to e-mails and the sending of SMS - statistical tracking systems that enable to detect when an e-mail is opened and when clicks are made on the links (hyperlinks contained in the e-mail) have been used, particularly identifying the relative numbers.
6. By means of this agreement, WeKloud undertakes to make the Kloudymail @ service available with a 99% up-time availability rate, 24 hours a day, 365 days a year. This availability does not include the following services that are not directly provided by WeKloud and of which WeKloud cannot take charge:
  - problems related to WeKloud suppliers or services by third parties;
  - Internet availability at the Client's facilities;
  - hardware, software or network problems within the Client's organisational structure.When defining the agreed service level, those days to be devoted to routine and supplementary maintenance that may be agreed between the Client and WeKloud, and which are generally planned in the weekend and/or during night hours, are not included. In addition, during holidays and from 0.00 am to 6.00 am of working days, occasional service interruptions may be necessary due to programme maintenance operations; such interruptions are not included in the calculation of the agreed service level.

7. For the use of the above mentioned Kloudymail ® service, the Client undertakes to pay a regular fee at the times and in the modes indicated in the Order Confirmation document, or in the 'on-line' order if the purchase is made through the Internet site. Any discounts granted to the Client by WeKloud are to be intended as applicable exclusively for agreements with a duration equal to or greater than 36 months. In case of anticipated termination of the agreement attributable to the Client, WeKloud shall ask the Client for the difference between the amount agreed (including the discount) and the price not discounted.

The parties agree that in case of delayed payment of such fee, on the predetermined due dates and even of one single instalment, the interests on arrears will be calculated pursuant to article 5 of Italian Legislative Decree No. 231 of 9 October 2002 and subsequent amendments. In case the payment is not received, in accordance with the terms agreed upon by the parties, WeKloud shall have the right to suspend all the services without any advance warning, and to request the immediate payment of all the fees and values agreed upon plus expenses for taking credit recovery actions. The client authorises WeKloud to charge an amount for bank charges in case of request of payments in instalments.

The payment of all the amounts due to WeKloud according to this agreement, and to the relative order confirmation, may not be delayed or suspended for any reason, with the express waiver to any exception.

Without prejudice to the payment of the regular fee at the times and in the modes indicated in the Order Confirmation document, or in the 'on-line' order if the purchase is made through the Internet site, agreed for sending SMS messages, the purchase of credits (or recharges) is foreseen, and it may be directly performed by the Client from the administration console (or control panel). Once the credits that had been previously purchased have been used up, no new messages may be sent unless an additional credit package is purchased. The credits shall be valid for 12 months since the purchase data, and they may be used only while the agreement is in force. If the agreement is terminated in advance, for any reason whatsoever, or reaches its natural expiry date and is not renewed, the Client waives, now for then, the residual credit, which may not be reimbursed.

The Client acknowledges and accepts that the number of credits debited for each sent message will be determined taking into account, each time, the message sending cost and, in general, the costs connected with the telephone and/or IT service when sending the message. The Client also acknowledges and accepts that the values of the credits are determined by assuming, in each single distribution list concerning the Client, a distribution among the mobile phone network operators reasonably in line with the market share held by each of them. If a distribution list shows a distribution among the mobile phone network operators that is not in line with the market share held by each of them, the amount of the credits debited for the SMS messages sent to the operators included in such list may be increased proportionally to take into account the higher cost connected with the telephone service. The Client declares that it is aware of the fact that the higher cost borne by WeKloud in relation to the telephone service will break out only after the Client sends SMS messages. The Client therefore accepts that WeKloud may charge to the Client the higher amount due only once the higher cost borne by WeKloud becomes known.

8. The Client shall be responsible for the photographic, graphic or textual documentation for creating the newsletters. The Client may ask WeKloud for such services, which will be assessed and quoted separately from this agreement.

9. The Client accepts that the characteristics of the software and service updates are established by WeKloud, which decides their modes, number and execution times.

10. The agreement duration is 12 (twelve) months, starting from the date on which the Order Confirmation document written by WeKloud and sent to the Client is signed, or from the date of the on-line purchase through Internet or in any other mode and, in any case, from the date of acceptance of all the clauses of this agreement.

The agreement shall be deemed automatically renewed for 12 months in the absence of notice of termination, which shall be sent via registered post with acknowledgement of receipt or another equivalent means at least 60 (sixty) days before the natural expiry date of this agreement. In case of notice of termination submitted beyond the above mentioned essential term, such termination shall not be valid, and the user (Client) shall have to pay the complete fee also for the following period, even in case of no use. In case the Client does not pay the annual fee indicated in item 7 of this agreement, WeKloud may - at its sole discretion - suspend the Kloudymail ® service and demand in any case the payment of the entire amount of the annual fee.

11. The clauses of this agreement are intended as fully effective and accepted by the Client even in case of gratuitous and/or temporary use of the services provided for any reason by WeKloud.

12. WeKloud shall have the right to transfer its relative rights and obligations pursuant to this Agreement, notifying such transfer by means of PEC (certified e-mail address) or e-mail. In no case may the Client transfer this agreement, without WeKloud's previous written consent, via registered post with acknowledgement of receipt or another equivalent means, under penalty of terminating the agreement and paying the consequent compensation for damages.

Stamp and signature of the Partner / End-User Client

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13. Kloudymail® is a registered trademark. The Kloudymail® service, the web site, the service and the information contained are property of WeKloud and are protected from unauthorised reproduction and disclosure according to the Intellectual Property Rights (as specified below). The phrase 'Intellectual Property Rights' identifies any right governed, in each specific case, by the laws on patents, copyright, protection of semiconductor chips, moral rights, business secrecy, trademarks, unfair competition, privacy and any other right related to property rights, as well as possible applications, renewals, extensions, re-introductions and restorations, currently in force or to be implemented in the future, all over the world.

14. The Client approves WeKloud's use of all its names and marks as well as the names and marks of its Customers that will use WeKloud technologies and services.

15. Any message sent by the Client must contain an operating link that enables the addressee to cancel the subscription and to be excluded from the sending of subsequent e-mails or SMS messages, as well as the indications foreseen (privacy policy) by the current privacy legislation (Italian Legislative Decree 196/2003 as amended), as well as in compliance with Resolutions no. 42/13/CIR and 131/14/CIR by the AGICOM (Italian Authority for Communications Guarantees) and the relative Code of Ethics. The cancellation link must be evident, easily recognisable and legible. The cancellation must be automatic, be effective with a maximum number of two clicks, and it should not require visiting a web site, entering a password or sending an e-mail. By using the Kloudymail® unsubscribe link, cancellations will be immediate and automatic. Any unsubscribe requests managed otherwise by the Client will be monitored also by introducing sentry addresses within the clients' database, and they shall be handled by the Client within the 5 days following the request. The Client shall consequently update the lists loaded in Kloudymail®. All lists and e-mail addresses imported or added by the Client or partner are under the full responsibility of the user or Client; the Client releases WeKloud from any liability regarding the misuse of e-mail addresses or other data imported in the system.

16. The Client declares and guarantees: (i) that all the information provided by the Client to WeKloud are complete, correct and up-to-date; (ii) that it is entitled to authorise, and that it authorises, WeKloud to exercise all the rights that are necessary in order for WeKloud to be able to provide the newsletter sending service. Nothing in this article shall limit or release the liability of any of the parties in case of wilful misconduct or gross negligence. The Client releases WeKloud from any liability in case of official complaint, legal actions, governmental or administrative actions, loss or damage (including legal expenses and fees) resulting from the illegal use of the services by the Client or by one or more of its customers. The civil and criminal liability for the information published by means of the service provided by WeKloud remains the sole responsibility of the Client. WeKloud is not responsible for the content of the information freely published by the user on the newsletter, and it may not be held liable, for any reason, for any damage caused directly or indirectly by the services provided.

17. All the correspondence between the Client and WeKloud, including its collaborators, can be recorded and filed. No communication can be considered to be confidential, unless otherwise agreed by mutual consent. WeKloud reserves the right to publish or forward to third parties (such as ISP or DNSBL) any communication or correspondence between the Client and the Abuse Desk service, which can be identified with the e-mail address abuse@kloudymail.com.

18. The access to the Kloudymail® service is possible by means of alphanumeric codes (called 'username' and 'password' for sending e-mails, and Alias for sending SMS messages), and no simultaneous accesses with the same alphanumeric codes are allowed. The Client undertakes to preserve with utmost confidentiality the alphanumeric codes that are necessary for the provision of the service and shall therefore be responsible also for the custody of such codes: the Client shall consequently be solely responsible for any damage caused by the possible use of login and password by third parties. In any case, the Client undertakes to immediately report to WeKloud any theft, loss or appropriation for any reason whatsoever, by third parties, of login and password. The Client also undertakes, pursuant to Italian Legislative Decree 196/2003, to change the 'password' alphanumeric code at least once every three months by using the Kloudymail® console.

The Client must provide up-to-date, complete and accurate information and references (in particular, the e-mail address). The Client must not try to bypass or tamper with the access and authentication to the console. It is expressly prohibited for the User to access the service by means of programmes or methods different from those officially issued and managed by WeKloud; any attempt at violating the security of the Kloudymail® service and at making hacking or reverse engineering interventions constitutes a criminal offence. The Client must immediately inform WeKloud in case of unauthorised use of the access to Kloudymail® and its functions, or in case of any violation of security. WeKloud shall not be liable for possible damages or inefficiencies resulting from unauthorised uses of the access by means of alphanumeric codes assigned to the Client.

19. It is absolutely forbidden for the user to use WeKloud IT services for illegal purposes, for sending advertising that has not been requested (also known as sending 'spam' and 'spamming') to newsgroups and/or to addresses and/or telephone numbers of users who have no relationship with the sender. Spam means using Kloudymail® to send any message, regardless of its content, to addresses that have not previously consented to receive messages via e-mail or via SMS from the Client.

Spam therefore includes, without limitation, those messages sent to e-mail addresses and/or telephone numbers purchased from suppliers of Category Lists, to e-mail addresses and/or telephone numbers published on the Internet or that can anyhow be obtained from public lists, or to e-mail addresses and/or telephone numbers created with automatic algorithms derived from the list of most common names, surnames and domains.

WeKloud reserves the right to examine the documentation, including electronic documentation, proving the consent obtained by the Client from the addressees of the newsletters and business information/communications and, in case of refusal by the Client, WeKloud reserves the right to limit and/or suspend the Kloudymail® service as a precautionary measure. If the Client takes on the responsibility for using WeKloud IT services for illegal purposes and/or for sending unwanted or unauthorised advertising, the Client shall be considered to be solely responsible for such violations, releasing WeKloud from any kind of liability on this regard. The parties also agree that in case the Client is responsible for sending unwanted advertising ('spamming'), causing for WeKloud consequent inefficiencies such as blacklisting (i.e. recording one or more sending IPs or the second-level domain connected to the sending console in one of the following international Relay Block Lists and Blacklists: URIBL, SURBL, SORBS, SPAMCOP, SPAMHAUS, MAILPOLICE, CBL, SYMANTEC, HOSTKARMA, AHBL, SPAMCANNIBAL, DNSBL, FIVE-TEN.BG, IN-PS.DE, NIXSPAM, INTERSIL, x1GHLB, OUTBLAZE, LEADMON.NET, NJABL, NOMORE-FUNN, PSBL SURRIEL, RRBL (RANGERS), TQMUCUBE, TORDNSBL, UNSUBSCORE, VIRBL, WPBL or blacklisting or relay block listing at ISP (i.e. Godaddy, Register, Aruba, Fastweb, Alice) or to portals that offer free E-mail boxes (Hotmail, Gmail, Yahoo! Mail...), the Client shall be obliged to pay 1,000.00 Euros (one thousand/00) for each list in which the IPs or domains are registered, as penalty, plus the compensation for any damages to Kloudymail® reputation and infrastructure.

It is also forbidden to publish: (a) any material that is obscene or in favour of paedophilia, (b) any material that is offensive or with immoral purposes, (c) any material with purposes contrary to law and order, (d) any material that is detrimental to the rights of third parties, (e) any material protected by copyright (books and/or publications or parts thereof or anything else), (f) any material that has been obtained illegally (pirated software, unauthorised copies, etc.), (g) information or data bases in contrast with the regulations in force, (h) any material that incites to violence or to hatred, (i) any material that sells or promotes services or goods that are illegal in the country where the messages are received, (j) any material that introduces viruses, Trojans or other harmful and illegal software.

The material considered to be 'dubious' – at WeKloud's sole discretion – shall be examined carefully and thoroughly, and a decision will be taken regarding the possibility of publishing such material after having sent a suitable notice via e-mail to the user. Whenever the user does not comply with the above mentioned terms, WeKloud will cease its services without having to send any advance notice and without owing anything for the possible period during which the service was not provided.

19b. Now for then, the Client authorises WeKloud to suspend the services at any time and without any advance notice: for one week upon the first abuse report; for two weeks upon the second abuse report; and definitively upon the third abuse report. WeKloud also reserves the right to immediately and definitively close the platform without any advance notice in case of abuse report due to SPAM TRAP. WeKloud reserves the right to eliminate any information (such as e-mail addresses and statistics connected to the platform indicated) from the existing monitoring systems. The Client may ask for the reactivation of the services after paying a penalty that will depend on the offence committed. The Client shall also guarantee the cleaning of the indicted mailing lists.

19c. The Client authorises WeKloud to freeze, at any time and without any advance notice, the lists in case suspicious activities or e-mail addresses and/or telephone numbers are detected (SPAM TRAP, purchased e-mail addresses and/or telephone numbers or other e-mail addresses and/or telephone numbers acquired illegally, etc.).

19d. Pursuant to and in accordance with Title III of Italian Legislative Decree 196/2003, WeKloud shall inform civil and administrative authorities, as well as law enforcement authorities, about any suspicious behaviour according to articles 19, 19b and 19c, reserving the right to initiate actions to obtain compensation for the damage suffered as a result of illegal behaviour by the Client.

20. By signing this agreement, the Client accepts that its messages can be intercepted, blocked, filtered, read or monitored by WeKloud with a view to make sure that the Terms and Conditions of use are observed and to guarantee the security of our systems. Anyhow, such information will not be transferred to third parties or used for other purposes under any circumstances, other than for statistical purposes.

21. The Client acknowledges that WeKloud services are based on a system that is physically located on Italian or foreign servers managed by WeKloud or by commissioned companies.

22. In no case may WeKloud and/or its employees and/or collaborators who have participated in the creation, production or provision of WeKloud services be held liable for any kind of direct or indirect, inherent, special or consequent damage of any nature, in contract or in tort, resulting from the activation or use of WeKloud services and/or from the interruption in the provision of such services. Such provisions shall remain valid and effective even after the cessation of this contract, due to the expiration of its term, termination or withdrawal.

WeKloud shall not be held responsible for the malfunction of the services resulting from problems in telephone and electrical lines and in world and national networks, such as faults, overloads, interruptions, etc.

Stamp and signature of the Partner / End-User Client

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WeKloud may not be held liable in any way in case of problems or malfunctions related to third-party suppliers or technological partners (for example, providers or software suppliers); the Client directly releases WeKloud from any request for compensation for damages. No compensation for damages may be requested to WeKloud for direct and/or indirect damages caused by the use of the services or by failure to use them.

WeKloud may not be held liable for noncompliance with its obligations whenever this is caused by reasons beyond its reasonable control or by force majeure.

In addition, WeKloud shall not be held liable for noncompliance by third parties that compromise the operation of the IT services made available for users, including, by way of example, low speed or failure of the telephone lines and processors that manage the IT traffic between the Client and the WeKloud system.

23. WeKloud undertakes to keep the efficiency of the service offered; whenever WeKloud were forced to interrupt the service due to exceptional events or maintenance operations, it will try to make such periods as short as possible, except for what has been indicated in art. 6 above with regard to the up time. WeKloud will define the suitable service access procedures, and it will reserve the right to improve them at any time so as to be able increase their efficiency; in addition, WeKloud will give users all the technical specifications so that they can have access to such services.

24. WeKloud undertakes to provide a technical assistance service for reports on problems related to the correct operation of the Kloudymail ® system from Monday to Friday in office hours, excluding holidays. The assistance service will be provided by E-MAIL (activation by means of a specific form in the relative area of Kloudymail.com) on topics concerning the operation of Kloudymail ® with problems taken care of within 48 working hours. The service does not include giving advice on the composition of the messages, on the HTML code, on the setting and on the qualitative level of the communication, and on message deliverability problems. The response times are guaranteed since the time at which all the information that is necessary for the identification of the problem has been provided.

25. The elements included in this file will be processed in accordance with the disposals of Legislative Decree no. 196/03 and Regulation (EU) 2016/679 and indicated in the processing of personal information register. To read the full informer click on the link <https://www.kloudymail.com/en/privacy-policy/>

26. Any tax burden resulting from the performance of the agreement, including possible taxes due to advertising activity, is to be borne by the user.

27. In order for any amendment and/or addition to this agreement to be valid and effective, they must be issued in writing or electronically, and they must be explicitly accepted by both parties. The agreement may also be accepted and signed on-line by entering username and password in the relative area. Now for then, the Client accepts that the access data are outlined and filed in order to comply with the acceptance of all the clauses herein set forth.

28. All the clauses of this agreement are to be intended as essential and mandatory; therefore, failure to comply with even one of them will automatically result in the termination of the agreement, with the defaulting party being obliged to pay the compensation for damages.

29. Other provisions. This Agreement represents the complete agreement between the parties with regard to the subject matter herein governed, and it cancels and replaces any other agreement, declaration or arrangement of any kind, previously signed between the parties in relation to the subject matter of this Agreement. No part of this Agreement may be interpreted as aimed at setting up a partnership or joint venture of any kind between the parties, or an agency relationship between the parties for any purpose, and neither of the parties shall have the right or the power to give rise to any form of obligation for the other party, or to take on commitments or responsibilities on behalf of the other party in any way and for any purpose.

Unless otherwise expressly specified in this Agreement, the messages shall be sent to the addresses indicated in this Agreement (or within Kloudymail® on-line service), sending a copy to the legal office, by means of facsimile transmission accompanied by a transmission report, followed by sending by express mail or airmail; or by means of courier; they will be intended as completed upon their reception.

30. Applicable law and competent court. This Agreement shall be regulated and interpreted according to the Italian law, and the parties shall henceforth submit any disputes or issues resulting from or connected with this Agreement to the exclusive jurisdiction of the Court of Brescia.

Stamp and signature of the Partner / End-User Client

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Pursuant to and in accordance with articles 1341 and 1342 of the Italian Civil Code, the Client declares to have fully read and expressly and specifically approves the following clauses foreseen and included in the Agreement: 7, 10, 12, 14, 16, 19, 19b, 19c, 19d, 20, 22, 26, 27, 28, 29 and 30.

Stamp and signature of the Partner / End-User Client

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## APPENDIX

### 1. Permission

#### 1.1 Consent

Emails may, in principle, only be sent to recipients who have provided their consent to this (Opt-In). The consent must comply with the following prerequisites:

a. Consent to receiving advertising material via email/newsletter must, in particular, be granted actively and separately. The recipient must either click/check a box or otherwise similarly declare his/her clear agreement. This declaration may not form part of any other declarations (e.g. consent to general terms and conditions of business, general data protection provisions) and may only relate to advertising.

b. If consent is not granted in writing or electronically, it requires written confirmation from the address holder.

c. Please note that the consent of minors is only valid if:

- the minor has reached the age of 16 years, or
- the legal guardians have given consent.

d. The option to revoke consent at any time with future effect must be clearly and explicitly indicated at the time of obtaining consent. This must also contain information as to how consent may be revoked and with whom. The option to revoke consent may not be more complicated than the obtaining of the consent. Revoked consent must be implemented after five (5) working days at the latest.

#### 2. Email format

2.1 The contracting entity, that is the sender's contractual partner for a business-related mail, must be clearly identifiable. In every email sent, an easily recognizable legal notice must be contained as full text. The legal notice must contain the following details:

a. The name and address where the sender is established; for legal entities also the legal structure, the commercial register, the association register, partnership register or the register of cooperatives, in which they are recorded and the applicable register number;

b. Contact information, at least one valid telephone number or an electronic contact form, and an email address;

c. A sales tax identification number or a business identification number, if applicable. Further obligations to provide information in accordance with national laws are not affected.

2.2 The option to revoke permission to send emails must be indicated in every email. Unsubscribing from emails must always be possible without the recipient having to know any access data (for example, login and password). Exceptions can be granted in individual cases if different handling is required due to certain particularities of the service offered.

2.3 The sender and the commercial nature of the message may not be obfuscated or concealed in the header and subject line of the email. An obfuscation or concealment occurs when the header and subject line have been intentionally designed such that the recipient, prior to viewing the content of the communication, receives either no information or misleading information about the actual identity of the sender or the commercial nature of the message.

2.4 When using email addresses that the sender or their customer have acquired from third parties, the sender and/or their customer are obliged, prior to carrying out advertising activities, to ensure that only those recipients are actually contacted who have granted consent under this terms. This consent has to refer not only to mailing by a third party but also by the sender and/or their customer

2.5 Obtaining address data for third parties (for instance via co-sponsoring) must be transparent to the user. In particular, address data obtained in this way may only be used for a mailing, if, when collecting:

a. The companies, for which the address data was generated, were transparently and individually named with details of the sector,

b. The user was easily and clearly able to be aware of the list of companies and

c. The number of companies and/or persons for which the address data was collected is reduced to an extent that excludes forwarding user data to a disproportionately large number of third parties and permits the user to easily grasp the significance and scope of their consent and to easily monitor the lawful handling of their data.

In the interest of clarity, it must be pointed out that the companies, for which the address data was generated, may not forward this data to third parties without the user having separately provided additional consent to this.