

# CELLENION

A BICO COMPANY

## cellenPIPE: Data Processing Agreement (v1, 08/09/2022)

This Data Processing Agreement (“**DPA**”) is entered into by the customer (“**Customer**”) and CELLENION SASU (“**Cellenion**”), each of the Customer or Cellenion may also be referred to as a party and collectively as the parties. By clicking the button “I agree” to the Terms of Use (“**Services**”) in the cellenPIPE interface, the Customer agrees to the terms of this DPA and that it is automatically legally binding as a prerequisite for using the Services provided by Cellenion.

In the course of providing the Services to Customer, Cellenion may Process Personal Data on behalf of Customer and the parties agree to comply with the following provisions with respect to any Personal Data, each acting reasonably and in good faith.

### 1. Definitions

All capitalized terms used in this DPA and not otherwise defined shall have the same meaning attributed to them in the Terms of Use. The following definitions have the meanings set out below:

“**Affiliate**” means an entity that controls, is directly or indirectly controlled by, or is under common control of the relevant party;

“**Applicable Law**” means (i) applicable data protection laws or regulations in the jurisdiction in which the Personal Data is hosted, in this case France; (ii) Regulation (EU) 2016/679 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 (the “GDPR”).

“**Customer Data**” means the data provided by Customer Processed through Customer's use of the Services, including the contents of the files and emails sent by or to Permitted Users of the Services;

“**Data Subject**” means “data subject” as defined under the GDPR;

“**Data Subject Request**” refers to a request from a Data Subject in accordance with the GDPR;

“**Instructions**” means (i) instructions from Customer as embodied in the DPA, the applicable ordering documents and this DPA for those limited and specific purposes of providing the Service (the “Business Purpose” as defined under the XXX), and (ii) those as may be additionally communicated in writing by Customer to Cellenion from time-to-time;

“**Personal Data**” means “personal data” as defined under the GDPR under the control of Customer and Processed by Cellenion in connection with the performance of the Services;

“**Process**”, “**Processed**” or “**Processing**” means “processing” as defined under the GDPR, the

details of which are outlined on Schedule 1;

**“Regulator”** means the data protection supervisory authority which has jurisdiction over Customer’s Processing of Personal Data;

**“Sale”, “Sell” or “Selling”** means selling, renting, releasing, disclosing, disseminating, making available, transferring, or otherwise communicating orally, in writing, or by electronic or other means, Personal Data with a Third Party, whether for monetary or other valuable considerations or for no consideration, for the Third Party’s commercial purposes;

**“Services”** means the services provided by Cellenion in the cellenPIPE interface;

**“Standard Contractual Clauses”** means the agreement pursuant to the European Commission’s decision (C(2010)593) of 5 February 2010 on Standard Contractual Clauses for the transfer of Personal Data to processors established in Third Countries approved by the EU Commission in Commission Decision 2010/87/EU, dated 5<sup>th</sup> February 2010;

**“Third Country(ies)”** means countries outside of the scope of the data protection laws of the European Economic Area, excluding countries approved as providing adequate protection for Personal Data by the European Commission from time-to-time;

**“Third Party”** means any person (including companies, entities, organizations, etc.) that is not Customer or Cellenion;

**“Third-Party Subcontractor”** means the third-party subcontractors listed in Schedule 2, as such list may be updated from time to time pursuant to Clause 8;

**“Threat Data”** means all data identified through the Services as malicious, such as data which may perpetuate data breaches, malware infections, cyberattacks or other threat activity, as well as data that describes and gives information about Customer Data, including but not limited to files, URLs, and other graph identifier derived features and other data used by machine learning processes that are designed to improve the Services. Threat Data does not include raw content of Customer Data; and

**“Trust Center”** means Cellenion’s website: [www.cellenion.com](http://www.cellenion.com).

## **2. Data Processing**

Cellenion shall only Process Personal Data on behalf of Customer in accordance with and for the purposes set out in the Instructions, which, for the avoidance of doubt and depending on the Services provided, may include Cellenion (i) providing the Customer with access to and use of the Services; and (ii) if applicable, improving and developing the Services, including but not limited to using Threat Data to train the Service’s machine-learning algorithms, the output of which are anonymized and irreversible. Notwithstanding the foregoing, Processing may be required by EU or Member State law to which Cellenion is subject. In such a case, Cellenion shall inform Customer of that legal requirement before Processing, unless that law prohibits such information on important grounds of public interest.

If applicable, Cellenion shall act as Customer's service provider, and as such, certifies it will not Sell or otherwise Process Customer's Personal Data, other than: (a) as permitted under the Terms of Use; or (b) as may otherwise be permitted under Applicable Law for service providers or under a comparable exemption from a Sale, as reasonably determined by Cellenion.

Each party shall comply with the obligations applicable to that party under Applicable Law.

**2.1.1** Cellenion represents and warrants that:

- (i) it shall promptly inform Customer if, in Cellenion's opinion: (i) Cellenion cannot comply with Applicable Law or (ii) Customer's Instructions violate Applicable Law, provided that Cellenion is not obliged to perform a comprehensive legal examination with respect to an Instruction of Customer;
- (ii) its personnel and Third-Party Subcontractors who are authorised to Process Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality; and
- (iii) Cellenion understands the restrictions placed on it under Section 2.2.

**2.1.2** Customer represents and warrants that:

- (i) its use of the Services and the Instructions provided do not contravene Applicable Law;
- (ii) it has complied and continues to comply with Applicable Law, in particular that it has obtained any necessary consents and/or given any necessary notices, and/or otherwise has the right to disclose Personal Data to Cellenion and enable the Processing set out in this DPA and as contemplated by the Terms of Use;
- (iii) it has assessed the requirements under Article 28 of the GDPR as they apply to Customer with regards to Personal Data and finds that the security measures referenced in Schedule 3 are adequate to meet those requirements;
- (iv) it will ensure compliance with and shall not in any way alter or diminish such security measures referenced in Schedule 3 to the extent applicable to Customer through its use of the Services; and
- (v) where Processing hereunder includes, or may include, special categories of Personal Data, it has complied and continues to comply with requirements of Applicable Law to notify Data Subjects of the Processing and, where relevant, obtain any consents, or otherwise have the right to enable the Processing of the special categories of Personal Data.

Customer understands that Personal Data transferred to Cellenion is determined and controlled by Customer in its sole discretion. As such, Cellenion has no control over the volume and sensitivity of Personal Data Processed through its Services by Customer or users. Cellenion shall implement and maintain the technical and organisational security measures specified in Schedule 3 hereto before Processing Customer's Personal Data and shall continue to comply with such technical and organizational security measures as a minimum standard of security

during the term of the DPA.

Notwithstanding any provision herein to the contrary, Cellenion owns the Aggregated Data. Customer hereby grants Cellenion a worldwide, royalty-free, fully paid up, irrevocable, non-exclusive license to use, process and store the Threat Data for the purpose of providing the Services in accordance with this DPA. For clarity, Cellenion owns all aggregated data derived from the Services as aggregated with usage data from Cellenion's other customers, including, without limitation, utilization statistics, reports, logs and information regarding spam, viruses or other malware processed by the Services. Aggregated Data does not contain Personal Data. Customer agrees Cellenion may Process Aggregated Data or Threat Data for its business purposes and share Aggregated Data or Threat Data with Third Parties.

### **3. Notification of Data Breach**

Cellenion shall notify Customer without undue delay (and in no event more than 48 hours, with periodic updates to follow as may be necessary) of a declared breach of security which has led to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Customer's Personal Data which affects the integrity, availability or confidentiality of Customer's Personal Data ("**Security Breach**"). For the avoidance of doubt, Security Breaches will not include unsuccessful attempts to, or activities that do not, compromise the security of Personal Data including, without limitation, unsuccessful log in attempts, denial of service attacks and other attacks on firewalls or networked systems and no notice of the foregoing shall be required. In the event a Security Breach requires notification by Customer to Data Subjects or relevant Regulators, the parties agree to coordinate in good faith on developing the content of any public statements or required notices.

### **4. Audit and Inspection**

**4.1** Cellenion shall provide reasonable assistance in response to inquiries from Customer or its Regulator relating to Cellenion's Processing of Customer's Personal Data.

**4.2** Cellenion shall, upon written request from Customer, provide Customer with information reasonably necessary to demonstrate compliance with the obligations set forth in this DPA. This information shall consist of permitting examination of the most recent reports, certificates and/or extracts prepared by an independent auditor pursuant to Cellenion's ISO27001 or similarly held industry certification.

**4.3** In the event the information provided in accordance with Clause 4.2 above is insufficient to reasonably demonstrate compliance, Cellenion shall permit Customer to inspect or audit the technical and organisational measures of Cellenion for the purposes of monitoring compliance with Cellenion's obligations under this DPA no more than once per any twelve-month period. Any such inspection shall be:

- (i) at Customer's expense;
- (ii) limited in scope to matters specific to Customer;
- (iii) agreed in advance between the parties in writing, including scope, duration, start date and Cellenion's then-current rates for professional services;

- (iv) conducted in a way which does not interfere with Cellenion's day-to-day business;
- (v) during local business hours of Cellenion and, upon not less than twenty (20) business days advance written notice unless, in Customer's reasonable belief an identifiable, material non-conformance has arisen; and
- (vi) subject to the confidentiality obligations in the Terms of Use or, where a third-party auditor conducts the audit, such third-party auditor must be a professional bound by a duty of confidentiality or subject to a suitable non-disclosure agreement.

4.4 Any audit conducted under this Section shall not be conducted by a party who is a competitor of Cellenion.

4.5 Customer will provide Cellenion with copies of any audit reports generated in connection with any audit under this Section, unless prohibited by Applicable Law. Customer may use the audit reports only for the purposes of meeting its regulatory audit requirements and/or confirming compliance with the requirements of this DPA.

4.6 For the avoidance of doubt, the provisions of this Clause 4 shall also apply to the audit provisions of any Standard Contractual Clauses entered into in accordance with Clause 6 of this DPA.

## **5. Compliance, Co-operation and Response**

5.1 Cellenion will provide reasonable assistance to Customer in complying with any Data Subject Requests or requests received by Customer from Regulators that occur in accordance with Applicable Law.

5.2 If Cellenion receives a Data Subject Request, and it is clear from the nature of the request without the need for any independent investigation that Customer is the applicable controller of Data Subject's Personal Data, Cellenion will refer the Data Subject to Customer, unless otherwise required by Applicable Law. In the event Cellenion is legally required to respond to the Data Subject, Customer will fully co-operate with Cellenion as appropriate. Customer agrees that provision of technical tools to enable Customer to take the necessary action to comply with such request/s shall be sufficient to discharge Cellenion's obligations of assistance hereunder.

5.3 Customer will reimburse all reasonable costs incurred by Cellenion as a result of reasonable assistance provided by Cellenion under this Clause 5.

## **6. Transfer**

Customer acknowledges and agrees that Cellenion may, in the course of providing the Services, Process (or permit any Affiliate or Third-Party Subcontractor to Process) Customer's Personal Data in one or more Third Countries, provided that such Processing takes place in accordance with the requirements of Applicable Law. In such case, Cellenion shall, comply with (or procure that any Affiliate or Third-Party Subcontractor comply with) the data importer obligations in the Standard Contractual Clauses. Cellenion and its Affiliates have executed an Intercompany

Agreement, a copy of which is available on the Trust Center, to provide for the adequate safeguards for the transfer of Personal Data among its Affiliates as such transfer may be necessary in order for Cellenion to fulfil its obligations under the Terms of Use. Customer hereby grants Cellenion a mandate to enter into the Standard Contractual Clauses with a Third-Party Subcontractor or Affiliate it appoints.

## **7. Changes in Applicable Law**

The parties agree to negotiate in good faith modifications to this DPA if changes are required for Cellenion to continue to Process Personal Data in compliance with Applicable Law including (i) the GDPR; (ii) Standard Contractual Clauses; or (iii) if changes to the membership status of a country in the European Union or the European Economic Area require such modification.

## **8. Sub-Contracting**

**8.1 Use of Third-Party Subcontractors.** Customer hereby consents to the use of the Third-Party Subcontractors to perform Services. Subcontracting for the purpose of this DPA is to be understood as meaning services which relate directly to the provision of the principal obligation related to the processing of Personal Data pursuant to the Agreement. This does not include ancillary services, such as telecommunication services, postal/transport services, maintenance and user support services or the disposal of data carriers, as well as other measures to ensure the confidentiality, availability, integrity and resilience of the hardware and software of data processing equipment. Cellenion agrees that it has a written agreements in place with all Third-Party Subcontractors that contains obligations on the Third-Party Subcontractor that are no less onerous on the relevant Third-Party Subcontractor than the obligations on Cellenion under this DPA in respect of the specific Services provided by the Third-Party Subcontractor.

**8.2 Change to Third Party Subcontractors.** If Cellenion appoints a new Third-Party Subcontractor or intends to make any changes concerning the addition or replacement of the Third-Party Subcontractors, it shall provide Customer with reasonable advance written notice. For the purposes of this Clause 8.2, notice may be provided electronically, including but not limited to posting on the Cellenion administrative console of the Services, a notice on the Trust Center and/or in a e-newsletter sent to Customer (if Customer has subscribed to such e-newsletter via Cellenion's online preference center). If Customer objects to the appointment or replacement of Third-Party Subcontractor in writing based on legitimate data protection grounds within ten (10) days after Cellenion's advanced written notice of a new Third-Party Subcontractor, Cellenion, at its option may suggest a commercially reasonable change to Customer's use of the Services so that the relevant Third-Party Subcontractor is not used in terms of the Service/s procured. If Cellenion is unable to enact such change within a reasonable period of time, Customer may, upon not less than twenty (20) days' written notice from the date of notification by Cellenion, terminate the applicable Services Order with respect to those Services which cannot be provided without the use of the relevant Third-Party Subcontractor. If Customer does not provide a written objection within such ten (10) day period, Customer is deemed to have consented to such appointment or change in Third-Party Subcontractor. Termination of any ordering document under this Clause 8 shall entitle Customer to receive a pro-rata refund of any unused portion of the fees paid in advance. For the avoidance of doubt, termination under this Clause 8 shall not entitle Customer to any refund of fees paid for the period up to the effective date of termination.

## **9. Confidentiality**

The Confidentiality provisions in the Agreement shall apply equally to this DPA and where applicable, the Standard Contractual Clauses pursuant to Clause 6 therein.

## **10. Liability**

**10.1 Limitations.** The parties agree that Affiliates of Data Processor and/or Third-Party Subcontractors Processing Personal Data hereunder shall be bound by data protection obligations no less protective than the data protection obligations as specified in this DPA and any Standard Contractual Clauses entered into pursuant to Clause 6 herein. It is further agreed that the aggregate liability of the Affiliates, Third-Party Subcontractors and Data Processor under this DPA and any Standard Contractual Clauses entered into pursuant to this DPA, shall be no greater than the aggregate liability of Data Processor under the Agreement, to the extent permissible by Applicable Law. If Data Controller has contracted the Services through a managed services provider ("MSP"), Data Controller shall have no direct right of action against Data Processor with regards to the general provision of the Services and/or any instruction received from or access granted by the MSP, and all such claims should be brought against Data Controller's MSP. For the avoidance of doubt, the limitations of liability in the Agreement shall apply to this DPA and any Standard Contractual Clauses entered into in accordance with Clause 6 herein. The Data Controller shall not be entitled to recover more than once in respect of the same claim under this DPA.

**10.2 Limitations.** In the event of any claim by Customer against any Affiliate of Cellenion under the Standard Contractual Clauses, Customer shall accept payment from the Cellenion entity with whom Customer entered into the Agreement, on behalf of the relevant Affiliate of Cellenion in satisfaction of such claim.

## **11. Termination**

Termination of this DPA shall be governed by the Agreement.

## **12. Consequences of Termination**

Upon termination of this DPA in accordance with Clause 11, Cellenion shall, at Customer's request:

- (i) delete all Personal Data Processed on behalf of Customer, unless applicable laws, regulations, subpoenas or court orders require it to be retained; or
- (ii) assist Customer with the return to Customer of Personal Data and any copies thereof which it is Processing or has Processed upon behalf of Customer. Customer acknowledges and agrees that the nature of the Services mean that Customer may extract a copy of Personal Data at any time during the term of the Agreement, and providing the tools to allow Customer to do so shall be sufficient to show Cellenion has complied with this Clause 12 (ii). If Customer requires Cellenion to extract Personal Data on its behalf, Customer must engage Cellenion in a professional services project, which shall be subject to additional fees; and
- (iii) in either case, cease Processing Personal Data on behalf of Customer, except as may otherwise be required in accordance with subparagraph (i) above.

## **13. Law and Jurisdiction**

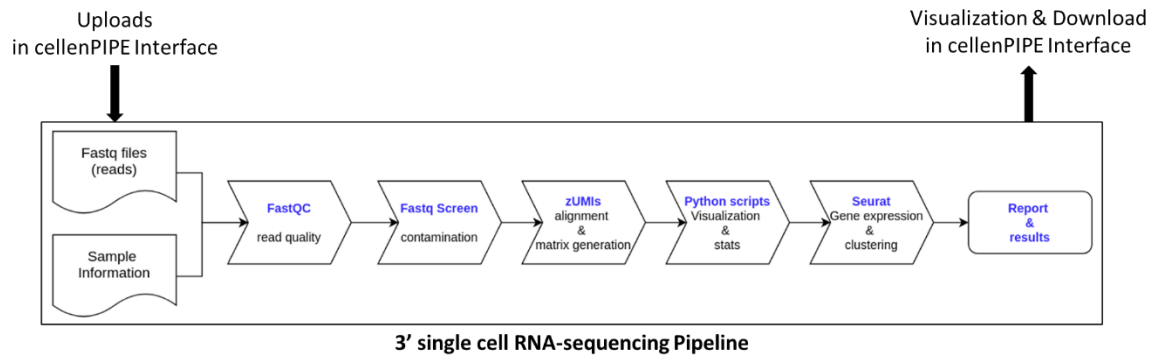
This DPA shall be governed by and construed in all respects in accordance with the governing law and jurisdiction provisions in the Agreement, provided that, in the event of a conflict between the Agreement and this DPA with regards to the Processing of Personal Data, this DPA shall control.



## Schedule 1 to the DPA Processing Details

The details of the Processing relevant to the Services provided by Cellenion can be found here:

### cellenPIPE for 3' single cell RNA-sequencing



## **Schedule 2 to the DPA**

### **Third-party subcontractors**

Cellenion shall maintain a list of Third-Party Subcontractors:

- **AlphaiTS**

alpha IT Solutions GmbH  
Arthur-Scheunert-Allee 2 (Haus 3)  
14558 Nuthetal

Tel: +49 33200 66 91 61

Mob: +49 151 11 44 92 55

Fax: +49 33200 66 91 99

Web: [www.alphaits.de](http://www.alphaits.de)

### **Schedule 3 to the DPA**

#### **Technical and Organisation Security Measures**

Cellenion shall implement the technical and organisational security measures specified by the Customer as a minimum-security standard. Customer acknowledges and agrees that the nature of the Services mean that the technical and organisational measures may be updated by Cellenion from times to times but such updates shall not result in a lesser standard of security to that in place upon signature of this DPA.

To access cellenPIPE, credentials included in the cellenCHIP kits are required.

Downloaded results are stored into password-protected zip folders. This password is transmitted to the customer only, via email when a cellenPIPE run ends.

The data are stored in Cellenion on-premise servers in a locked and secure location.

Access to the data is prevented by a specific organization of the web servers and firewalls.

An access log allows the surveillance of the traffic into cellenPIPE.

Secure password managers are used with several layers of physical and dematerialized processes.

Requests to databases are also protected.

A very low number of Cellenion employees can access those protected data (<3).

**CELLENION** 

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