

Preamble

The contracting parties have concluded an agreement (hereinafter referred to as "Main Agreement") for providing and calling off services.

If the contractual relationship between the client and the contractor (hereinafter together referred to as "Parties") also involves the processing of personal data, which requires the conclusion of an agreement according to Art. 28 of the General Data Protection Regulation (hereinafter "GDPR"), the following provisions shall apply unless the Parties have stipulated relevant provisions in the Main Agreement or concluded a separate written agreement governing the processing of personal data.

1 Definitions

The following terms correspond to the definitions stipulated in the GDPR:

- processor;
- data subjects;
- personal data;
- controller;
- personal data breach.

2 Data protection roles

The Parties agree in compliance with the definitions of the GDPR that the contracting party which, alone or jointly with others, determines the purposes and means of the processing of personal data shall be considered as the Controller.

The Processor shall be the contracting party which processes personal data on behalf of the Controller.

The decision as to which party acts as the Controller and which acts as the Processor shall be made according to objective criteria based on the Main Agreement.

3 Subject matter, nature and purpose of the processing

The subject matter, nature and purpose of the processing depends on the services to be provided under the Main Agreement.

If the Main Agreement does not specify the subject matter, nature and purpose of the processing to the extent required by Art. 28 (3) GDPR, the Parties agree to regulate these issues in a separate agreement.

4 Duration of processing

The duration of processing shall be based on the contractual term of the Main Agreement unless otherwise agreed in writing by the Parties.

5 Nature of personal data and categories of data subjects

The nature of the personal data processed and the categories of data subjects affected by the processing result from the Main Agreement.

If the Main Agreement does not specify the nature of the personal data processed and the categories of data subjects affected by the processing to the extent required by

Art. 28 (3) GDPR, the Parties agree to provide this information in a separate agreement.

6 Duties of the Processor

6.1 Acting on instructions

The Processor and any person acting under its authority who has access to personal data of the Controller may process those personal data only on documented instructions from the Controller, including with regard to transfers of personal data to a third country or an international organisation.

The Processor shall immediately inform the Controller if, in its opinion, an instruction infringes the GDPR or other European Union or Member State data protection provisions.

The Parties are familiar with European Union and Austrian law. The Processor shall thus only be obliged to inform the Controller of legal requirements for the processing of the Controller's data if these requirements are laid down in other legal provisions. This shall not apply if the Processor is prohibited from informing the Controller on important grounds of public interest.

6.2 Compliance with confidentiality obligations

The Processor may only use persons in the performance of the contract who have been contractually committed to observe secrecy with respect to the Controller's data or are under other appropriate statutory obligations of confidentiality. The Processor shall furthermore ensure that the persons entrusted with data processing will transfer data only upon express instructions.

The Processor shall ensure that these confidentiality obligations also apply to the data of legal persons. The Processor shall also ensure that the confidentiality obligations for persons entrusted with data processing remain in effect even after the end of their activity or employment relationship.

The Processor shall provide evidence that it has instructed the persons entrusted with data processing about the transfer instructions applicable to them and the consequences of breaching the confidentiality of data.

The Processor shall, at the request of the Controller, confirm compliance with the confidentiality obligations free of charge and in writing.

If the Controller is under statutory or contractual confidentiality obligations extending beyond the GDPR requirements, it shall notify the Processor thereof prior to conclusion of the Main Agreement. The Processor shall in this case agree to be bound by the same confidentiality obligations that apply to the Controller. If required for compliance with special confidentiality obligations of the Controller, the latter may provide a template for a non-disclosure agreement to the Processor, who shall use this template for concluding non-disclosure agreements with persons entrusted with data processing.

6.3 Security of processing

The Processor agrees that it will take all measures required pursuant to Article 32 of the General Data Protection Regulation. At the Controller's request, the Processor

shall inform the Controller free of charge about the measures taken by the Processor to protect personal data.

6.4 Other processors

The Processor shall not engage other processors without prior specific or general written authorisation from the Controller. In the case of general written authorisation, the Processor shall inform the Controller of any intended changes concerning the addition or replacement of other processors, thereby giving the Controller the opportunity to object to such changes. This information must be provided in good time before the planned change is made in order to enable the Controller to object to such changes.

The Processor shall be allowed to engage affiliated companies (within the meaning of § 189a (8) Company Code (UGB)) as additional processors if the designated processors have not been prohibited from data processing pursuant to § 22 (4) of the Data Protection Act (DSG) in the past three years prior to their engagement, if no measures according to Art. 58 (2) (f) to (j) GDPR have been imposed and if the processing is carried out within the European Union.

Where the Processor engages another processor for carrying out specific processing activities on behalf of the Controller, the same data protection obligations as imposed on the Processor in this Agreement, the Main Agreement or any other agreement between the Controller and the Processor shall be imposed on that other processor by way of a contract or other legal act under Union or Member State law. Where that other processor fails to fulfil its data protection obligations, the initial Processor shall remain fully liable to the Controller for the performance of that other processor's obligations.

6.5 Rights of data subjects

The Processor shall, taking into account the nature of the processing, assist the Controller by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Controller's obligation to respond to requests for exercising the data subject's rights laid down in Chapter III of the GDPR (Arts. 12 to 23 GDPR). Claims for compensation for such assistance on the part of the Processor shall be based on the provisions specified in the Main Agreement or other written agreement concluded between the Contractor and the Processor as the occasion arises.

If the Processor receives requests from data subjects indicating that they have obviously mistaken the Processor for the Controller, the Processor shall immediately forward these requests to the Controller and inform the data subject thereof. In cases of doubt where it is not clear whether a data subject intended to contact the Processor or the Controller, the Processor shall first clarify this issue in consultation with the data subject.

6.6 Obligation to provide assistance

The Processor shall assist the Controller in ensuring compliance with the obligations pursuant to Arts. 32 to 36 GDPR taking into account the nature of processing and the information available to the Processor. Claims for compensation for such assistance on the part of the Processor shall be based on the provisions specified in the Main

Agreement or other written agreement concluded between the Contractor and the Processor as the occasion arises.

6.7 Conclusion of processing services

After conclusion of the processing services, the Processor shall, at the choice of the Controller, delete or return all the personal data and delete existing copies unless Union or Member State law requires storage of the personal data.

This obligation to delete personal data shall not apply to any backup copies which, for economic or technical reasons, cannot be deleted immediately, but only at certain times, and if appropriate technical or organisational measures have been taken to ensure that processing of these data is restricted according to Art 18 (2) GDPR until the data can be deleted.

At the Controller's request, the Processor shall confirm in writing and free of charge that the personal data processed on behalf of the Controller have been deleted, stating the date of deletion.

If the Controller requests the return of the data the Processor shall return the data in the technical format specified in the Main Agreement or other written agreement between the Controller and the Processor.

Any objections based on a right of retention or comparable rights with respect to the data processed and the associated storage media shall be excluded.

6.8 Information provision by Processor and inspection by Controller

The Processor shall make available to the Controller all information necessary to demonstrate compliance with the obligations laid down in this Agreement free of charge.

The Parties shall, upon request and free of charge, provide each other with the names and contact details of their Data Protection Officers, if appointed.

The Processor shall, upon request and free of charge, provide the Controller with all information concerning the Controller included in the record to be maintained by the Processor pursuant to Art. 30 (2) GDPR.

The Processor shall inform the Controller immediately and free of charge, if the Austrian Data Protection Authority prohibits the Processor from continuing the data processing according to § 22 (4) DSG. The Processor shall also inform the Controller immediately and free of charge of any measure taken by a supervisory authority against the Processor according to Art. 58 (2) GDPR.

The Processor enables the Controller to carry out audits, including inspections, conducted by the Controller or another auditor mandated by the Controller. The Controller shall not be allowed to engage an auditor who is in economic competition with the Processor or if the Processor can provide other good reasons why that specific auditor should not be engaged.

7 Standard contractual clauses and changes in legal situation

7.1 Unless otherwise agreed in the Main Agreement or any other written agreement concluded between the Parties, each party shall upon request conclude standard

contractual clauses with the other party adopted by the Commission or a supervisory authority pursuant to Art. 28 (7) or Art 28 (8) GDPR.

- 7.2 In the event of changes in data protection regulations mandatory for the Controller or the Processor, the Parties shall conclude an agreement adjusted to the new provisions *mutatis mutandis*.

8 Final provisions

- 8.1 This Agreement shall only be valid if the Parties have not specified separate regulations for the processing of personal data in the Main Agreement or other written agreement. Modifications and amendments to this Agreement must be made in a uniform written document signed by both Parties in order to be valid. This shall also apply to any waiver of this written form requirement.
- 8.2 Should one or more provisions of this Agreement be or become unenforceable or invalid or if both parties agree that there is an omission in the Agreement this shall not affect the validity of the remaining provisions. The contracting parties undertake to supplement the Agreement with a valid provision that corresponds to the legal and commercial purpose of the invalid or incomplete provision.
- 8.3 This Agreement shall be governed exclusively by the laws of the Republic of Austria to the exclusion of the conflict of law rules. This shall also apply to the coming into existence of the Agreement and the legal consequences of its termination.
- 8.4 Any disputes arising from this Agreement shall be settled by the competent courts in Vienna, Innere Stadt.
- 8.5 This Agreement shall enter into effect upon conclusion of the Main Agreement unless otherwise provided in the Main Agreement or other written agreement concluded between the Parties.