

AGREEMENT ON THE TERMS AND MODALITIES FOR THE USE OF PERSONAL DATA

This Agreement on the Terms and Modalities for the Use of Personal Data (hereinafter referred to as „Agreement“) is made and entered into on __/__/20__ by and between the following Parties:

_____, in _____, personal identification number (OIB): _____, represented by _____ (hereinafter referred to as „Controller“)

and

_____, in _____, personal identification number (OIB): _____, represented by _____ (hereinafter referred to as „Processor“)

PROCESSOR and CONTROLLER are sometimes hereinafter referred to individually as a "Party" and collectively as the "Parties".

WHEREAS:

- the Processor and the Controller have a business relationship, based on which the Processor has access and may process certain personal data relating to natural persons on behalf of the Controller. For the purposes of this Agreement, „personal data“ means any information processed by the Processor on behalf of the Controller relating to an identified or identifiable natural person, whereas „processing“ means any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, or in any other way defined by the General Data Protection Regulation;

NOW, THEREFORE, in consideration of these premises and of the mutual rights and obligations specified below, the Parties enter into this Agreement in order to harmonise their processes with the personal data protection laws, particularly 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) (hereinafter referred to as „General Data Protection Regulation“ or „GDPR“), the General Data Protection Regulation Implementation Act, and all other applicable international, national and regional regulations in the area of protection of privacy and protection of personal data (hereinafter referred to as „Personal Data Protection Laws“). Therefore, the Parties hereto agree as follows:

OBJECT OF THE AGREEMENT

Article 1

This Agreement governs the mutual obligations and responsibilities of the Processor and the Controller in relation to the processing of personal data, whose means, scope, nature and purposes are defined by the business relationship between the Parties.

The Parties hereto agree that the Processor, on behalf of the Controller, processes only those personal data the Processor is required to process within the scope of the Services provided to the Controller based on their business relationship, after such personal data have been transferred or otherwise made available by the Controller to the Processor for the purposes of performance of the services arising from their mutual business relationship.

PROCESSOR'S RIGHTS AND OBLIGATIONS

DATA CONFIDENTIALITY

Article 2

The Processor agrees and acknowledges that it is not authorised and it shall not undertake any personal data processing operation not connected with the provision of the Services defined by the business relationship between the Parties.

Except to the extent necessary for the Processor to fulfil its obligations towards the Controller based on the business relationship between the Parties, the Processor ensures confidentiality of the personal data delivered or made available

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to the Processor, without any claims on such data, and it is not authorised, unless otherwise agreed by the Parties in writing, to provide access, make public or transfer the personal data (in whole or in part) to any third party during the term of or after the expiry of the business relationship between the Parties.

PARTICIPATION OF THIRD PARTIES

Article 3

The Controller hereby authorises the Processor to engage, for the purposes of personal data processing, its affiliates and/or other sub-processors, provided that their participation does not lead to a breach of the Personal Data Protection Laws or the Processor's obligations arising from this Agreement, and provided that the Processor obtains from the Controller prior authorisation for such engagement.

The Processor guarantees that the third parties are sufficiently qualified and that it shall enter with such third parties into adequate agreements containing the personal data protection standards which are applicable to the Processor pursuant to this Agreement.

The Processor is liable to the Controller for all operations performed by the Processor's sub-processors within the scope of the personal data processing. To the extent the Processor processes the personal data on behalf of the Controller and/or its affiliates, the Processor is obliged to ensure that each of its sub-processors processes the personal data only as far as necessary to fulfil the obligations assumed by the Processor in accordance with the Main Agreement.

Apart from being obliged to inform the Controller about the involved sub-processors and about the modalities of their participation in personal data processing operations, the Processor undertakes to inform the Controller promptly and in writing of any intended replacement of a sub-processor and to request its authorisation for such replacement.

If the Controller fails to respond to such proposal within 36 hours after the receipt of such notice by the Processor, it shall be deemed that the Controller has approved such replacement.

In the event the Controller does not approve the proposed new sub-processor and the Processor does not propose another sub-processor, the Controller has the right to terminate this Agreement with immediate effect and is entitled to claim from the Processor all damages suffered as a result thereof.

SAFEGUARDS

Article 4

The Processor is obliged to implement and maintain at all times all appropriate operational, management, physical, technical and organisational measures of personal data protection and to prevent the occurrence and/or to take urgent and suitable measures in order to remedy and/or prevent any accidental, unauthorised or unlawful destruction, loss, alteration, disclosure of, or access to personal data.

The Processor is obliged to perform a risk-based analysis associated with its personal data processing activities. In the analysis itself, particular attention should be paid to the processing of special categories of personal data and to any such processing that allows an automated evaluation of the personal aspects relating to a data subject, i.e. profiling.

Based on the analysis, the Processor is obliged to implement and maintain the appropriate security measures i.e. technical and organisational measures required to ensure the security of personal data, as well as the security of the processing centres, premises, equipment, systems and programmes to mitigate the identified risks.

The Processor is obliged to limit the access to personal data only to authorised and specific trained employees and/or other persons that carry out for the Processor the activities concerning the personal data whose processing is the object of this Agreement, based on the „need to know“ principle, and who are bound by appropriate obligations of confidentiality.

The Processor is obliged to implement at least the following measures:

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- i. the ability to ensure at all times the ongoing confidentiality, integrity, availability and resilience of personal data processing systems;
- ii. the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident;
- iii. a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing of personal data.

Upon request of the Controller, the Processor is obliged to submit, in writing, information on the applicable security measures used to protect personal data ("Security Policy") thus enabling the Controller to ensure that the above indicated technical and organisational measures have been taken, including the information on where the personal data are stored, who has the right of access to personal data, and how he/she exercises that right.

The Processor is obliged to communicate to the Controller any and all changes to security measures that, in its reasonable opinion, may affect the security of personal data.

The Processor is obliged to maintain records of all personal data processing activities, in electronic form, in accordance with the regulations governing personal data protection ("Records").

Upon request of the Controller, the Processor is obliged to make the above Records available to the Controller, within a reasonable time but not later than 36 hours after the Controller's request for delivery of such Records.

CONTROLLER'S RIGHTS AND OBLIGATIONS COMMUNICATION OF A PERSONAL DATA BREACH

Article 5

In the case of a personal data breach, the Processor shall without undue delay, and not later than thirty-six (36) hours after having become aware of it, notify in writing the personal data breach to the Controller.

The notification of a personal data breach shall contain at least:

- i. description of the nature of the personal data breach including, where possible, the categories and approximate number of data subjects concerned and the categories and approximate number of personal data records concerned;
- ii. the name and contact details of the person from whom more information can be obtained;
- iii. description of the likely consequences of the personal data breach;
- iv. description of the measures taken or proposed to be taken by the Processor to address the personal data breach, including, where appropriate, measures to mitigate its possible adverse effects.

The Processor is obliged to document any personal data breach, comprising the circumstances in which it occurred, its effects and the remedial actions taken.

RIGHT OF SUPERVISION

Article 6

The Processor undertakes to make available to the Controller all information necessary to demonstrate compliance with the obligations herein.

The Processor undertakes to enable **the Controller** or another auditor mandated by the Controller to conduct audits and inspections in order to verify the applied level of protection and security of the processing of personal data and to verify compliance of the Processor's processes with the provisions hereof.

For the avoidance of any doubt, the Processor shall make sure that the Controller has equivalent rights when carrying out supervision of the actions taken by the Processor's sub-processors.

Each Party shall bear its own expenses incurred in connection with the supervision. Any such supervision conducted by the Controller shall not limit in any way whatsoever the liability of the Processor and/or its sub-processors for the

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fulfilment of the obligations in accordance with the Main Agreement.

The Processor shall make available to the Controller all information necessary to demonstrate compliance with the obligations herein.

ACCESS TO PERSONAL DATA AND OBLIGATION OF PROVISION OF ASSISTANCE

Article 7

If requested so by the Controller in order to comply with the regulations governing personal data protection, the Processor shall, without any additional cost, (i) submit to the Controller without delay a copy of personal data of natural persons in a structured, commonly used and machine-readable format or, at its own discretion, give the Controller access to personal data at any time, (ii) rectify, stop processing or erase personal data, and (iii) provide the Controller with all information, assistance and cooperation with regard to the processing of personal data within the scope of the Main Agreement, upon reasonable request of the Controller; (iv) provide the Controller with any other reasonable assistance in order to respond to requests from natural persons who are exercising their rights provided for by the regulations governing personal data protection.

The Processor shall also provide the Controller with reasonable assistance, taking into account the nature and scope of the processing of personal data, in order for the Controller to fulfil its obligations: (i) the carrying-out of a data protection impact assessment, (ii) the notification of personal data breaches to supervisory authorities and the communication of such personal data breaches to data subjects, and (iii) prior consultation of the competent regulatory body, as provided for by the regulations governing personal data protection.

The Processor undertakes to cooperate with all competent national and international supervisory authorities and agencies with regard to the processing of personal data within the scope of this Agreement and/or the Main Agreement.

LOCATION OF DATA PROCESSING

Article 8

The Parties hereto agree that the processing of data shall be carried out at the official premises of the processor in its registered seat. The Processor undertakes to inform the Controller beforehand of any change of the location of processing activities.

The Processor is not allowed to process personal data in countries outside the European Economic Area without prior written authorisation of the Controller, and the Processor shall make sure that its sub-processors do the same. In the event that the services are provided outside the European Economic Area, the Parties hereto shall ensure compliance with regulations governing personal data protection with regard to any such transfer of personal data and they undertake to execute related agreements.

The Controller has the right, at any time and during the entire duration of the business relationship between the Parties, to require from the Processor to enter into appropriate agreements for any such transfer of personal data to third countries, which is accepted by the Processor. Notwithstanding the existence of prior written authorisation of the Controller, the Processor is obliged to process personal data in accordance with the regulations governing personal data protection, in such a manner that the Controller is not put in a position that may violate the applicable law.

TERM AND TERMINATION OF THE AGREEMENT

Article 9

This Agreement shall remain in force during the entire duration of the business relationship between the Parties and even after the end of their business relationship to the extent necessary for the activities to be carried out due to expiration or termination of the business relationship between the Parties hereto (e.g. return of personal data to the Controller and/or deletion of personal data if requested by the Controller), or even longer, if required by the applicable law.

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The Processor is authorised to process personal data on behalf of the Controller only during the existence of the business relationship between the Parties.

In the event of termination or expiration of the business relationship between the Parties, the Processor is obliged to return or destroy all personal data in hard-copy form and to permanently delete all personal data on hardware, including data storage media, and on software used by the Processor for processing personal data, all in accordance with the written instructions of the Controller, which shall be confirmed by the Processor in writing. This paragraph is applicable as long as it is not in conflict with other legal obligations of the Processor.

The Processor shall make sure that its sub-processors act as specified above.

NOTICES

Article 10

Unless expressly provided otherwise herein, all notices and other communications required or permitted under this Agreement shall be in writing and in Croatian and shall be given to the other Party either by personal delivery or by email to the addresses as indicated below or to such other address as the Parties shall designate in a notice.

For CONTROLLER:
Contact person:
Email:
Phone:

For PROCESSOR:
Contact person:
Email:
Phone:

Unless expressly provided otherwise herein, every binding notice associated with this Agreement shall be deemed received and legally binding as of (i) the date of personal delivery to the receiving Party against acknowledgment of receipt and/or, in the case of refusal to accept delivery, the date of the delivery attempt (ii) the date of email's sending.

FINAL PROVISIONS

Article 11

This Agreement is applicable to every personal data processing within the scope of all services provided within the business relationship between the Parties.

The governing law applicable to this Agreement is the law of Croatia.

Any dispute with regard to factual aspects or the application of substantive law, arising out of or in connection with interpretation, fulfilment, non-fulfilment or termination of this Agreement, shall be resolved amicably by the Parties, in good faith and as soon as possible. Should they fail to resolve the dispute amicably, they agree on the *in rem* jurisdiction of the competent court in Pazin.

The Parties hereto agree that this Agreement reflects their true and free will and that it is not entered into by means of the threat or use of force or deception.

This Agreement is made in 2 (two) identical copies, whereof 1 (one) copy for each Party.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the date first above written.

For the Controller
COMPANY
NAME AND SURNAME, title

For the Processor
COMPANY
NAME AND SURNAME, title

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