

# **Data processing contract**

concluded between

**[Client / Controller]**

Address

[hereinafter referred to as the "Client"]

and

**PTM EDV Systeme Ges.m.b.H.**

FN 173442m

Bahnhofgürtel 59

8020 Graz

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## 1. Definitions

|                     |  |
|---------------------|--|
| Contractor          | The contractor is PTM EDV Systeme Ges.m.b.H. with its registered office in Graz and the business address Bahnhofgürtel 59, 8020 Graz, registered in the commercial register under FN 173442m, competent court Landesgericht für Zivilrechtssachen Graz   |
| Processor           | According to Article 4 (8) of the GDPR, a processor is a natural or legal person, authority, institution or other body that processes personal data on behalf of the controller.   |
| Main contract       | The main contract is the Subscription Contract concluded between the Contractor and the Client.  |
| Processing          | According to Article 4 (2) of the GDPR, processing is any operation or set of operations which is performed upon personal data, whether or not by automatic means, such as collection, recording, organisation, filing, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction. |
| Controller          | In accordance with Article 4 (7) of the GDPR, the controller is the body which alone or jointly with other controllers determines the purposes and means of the processing of personal data.   |
| Contract            | The contract is this data processing contract.   |
| Contracting parties | The contracting parties are the Contractor and the Client.   |

## 2. Subject matter of the contract

- 2.1. The Contractor shall provide services (provision of software) for the Client on the basis of or in connection with the main contract. In doing so, the contractor obtains access to personal data and processes these exclusively on behalf of and according to the directives of the client. The scope and purpose of the data processing by the Contractor are set out in the main contract. This contract forms an annex to the respective main contract. The Client is and remains the data controller in the sense of data protection law.

- 2.2. The parties conclude the present contract to specify the mutual rights and obligations under data protection law. In case of doubt, the provisions of this contract shall take precedence over the provisions of the main contract.
- 2.3. The provisions of this contract shall apply to operations related to the main contract in which the contractor and its employees or persons commissioned by the contractor come into contact with personal data originating from the client or collected for the client.
- 2.4. The Contractor may only process and use personal data provided to it by the Client for its own purposes and on its own responsibility within the scope of what is permissible under data protection law, in particular if a legal permission provision or a declaration of consent by the data subject permits this. This contract (in particular the provisions regarding the right to issue instructions in point 5) does not apply to such data processing.

### 3. Type of data processed, group of data subjects

- 3.1. In the course of the execution of the services, the Contractor shall have access to specified personal data, which shall be defined in more detail by the Client in the DocumentsCorePack TEMPLATE as well as AttachmentExtractor. These data may also include special categories of personal data.
- 3.2. The group of persons affected is also shown in the DocumentsCorePack TEMPLATE as well as AttachmentExtractor.

### 4. Duration of the agreement

**Link to main contract:** The term of this contract is based on the term of the main contract, provided that no further obligations or rights of termination arise from the following provisions.

### 5. Right to issue instructions

- 5.1. The Contractor may only collect, process or use personal data within the framework of the main contract, on the basis of the DocumentsCorePack template and in accordance with the Client's directives; this applies in particular with regard to the transfer of personal data to a third country or to an international organisation. If the Contractor is required by the law of the European Union or the Member States to which it is subject to carry out further processing, it shall notify the Client of these legal requirements prior to the processing, unless the law in question prohibits such notification on the grounds of an important public interest.
- 5.2. The Client's directives are stipulated on the one hand by this contract itself and may thereafter be amended, supplemented or replaced by the Client in writing or in text form by individual directives (individual directives). The Client is entitled to issue corresponding directives at any time. This also includes directives with regard to the correction, deletion and blocking of data.

- 5.3. All directives issued shall be documented by both the Client and the Contractor. If the Contractor is of the opinion that a directive of the Client violates data protection provisions, it shall notify the Client thereof without delay.

## 6. Responsibility of the Client

- 6.1. The Client shall be solely responsible for the lawfulness of the processing of the personal data and for the protection of the rights of the data subjects in the relationship between the parties. Should third parties assert claims against the Contractor on the basis of the processing of personal data in accordance with this agreement, the Client shall indemnify the Contractor against all such claims upon first request.
- 6.2. The Client shall be responsible for providing the Contractor with the personal data in sufficient time for the performance of the services under the main contract and shall be responsible for the quality of the personal data. The Client shall inform the Contractor immediately and in complete detail if it discovers errors or irregularities with regard to data protection provisions or its directives during the examination of the Contractor's order results.
- 6.3. Upon request, the Client shall provide the Contractor with the information referred to in Article 30(2) of the GDPR, insofar as the Contractor does not have this information itself.
- 6.4. If the Contractor is obliged to provide information about the processing of personal data to a government agency or a person or to otherwise cooperate with such agencies, the Client shall be obliged to support the Contractor upon first request in providing such information or in fulfilling other obligations to cooperate.

## 7. Requirements for the staff

The contractor shall oblige all persons processing personal data to maintain confidentiality with regard to the processing of personal data. Furthermore, § 6 of the Data Protection Act (DSG) concerning the observance of data secrecy shall be complied with.

## 8. Processing security

- 8.1. In accordance with Article 32 of the GDPR, the contractor shall take the necessary and appropriate technical and organisational measures, taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of the processing of the personal data, as well as the varying likelihood and severity of the risk to the rights and freedoms of the data subjects, to ensure a level of protection appropriate to the risk for the personal data processed on behalf of the Client.
- 8.2. The Contractor is permitted to change or adapt technical and organisational measures during the term of the contract as long as they continue to meet the legal requirements. Appendix ./1

shows the technical and organisational measures of the Contractor at the time of the conclusion of this contract.

## 9. Rights of the data subject

- 9.1. The Contractor shall support the Client with technical and organisational measures within the scope of what is reasonable to comply with its obligation to respond to requests to exercise the rights of data subjects to which they are entitled.
- 9.2. Insofar as a data subject asserts a request to exercise the rights to which he or she is entitled directly against the contractor, the contractor shall forward this request to the client in a reasonable time.
- 9.3. The Contractor shall provide the Client with information about the personal data stored, the recipients of personal data to whom the Contractor passes it on in accordance with the order and the purpose of the storage, insofar as the Client does not have this information itself or is able to obtain it itself.
- 9.4. The Contractor shall enable the Client to correct, delete or restrict the further processing of personal data within the scope of what is reasonable and necessary against compensation of the expenses and costs to be proven incurred by the Contractor in this respect or, at the request of the Client, to carry out the correction, blocking or restriction of further processing itself if and to the extent that this is impossible for the Client itself.
- 9.5. Insofar as the data subject has a right to data portability vis-à-vis the Client with regard to the processed personal data in accordance with Art. 20 GDPR. The Contractor shall support the Client within the scope of what is reasonable and necessary in providing the personal data in a common and machine-readable format against reimbursement of the expenses and costs to be proven incurred by the Contractor as a result, if the Client cannot obtain the data otherwise.

## 10. Notification and support obligations of the Contractor

- 10.1. Insofar as the Client is subject to a legal obligation to report or notify a breach of the protection of personal data (in particular in accordance with Art. 33, 34 GDPR), the Contractor shall inform the Client in a reasonable time about any reportable events in its area of responsibility. The Contractor shall support the Client in fulfilling the reporting and notification obligations at the Client's request within the scope of what is reasonable and necessary against reimbursement of the expenses and costs to be proven incurred by the Contractor as a result.
- 10.2. The Contractor shall support the Client within the scope of what is reasonable and required against reimbursement of the expenses and costs to be proven incurred by the Contractor in connection with any data protection impact assessments to be carried out by the Client and any subsequent consultations with the supervisory authorities in accordance with Art. 35, 36 of the GDPR.

## 11. Data deletion

- 11.1. The Contractor shall delete the personal data processed on behalf of the Client after the termination of this contract, unless the Contractor is legally obliged to continue storing the personal data.
- 11.2. Documentation which serves as proof of the proper processing of personal data in accordance with the order may be retained by the Contractor even after the end of the contract - insofar as this is legally allowed.

## 12. Evidence and verifications

- 12.1. The Contractor shall provide the Client, at the Client's request, with all information necessary and available to the Contractor to prove compliance with its obligations under this Contract.
- 12.2. The Client shall be entitled to check the Contractor with regard to compliance with the provisions of this contract, in particular the implementation of the technical and organisational measures; including by means of inspections.
- 12.3. In order to carry out inspections in accordance with point 12.2, the Client is entitled to enter the Contractor's business premises where data is processed on behalf of the Client during normal business hours (Mondays to Fridays from 10 a.m. to 6 p.m.) after sufficient advance notice in accordance with point 11.5, at its own expense, without disrupting the course of business and with strict confidentiality of the Contractor's business and trade secrets.
- 12.4. The Contractor shall be entitled, at its own discretion taking into account the Client's legal obligations, not to disclose information which is sensitive with regard to the Contractor's business or if the Contractor would violate legal or other contractual regulations by disclosing it. The Client is not entitled to have access to data or information on other clients of the Contractor, to information regarding costs, to quality review and contract management reports and to any other confidential data of the Contractor which is not directly relevant to the agreed review purposes.
- 12.5. The Client shall inform the Contractor in sufficient time (as a rule at least two weeks in advance) about all circumstances connected with the performance of the inspection. The Client may carry out one inspection per calendar year. Further inspections shall be carried out against reimbursement of costs and after consultation with the contractor.
- 12.6. If the Client commissions a third party to carry out the inspection, the Client must oblige the third party in writing in the same way as the Client is obliged to the Contractor on the basis of this point 12 of this contract. In addition, the Client shall oblige the third party to maintain secrecy and confidentiality, unless the third party is subject to a professional confidentiality obligation. At the request of the Contractor, the Client shall immediately submit the obligation



agreements with the third party to the Contractor. The Client may not commission a competitor of the Contractor with the inspection.

### 13. Control rights of the Client

- 13.1. The Client shall satisfy itself of the technical and organisational measures of the Contractor prior to the commencement of data processing (and thereafter regularly at reasonable intervals). For this purpose, it may, in particular, obtain information from the Contractor, have existing test certificates from experts, certifications or internal audits presented to it or, after due consultation, personally inspect the Contractor's technical and organisational measures during normal business hours or have them inspected by a competent third party, provided that this third party is not in a competitive relationship with the Contractor. The Client shall only carry out inspections to the extent necessary and shall not disproportionately disrupt the Contractor's operating processes.
- 13.2. The Contractor shall be obliged to provide the Client, at the Client's verbal or written request and within a period of ten working days, with all information and evidence required to carry out a check of the Contractor's technical and organisational measures.
- 13.3. The Client shall document the inspection results and inform the Contractor thereof. In the event of errors or irregularities discovered by the Client, in particular during the inspection of order results, the Client shall inform the Contractor without delay. If any facts are ascertained during the inspection, the future avoidance of which requires changes to the ordered procedure, the Client shall inform the Contractor of the necessary procedural changes without delay. The contractor is obliged to implement the changes thus notified without delay.
- 13.4. At the Client's request, the Contractor shall immediately provide the Client with a comprehensive and up-to-date data protection and security concept for the commissioned processing as well as on persons authorised to access the data.
- 13.5. The Contractor shall provide the Client with evidence of the obligation of the employees in accordance with item 6.4 upon request.

### 14. Use of further processors

- 14.1. The contractually agreed services or the partial services described below shall be performed with the involvement of the subcontractors named in Appendix ./2. Within the scope of its contractual obligations, the Contractor shall be authorised to establish further subcontracting relations with subcontractors ("subcontractor relations"), provided that it notifies the Client thereof in advance.
- 14.2. The Contractor shall inform the Client of any intended changes with regard to the involvement or replacement of further processors.



- 14.3. The Contractor is obliged to carefully select subcontractors according to their suitability and reliability. When engaging subcontractors, the Contractor shall commit them in accordance with the provisions of this Contract and shall ensure that the Client can exercise its rights under this Contract (in particular its audit and inspection rights) directly against the subcontractors. If subcontractors in a third country are to be involved, the Contractor shall ensure that an appropriate level of data protection is guaranteed at the respective subcontractor (e.g. by concluding a contract based on the EU standard data protection clauses). Upon request, the Contractor shall provide the Client with evidence of the conclusion of the aforementioned contracts with its subcontractors.

## 15. Liability

- 15.1. The liability of the Contractor under this contract shall be subject to the exclusions and limitations of liability under the main contract and the General Terms and Conditions. Insofar as third parties assert claims against the Contractor which have their cause in a culpable breach by the Client of this Contract or of one of its obligations as a data protection officer, the Client shall indemnify and hold the Contractor harmless from and against such claims upon first request. The indemnity and hold harmless shall apply to any conceivable (indirect) damage as well as to any expenses, (consultancy) costs, etc.
- 15.2. The Client is obliged to indemnify and hold harmless the Contractor also from any fines imposed on the Contractor to the extent that the Client bears a share of the responsibility for the penalty sanctioned by the fine.
- 15.3. The indemnity and hold harmless shall apply to any conceivable (indirect) damage as well as to any expenses, (consultancy) costs, etc.

## 16. Applicable law and place of jurisdiction

- 16.1. This contract and its validity, interpretation and performance shall be governed by Austrian law, excluding the conflict of laws rules and the UN Convention on Contracts for the International Sale of Goods.
- 16.2. Any dispute or claim arising out of or in connection with this contract or relating to its formation, validity, breach, termination or invalidity shall be subject to the exclusive jurisdiction of the responsible court for 8010 Graz.

## 17. Miscellaneous

- 17.1. If any provision of this contract is or becomes invalid or unenforceable in whole or in part, this shall not affect the validity or enforceability of the remaining provisions of this contract. Instead of the invalid provision, the valid provision shall be deemed agreed which corresponds to the

sense and purpose of the invalid provision; the same shall apply accordingly to any loopholes in this contract.

- 17.2. Amendments or supplements to this contract shall only be valid if agreed in writing and signed by the contracting parties (or the relevant universal or individual legal successors). This shall also apply to amendments or additions to this provision. Amendments to this contract shall also require the approval of the responsible bodies of the company.

## 18. Appendixes

All appendixes attached to this Contract form an integral part of this Contract:

|               |  |
|---------------|--|
| Appendix ./1: | Technical and organisational measures          |
| Appendix ./2: | Authorised further processors (sub-processors) |

Technical and organisational measures

The processor shall in particular implement the following **technical and organisational measures**:

- a. Control access to data processing facilities, e.g. through regulated key management, security doors or security personnel;
- b. Control of access to data processing systems, e.g. through passwords, automatic blocking mechanisms, two-factor authentication, encryption of data carriers, Virtual Private Network (VPN) or logging of user logins;
- c. Control of access to data within the system, e.g. through standard authorisation profiles on a "need to know basis", network segmentation, partial access authorisations or logging of accesses;
- d. Pseudonymisation of personal data;
- e. Classification of data as secret, confidential, internal or public;
- f. Protective measures to prevent the destruction or loss of personal data, e.g. through safekeeping in safes or security cabinets, storage networks, software and hardware protection;
- g. Protection against unauthorised reading, copying, modification or removal during data transmission, e.g. through encryption, virtual private networks (VPN), ISDN wall, content filter for incoming and outgoing data or electronic signature as well as lockable transport containers;
- h. Verification of whether and by whom personal data have been entered into data processing systems, changed or deleted, e.g. by logging, use of electronic signatures, regulation of access authorisations;
- i. Separation of data processing for different purposes.

**Approved further processors (subcontractors)**

The following companies are subcontractors approved by the client

(i) Microsoft Corp.

(ii) [•]