

## **Agreement on commissioned data processing of personal data**

### **According to Art. 28 DS-GVO**

between

**Customer (Client)**

and

**FireStorm ISP GmbH, Kirchenrainstrasse 27, 8632 Tann,  
Switzerland (contractor)**

**Version May 2019**



## **1. Subject and duration of the order**

The object and duration of the order are determined entirely by the information provided in the respective contractual relationship. The contractor processes personal data for the client in terms of Art.4 No.2 and Art.28 DS-GVO on the basis of this order.

## **2. Scope, nature and purpose of the collection, processing or use of data**

The object of the contract is the processing of data by means of collecting, recording, organizing, arranging, storing, adapting or modifying, reading, querying, using, disclosing by means of transmission, dissemination or any other form of providing, matching or linking, limiting, deleting or destroying data exclusively in connection with the services listed in the main contract.

The contractual services are provided by the contractor himself exclusively in member states of the EU, Switzerland or in a state that is a signatory to the Agreement on the European Economic Area. A relocation of the services or parts of the work to a third country may only take place if the special requirements of Art. 44 ff. DSGVO are fulfilled and this is absolutely necessary for the provision of the services.

Changes to the object of processing and changes to procedures shall be agreed jointly.

## **3. Type of processing**

The Contractor processes personal data of the Client's customers or employees of the Client.

### **3.1. Type of personal data**

Personal data required for the execution of the service:

- Person master data
- Communication data
- Contract master data
- Log data
- If required by the main contract: billing and payment data
- Where required by governmental regulations: proof of identity data.



### 3.2. Circle of parties concerned

Customers, employees and suppliers of the client

## **4. Rights and duties of the client**

- 4.1. The client alone is responsible for assessing the permissibility of data collection/processing/use and for safeguarding the rights of the persons concerned.
- 4.2. The client shall place all orders or partial orders in writing or in a documented electronic format.
- 4.3. The Customer has the right to issue written instructions to the Contractor with regard to the processing of personal data provided by him.
- 4.4. The client is entitled to ensure that the technical and organizational measures taken by the contractor and the obligations arising from this contract are complied with before the start of data processing and regularly thereafter. The client may also have this inspection carried out by a third party. The customer is obliged to compensate the contractor for the expenses incurred by the contractor in the course of enabling such inspections.
- 4.5. The client shall inform the contractor immediately if he discovers errors or irregularities in the examination of the order results.
- 4.6. The Customer is obliged to treat all knowledge of business secrets and data security measures of the Contractor obtained within the scope of the contractual relationship as confidential. This obligation shall remain in force even after termination of this contract.



## 5. Duties of the contractor

- 5.1. The contractor processes personal data exclusively within the framework of the agreements made, the legal basis and according to the instructions of the customer in accordance with the DSGVO (see Annex 2 DSGVO), unless he is obliged to process the data by the law of the European Union or the member state to which the processor is subject (e.g. investigations by criminal prosecution and state protection authorities). If this is the case, the processor must notify the controller of these legal requirements prior to processing, unless such notification is prohibited by the law in question due to an important public interest (Art. 28 para. 3 sentence 2 lit. a DSGVO).
- 5.2. The Contractor shall correct, delete and block personal data from the contractual relationship or restrict its processing if the Client demands this in the agreement made or an instruction and no legitimate interests of the Contractor conflict with this. Insofar as a person concerned contacts the contractor directly in this respect, the contractor shall forward this request to the customer without delay. Contractor shall be entitled to make such changes itself if Customer does not respond to corresponding requests from the persons concerned.
- 5.3. No copies or duplicates of the data will be made without the knowledge of the client. Excluded from this are back-up copies, insofar as they are necessary to ensure proper data processing, as well as data which is required in order to comply with statutory storage obligations.
- 5.4. The Contractor shall immediately notify the Customer if, in his opinion, an instruction issued by the Customer violates statutory provisions. The contractor is entitled to suspend the execution of the relevant instruction until it is confirmed or changed by the person responsible at the customer.
- 5.5. The Contractor agrees that the Client - after an appointment has been made - is entitled to check compliance with this agreement to the necessary extent in accordance with Art 28 DSGVO either himself or through third parties commissioned by the Client. The contractor undertakes to provide the customer with the necessary information and to prove that the technical and organizational measures have been implemented.



- 5.6. After completion of the contractual work, the Contractor shall delete or destroy / have destroyed in accordance with data protection laws all data, documents and created processing or usage results that come into its possession in connection with the contractual relationship, unless there is a legal or factual reason to the contrary.
- 5.7. At the contractor as data protection officer  
Mr. Christian Geissler appointed.  
The client must be informed immediately of any change in the data protection officer.
- 5.8. The Contractor confirms that he is aware of the relevant data protection regulations of the DSGVO (German Data Protection Ordinance) for processing order data and that he complies with his corresponding obligations.
- 5.9. The Contractor undertakes to maintain confidentiality in the processing of the Client's personal data. This confidentiality continues to exist after the termination of the contract.
- 5.10. The Contractor warrants that it will familiarize the employees employed in the performance of the work with the provisions of data protection applicable to them before commencing work and that it will oblige them to maintain secrecy both during the period of their employment and after termination of the employment relationship. The Contractor shall monitor compliance with the data protection regulations specified here in his company.
- 5.11. The Contractor may only provide information about personal data from the contractual relationship to third parties or the person concerned after prior instruction or written consent from the Customer, or if this information is provided due to legal obligations.

## 6. Subcontracting relationships

- 6.1. The use of subcontractors for the processing of data such as registries, registrars and data escrow providers are permitted due to the specifics of the domain name administration and registration process and does not require further consent if the use of such subcontractors is necessary for the performance of the contract under the main contract. The approval required under Art. 28 para. 2 and para. 9 DSGVO is hereby granted.
- 6.2. Name and address as well as the intended activity of the subcontractor can be found on the respective information pages of the special TLDs (Switch, DENIC, nic.at, ICANN). The Contractor shall ensure that he has carefully selected the subcontractor with special regard to the suitability of the technical and organizational measures taken by him in accordance with Art. 32 DSGVO.
- 6.3. Subcontractors in third countries may only be commissioned if the special requirements of Art. 44 ff DSGVO are met (e.g. Commission's decision on appropriateness, standard data protection clauses, approved rules of conduct), or if their commissioning is absolutely necessary for the provision of the service by the contractor.
- 6.4. The Contractor shall ensure that the regulations agreed between the Client and the Contractor also apply to subcontractors as far as possible and shall regularly check that the subcontractor(s) comply with their obligations.



- 6.5. In the contract with the subcontractor, the details shall be specified in such a concrete manner that the responsibilities of the contractor and the subcontractor are clearly separated. If several subcontractors are used, this shall also apply to the responsibilities between these subcontractors.
- 6.6. The subcontractors currently involved in the processing of personal data for the contractor are listed in the respective service description or result from the service offered. The client agrees to their assignment.
- 6.7. The processor shall inform the responsible person in advance of any change regarding the involvement of new subcontractors or the replacement of existing ones, which shall give the principal, the opportunity to object to such changes (Art. 28 para. 2 sentence 2 DSGVO).

## **7. Technical-organizational measures according to Art. 32 DS-GVO (Art.28 para.3 sentence 2 lit.c DS-GVO)**

- 7.1. The Contractor shall ensure a level of protection for the specific commissioned data processing that is commensurate with the risk to the rights and freedoms of the natural persons affected by the processing. To this end, at least the protection objectives of confidentiality, availability and integrity of the systems and services, as well as their resilience with regard to the type, scope, circumstances and purpose of the processing operations shall be taken into account in such a way that the risk is permanently contained by means of suitable technical and organizational remedial measures.
- 7.2. The data protection concept used by the Contractor has implemented its technical and organizational measures in accordance with the state of the art, taking into account the protection goals and with special consideration of the IT systems and processing procedures used by the Contractor.
- 7.3. The contractor observes the principles of proper data processing. He guarantees the contractually agreed and legally required data security measures.
- 7.4. The technical and organizational measures can be adapted in the course of the contractual relationship to technical and organizational developments. The Contractor shall implement procedures for regular monitoring, evaluation and assessment of the effectiveness of the measures taken to ensure the security of the processing. The Contractor shall notify the Client in documented form of any significant changes.
- 7.5. The Contractor shall notify the Client immediately of any disruptions, violations by the Contractor or the persons employed by the Contractor against data protection regulations or the stipulations made in the order as well as suspicion of data protection violations or irregularities in the processing of personal data. This shall apply in particular with regard to any reporting and notification obligations of the Client pursuant to Art. 33 and 34 DSGVO. The contractor assures to support the customer adequately in his duties according to Art. 33 and 34 DSGVO.

## **8. Liability**

- 8.1. The client is responsible to the data subject for the compensation of damages suffered by a data subject due to data processing that is inadmissible or incorrect for data protection purposes within the scope of the contractual relationship. The



recourse of the client for such damages of third parties at the contractor is only permissible if the contractor has violated this contract grossly negligently or intentionally.

- 8.2. In all other respects, the liability regulations for the individual services of the contractor are agreed in the main contract in the general terms and conditions.

## **9. Special right of termination**

- 9.1. In the event of serious violations of the agreements of this contract, in particular of compliance with applicable data protection regulations, the client shall be granted a special right of termination. Further sanctions, especially contractual penalties, are excluded.
- 9.2. In particular, a serious breach shall be deemed to have occurred if the contractor fails or has failed to perform the obligations set out in this agreement to a considerable extent.
- 9.3. In the case of minor violations, the customer shall set the contractor a reasonable deadline for remedy. If the remedy does not take place in time, the client is entitled to extraordinary termination as described in this section.



## **10. Miscellaneous**

- 10.1. Both parties are obliged to treat confidentially all knowledge of business secrets and data security measures of the other party obtained within the scope of the contractual relationship, even after the termination of the contract. If there is any doubt as to whether any information is subject to the obligation of secrecy, it shall be treated as confidential until the other party releases it in writing.
- 10.2. The written form is required for collateral agreements.
- 10.3. Terms used in this Agreement shall be understood in accordance with their definitions in the EU Data Protection Basic Regulation.
- 10.4. A fee for this order is not required. Insofar as the client requires support in accordance with section 5.2 for the purpose of answering inquiries from affected persons, he must reimburse the costs incurred as a result. Insofar as the customer will exercise rights of control according to section 4, the amount of the fee to be agreed in advance shall be based on an hourly rate to be determined for the employee seconded by the contractor for the support. If the customer gives the contractor instructions in accordance with section 4, he shall reimburse the costs arising from these instructions.

## **11. Effectiveness of the agreement**

Should individual parts of the agreement be invalid or unenforceable, this shall not affect the validity of the rest of the agreement. The invalid or unenforceable provision shall be replaced by a valid and enforceable provision whose validity comes as close as possible to the economic objective which the parties pursued with the invalid or unenforceable provision.

## **12. Term of contract**

This Agreement is dependent on the existence of a principal contractual relationship pursuant to Section 1. The termination or any other ending of the main contractual relationship according to clause 1 shall simultaneously terminate this Agreement. The right to terminate this agreement in isolation and extraordinary termination of this agreement as well as the exercise of legal rights of withdrawal specifically for the agreement remain unaffected.