

## General Agreement Individual regarding the consignment processing of personal data

Between

Customer

**- Principal -**

And

d.vinci HR-Systems GmbH  
Nagelsweg 37-39  
20097 Hamburg  
Germany

**- Contractor -**

### 1. Subject of the order

- 1) The Principal commissions the Contractor to process personal data on a contractual basis. With this General Agreement ("General Agreement"), the Parties determine the contractual foundation upon which the Contractor's tasks are based. The General Agreement is supplemented for each specific processing activity with an individual agreement ("Supplemental Individual Agreement"), which contains the necessary legal specifications for this processing activity and determines supplemental technical and organisational measures to be taken by the Contractor (TOMs to the Individual Agreement"). Supplemental Individual Agreements and TOMs to Individual Agreements are jointly referred to as "Individual Agreements".
- 2) In the event of contradictions between an Individual Agreement and this General Agreement, the General Agreement is subordinate.

## 2. Principal's responsibilities

- 1) The Principal is the responsible entity for the consignment processing of the personal data in terms of Article 4 No. 7 GDPR (General Data Protection Regulations) subject to the respective Individual Agreement. The Principal is responsible for the compliance with the statutory regulations for data protection, particularly for the legality of the data transfer to the Contractor as well as the legality of the data processing.
- 2) The Principal is responsible for the decision regarding the admissibility of the data processing in the individual case. The Contractor is entitled and obligated to point out any concerns regarding the legal admissibility of the data processing.

## 3. Principal's right to issue instructions

- 1) The Principal is entitled to issue supplemental instructions regarding the type, extent and procedure of the personal data processing at any time. Instructions can be issued verbally or in text form. Verbal instructions have to be confirmed with the Contractor in writing without undue delay. The Principal's employees specified in the respective Individual Agreement are authorised to issue instructions.
- 2) The Contractor shall inform the Principal in writing and without undue delay if he is of the opinion that an instruction issued by the Principal violates statutory regulations. The Contractor is entitled to suspend the execution of the respective instruction until it has been confirmed or amended by the Principal.

## 4. Principal's rights of control, measures by supervisory authorities

- 1) The Principal is entitled to all control rights necessary to maintain his obligations according to the Data Protection Act.
- 2) Upon demand by the Principal, he is to be granted access and insight to the Contractor's data processing systems used for the purpose of this Agreement during normal business hours. Such on-site controls are limited to one audit per calendar year unless the Principal has an important reason to suspect the violation of the specifications in this Agreement, or it is required for the Principal's compliance with statutory obligations or the control is conducted by the supervisory authority.
- 3) An on-site control requires prior announcement with an appropriate notice period, unless an important reason exists. In the process, the Principal shall ensure that the controls are only conducted at a necessary extent in order to prevent any unreasonable disturbance of the Contractor's operating procedures due to the controls. The Contractor has a right to veto the commissioning of the auditor if the auditor appointed by the Principal is a competitor of the Contractor.
- 4) The Contractor is entitled to carry out the on-site controls subject to the execution of a declaration of confidentiality in terms of the personal data and the industrial secrets of other customers and the established technical and organisational measures. This does not apply for an activity by the supervisory authority.
- 5) The Contractor is entitled to demand appropriate compensation for support in the execution of an on-site control, unless the Contractor is responsible for the reason for the control.

## 5. Contractor's obligations

- 1) Any processing of personal data by the Contractor or any sub-processor subject to this General Agreement occurs exclusively based on this General Agreement, the respective Individual Agreement as well as the instructions issued by the Principal. It does not apply if the laws of the European Union or the member states by which the Contractor is governed dictate a different processing; in such a case, the Contractor shall inform the Principal of these legal requirements prior to the processing, unless the governing law prohibits such notification due to an important public interest.
- 2) The Contractor shall design the internal organisation in his sphere of responsibility in the context of processing personal data in such a manner that it complies with the statutory requirements as well as the requirements agreed upon in this Agreement and/or the respective Individual Agreement.
- 3) The Principal has the right to change the technical and organisational measures agreed upon in the Individual Agreement, whereby it must be ensured that the respectively agreed level of protection is not compromised. The Contractor has to inform the Principal of essential changes without prompt.
- 4) The Contractor corrects or deletes personal data if so instructed by the Principal and if this is covered by the instruction scope. If the erasure or respective limitation of the data processing according to the data protection regulations is not possible, the Contractor shall undertake the destruction of data carriers and other materials according to the data protection regulations based on an Individual Agreement of the Principal, or he shall return these data carriers to the Principal, unless otherwise agreed.
- 5) The Contractor confirms that he has appointed an operational data protection controller and shall specify him in text form to the Principal.
- 6) The Contractor has to obligate persons authorised to process the personal data to confidentiality or ensure that they are subject to an appropriate statutory obligation for confidentiality. This has to be verified to the Principal upon request.
- 7) The Contractor is obligated to inform the Principal immediately of any (impending) violation of data protection regulations or the contractual agreements and/or the instructions issued by the Principal, which has occurred or may occur in the course of data processing by him or other persons assigned with the processing.
- 8) In the event of inadmissible processing or disclosure of personal data, the Contractor shall take the necessary measures to secure the data and reduce possible adverse consequences for the affected persons and shall coordinate further measures with the Principal without undue delay.
- 9) The Contractor supports the Principal with the compliance with the obligations specified in Articles 32 to 36 GDPR regarding the security of personal data, notification duties in case of data breaches, data protection follow-up estimations and prior consultation.

## 6. Contractor's obligation to produce evidence

- 1) The Contractor shall verify to the Principal the compliance with the obligations specified in this General Agreement and/or the respective Individual Agreement with suitable means.

- 2) The Contractor is entitled to refer to appropriate certifications or other suitable verifications for the verification of the compliance with the respectively agreed technical and organisational measures and their efficacy. Certifications according to Article 40 GDPR or verifications according to Article 42 GDPR are particularly appropriate. Further verifications include a certification according to ISO 27001 or ISO 27017, an ISO 27001 certification based on the IT principle, a certification according to approved and suitable industry standards or verification according to SOC / PS 951. The certification and audit procedures have to be conducted by an approved independent third party. The Contractor has to provide his certificates or audit verifications. In addition, other suitable means (e.g. activity reports of the data protection controller or excerpts from auditor reports) can be provided to verify compliance with the agreed protective measures by the Contractor.

## 7. Sub-processor

- 1) The Contractor is obligated to inform the Principal of the commissioning of sub-processors or changes in the commissioning of sub-processors without undue delay. In the case of an important reason, the Principal can object to the commissioning of the sub-processor in writing within four weeks following the acknowledgement. A particularly important reason exists in the event of justified doubts about whether or not the sub-processor provides the agreed service in accordance with the applicable statutory regulations pertaining to data protection or the Agreements between the Parties.
- 2) The Contractor shall impose upon possible sub-processors the same data protection obligations, which are specified in this General Agreement and/or the respective Individual Agreement or any other legal instrument between the Principal and the Contractor by way of a contract or another legal instrument according to the laws of the European Union or the laws of the respective member state.
- 3) Services utilised by the Contractor as mere ancillary services to exercise commercial activities are not considered sub-contractual relations in terms of the regulation above. For example, these include cleaning services, mere telecommunication services without specific reference to the services provided by the Contractor for the Principal, postal and courier services, transport services and monitoring services. Nonetheless, the Contractor is obligated to ensure that appropriate precautions and technical and organisational measures are taken in case of ancillary services provided by third parties to ensure the protection of personal data.

## 8. Rights of data subjects

- 1) If a data subject contacts the Contractor with the request to correct, erase or provide information, he shall refer the data subject to the Principal if an allocation to the Principal is possible according to the information of the data subject and to transmit the request to the Principal without undue delay. If the Contractor's participation for the implementation of the request - specifically information, correction, suspension or deletion - is required, the Contractor shall take the respectively necessary measures in accordance with the Principal's instructions.
- 2) If a data subject asserts claims against the Principal based on the regulations regarding liability and compensation of the Data Protection Act, the Contractor is obligated to support the Principal in the defence to the best of his ability in exchange for appropriate remuneration.

## 9. Contractor's remuneration

Unless explicitly agreed otherwise, the Contractor is not entitled to separate remuneration for the services provided in accordance with this Agreement.

## 10. Liability

- 1) The liability of the Parties is based on the stipulations of the respective Agreement according to which the data is processed. The direct liability of the Parties based on statutory regulations of the Data Protection Act toward a data subject remains unaffected.
- 2) Internally, the Contractor is responsible to the Principal for the compensation of damages suffered by a data subject or a third party due to the inadmissible or incorrect collection, processing or usage of personal data by the Contractor or a sub-processor assigned by the Contractor according to the Data Protection Regulations of the EU or the EU member states, if the Contractor is responsible for the respective violation and if the violation is not based on the Principal's instruction. In this context, the Contractor shall fully exempt the Principal from any third party claims. This also applies for all costs pertaining to legal defence and litigation as well as any fines and sanctions imposed upon the Principal.

## 11. Duration and termination of the Agreement, right of retention

- 1) This General Agreement is concluded for an indefinite period.
- 2) As long as there is no Individual Agreement to this General Agreement, it can be terminated by either Party with a notice period of one month to the end of the month.
- 3) As soon as an Individual Agreement has been concluded as a supplement to this General Agreement, this General Agreement can only be terminated together with the Individual Agreement(s) in accordance with the notification periods specified therein or for an important reason.

## 12. Final conditions

- 1) This Agreement including any Individual Agreements contains all understandings between the Parties with respect to the contractual subject. Any deviating subsidiary agreements and earlier agreements regarding the contractual subject are hereby invalid.
- 2) Changes and amendments to this agreement are required in written form, unless a stricter form is prescribed by law. This also applies for any waiver of this written-form-agreement.
- 3) The General Terms and Conditions of the parties do not apply to this Agreement. This also applies if their incorporation in subsequent documents, which are associated with this Agreement (e.g. retrieval of services), was pointed out without an objection.
- 4) If one of the conditions of this Agreement should be or become entirely or partially invalid, ineffective or unfeasible ("incorrect provision"), or if a necessary regulation has not been included, the effectiveness and feasibility of all remaining conditions of this Agreement is not affected. In the event of an ineffective or unfeasible regulation or a gap in the Agreement, the Parties shall agree on a legally admissible regulation closest to the Contractual Parties' intent and purpose of this Agreement to replace the ineffective condition or fill the loophole. If the invalidity of a condition is based on a measure of performance or time (period of notice or deadline) specified therein, the condition is deemed agreed upon with a legally admissible measure closest to the original specification.

- 5) This Agreement is solely subject to the laws of the Federal Republic of Germany; unless mandatory, Private International Law does not apply.



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Customer

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d.vinci HR-Systems GmbH