

## PROCESSING AGREEMENT

between

company name

address

zip code, city

country

- hereinafter "**Processor**" -

and

HAAS + SOHN OFENTECHNIK GMBH

Urstein Nord 67

5412 Puch bei Hallein

Österreich

- hereinafter "**Controller**" -

- collectively referred to as the "**Parties**" -

conclude the following processing agreement (the "**Agreement**")  
which governs the processing by the Processor of the Controller's personal data.

## § 1 Preamble

Controller and Processor have concluded a contract ("Main Contract") on the provision of certain services. The Parties conclude this Agreement to ensure that personal data are processed by Processor on behalf of the Controller subject to applicable data protection laws.

## § 2 Definitions

All definitions used herein shall have the meanings assigned to these in the General Data Protection Regulation (EU/2016/679):

- a. "data protection laws" means the EU General Data Protection Regulation (EU/2016/679) and the national data protection laws applicable to the Controller's activities in connection with the Main Contract.
- b. "personal data" means any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;
- c. "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, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;
- d. "controller" means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data; where the purposes and means of such processing are determined by Union or Member State law, the controller or the specific criteria for its nomination may be provided for by Union or Member State;
- e. "processor" means a natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller;
- f. "recipient" means a natural or legal person, public authority, agency or another body, to which the personal data are disclosed, whether a third party or not. However, public authorities which may receive personal data in the framework of a particular inquiry in accordance with Union or Member State law shall not be regarded as recipients; the processing of those data by those public authorities shall be in compliance with the applicable data protection rules according to the purposes of the processing;
- g. "third party" means a natural or legal person, public authority, agency or body other than the data subject, controller, processor and persons who, under the direct authority of the controller or processor, are authorised to process personal data;
- h. "personal data breach" means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed;
- i. "supervisory authority" means an independent public authority which is established by a Member State pursuant to Article 51;

- j. "cross-border processing" means either processing of personal data which takes place in the context of the activities of establishments in more than one Member State of a controller or processor in the Union where the controller or processor is established in more than one Member State or processing of personal data which takes place in the context of the activities of a single establishment of a controller or processor in the Union but which substantially affects or is likely to substantially affect data subjects in more than one Member State;

### **§ 3 Processing of personal data**

The processor makes available an App as white label version to the controller. The personal data provided by the users of the App are saved electronically and processed in cooperation with IoT Internet of Things GmbH, Münchner Bundesstraße 8/2, 5020 Salzburg, Österreich and EDIS GmbH, Hauptplatz 3, 8010 Graz, Österreich (hostprovider) for the purpose of performing the contract for the duration of the contractual services. Furthermore, the processor processes personal data in the form of DAQ data for the purpose of support and maintenance as well as system monitoring. Data are processed in consideration of the data minimization principle until the expiration of the legal deadlines for warranty and damages, at the latest, and are deleted after these deadlines have expired. Personal data may be disclosed within the group in a particular case for the purpose of support and corrective action and to fulfil legal obligations.

### **§ 4 Controller's rights and obligations**

It is the Controller's sole responsibility to define the content of the contractual processing of personal data, the resulting risks, the commissioned processing operations, and the required level of protection. These include in particular:

- a) to assess the legitimacy of the processing operations in question
- b) to issue and to document instructions to the Processor
- c) to carry out audits - including inspections - to monitor compliance with the contractual obligations and the obligations under data protection laws by the Processor
- d) to check, to examine and to accept as well as to evaluate constantly the technical and organisational measures implemented by the Processor
- e) to meet the rights of data subjects according to the data protection laws.

The Controller undertakes to process personal data exclusively in compliance with applicable data protection laws.

### **§ 5 Processor's rights and obligations**

#### **a) Obligation to follow instructions**

The Processor processes the personal data only on documented and written instructions from the Controller and only subject to applicable data protection laws. Furthermore, the Processor processes the data sets made available only in such a manner which is necessary to fulfil its obligations under this Agreement and the Main Contract. Should the Processor be required under data protection laws to process the data made available to him under this contractual relationship, such data may be processed without documented instructions by way of exception. In such a case, the Processor shall inform the Controller of

that legal requirement before processing, unless that law prohibits such information on important grounds of public interest.

## **b) Confidentiality of data**

The Processor ensures that the persons authorised to process personal have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality- Furthermore, the Processor ensures that this obligation of confidentiality survives also after termination of employment contracts and service contracts.

## **c) Notification duty**

The Processor is subject to comprehensive notification duties, including but not limited to:

### **(i) notification of a data breach**

The Processor shall notify the Controller without delay after becoming aware of a personal data breach as well as justified cases of suspected personal data breaches.

### **(ii) notification of failures of processing of personal data and breaches of data protection laws**

The Controller shall be informed without delay if there are any significant failure in the processing of personal data and if the Processor or engaged other processors breach data protection laws or the rights and obligations set forth herein.

### **(iii) notification that instructions are in breach of data protection laws**

The Processor shall inform the Controller without delay if it considers that any instruction from the Controller infringes applicable data protection laws.

### **(iv) notification of communications by data subjects**

The Processor will inform the Controller without delay of any requests, complaints, notices, inquiries or any other communications of a data subject relating to the processing operations.

### **(v) notification of investigations by authorities**

The contractor will inform the customer without delay of inspections or measures of supervisory authorities or other third parties to the extent related to the processing operations.

## **d) Security of processing**

In consideration of the type of processing operations and the information available to it, the Processor will assist the Controller in the fulfilment of the obligations laid down in Articles 32 to 36 GDPR.

## **e) Technical and organisational measures**

The Processor will implement all technical and organisational measures required pursuant to Article 32 GDPR. A list of measures implemented on the date of signing of this Agreement shall be provided by the Processor upon request. The Controller has examined the technical and organisational measures and confirmed these to constitute sufficient guarantees. The Controller is responsible for the evaluation and updates of these measures. Where agreed in writing, for example in the Main Contract, the Processor shall reasonably evaluate and update these measures.

## **f) Rights of data subjects**

Taking into account the nature of processing, the Processor assists 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 guaranteed under the data protection laws (right of information, right to rectification and erasure of data, right to be forgotten, right to data portability, right to restriction of processing and right to object). In particular, the Processor will make available to the Controller information and documents in the form of data records to allow the Controller to respond to these requests within the legal deadlines set forth in the data protection laws. The Processor may request a reasonable compensation for making available these data records.

## **g) Evidence of compliance with audits**

The Processor provides the Controller with all necessary information to demonstrate the fulfilment of the obligations set out in this paragraph and allows and assists in examinations - including inspections - which are carried out by the Controller or by another auditor appointed by it. The Controller shall notify the Processor at least three weeks in advance of an inspection. The Processor shall cooperate in these inspections, but may not charge a corresponding compensation for time spent to the Controller.

## **h) Fulfilment of obligations set forth in data protection laws**

The Processor guarantees to comply with his obligations laid down in data protection laws. Furthermore, the Processor assures to assist the Controller in the compliance with data protection laws and to make available to him any data and information which the Controller needs for the compliance with data protection laws. The Processor may request a reasonable compensation for making available these data records.

## **§ 6 Other processors**

The Processor may generally engage other sub-contractors as processors to process personal data. However, in each particular case, the appointment of other processors must be notified to the controller in due time to allow the controller to object. If the Processor engages another processor for carrying out specific processing activities on behalf of the Controller, the same data protection obligations as set out in the contract between the Parties shall be imposed on that other processor by way of a written contract, in particular providing sufficient guarantees to implement appropriate technical and organisational measures in such a manner that the processing will meet the requirements of the Regulation. Where the other processor fails to fulfil its data protection obligations, the Processor shall remain fully liable to the Controller for the performance of that other processor's obligations.

The Controller specifically approves the sub-processors mentioned in § 3.

## **§ 7 International data transfer**

The Processor may transfer business data only to third parties within the European Economic Area (EEA) or to a country which guarantees an adequate level of protection according to applicable data protection laws. Business data may be transferred to third countries only with the prior separate or general written

consent of the Controller. Furthermore, any data transfer must ensure compliance with applicable data protection laws (e.g. through conclusion of EU standard contractual clauses). Should the Processor intend to transfer data to non-EEA countries ("international data transfer") after conclusion of this Processing Agreement or to countries without adequate level of protection, it shall promptly notify the Controller in writing.

## **§ 8 Term and termination**

- (1) In case of termination of the Main Contract, this Processing Agreement will survive as long as the Processor processes business data on behalf of the Controller.
- (2) After completion of the processing operations, the Processor shall either erase or return all personal data at the Controller's election, unless there is an obligation under Union law or the laws of the Member States to store the personal data. The Processor may request a reasonable compensation in return for any effort in connection with returning the data records.
- (3) The Processor's comprehensive confidentiality obligation will survive without limitation after termination of this Processing Agreement.

## **§ 9 Final provisions**

- (1) The terms and conditions of the Processor are applicable.
- (2) Any form of addendum, both prior to and during the term of this Agreement, is valid only if made in writing. This shall also apply to any waiver of the written form requirement.
- (3) Should any term hereof be invalid or unenforceable, the invalid term shall be replaced by a valid term which closest reflects its economic purpose.
- (4) All legal relationships and circumstances between the Parties shall exclusively be governed by and construed in accordance with Austrian law, to the exclusion of international conflict of law rules.
- (5) All disputes arising between the Parties shall be referred to the Austrian court having jurisdiction *ratione materiae* for Puch bei Hallein.