

# **General Terms for Data Processors**

**of**

## **ERSTE Immobilien Kapitalanlagegesellschaft m.b.H.**

### **1. Scope**

- a) The following provisions apply to all processing of personal data pursuant to Art 28 (3) GDPR commissioned by **ERSTE Immobilien Kapitalanlagegesellschaft m.b.H.**, Am Belvedere 1, A-1100 Vienna (called the "Client" in the following) and completed by the processor (called the "Contractor" in the following).
- b) The Contractor provides services for the Client on the basis of a separately concluded contract; these services consist of or include the processing of personal data pursuant to Art 4 items 1 and 2 of the General Data Protection Regulation (GDPR). This supplementary Agreement forms the specific legal basis for data processing pursuant to Art (3) GDPR.
- c) This shall have no effect on the underlying contractual agreement in so far as the provisions of the underlying agreement do not contravene the provisions of this Agreement; the latter shall take precedence in full in the event of conflicts and shall be interpreted as valid for the purposes of the GDPR and accompanying national laws (especially the Data Protection Act – DSGVO).

### **2. Concrete data processing/limitations**

- a) The maximum extent of the data applications covered by this Agreement is set forth in the underlying contract. Unless the Contractor is legally obligated to certain types of processing, it shall use the personal data solely to fulfil its contractual obligations to the Client. The Contractor shall inform the

Client in advance as permitted by law before fulfilling any legal processing obligations.

- b) The Contractor may under no circumstances use the data for its own or third-party purposes or pass the data on to third parties without the written instructions or authorisation of the Client. The Contractor may only make copies or duplicates of the data without the express authorisation of the Client when required to ensure proper processing (backups) or to comply with legal retention obligations.
- c) The data shall be processed within the countries subject to the GDPR unless the Client has given its written authorisation to transmit the data to non-EU countries and the specific conditions in Art 44 ff GDPR are complied with.
- d) The data shall be processed in a manner that enables the Client to fulfil its data protection obligations towards the data subject and towards the authorities at all times.

### **3. Rights and obligations of the Client**

- a) The Client is the data controller pursuant to Art 4 item 7 GDPR in reference to the provided personal data. The Client is obligated to ensure that the commissioned data processing is lawful and that the purposes are legitimate, and must ensure that all data protection regulations are complied with and all data subject rights are protected vis-à-vis third parties.
- b) In this context, the Client has comprehensive rights to issue instructions to the Contractor with regards to the type and scope of data

processing. Should the Contractor believe that such an instruction may be in violation of the applicable data protection laws, the Contractor must warn the Client immediately (Art 28 [3] third sentence GDPR) and can suspend execution until confirmation or amendment; obviously unlawful instructions shall not be followed.

- c) Any decisions about the limitation, erasure, or rectification of data sets shall be made at the sole discretion of the Client. The Contractor shall never act of its own accord in this context, but shall act solely on the basis of documented instructions from the Client. Should data subjects contact the Contractor directly in this context, they shall be referred immediately to the Client.

#### **4. Obligations of the Contractor**

- a) The Contractor is responsible for proper data processing in accordance with the valid data protection laws. The Contractor confirms that it is familiar with all pertinent regulations and especially follows the principles of proper data processing pursuant to Art 5 GDPR.
- b) The Contractor guarantees that all personnel assigned and used to process data are suitably qualified and are bound by a suitable non-disclosure agreement.
- c) The Contractor shall take all measures necessary pursuant to Art 32 GDPR to ensure the security of the data processing (Art 28 [3] c GDPR). In particular, the Contractor shall take all organisational and technical measures to ensure the integrity of the processing, prevent the loss of personal data, and to prevent unauthorised access to this data.
- d) The Contractor shall support the Client to the best of its ability in the fulfilment of data access obligations and other data subject rights that are exercised (Art 28 [3] e GDPR).

In particular, the Contractor shall create the technical and organisational prerequisites necessary to enable the Client to fulfil its obligations to data subjects pursuant to Art 15 ff GDPR in good time.

- e) The Contractor shall also support the Client to the best of its ability in fulfilling its obligations pursuant to Art 30–36 GDPR (Art 28 [3] f GDPR).
- f) The Contractor shall inform the Client immediately of every violation of the protection or security of the data processed for the Client, in any case within 24 hours of discovery. For this, especially the scope of the affected data sets/categories and persons, the likely consequences of the data protection violation, the implemented and planned countermeasures, and the contact data of a responsible officer or other contact of the Contractor for further information/coordination shall be provided.

#### **5. Use of (sub-)processors**

- a) The use of third parties/subcontractors by the Contractor for the fulfilment of this Agreement shall require the written authorisation of the Client when the provision of the principal service(s) themselves is to be contractually outsourced or delegated. Subcontractor agreements for general assistance provided by third parties for telecommunications, shipping/transport, IT maintenance, user services, and the like shall be exempt from this provision, though risk-appropriate and legally compliant contractual agreements and control measures must be ensured in such cases.
- b) The Client shall be informed of any intended changes in sub-processors (addition of new or replacement of existing subcontractors) in sufficient time to allow the Client to raise any objections against certain sub-processors before implementation.

- c) If the Contractor employs a sub-processor, the Contractor shall conclude a written or electronic contract with this subcontractor that subjects the subcontractor to the same obligations vis-à-vis the Client as assumed by the Contractor in this Agreement.
- d) In any case, the Contractor shall be fully liable to the Client for all actions and omissions by its sub-processor that are relevant to data protection.

#### **6. Proof of compliance/control authority**

- a) The Contractor must be able to prove proper fulfilment of the assumed obligations to the Client at any time during the term of the Agreement and for a period of 12 months after the termination of the underlying contract.
- b) The Client shall be entitled to conduct audits or to have audits conducted by qualified experts in coordination with the Contractor, and to evaluate compliance with the provisions of this Agreement by performing random checks at the premises of the Contractor. The Client shall not exercise this right more than once per contract year without specific grounds.
- c) The Contractor shall facilitate this and shall assist with the attainment of the intended audit and control objectives. The Contractor shall provide the Client with all necessary information upon request, and especially provide proof of the implementation of the technical and organisational security measures. Such proof can be provided in the form of compliance with approved rules of conduct pursuant to Art 40 GDPR, certification through an approved procedure pursuant to Art 42 GDPR, or current certificates or reports from independent entities (such as financial auditors, internal auditing departments, data protection officers, IT security departments, or quality auditors).

#### **7. Contract term/termination**

- a) This Agreement shall come into force upon signing by both parties or express consent (for example by means of electronic correspondence) and shall be considered to be a side letter to the underlying contract, and shall thus apply for as long as the Contractor provides the data-protection-relevant services in the underlying contract for the Client. It shall end automatically when the underlying legal relationship is terminated (for any reason whatsoever).
- b) Both parties shall be entitled to terminate this Agreement with immediate effect at any time in the event of material violations of the Agreement or pertinent objective law by the other party. In particular, the Client shall be entitled to terminate this Agreement if the Contractor refuses to implement agreed/required security measures, to follow lawful instructions, or to permit the Client to conduct reasonable checks. In the event of minor infractions, the offending party shall be given a period of at least 14 days to remedy the situation. Should the offending party fail to comply, this shall be treated as a serious violation.
- c) Such an extraordinary termination shall also apply to the underlying contract whose object was covered by this Agreement, regardless of the termination provisions in the underlying contract. The underlying contract shall only be continued in accordance with its other provisions with regards to any performance components that can be separated in an economically sensible manner.
- d) The Contractor shall return all information, documents, the results of processing and use, and all datasets associated with the contractual relationship (including test and reject material) to the Client or destroy such in accordance with the data protection laws

with the prior authorisation of the Client after the conclusion of the agreed services (by no later than the termination of the contract), or beforehand when requested to do so by the Client. The Contractor shall have all of the above returned or destroyed by its sub-processors, as well. The deletion report shall be submitted to the Client upon request. The non-disclosure obligation shall apply for an unlimited period of time after the end of the contract.

## 8. Liability

- a) Each contracting party shall bear full and unlimited liability for all damages resulting from the violation of its data protection obligations within its contractually and legally defined area of responsibility and shall fully indemnify the other contracting party against any claims from third parties.
- b) To the extent permitted by law, this damage compensation obligation shall especially include government fines levied against one contracting party due to the actions of the other contracting party.
- c) The Contractor shall bear the burden of proof vis-à-vis the Client in proving that damages arising from a processing service provided by the Contractor were not caused by reasons under its control.

## 9. Final provisions

- a) Amendments and supplements to this Agreement, including dispensing with the necessity for written form, shall be made in writing. An electronic message to the last known (e-mail) address shall fulfil the requirement of written form.
- b) The contracting parties shall hold the existence and contents of this Agreement in the strictest of confidence unless they are subject to legal information or disclosure requirements. In cases of doubt, all knowledge of internal company dealings,

business processes, and data protection measures of the other party gained during the contractual relationship shall also be held in the strictest of confidence after the end of the contractual relationship.

- c) Should individual parts of this Agreement be or become ineffective, this shall have no effect on the remaining provisions. Any ineffective provision shall be replaced with a lawful and effective provision that comes as close as possible to the original intent of the ineffective provision. This shall also apply to missing provisions.
- d) This Agreement shall be subject solely to Austrian material law and pertinent Union law, in particular the GDPR. The sole place of jurisdiction is Vienna.

Vienna, 24 May 2018