

# European Capital of Democracy

## Data Processing Agreement

This Agreement is entered into on *(insert date)* in *(insert location)*.

between

### **ECoD gemeinnützige GmbH**

Ungargasse 59-61, 1030 Vienna, Austria (hereinafter referred to as “ECoD NPO”)

and

*(insert title, full name and passport number)*

currently living at

*(insert address)*

(hereinafter referred to as “Processor”)

together as the “**Parties**”.

### **WHEREAS:**

- (A) ECoD NPO acts as a Data Controller as per Article 4 no. 7 GDPR.
- (B) The Processor acts as processor as per Article 4 no. 8 GDPR.
- (C) ECoD NPO wishes to subcontract certain Services, which imply the processing of personal data, to the Data Processor.
- (D) The Parties seek to implement a data processing agreement that complies with the requirements of the current legal framework in relation to data processing. In particular, it shall comply with the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).
- (E) The Parties wish to lay down their rights and obligations.

## IT IS AGREED AS FOLLOWS:

### 1. Definitions and Interpretation

- 1.1 Unless otherwise defined herein, capitalised terms and expressions used in this Agreement shall have the following meaning:
- 1.1.1 “Agreement” means this Data Processing Agreement and all Schedules;
- 1.1.2 “Contracted Processor” means a Subprocessor, in particular in accordance with Article 28 no. 2 and 4 GDPR;
- 1.1.3 “Data Protection Laws” means EU Data Protection Laws and, to the extent applicable, the data protection or privacy laws of any other country;
- 1.1.4 “EEA” means the European Economic Area;
- 1.1.5 “EU Data Protection Laws” means EU Directive 95/46/EC, as transposed into domestic legislation of each Member State and as amended, replaced or superseded from time to time, including by the GDPR and laws implementing or supplementing the GDPR;
- 1.1.6 “GDPR” means EU General Data Protection Regulation 2016/679;
- 1.1.7 “Data Transfer” means:
- 1.1.7.1 a transfer of Company Personal Data to a recipient, including a processor, outside the EU/EEA;  
or
- 1.1.7.2 a transfer of ECoD NPO Personal Data from ECoD NPO to a Contracted Processor; or
- 1.1.7.3 an onward transfer of ECoD NPO Personal Data from a Contracted Processor to a Subcontracted Processor, or between two establishments of a Contracted Processor, in each case, where such transfer would be prohibited by Data Protection Laws (or by the terms of data transfer agreements put in place to address the data transfer restrictions of Data Protection Laws);
- 1.1.8 “Services” means the Jury work, consulting, (event) management, organisational and other support services ECoD NPO provides.
- 1.1.9 “Subprocessor” means any person appointed by or on behalf of the Processor to process Personal Data on behalf of ECoD NPO in connection with the Agreement.
- 1.1.10 “ECoD NPO Personal Data” means all Data which is transferred, disclosed or otherwise made available to the Processor in the framework of this Agreement.
- 1.2 The terms, “Commission”, “Controller”, “Data Subject”, “Member State”, “Personal Data”, “Personal Data Breach”, “Processing” and “Supervisory Authority” shall have the same meaning as in the GDPR, and their cognate terms shall be construed accordingly.

## **2. Processing of ECoD NPO Personal Data**

2.1 The Processor shall:

2.1.1 comply with all applicable Data Protection Laws in the Processing of ECoD NPO Personal Data; and

2.1.2 not Process ECoD NPO Personal Data other than on the specific, documented instructions of ECoD NPO.

2.2 ECoD NPO instructs the Processor to process ECoD NPO Personal Data.

## **3. Processor Personnel**

Processor shall take reasonable steps to ensure the reliability of any employee, agent or contractor of any Contracted Processor who may have access to ECoD NPO Personal Data, ensuring in each case that access is strictly limited to those individuals who need to know/access the relevant ECoD NPO Personal Data, as strictly necessary for the purposes of the Jury work, and to comply with Data Protection Laws in the context of that individual's duties to the Contracted Processor, ensuring that all such individuals are subject to confidentiality undertakings or professional or statutory obligations of confidentiality.

## **4. Security**

4.1 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, Processor shall in relation to ECoD NPO Personal Data implement appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32 no. 1 of the GDPR.

4.2 In assessing the appropriate level of security, the Processor shall take account the risks that are presented by Processing, in particular from a Personal Data Breach.

## **5. Sub Processing**

5.1 The Processor shall not appoint (or disclose any ECoD NPO Personal Data to) any Subprocessor unless requested or authorised by ECoD NPO in writing.

## **6. Data Subject Rights**

6.1 Taking into account the nature of the Processing, the Processor shall assist ECoD NPO by implementing appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of ECoD NPO obligations, as reasonably understood by ECoD NPO, to respond to Data Subject rights requests under the Data Protection Laws.

6.2 The Processor shall:

6.2.1 promptly notify ECoD NPO if it receives a request from a Data Subject under any Data Protection Law in respect of ECoD NPO Personal Data; and

6.2.2 ensure that it does not respond to that request except on the documented instructions of ECoD NPO or as required by Data Protection Laws to which the Processor is subject, in which case Processor shall to the extent permitted by Data Protection Laws inform ECoD NPO of that legal requirement before the Contracted Processor responds to the request.

## **7. Personal Data Breach**

7.1 Processor shall notify ECoD NPO without undue delay upon the Processor becoming aware of a Personal Data Breach affecting ECoD NPO Personal Data, providing ECoD NPO with sufficient information as per Article 33 and 34 GDPR to allow ECoD NPO to meet any obligations to report or inform Data Subjects of the Personal Data Breach under the Data Protection Laws.

7.2 The Processor shall cooperate with ECoD NPO and take reasonable commercial steps as directed by ECoD NPO to assist in the investigation, mitigation and remediation of each such Personal Data Breach.

## **8. Data Protection Impact Assessment and Prior Consultation**

8.1 The Processor shall provide reasonable assistance to ECoD NPO with any data protection impact assessments, and prior consultations with Supervising Authorities or other competent data privacy authorities, which ECoD NPO reasonably considers to be required by Article 35 or 36 of the GDPR or equivalent provisions of any other Data Protection Law, in each case solely in relation to Processing of ECoD NPO Personal Data by, and taking into account the nature of the Processing and information available to, the Contracted Processors.

## **9. Deletion or return of ECoD NPO Personal Data**

9.1 Subject to this section 9, the Processor shall promptly and in any event within 10 business days of the date of cessation of any Services involving the Processing of ECoD NPO Personal Data (the "Cessation Date") or on specific request by ECoD NPO, delete and procure the deletion of all copies of those ECoD NPO Personal Data. On request, the Processor undertakes to provide to ECoD NPO a written confirmation of deletion.

## **10. Audit Rights**

10.1 Subject to this section 10, Processor shall make available to ECoD NPO on request all information necessary to demonstrate compliance with this Agreement, and shall allow for and contribute to audits, including inspections, by ECoD NPO or an auditor mandated by ECoD NPO in relation to the Processing of ECoD NPO Personal Data by the Contracted Processors.

10.2 Information and audit rights of ECoD NPO only arise under section 10.1 to the extent that the Agreement does not otherwise give them information and audit rights meeting the relevant requirements of Data Protection Law.

## 11. Data Transfer

11.1 The Processor may not transfer or authorise the transfer of ECoD NPO Personal Data to countries outside the EU and/or the European Economic Area (EEA) without the prior written consent of ECoD NPO. If Personal Data processed under this Agreement is transferred from a country within the European Economic Area to a country outside the European Economic Area, the Parties shall ensure that the Personal Data are adequately protected. To achieve this, the Parties shall, unless agreed otherwise, rely on EU approved standard contractual clauses for the transfer of personal data.

## 12. General Terms

12.1 Confidentiality. Each Party must keep this Agreement and information it receives about the other Party and its business in connection with this Agreement (“Confidential Information”) confidential and must not use or disclose that Confidential Information without the prior written consent of the other Party except to the extent that:

12.1.1 disclosure is required by law;

12.1.2 the relevant information is already in the public domain.

12.2 All notices and communications given under this Agreement must be in writing and will be delivered personally, sent by post or sent by email to the address or email address set out in the heading of this Agreement or other such address as notified from time to time by the Parties changing address.

12.3 Remuneration: all and any remuneration for the implementation of the present Agreement shall be governed exclusively by the agreement/s the Parties have concluded on the provision of Services. The Processor shall not be entitled to any additional or separate remuneration for the implementation of the present Agreement. All and any remuneration for the implementation of the present Agreement shall be covered by the remuneration agreed on the provision of Services.

## 13. Governing Law and Jurisdiction

13.1 This Agreement is governed by the laws of Austria (not including the conflict of law provisions and the UN-CISG).

13.2 Any dispute arising in connection with this Agreement, which the Parties will not be able to resolve amicably, will be submitted to the exclusive jurisdiction of the courts of Vienna, Austria.

**IN WITNESS WHEREOF, this Agreement is entered into with effect from the date first set out below.**

For ECoD NPO:

\_\_\_\_\_  
Signature, date, location (city/town) and full name and function

Processor:

\_\_\_\_\_  
Signature, date, location (city/town) and full name and function