

Data protection agreement for address usage business

between

XXXXXXX

(District court of XXXXX, registry number: XXXXXX)

hereinafter referred to as the “advertiser”

and

XXXXXXX

(District court of XXXXX, registry number: XXXXXX)

hereinafter referred to as the “address owner”

Preliminary remarks

This contract is based on agreements between the contractual parties on the use of addresses belonging to the address owner by the advertiser in so-called “letter shop processes” after weighing the interests of the data subjects and the parties. The advertiser shall not receive access to the addresses which the address owner makes available for advertisements of the advertiser in this respect. The two parties pursue different purposes. However, in the opinion of data protection authorities, in individual cases the advertiser and address owner may bear joint responsibility in the sense of Art. 26 of the GDPR, in particular if the advertiser has established criteria for selecting addresses or if the address owner or list broker chooses specified selection criteria.

Therefore, as a precaution, the parties are concluding this agreement in the sense of Art. 26 GDPR.

In accordance with Art. 26 para. 1 GDPR, two or more controllers who jointly define the purposes and means of data processing are obligated to conclude an agreement regulating which of them will fulfil which data protection law obligations, in particular when it comes to safeguarding the rights of data subjects and fulfilling the informational obligations under Art. 13 and 14 GDPR. According to Art. 26 para. 2 GDPR, the agreement shall comprehensively reflect the respective positions and relationships between the persons responsible for data subjects.

1. Definitions

For the purposes of this agreement, the definitions of terms on the General Data Protection Regulation (GDPR, (EU) regulation 2016/679) shall apply, along with the following definitions:

List data declaration:

Definition of the rights of use granted and contract processing issued by the address owner in text form; contains, in particular, information on the relevant address data sets (identification such as list names,

descriptions, number of data, type of personal data and the categories of data subjects), identity of the advertising entity, permitted processors and applicable contract processing conditions, as well as the duration of processing, type and purpose of processing in the form of the planned advertisement as well as any categories of recipients of the data. The list data declaration can also be provided in the form of an offer or contract confirmation accepted by the address owner.

Service provider, processor

Contract processor in accordance with Art. 4 no. 8 GDPR who processes the advertising data for the purpose of carrying out dialogue marketing measures or carries out other associated processing (for instance for the purpose of destroying files, computing centre services or call centre services on behalf of the address owner.

DDV-SVE,

DDV self-disclosure declaration

Self-disclosure declaration from the processor to the Deutschen Dialogmarketing Verband e.V. (German Dialogue marketing Association)

2. Object of the agreement

Agreement regulates the purposes and means of data processing and assigned duties, in particular to carry out the obligations of the joint controllers (hereinafter referred to as the “contractual parties” or the “parties) towards data subjects when processing personal data in the course of the planned data processing.

3. Purpose of data processing

The purpose of data processing is to send personalised advertisements by mail from the advertiser to addresses from the address owner’s inventory. Further details on the purpose of processing are provided in the *list data declaration*.

4. Division of tasks, type of data and data subjects

4.1. The advertiser provides the advertising materials (mailing) which are approved by the address owner for use with the data provided by it. The advertiser is solely responsible for ensuring the further legal permissibility of the planned dialogue marketing measure, in particular ensuring permissibility under competition law. This responsibility shall not be affected by the approval of the address owner.

4.2. The address owner shall prepare data in summarised lists (address lists) according to the specifications of the *list data declaration*. These are used by technical service providers that have been approved by the address owner to fulfil the above purpose within the framework of processing permitted by the address owner.

4.3. Approved by the client as *processor* for IT services (DV processor):

any companies that have filed a *DDV-SVE*.

4.4. Approved by the client as processor for letter shop work:

any companies that have filed a *DDV-SVE*.

4.5. The parties hereby agree that the service providers shall work exclusively in a contractual relationship to the address owner under data protection law, and shall be subject only to its instructions under data protection law.

The necessary agreements for contract processing in accordance with Art. 28 GDPR between the address owner and the approved service providers are stated in the AVV regulations provided by the respective service provider for this purpose, which are listed in clauses 4.3 and 4.4. The parties hereby agree that these fulfil statutory requirements.

If not otherwise indicated in the individual order granting rights of use with respect to one of the following definitions for the purposes of this agreement and for the respective contract processing agreement, or unless it provides supplements to it, the following content shall apply pursuant to Art. 28 para. 3 GDPR for each individual order under data protection law:

Type of data:	The data consists of address data sets for persons with a mailing address.
Categories of data subjects:	Customers and prospective buyers of the address owner
Object, type, and purpose	Processing of the personal address data in the sense of Art. 4 no. 2 GDPR shall be carried out as a preparatory IT service or dialogue marketing service. The respective permitted services are listed in clause 4.6. The actual work to be performed from the list in clause 4.7 is stated in the production order.
Duration of processing:	Information on the duration of processing is provided in the <i>list data declaration</i> .

4.6. The following kinds of processing are permitted by the address owner for its databases:

- a) Data conversion / analysis, supplementation, qualification;
- b) Reviewing and correcting mailing information;
- c) Comparisons with the Robinson or Nixie list, comparisons with moving information,
- d) Comparisons with reconciliations;
- e) Comparisons with duplicates;
- f) Splitting into different sections and reducing as well as assigning advertising codes,
- g) Shipping cost optimisation;
- h) Laser printing;
- i) Letter shop work (such as creating personalised mailings, packaging and postal delivery);
- j) Storing temporary data for a term of 6 months from the last agreed usage of the data

And (if ticked off):

Optimisation analyses,

History files,

□ *Storage for address collection or storing temporary files beyond a term of six months from the last agreed data usage as well as querying whether data belongs in the list for identification and forwarding purposes.*

4.7. The advertiser shall issue the commercial order for processing to the respective service provider (*production order*). The advertiser is solely liable to pay compensation to the service provider for the respective order.

4.8. With the commission of the production order to the service provider, the advertiser shall provide the consent of the address owner as its representative that the AVV regulations agreed in clauses 4.3 and 4.4 apply for the permitted processing of the data listed in the individual order. The advertiser shall accept the respective consent of the processor with the regulations selected by the address owner for contract processing in text form, and shall forward this consent to the address owner at its request.

4.9. If the advertiser carries out other kinds of processing (for instance making its own addresses available for processing), then this shall be done through a separate contract processing relationship between the advertiser and service provider, which must be subject to a contract processing agreement which fulfils the respective statutory requirements (cf. clause 11).

4.10. Furthermore, the scope of use is stated in the *list data declaration*.

5. Legality of data processing

5.1. The contractual parties hereby undertake to comply with all statutory data protection provisions. In particular, they shall ensure the legality of data processing carried out under their joint responsibility.

5.2. The address owner guarantees that it has collected the list data legally in compliance with informational obligations, and is entitled to make it available for the purposes underlying this agreement and in the agreed manner. The advertiser guarantees this in relation to any data it makes available, if this is processed for joint purposes.

5.3. The parties assure one another that objections by data subjects from their available addresses have been taken into account whenever possible through reasonable measures before materials are sent, and are taken into consideration equally during the term of processing. In particular, the other respective contractual party must be informed promptly regarding an objection or other request that will impact the further processing of personal data by the other party. Any further agreements on by when objections can be taken into consideration, with the date, are stated in the *list data declaration*.

5.4. The advertiser hereby undertakes to the address owner to not continue processing any selection criteria that have been used and are still assignable to an individual for advertising measures with the provided address lists in conjunction with the personal data of persons who come from the contractual lists. In particular, enriching the data with selection criteria is not permitted, unless the data has been collected by the advertiser directly from the data subject. Processing to check the effectiveness of advertising is excepted, if it can be ensured that this will not result in permanently usable assignment of a selection criteria to a data subject.

6. Data protection impact assessment

6.1. A balancing of interests between the interests of the parties, in particular the legitimate economic interests of the address owner to use the data for third-party advertising purposes, and the legitimate economic interest of the advertiser to gain new customers, each based on Art. 6 para. 1 lit. f GDPR, with the basic rights and freedoms of the data subjects, shall be carried out, and may not identify any obstacles. In particular, no overwhelming interest may be found on the part of the data subjects.

6.2. In addition, a preliminary review conducted by the parties in each individual case must show that the scope, type, circumstances, or purposes of processing likely do not pose any increased risk to the rights and freedoms of the data subjects, and therefore that no data protection impact assessment is required. In particular, the mandatory format of the so-called "letter shop process" regularly ensures that data is not transmitted to advertisers without a decision by the data subject themselves. Instead, the data of data subjects is disclosed exclusively based on the decision of the data subject themselves to react to the advertisement.

6.3. In addition, measures must be taken to keep the level of disturbance low and to enforce the rights of data subjects, in particular by ensuring as well as possible through reconciliations that keep the degree of disturbance low for data subjects, and in particular avoiding double advertisements or use of the data not in line with its intended purpose. Objections to the use of data via a reconciliation must also be taken into consideration. Persons who object to advertisements and have been entered into the relevant Robinson list must also be removed from the shipping recipients through reconciliation.

7. Rights of data subjects

7.1. Data subjects can assert their rights under Art. 15 to 22 GDPR against either of the two contractual parties. A petition based on Art. 15 to 22 GDPR is, therefore, also considered lodged effectively if it is not lodged against the contractual party responsible to carry it out based on the allocation of duties under this agreement.

7.2. The parties agree within the internal relationship with respect to responsibility for petitions based on Art. 15 to 22 GDPR that the requests of the data subjects to exercise their rights shall be fulfilled by the address owner as the joint contact person, since it has sole power over the data on data subjects from its inventory. If requests do not exclusively affect its responsibilities, the advertiser shall inform the data subjects in question, if necessary, carry out tasks directly affecting them (such as providing negative information) and promptly forward the petition with associated data to the address owner for further processing. For the purpose of identifying a data subject as the recipient of a certain advertising campaign and the associated address list, the advertiser is entitled to take advantage of the identification service of the IT service provider commissioned by the address owner (in this case Trebbau GmbH, Cologne) in order to forward the petition of the data subject to the address owner in the relevant legal relationship.

7.3. The contractual party responsible for handling the petitions according to Art. 15 GDPR hereby undertakes to promptly provide the data subjects with the information to which they are entitled under Art. 15 GDPR, at the latest within one month of receiving the petition, or within three months if this term is extended based on Art. 12 para. 3 GDPR.

7.4. If the term is extended, the responsible contractual party shall inform the data subject promptly of the exact relevant reasons for an extension of the term stipulated in Art. 12 para. 2 clause 3 GDPR, and at the latest within one month after receiving the petition. Petitions according to Art. 16 to 22 GDPR shall be fulfilled promptly by the respective responsible contractual party. In case of petitions according to Art. 17 GDPR, the contractual parties hereby

undertake to inform one another mutually before the petition for deletion is fulfilled. The other respective contractual party can object to the deletion for good cause, for instance if they are subject to a statutory retention period for the data to be deleted.

8. Documentation and support obligations

8.1. The contractual parties hereby undertake to complete comprehensive documentation in order to fulfil their accountability obligations under Art. 5 para. 2 GDPR and to store such documentation in accordance with statutory regulations and retention periods. The contractual parties shall undertake appropriate data protection measures (Art. 32 et seqq. GDPR) for this purpose.

8.2. The contractual parties hereby undertake to promptly provide the necessary information to one another from their area of activity. Information shall be provided following a request to do so by the other contractual party, without formal requirements, or shall be provided independently without a request to do so if one contractual party feels the exchange of information is necessary in an individual case. The contractual parties shall, in particular, mutually inform one another promptly and comprehensively, even without a request to do so, if they identify any errors or irregularities with respect to data protection law provisions when reviewing the processing under their joint responsibility. This also applies after the end of the collaboration.

8.3. At the end of the collaboration, the statutory retention periods shall continue to apply. The contractual party assigned to continue storing the business documents after the end of the joint business activities shall provide the other contractual party with the documents free of charge within the retention period if they are required by the other respective contractual party.

9. Delivery of information, printed information on the origins of the data

9.1. The advertiser shall include a notice regarding the origins of the data and the data subject's right to object in the respective advertising mailing, and shall inform the data subjects regarding data transmission to them if necessary. The minimum content of this printed origin information is stated in the definitions in the *list data declaration*.

9.2. the advertiser shall furthermore ensure that the data subjects receive the necessary minimum information (Art. 13 para. 1 GDPR) and any additional information needed to ensure fair and transparent processing (Art. 13 para. 2 and 3 GDPR) at the times specified by law. This shall not apply if and insofar as the data subject already has the information (Art. 13 para. 4 GDPR).

9.3. The advertiser shall inform the data subjects in accordance with Art. 26 para. 2 clause 3 GDPR in a transparent manner regarding the significant contents of the agreement, in particular regarding the distribution of responsibilities between the parties.

9.4. The processing carried out before the data was used in accordance with this agreement and associated informational obligations shall be solely within the scope of responsibility of the party that makes this data available for the purposes of this agreement. The advertiser is solely responsible for carrying out any other further of its own processing of the data of data subjects who react to the advertisement for the specified purposes, and for fulfilling related informational obligations and claims by the data subjects.

10. Reporting obligations

If a contractual party becomes aware of a violation of the protection of personal data subject to Art. 33 GDPR, then it shall contact the other contractual party promptly and submit the information and documents on which the notification is based to the responsible data protection supervisory authority within 72 hours. If Art. 34 GDPR applies, then the contractual parties shall also carry out the informational obligations towards the data subject according to Art. 34 GDPR.

11. Contract processor

If contract processors are used to fulfil processing tasks in accordance with this agreement, then the contractual parties hereby undertake to conclude a contract in accordance with Art. 28 GDPR with the contract processors. The contractual parties hereby undertake to only use the services of contract processors that fulfil the requirements of Art. 28 para. 1 GDPR in order to ensure processing in compliance with the GDPR. The contract processor must have submitted a *DDV-SVE*. This self-disclosure obligation (*DDV-SVE*) contains the regulations on contract processing between the address owner and the processor, if not otherwise specified by the address owner or agreed between the address owner and processor. The parties hereby agree that Trebbau GmbH, Cologne has the qualifications necessary to be a processor. The obligation of the advertiser to only commission the contract processors approved by the address owner to process the data of data subjects for the purposes of this agreement shall remain unaffected.

12. Liability

12.1. Regardless of any statutory external liability, each respective contractual party shall be solely liable for damages attributable to its sphere of responsibility and activity within the internal relationship between the parties. The other respective party must be released from payment claims by third parties. The release shall include the necessary costs of legal defence.

12.2. Both parties shall be equally liable for ensuring the effectiveness of this agreement and for the consequences of any legal violations resulting if it is not effective, unless the lack of effectiveness is a result of a violation of contractual obligations by one party, in particular the obligation to provide true and complete information.

13. Term of the agreement

This agreement shall be concluded for an unlimited term, and shall end at the end of joint business activities or termination by one party, which must be issued in writing.

14. Final provisions

14.1. If individual provisions of this agreement are or become invalid, or if there is a loophole, then the other provisions shall remain unaffected. In this case, the contractual parties are obligated to replace the invalid regulation with a contractual regulation coming as close as possible to the purpose of the invalid and/or missing regulation and best fulfilling the requirements of Art. 26 GDPR.

14. 2. Otherwise the regulations concluded between the parties on choice of law and any agreements on place of jurisdiction also apply to this agreement.

14.3. In case of doubt, only German law applies - if permissible.

Place, Date

Place, Date

Stamp/signature of advertiser

Stamp/signature of address owner