proficio

GENERAL TERMS AND CONDITIONS

1. INTRODUCTORY PROVISIONS

1.1. These General Terms and Conditions (hereinafter referred to as the "GTC") are binding contractual terms and conditions applying to the legal relations arising from the provision of online marketing services by Proficio Marketing s.r.o., Company ID: 017 49 315, with its registered office at Anglická 140/20, Vinohrady, 120 00 Praha 2, registered under file number C 417660 maintained by the Municipal Court in Prague. (hereinafter referred to as the "Provider").

1.2. These GTC are an integral part of the agreements that the Provider concludes with its customers (hereinafter referred to as the "Client") and that expressly refer to these GTC (hereinafter referred to as the "Agreement").

1.3. These GTC contain the following definitions:

1.3.1. **Copyrighted Work** means work according to Section 8.1 of the GTC.

1.3.2. **Copyright Act** means Act No. 121/2000 Coll., on copyright and copyright-related rights and on amendments to certain Acts (Copyright Act).

1.3.3. **Media Plan** has the meaning given in Section 2.1. of the GTC.

1.3.4. **Offer** means the Provider's offer based on the Client's Inquiry under Section 5.1.2 of the GTC.

1.3.5. **Civil Code** means Act No. 89/2012 Coll., the Civil Code, as amended.

1.3.6. Conditions mean **Annex No. 1** to the GTC – Conditions of the Processing of Personal Data.

1.3.7. **Provider** means Proficio Marketing s.r.o., Company ID: 017 49 315, with its registered office at Anglická 140/20, Vinohrady, 120 00 Praha 2, company registered under file number C 417660 maintained by the Municipal Court in Prague.

1.3.8. **Inquiry** means the Client's inquiry according to Section 5.1.1 of the GTC.

1.3.9. **Services** mean the services agreed in the Agreement in accordance with Section 2.1 of the GTC.

1.3.10. **Agreement** means the agreement made between the Provider and the Client, which includes these GTC.

1.3.11. **Party** means the Client or the Provider.

1.3.12. **GTC** means these general terms and conditions of the Provider.

1.3.13. **Statement** means an overview of the services provided according to Section 4.3 of the GTC.

2. CONCLUSION OF THE AGREEMENT

2.1. The Agreement is concluded on the basis of the offer acceptance sent by the Provider to the Client via e-mail, which contains a description of the services provided (hereinafter referred to as the "**Services**"), the price for the Services provided, as well as information on which of the estimated out-of-pocket expenses or costs for the Services provided are not-to-exceed amounts, and more detailed terms that relate to the Services. For the avoidance of doubt, the offer of the Services may be made in the form of a media plan (hereinafter referred to as the "**Media Plan**"). The offer will also include these GTC, which will be attached to the offer as a reference or as an attachment.

2.2. The Agreement is concluded upon delivery of the acceptance by the Client according to Section 2.1 of the GTC to the Provider.

2.3. For the avoidance of doubt:

2.4. The Parties may also conclude the Contract by a procedure other than that specified in Article 2 of these GTC, which will result in the agreement of the Parties on the subject matter of the Services provided and their price.

2.5. These GTC are an integral part of the Agreement, and in the event of a conflict between the content of the Agreement and the GTC, the provisions of the Agreement will prevail.

2.6. The Parties exclude the provision of Section 1751(2) of the Civil Code, whereas in the event of any other conditions being submitted by the Client, the reference to them is invalid and only these GTC will apply.

3. SUBJECT-MATTER OF THE AGREEMENT

3.1. By concluding the Agreement, the Provider undertakes to provide the agreed Services to the Client.

3.2. By concluding the Agreement, the Client undertakes to pay the Provider the agreed remuneration for the provided Services as well as reimbursement of direct costs, and to provide the Provider with necessary assistance.

4. SCOPE AND MANNER OF THE PROVISION OF SERVICES

4.1. The Provider undertakes to provide, at its expense and risk, the Services:

4.1.1. the scope and details of which are agreed in the Agreement;

4.1.2. the scope of which is agreed in the manner stated in Article 5 of these GTC.

4.2. At regular meetings the Parties will discuss further details of the Services provided, evaluate the current setting of their business relationship and, as the case may be, adjust the time scope of the Services provided, always as needed by the Client. The Provider undertakes to follow the Client's instructions in the provision of Services.

4.3. If the Parties expressly agree, the Provider undertakes to keep an overview of the services provided, including the time required for individual tasks (hereinafter referred to as the "Statement"). The Client has a right to request semi-finished and finished outputs of the Services or Statements, which will be provided to the

Client by the Provider within a reasonable time limit.

5. ORDERING FURTHER SERVICES

5.1. The Parties agree that the Client is also entitled to order services other than those expressly agreed in the Agreement, in accordance with the procedure specified in this Article 5 of the GTC:

5.1.1. The Client will send the Provider an inquiry containing specification of the requested Service by the e-mail stated in the Agreement (hereinafter referred to as the "Inquiry");

5.1.2. After receiving the Inquiry, the Provider will prepare an offer (especially in the form of a Media Plan) which will specify further details of the offered Service, including an approximate date of completion, estimated labor intensity (if possible), and information as to which of the estimated amounts of out-of-pocket expenses or costs of the Service provision are not-to-exceed amounts, and the Provider will do so within a reasonable time limit after receiving the Inquiry (hereinafter referred to as the "Offer");

5.1.3. Within five days after receiving the Offer, the Client will either confirm or refuse the Offer by e-mail. If the Client has any reservations concerning the Offer, it will act accordingly under Section 5.1.1 of the Agreement.

5.2. For the avoidance of doubt:

5.2.1. The Client is not obliged to accept an Offer, and the Provider is not obliged to make an Offer. If the Parties do not agree on the content of an Offer, this is without prejudice to the other obligations arising from the Agreement or these GTC;

5.2.2. The Parties may also agree on a different manner of ordering further services under this article, which will clearly state the content of the provided services.

6. REMUNERATION, OUT-OF-POCKET EXPENSES AND PAYMENT TERMS

6.1. The price for the provision of Services is agreed between the Parties as the product of the hourly rate stated in the Agreement and the actual number of hours spent by the Provider on providing the Services. For the avoidance of doubt, the Parties may also agree on a monthly lump sum or other method of calculating the price.

6.2. VAT in the statutory amount will be added to the price referred to in Section 6.1.

6.3. In addition to the price, the Client will reimburse all out-of-pocket expenses and costs incurred by the Provider during the fulfilment of the Agreement, in accordance with the Agreement or approved Media Plan. If requested by the Provider, the Client will make an advance payment intended for out-of-pocket expenses or costs.

6.4. Out-of-pocket expenses and costs include, without limitation, expenses for the purchase of third party services, such as PPC advertisements, display campaigns, promotion of articles on Facebook and others. The Parties will agree in the Agreement or, as the case may be, in the approved Media Plan by the procedure referred to in Section 5.1 of the GTC, which of the expenses or costs are capped.

6.5. The Provider's remuneration together with the reimbursement of out-of-pocket expenses will be paid monthly on the basis of an invoice that will always be issued on the last day of the month for which the remuneration is to be paid.

6.6. The invoice is due 14 days after its receipt by the Client. If an invoice does not meet the requirements for a tax document, the Client has a right to return it to the Provider together with information about defects of the invoice no later than 5 working days after its receipt; in such case, the due date of the price stated in the invoice with defects does not apply. The corrected invoice is due 14 days after the day of its receipt by the Client.

7. INFLATION CLAUSE

7.1. By concluding this Agreement, the Client and Provider agree that the Provider's remuneration may be regularly, every calendar year of the term of the Agreement, unilaterally increased by the Provider by means of a written notification sent to the Client. The percentage of such increase will correspond to the percentage of the increase in the inflation rate expressed as an increase in the average annual index of consumer prices for the concerned calendar year of the term of the Agreement, always with effect from the first of January of the concerned calendar year of the term of the Agreement. Upon delivery of such written notification to the Client, the written notification becomes binding on the Parties.

8. LICENSES

8.1. If, as an output or other result of an activity associated with the provision of Services under the Agreement, a work is created that meets the definition of the copyrighted work under the Copyright Act (such output or other result of an activity is hereinafter referred to as the "Copyrighted Work"), by concluding the Agreement, the Provider gives the Client the right (license) to use such work on the following conditions:

8.1.1. the license is given as a non-exclusive one unless the Parties expressly agree otherwise;

8.1.2. the license is given for the duration of the proprietary rights in relation to the concerned Copyrighted Work;

8.1.3. the license is given without any quantity and territorial restrictions;

8.1.4. the Client may use the Copyrighted Work in all manners of use that are known on the day of handover of the Copyrighted Work;

8.1.5. the Client may assign the license to a third party or give a sublicense to a third party solely with the Provider's consent; this does not apply to sublicenses given to such parties with which the Client forms a business group;

8.1.6. the Client is not obliged to use the license;

8.1.7. the Client has a right to modify and alter the concerned work even through third parties.

8.2. If the Parties agree on the delivery of a work the author of which is a third party, the Client has a right to use the work within the scope of the license conditions on which such work was released (open source license or stock photo license, in particular).

8.3. In the event that the Client hands over to the Provider documents or materials for the provision of services or the Agreement, the Client declares that the use of such documents or materials will not affect any rights of third parties, in particular personal or intellectual property rights. The Client gives the Provider a license to use the documents or materials referred to in the first sentence of this section for the purpose of fulfilment of the Agreement.

9. ASSISTANCE

9.1. The Client undertakes to provide the Provider with necessary assistance.

9.2. If agreed between the Parties, the Client will provide the Provider with materials and documents necessary for the provision of Services, such as photographs and fonts, in particular.

9.3. If the assistance provided by the Client is delayed, the time limit for the fulfilment of the Provider's obligation is extended reasonably but always at least by the time for which the assistance provided by the Client was delayed.

10. TERM OF THE AGREEMENT

10.1. The Agreement concluded under the GTC becomes valid and effective on the date of signature of the last of the Parties and is concluded for an indefinite period of time.

10.2. The Agreement may cease to exist at any time by written agreement of the Parties.

10.3. Any of the Parties may terminate the Agreement at any time and without giving the reason. Then the Agreement terminates on the last day of the second calendar month following the month in which the termination notice was delivered to the other Party.

10.4. Any of the Parties may withdraw from the Agreement if the other Party commits a material breach of any of the obligations referred to in the Agreement or GTC.

11. RIGHTS IN RELATION TO DEFECTIVE PERFORMANCE

11.1. Rights in relation to defective performance are governed by the Civil Code.

11.2. For the avoidance of doubt, the fact that the results of the Service do not have an effect on an increase in the sales of the Client's products or services is not deemed to be a defect of the Services, provided that during the provision of Services the Provider did not breach its obligation to provide its Services in accordance with the best practice, unless deviation from the best practice was agreed between the Provider and Client.

12. SANCTIONS

12.1. If any payment under the Agreement or these GTC to be made by the Client is more than 14 days late, the Provider may demand from the Client a contractual penalty in the amount of 0.05 percent of the outstanding amount for each day of delay.

13. COMPENSATION FOR DAMAGE

13.1. Compensation for damage is governed by the Civil Code unless stipulated otherwise in the Agreement.

13.2. The Parties agree that the Provider is not liable for any damage incurred by the Client in connection with the Agreement, provided that such damage does not result from intentional conduct or gross negligence of the Provider.

13.3. If despite the exclusion of liability under Section 14.2 of the Agreement the Provider becomes obliged to compensate the Client for damage, the Parties hereby set a cumulative limit for this obligation that is equal to the amount of the remuneration referred to in Section 6.1. of the GTC received by the Provider for 12 months.

14. PRIVACY AND CONFIDENTIALITY POLICY

14.1. The matters of personal data protection are regulated in Annex No. 1 to these GTC.

14.2. The matters of confidentiality are regulated in Annex No. 2 to these GTC.

15. DELIVERY

15.1. For the purposes of the Agreement, the only addresses to be used for the delivery of documents of the Parties in the matters of the Agreement are stated in the Agreement. Any changes of these contact details have to be announced to the other Party in the form of a written notice sent to the currently valid delivery address.

15.2. The Parties agree that where the GTC, Agreement or law require a written form for

a certain legal act, it is sufficient, to the maximum extent allowed by law, to send the document in electronic form from the respective e-mail addresses. This is without prejudice to the delivery by registered mail or through a data box.

16. REFERENCES

16.1. By entering into the Agreement, the Client gives consent and all necessary authorizations to the Provider to state the name and logo of the Client, including a brief description of the provided Services, on its website in the reference section.

16.2. The provision of Section 17.1 is without prejudice to the confidentiality obligation under Article 12 of the GTC.

17. SEVERABILITY CLAUSE

17.1. If it turns out that any provision of the Agreement or GTC is or becomes invalid, ineffective or inapplicable contrary to the will of the Parties or that such invalidity, ineffectiveness or inapplicability is inevitable (especially as the consequence of an amendment to the applicable legal regulations), this is without prejudice to the validity, effect and applicability of the other provisions of the Agreement or GTC.

17.2. In cases referred to in Section 18.1 of the GTC the Parties undertake to provide each other with assistance and to make the required legal acts in order replace the invalid, ineffective or inapplicable provision with a new one so as to maintain and fulfil the purpose of the Agreement and GTC.

18. GOVERNING LAW AND SETTLEMENT OF DISPUTES

18.1. The rights and obligations of the Parties arising from the Agreement are governed by the Civil Code and other applicable legal regulations of the Czech legal system.

18.2. The Parties undertake to make their best efforts to eliminate any mutual disputes arisen under or in connection with the Agreement, including disputes concerning its interpretation or validity, and try to achieve amicable settlement of such disputes first through negotiations between their contact persons or authorized representatives.

18.3. If a matter in dispute is not resolved within sixty (60) days from the date of delivery of the call to negotiate under Section 18.2 of the GTC, both Parties may turn to the general court of the Czech Republic with the material and local jurisdiction based on the seat of the Provider.

19. FINAL PROVISIONS

19.1. Integral parts of these GTC are

19.1.1. Annex No. 1 – Conditions of the Processing of Personal Data.

19.1.2. Annex No. 2 – Confidentiality

19.2. These GTC come into effect on 1 January 2025.

Annex No. 1 – Conditions of the Processing of Personal Data

1. INTRODUCTORY PROVISIONS

1.1. These Conditions of the Processing of Personal Data (hereinafter referred to as the "**Conditions**") form an annex to the Provider's General Terms and Conditions. All capitalized terms not defined in these Conditions have the same meaning as those in the GTC or the Agreement.

1.2. For the purposes of these Conditions, the following definitions are set forth:

1.2.1. **GDPR** means 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).

1.2.2. **Conditions** mean this Annex No. 1 to the GTC – Conditions of the Processing of Personal Data.

1.2.3. **Controller** means the Client even where the Client is the processor and the Provider is another processor of the Client.

1.2.4. **Processor** means the Provider even where the Provider is another processor of the Client.

2. GENERAL SPECIFICATION OF PERSONAL DATA PROCESSING

2.1. General processing specification is set out in the Agreement, or specified in the manner set out in the GTC.

3. DOCUMENTED INSTRUCTIONS FROM THE CONTROLLER

3.1. The Processor undertakes to process personal data under the Agreement and these Conditions only on the basis of documented

instructions from the Controller that the Controller will
give to the Processor on
the conditions stated in this Article 3 of the Conditions.

3.2. The Controller will give instructions to the Processor in the following manners:

3.2.1. if personal data are processed in a software or application that is provided or made accessible to the Controller by the Processor and that is controlled by the Controller at its own discretion (hereinafter referred to as the "Software"), then the Service Agreement itself is deemed to be the documented instruction;

3.2.2. apart from the procedure stated in Section 3.2.1 of the Conditions, an act in the administrative and user interface of the Software is also deemed to be a documented instruction, provided that such administrative or user interface makes it possible to document individual acts and such functionality was made accessible to the Controller;

3.2.3. other instructions will be given by the Controller to the Processor by e-mail messages sent to the address determined under the GTC or Agreement, or in another manner in which, in accordance with the Agreement, the Controller gives instructions to the Processor for service provision, either in the form of a ticket in a ticketing system, order or in any other manner the content of which is provable.

3.3. The Processor is not entitled to process personal data without documented instructions under Section 3.2. of the Conditions, except for cases when the duty to carry out such processing is imposed on the Processor by the law of the Czech Republic or the law of the European Union, and in such case, the Processor is obliged to notify the Controller in writing of such processing and, if this is possible with regard to the Processor's duties, to discuss such processing with the Controller first.

3.4. The Processor hereby undertakes to inform the Controller whenever the Processor believes that a certain instruction given by the Controller breaches the GPDR or other regulations of the European Union or another EU Member State.

4. CONFIDENTIALITY

4.1. The matters of confidentiality are regulated in Annex No. 2 to the GTC, unless the Parties agree otherwise.

5. SECURITY MEASURES

5.1. The Processor undertakes to adopt such measures that prevent unauthorized or accidental access to personal data, their change, destruction or loss, unauthorized transfers, other unauthorized processing and other misuse of personal data.

5.2. For the purpose of adoption of security measures, the Processor undertakes to:

5.2.1. protect the media containing personal data from unauthorized access by locking them in boxes or archives in which personal data are stored;

5.2.2. protect the personal data kept in electronic form from unauthorized access by means of creating access rights and controlling access, and using pseudonymization and an encryption technology selected as appropriate;

5.2.3. ensure protection, maintenance and monitoring of the security and integrity of the Processor's network;

5.2.4. ensure regular data backup unless such backups are made by the Software providers;

5.2.5. appoint natural persons who will be authorized to process personal data – only these persons will be allowed to access and process personal data in accordance with the provisions of these Conditions;

5.2.6. adopt additional technical measures that are generally regarded suitable for the used manner of personal data processing.

6. REPORTING SECURITY INCIDENTS

6.1. The Processor hereby undertakes to take every effort necessary to detect any breach of confidentiality and integrity of the personal data processed, and if detecting a security incident, the Processor undertakes to inform the Controller of it.

6.2. A security incident report will contain necessary information that makes it possible for the Controller to adopt adequate measures in relation to the supervisory authority and, as the case may be, data subjects.

6.3. The Processor hereby undertakes to send the Controller a security incident report without undue delay after it becomes aware of the security incident but no later than in 48 hours.

7. ENGAGING ANOTHER PROCESSOR

7.1. The Processor hereby undertakes to engage in personal data processing only such other processor who provides appropriate and sufficient guarantees of compliance with the principle of confidentiality and integrity of personal data in accordance with this Article 7 of the Conditions.

7.2. The Controller hereby gives the Processor general and prior consent to the engaging of another processor in accordance with Section 7.1. of the Conditions, which will be engaged as follows:

7.2.1. The Processor will send the Controller an e-mail notification that it intends to engage or change another processor;

7.2.2. Within 7 days from the receipt of the notification, the Controller may send the Processor its written reasoned objections; mere disagreement with engaging another processor is not deemed to be reasoned objections;

7.2.3. If the Controller does not send its reasoned objections to the Processor, or the period specified in Section 7.2.2. of the Conditions expires, or the sent objections are not reasoned or reasonable, the Processor is entitled to engage another processor in the processing.

6.1. If the Processor engages another processor in the processing, it will impose on such other processor the same obligations that the Processor has toward the Controller and that are closest to the meaning of the rights and obligations stated in these Conditions.

6.2. The list of other processors is provided to the Controller upon conclusion of the Agreement and at any time upon request.

8. ASSISTANCE IN THE EXERCISE OF RIGHTS OF DATA SUBJECTS

8.1. The Controller does not delegate its obligation to respond to and allow exercise of rights of data subjects, unless expressly agreed otherwise between the Parties by the procedure referred to in Section 3.2. of the Conditions.

8.2. If the Controller requires assistance from the Processor during the exercise of rights of data subjects, which the Controller may handle itself through the user or administrative environment of the Software, the Processor may require reasonable reimbursement of the associated costs from the Controller.

8.3. The Controller may require assistance during the exercise of rights of data subjects if the Software does not make this possible (or if no Software was made accessible to the Controller), by using the e-mail address determined under the Agreement. Within 5 working days the Processor is obliged to respond to the Controller's request and propose a solution, solve the matter or set an approximate date of the solution if the right cannot be exercised within the aforesaid time limit, but no later than in 15 working days from the receipt of the Controller's request.

9. ASSISTANCE IN ENSURING COMPLIANCE

9.1. The Processor hereby undertakes to provide the Controller with assistance in the fulfilment of the Controller's obligations, by means of providing information requested by the Controller. The provisions of this Article 9. of the Conditions will apply to the provision of assistance during data protection impact

assessments and prior consultations with the supervisory authority.

9.2. If, in order to fulfil its obligations, the Controller requires assistance other than assistance in the form of providing information of a technical nature or information that the Processor has at its disposal due to the nature of the matter, i.e. especially legal opinions, legal advice or information the Processor does not have at its disposal, the Controller undertakes to reimburse the costs incurred by the Processor in connection with the Controller's request.

9.3. The Controller hereby undertakes to send its request to the Processor by e-mail to the address determined under the Agreement, stating the scope of information or the form of assistance requested from the Processor.

9.4. The Processor undertakes to send a reply to the Controller within 15 days from the receipt of the request under Section 9.3. of the Conditions, stating the date by which it will fulfil the Controller's request and, where assistance referred to in Section 9.2. of the Conditions is concerned, providing a preliminary calculation of costs.

9.5. The Processor undertakes to fulfil its obligation under Article 30(2) of the GDPR, i.e. to maintain records of processing activities.

10. PROVISION OF INFORMATION AND AUDIT

10.1. The Processor undertakes to provide the Controller with necessary assistance to demonstrate compliance with all obligations laid down in the GDPR and these Conditions, all that by the procedure referred to in this Article 10. of the Conditions.

10.2. For the avoidance of doubt, the Controller has made sure in accordance with Article 28(3) of the GDPR that the Processor provides sufficient guarantees concerning implementation of appropriate technical and organizational measures in such manner that the processing under the Agreement and these Conditions meets the requirements of the GDPR and that the protection of rights of data subjects is ensured.

10.3. The Controller may require that the Processor provides information and undergoes an audit under the following rules:

10.3.1. The Controller will send the Processor a request to the e-mail address determined under the Agreement, stating the scope of information it wishes to clarify;

10.3.2. The Processor undertakes to send the Controller the requested information without undue delay but no later than in 15 days from the receipt of the request under Section 10.3.1 of the Conditions;

10.3.3. If the information provided under Section 10.3.2 of the Conditions is not sufficient for the Controller, the Controller will send the Processor information that it requires to perform an audit of the Processor and will propose a date of the audit, which will not be earlier than 15 days from the receipt of such request;

10.3.4. After receiving the communication referred to in Section 10.3.3 of the Conditions, the Processor will either confirm the date of the audit to the Controller or propose a different date which will not be later than 10 working days after the proposed date;

10.3.5. The Controller will perform the audit of the Processor on the agreed date in accordance with Section 10.3.4 of the Conditions.

10.4. The Controller may perform an audit once per calendar year and whenever the obligations imposed on the Processor by the GDPR or this Annex are grossly breached or when so agreed between the Parties.

10.5. As part of an audit, the Controller will verify at the location determined by the Processor whether the Processor duly fulfils its obligations under the GDPR and the Agreement, and the Processor undertakes to ensure that on the given day a person entrusted by the Processor is present and is ready to provide the Controller with necessary documents and information. The Processor is not obliged to provide access to databases, etc. if providing such access would constitute a breach of obligations regarding the protection of personal data or confidential information of third parties.

10.6. The Controller and Processor bear the costs associated with the audit each on their part, except where the audit was performed due to a suspected breach of obligations of the Processor which was not proved during the audit, and in such case the Processor is entitled to reimbursement of reasonable costs.

10.7. For the avoidance of doubt, the Controller may also entrust a third party with performing an audit. The Controller undertakes to send contact and identification details of such entrusted person reasonably in advance and will bind such person by the same obligation of secrecy as the Controller itself is bound.

10.8. For the avoidance of doubt, the Processor may refuse to provide assistance under this Article 10. of the Conditions if the request is apparently vexatious or unjustified.

11. EFFECT OF PROCESSING ARRANGEMENTS

11.1. The obligations arising from these Conditions continue for the duration of the Agreement, unless the Parties agree otherwise.

12. PROCEDURE AT THE END OF PROCESSING

12.1. In the event of termination of the Agreement the Processor undertakes to hand over or ensure deletion of the personal data as follows:

12.1.1. if the Software makes it possible to do so (and the Controller was given access to such Software), the Controller will create a copy for itself and will delete existing copies in the Software by the date when the Agreement terminates;

12.1.2. if the Software does not allow the procedure referred to in Section 12.1.1. of the Conditions, the Controller will send the Processor, within 15 days at the latest, an instruction as to whether the Controller requires only deletion of copies of personal data or requires not only deletion but also handover of copies.

12.2. If the Controller does not act under Section 12.1. of the Conditions, the Processor may create a copy, hand over the copy to the Controller in a suitable manner and delete the personal data in the Software.

13. FINAL PROVISIONS

13.1. In the event of a conflict between the Conditions and the GTC or the Agreement, the specific provisions of the Agreement or the GTC will prevail.

Annex No. 2 — Confidentiality

1. INTRODUCTORY PROVISIONS

1.1. This Annex No. 2 – Confidentiality (hereinafter referred to as the "**Annex**") forms an annex to the General Terms and Conditions of the Provider or to the Agreement.

1.2. All capitalized terms not defined in these Conditions have the same meaning as those in the GTC or the Agreement.

1.3. For the purposes of these Conditions, the following definitions are set forth:

1.3.1. **Confidential Information** means all facts of a business, marketing, financial, know-how, production, organizational and legal nature relating to the Disclosing Party that are not commonly available in business circles and that the Receiving Party learns while fulfilling the Agreement, notwithstanding whether or not such facts constitute a trade secret. Personal data is also considered Confidential Information. The following information is not deemed to be Confidential Information: information that was known to the Receiving Party beyond reasonable doubt or known publicly prior to its disclosure by the Disclosing Party; that has been identified as non-confidential by the Disclosing Party; or that is the result of a procedure by which the Receiving Party arrives at it independently of the Disclosing Party and the Receiving Party is able to prove this fact.

1.3.2. **Disclosing Party** means the Party that discloses Confidential Information to the other Party.

1.3.3. **Receiving Party** means the Party that receives Confidential Information from the other Party.

2. CONFIDENTIALITY OBLIGATION

2.1. The Receiving Party is obliged to handle Confidential Information in a manner preventing its leak or misuse. The Receiving Party undertakes to adopt such technical and organizational measures against leak and misuse of Confidential Information that are adequate to the nature and significance of the Confidential Information and to the damage the Disclosing Party may incur due to its leak or misuse.

2.2. The Receiving Party undertakes to use all Confidential Information solely for the purposes of the performance of the Agreement and not for any other purposes. The Receiving Party also undertakes not to provide or disclose Confidential Information to any other parties, unless such handling is (i) fulfilment of rights and obligations as part of performance of the Agreement, (ii) envisaged by the GTC or Agreement, or (iii) fulfilment of a statutory duty to disclose Confidential Information to a public authority.

2.3. The Receiving Party may disclose Confidential Information to its employees or contractors to the extent necessary for the purposes of the performance of the Agreement. The Receiving Party

undertakes to ensure that such persons are bound by the obligation to protect Confidential Information in relation to the Receiving Party accordingly as the Receiving Party itself is bound in relation to the Disclosing Party.

2.4. The Receiving Party may use Confidential Information to exercise or defend its rights or legal entitlements before courts or other public authorities. For this purpose, the Receiving Party may disclose Confidential Information to its advisors who are under a statutory obligation of confidentiality (such as lawyers or tax advisors, in particular).

2.5. The Receiving Party undertakes to notify the Disclosing Party immediately of a threat to or leak of Confidential Information, especially of any impending or actual disclosure of Confidential Information to third parties contrary to this Annex.

2.5.1. The Receiving Party is liable for a breach of his or her obligations during the handling of Confidential Information according to this Annex and is liable to the Disclosing Party for all damage thus incurred.

3. SANCTIONS

3.1. In the event of a breach of the obligations listed in this Annex by the Disclosing Party, the Receiving Party is entitled to a contractual penalty of CZK 100,000 for each individual breach.

3.2. For the avoidance of doubt, the Parties agree that the Receiving Party is obliged to pay the contractual penalty under Section 3.2 of the Annex, which in aggregate will not exceed the cumulative limit equal to the amount of the performance received by the Provider from the Client for the last 12 months.

4. FINAL PROVISIONS

4.1. In the event of a conflict between the Annex and the GTC or the Agreement, the specific provisions of the Agreement or the GTC will prevail.