Vendor

**INDEPENDENT CONTROLLER AGREEMENT**

THIS INDEPENDENT CONTROLLER AGREEMENT (“ICA”) forms part of the Vendor Agreement (“Agreement”) between ShowHeroes SE or any other entity that directly or indirectly controls, is controlled by, or is under common control with ShowHeroes SE (“ShowHeroes Group”), and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Vendor”) (collectively the “Parties”) whereby ShowHeroes Group will use commercially reasonable efforts to integrate Vendor into its digital video advertising and content services to connected Publishers (the “Services”). This ICA reflects the Parties’ responsibilities and obligations with respect to the terms governing the processing of Personal Data during the performance of the Agreement. This ICA is incorporated into the Agreement and is subject to its terms and conditions. In the event of any conflict between the terms of the Agreement and the terms of this ICA, the relevant terms of this ICA shall take precedence. This ICA shall be effective for the Period established under the Agreement. Any capitalized terms not defined herein shall have the respective meanings given to them in the Agreement.

**1. DEFINITIONS**

“Data Controllers” means the entities that collectively determine the purposes and means of the Processing of Personal Data, namely ShowHeroes Group and the Vendor.

“Data Processor” means the entity which Processes Personal Data on behalf of a Data Controller.

“Data Protection Laws” means Regulation (EU) 2016/679 (“GDPR”) and any other laws and regulations, including laws and regulations of the European Union, applicable to the Processing of Personal Data under the Agreement.

“Data Subject” means the individual to whom Personal Data relates.

“GVL” means the Global Vendor List as published under the TCF 2.0 Framework by IAB Europe

“Personal Data” means any information relating to an identified or identifiable person. The types of Personal Data and categories of Data Subjects Processed under this ICA are set forth in Appendix A attached hereto.

“Processing” means any operation or set of operations which is performed upon Personal Data, whether or not by automatic means, such as collection, recording, organization, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction (“Process”, “Processes” and “Processed” shall have the same meaning).

“Security Breach” has the meaning set forth in point 3.5 of this ICA.

“TCF 2.0 Framework”, or Transparency and Consent Framework, as issued and defined by the European division of the Interactive Advertising Bureau (IAB Europe)

“TOMs”, or Technical and Organizational Measures, as defined in Article 32 of the General Data Protection Regulation (GDPR).

**2. SCOPE AND RESPONSIBILITIES**

**2.1 Roles of the Parties, Scope**

The Parties acknowledge and agree that with regard to the Processing of Personal Data, ShowHeroes Group and Vendor are Independent Controllers of the Processing, each determining the means and purposes for the collection of Personal Data and each managing the Personal Data for their own business as laid out in Annex 1 of this ICA.

Further, they determine each Parties’ responsibilities for the collection of Personal Data in a transparent manner and in compliance with the GDPR.

The Parties agree that personal data will be processed exclusively to comply with contractual and pre-contractual obligations, using methods that comply with the provisions of the law.

For the avoidance of doubt, nothing in this ICA shall restrict or otherwise prohibit either Party’s right as a sole Controller to use or otherwise Process the Personal Data, provided that such Processing complies with the Data Protection Laws. This ICA does not create any association, partnership or joint venture. Neither Party shall be entitled to represent the other Party or to make binding declarations on behalf of the other Party.

The definitions of the Processing purposes are based on the TCF 2.0 Framework as amended from time to time. The Parties agree that the purposes and underlying legal basis as published by the Parties in the GVL are binding.

**2.2 Responsibilities of the Parties**

The Parties guarantee that only personal data that are absolutely necessary for the purposes of the processing are collected.

Furthermore, both contracting parties respect the principle of data minimization pursuant to Article 5 paragraph 1 letter c GDPR.

The documentation pursuant to Article 5 paragraph 2 of the GDPR, which serves as proof of correct data processing, will be kept by each party in accordance with the legal powers and obligations beyond the expiration of the contract.

As to the respective collection of Personal Data, the Data Subject may exercise his or her right under the Data Protection Laws in respect of and against the Party processing the respective Personal Data.

Each Party shall, to the extent legally permitted and as may reasonably be expected, promptly notify the other Party if it receives any requests from a Data Subject to exercise the following Data Subject rights: access, rectification, restriction of Processing, erasure (“right to be forgotten”), data portability, objection to the Processing, or to not be subject to an automated individual decision making (each, a “Data Subject Request”).

The Parties undertake to provide Data Subjects with the information required by Articles 13 and 14 of the GDPR in a precise, transparent, understandable and easily accessible form in a simple and clear language free of charge.

Upon request, the Parties undertake to provide the interested Data Subjects with the information they are entitled to pursuant to Article 15 of the GDPR.

The parties undertake to make the essential content of the agreement on collection of Personal Data for Processing available to the interested Data Subjects.

Each Party is liable to third parties for the entire damage caused by the collection of Personal Data which infringes the Data Protection Laws. A Party is exempt from liability if it proves that it is not in any way responsible for the event giving rise to the damage (Article 82 GDPR).

Further, each Party shall:

1. implement appropriate TOMs as laid out in Article 4.1 of this ICA to ensure the security of the Data Collection in accordance with Art. 32 GDPR;
2. fulfil the notification and communication obligations as laid out in Art. 33, 34 GDPR;
3. carry out data protection impact assessment for the collection of Personal Data if necessary, under Art. 35 GDPR;
4. transmit Personal Data to a third country only if the legal requirements for data exports to third countries are met in accordance with applicable law, suitable guarantees, in particular in accordance with Art. 46 GDPR, are given, and the data subject is provided with enforceable rights and effective judicial remedies;
5. accede to the TCF 2.0 Framework and thus agree to the TCF 2.0 Policies; and
6. be responsible for its part of the Processing of the types of Personal Data as laid out in Annex 1 to this ICA and for the purposes as defined in the GVL.

**3.2 Appointment of Processors**

Where either Party engages a Processor in the Processing of collected Personal Data on its behalf, it shall ensure that it has a written agreement in place with the Processor that is compliant with Article 28, paragraph 3 GDPR. Each Party shall be responsible for the Processing of collected Personal Data by its Processors. In addition, as a condition to permitting a third-party processor to Process collected Personal Data, processor shall (a) agree in writing to process Data in accordance with documented instructions; (b) implement appropriate TOMs to protect the Data against a Security Breach; (c) otherwise provide sufficient guarantees that they will process the Data in a manner that will meet the requirements of Data Protection Laws and this ICA. Each Party may request a list of active processors from the other at any time for auditing purposes.

The Parties inform each other in good time about any planned changes in connection with the involvement or replacement of Processors. Services that the contracting Processors use by third parties as ancillary services to support the execution of the order, such as telecommunications services and maintenance, are not considered Sub-Processor services within the meaning of this regulation. However, the Parties are obliged to enter into appropriate and legally compliant contractual agreements and to take control measures to ensure the protection and security of personal data, even in the case of outsourced ancillary services as laid out above.

**3. PROCESSING OF PERSONAL DATA**

Each party defines the means and purposes of the Processing of Personal Data that it treats as an Independent Controller.

As such, each Party will:

1. define the data and the purposes of its own processing;
2. comply with the obligations applicable to it as a Controller under the Data Protection Laws and this ICA in relation to its Processing of Personal Data, in particular to Process Personal Data only on the basis of consent given to the Party by the Data Subject and/or the Parties’ legitimate interest on Processing of Data Subject’s Personal Data;
3. adequately support the other Party in complying with the Data Protection Laws, especially with the obligations pursuant to Art. 32-36 GDPR, taking into account the nature of the Processing and the information available to such Party;
4. designate a point of contact for Data Subjects seeking to exercise their rights:
	1. ShowHeroes Group’s designated point of contact is:

E-Mail address: gdpr@showheroes-group.com

* 1. Vendor’s designated point of contact is:

E-Mail address:

1. not knowingly cause the other Party to breach its obligations under the Data Protection Laws and this ICA; and
2. promptly notify the other Party of any circumstances in which such Party is unable or becomes unable to comply with the Data Protection Laws.

Personal Data are processed exclusively within the restrictions of the Agreement in terms of object, duration, type and scope. No data is being transferred between the Parties.

**4. SECURITY**

**4.1 Controls for the Protection of Customer Data**

Each Party shall maintain appropriate TOMs for protection of the security (including protection against unauthorized or unlawful Processing and against accidental or unlawful destruction, loss or alteration or damage, unauthorized disclosure of, or access to, Customer Data), confidentiality and integrity of Customer Data. Either Party shall maintain a record of Processing activities for the collection of Personal Data, which may also be part of a different record of Data Processing. Each Party shall provide its record, or the part of a record, relating to the Processing of Personal Data to the other Party upon request and free of charge. Neither Party will materially decrease the overall security during the term of the Agreement.

The Parties ensure, within their sphere of activity, that all employees involved in the Processing of Personal Data maintain the confidentiality of the Personal Data pursuant to Articles 28 paragraphs 3, 29 and 32 of the GDPR for the period of their activity and after termination of the employment relationship and who are obliged to respect data secrecy before starting their work and are educated on the data protection provisions that are relevant to them.

The TOMs taken by ShowHeroes Group are listed in Annex 2, which forms an integral and substantial part of this agreement.

**4.2 Incident Management**

If either Party becomes aware of any accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to any Personal Data transmitted, stored or otherwise Processed on its equipment or its facilities (“Security Breach”), it will promptly: (i) notify the other Party of the Security Breach in accordance with Section 5 below; (ii) investigate the Security Breach and provide the other Party with all relevant information about the Security Breach; and (iii) take all steps to mitigate the effects and to minimize any damage resulting from the Security Breach. The Parties document their Security Breach Management Plan within their TOMs, which may be mutually reviewed subject to confidentiality considerations.

**5. Notification**

Each Party shall promptly provide notification of a Security Breach to the other Party’s designated contact:

|  |  |
| --- | --- |
| ShowHeroes GroupName: Patrick JähnichenTitle: Data Privacy OfficerEmail: dpo@showheroes-group.comPhone: +49 174 24 50 17 4 | VendorName:Title:Email:Phone: |

**6. LEGALLY REQUIRED DISCLOSURES; LIABILITY**

Except as otherwise required by law, if either Party is being approached by Data Subjects, supervisory authorities, competitors or other entitled stakeholders with regard to a purportedly illegal collection of Personal Data, both in court or out of court (the “Claim”), it shall inform the other Party without undue delay. If and insofar as Vendor is subject to a Claim, and if and insofar as such Claim is not based on a violation of Vendor's Obligations but on a violation of ShowHeroes Group’s obligations, ShowHeroes Group shall fully indemnify Vendor against any claim whatsoever, in particular claims for damages (Article 92 GDPR) and fines (Article 93 GDPR).

At a Party’s request, the other Party will provide it with reasonable information in its possession that may be responsive to the Claim and any assistance reasonably required for it to respond to the Claim in a timely manner.

Each Party acknowledges that the other Party has no responsibility to interact directly with the entity making the Claim yet shall coordinate further legal defense with each other.

**7. PARTIES TO THIS ICA**

Nothing in this ICA shall confer any benefits or rights on any person or entity other than the Parties to this ICA.

**8. LEGAL AUTHORITY**

ShowHeroes Group and Vendor mutually represent and warrant that (i) the person executing this ICA on its respective behalf has the legal authority to bind such party, and (ii) it has right, power, and authority to (a) enter into this ICA, (b) make the representations and warranties contained herein, and (c) commit to and perform the respective duties, obligations and covenants set forth hereunder. Without limiting the foregoing, the choice of law and venue section clause of the Master Agreement will apply to any disputes arising out this ICA.
Entire Agreement. This Agreement constitutes the entire Agreement between the Parties with respect to the subject matter of this Agreement. This Agreement supersedes all previous agreements between the Parties relating to the subject matter hereof. No provision of this Agreement will be deemed waived, amended or modified by either Party, unless such waiver, amendment or modification is made in writing and signed by both Parties.

**9. SEVERABILITY**

If any provision of this Agreement is invalid or unenforceable for any reason in any jurisdiction, including but not limited to a change in law(s), such provision will be construed to have been adjusted to the minimum extent necessary to cure such invalidity or unenforceability. If any provision of this Agreement is found by a proper authority to be unenforceable or invalid, such unenforceability or invalidity will not render this Agreement unenforceable or invalid as a whole and such provision will be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law or applicable court decisions.

**10. COMMENCEMENT AND TERMINATION**

This agreement enters into force at the time of the parties’ signing hereof.

The agreement is in force as long as the data concerned are processed, or until the agreement is replaced by a new agreement determining the distribution of responsibilities in connection with processing.

**11. FINAL PROVISIONS**

For any other aspect not explicitly dealt with in this ICA, the parties refer to the GDPR text and any subsequent amendments.

Berlin, Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Parties: ShowHeroes SE \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 (Vendor)

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 (Name) (Name)

Title: (Position) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Annex 1 – Purposes and Legal Bases of Processing of Personal Data**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Controlling Party** | **Datum** | **Type of Datum** | **Legal Basis** | **Purpose of Processing (TCF2.0)** |
| ShowHeroes Group | randomized UID character string | Cookie | Article 6 p. 1 lit. a (user consent) | storing and accessing, UID matching with demand partners,creating user profilesTCF2.0 Purposes 1, 3  |
| ShowHeroes Group | character string | IP address | Article 6 p.1 lit. f (legitimate interest) | ensure security, prevent fraud and debug; technical delivery of adsTCF2.0 Special Purpose 1, 2 |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |

**Annex 2 – Technical and Operational Measures**

*ShowHeroes Group reserves the right to modify the terms of this Appendix, at any time, in its sole discretion. Updated versions of this Appendix will be accessible through ShowHeroes Group´s privacy section on its website.*

**Physical Access Control**

The aim of physical access control is to prevent access by unauthorized persons to data processing facilities which are used for the processing or use of personal data.

ShowHeroes Group maintains its own root servers within Hetzner Online GmbH (“Hetzner”) data centers, which are located in Nuremberg, Germany and in Falkenstein/Vogtland, Germany. Hetzner is certified in accordance with DIN ISO/IEC 27001. The internationally recognized standard for information security certifies that Hetzner has established and implemented an appropriate information security management system (ISMS). Hetzner Online utilizes the ISMS in its infrastructure and complete operations for the data center parks in both locations, Nuremberg and Falkenstein. FOX Certification, a third-party certification authority, audited Hetzner Online's data center parks for the certification process. The ISMS also requires Hetzner to continually reassess and improve its information security methods, so that they always remain up-to-date.

All entrants to the data center are required to identify themselves, typically biometrically, as well as show proof of identity to on-site security operations. Only authorized employees, contractors and visitors are allowed entry to the data centers. Visitors must register in advance to visit the data center, and must specify the areas they wish to visit within. When visitors arrive, their identity and approval to visit the site is verified by on-site operations. Specific cages are secured by badge and key access and have 24/7 CCTV monitoring. Access to ShowHeroes Group´s servers can only be given by employees and maintenance, when their visit has been requested and authorized by data center and ShowHeroes Group systems management.

**System Access Control**

The objective of system access control is to prevent unauthorized persons from using data processing facilities used for the processing or use of personal data. ShowHeroes Group has multiple measures in place to ensure no unauthorized individuals can access the ShowHeroes Group systems. These measures include but are not limited to:

* ShowHeroes Group offices have secured entry using badges or keys
* Access to systems is provided based on a personal log in that has to meet strict requirements and is exposed to verification and/or is placed behind a secured VPN
* Every employee is assigned a role which places the employee in particular user groups, these groups determine to which systems and to which level the employee has access with a personal log in
* Provided mobile phones are equipped with software that allows instant close off and wiping of the device in question should such equipment be compromised.

**Data Access Control**

The following measures are used to ensure that those authorized to use a data processing system can only access data in accordance with their access permission, and that personal data cannot be read, copied, changed or deleted during processing and use and after storage without authorization:

* As stated in the systems control section of this appendix, access levels are assigned to groups of employees, or individuals, at ShowHeroes Group based on role and responsibility
* Only authorized system operators have access to production data
* ShowHeroes Group has a strict policy in place to make sure all access is revoked upon termination of employment
* Data made available outside the authorized system operator’s access level is hashed and salted

**Separation Control**

The goal of separation control is to ensure that data collected for different purposes is processed separately.

Within ShowHeroes Group all the personal data that is being processed is kept in a separate server-cluster. Only authorized system operators have the ability to access the production data.

Every developer has personalized and logged access to the code repositories. All development goes through extensive code review. After review it is tested in our test environment.

Deployments to production are subject to this strict reviewing process and can only be made by authorized system operators. Every deployment on production must be approved and documented via a central ticketing system with role separation.

**Transfer Control**

The aim of transfer control is to ensure that personal data cannot be read, copied, modified or removed by unauthorized parties during the electronic transmission of these data or during their transport or storage on a data carrier. It must be possible to verify and identify where a transmission of personal data by entities for data transmission purposes takes place.

In the process of transferring information - ShowHeroes Group only stores Personally Identifiable Information of EU citizens in Hetzner data centers, which are located in Nuremberg, Germany and in Falkenstein/Vogtland, Germany. All Personally Identifiable Information that gets transferred from Hetzner data centers to any other place is hashed and salted before transfer. For transfers our required model clauses are in place.

ShowHeroes Group logs all received and transferred bodies for both internal and external transport of data. ShowHeroes aims to have the transport take place on secured endpoints.

**Input Control**

By using the following measures, ShowHeroes Group ensures the exact circumstances for data input, which can be checked and identified afterwards:

* Input processes are exposed to a strict integration and input process
* All input is logged and can be traced

**Availability Control**

ShowHeroes Group has multiple measures in place to ensure availability and resilience of data.

* All data centers containing ShowHeroes Group’s root servers are equipped with alarms on server rooms, temperature and humidity monitors, are connected to emergency generators, are connected to overvoltage protection devices and smoke and fire alarms
* ShowHeroes Group has 24/7 monitoring in place that checks the operational parameters of the hardware and is connected to an alert system that warns our dedicated system engineers in case of alarms
* All ShowHeroes Group data is part of a clearly stated backup plan and part of a disaster recovery plan
* Additionally, ShowHeroes Group utilizes a Rescue System. The Rescue system is a live operating system with useful tools for diagnosing ShowHeroes Group´s servers and fixing problems. It can be launched without installation and runs only in memory. If ShowHeroes Group accidentally loses access to a server due to a mistake made while configuring the network or by accidentally applying overly restrictive firewall rules, ShowHeroes Group can use the Rescue System to find and correct such errors in its configuration and immediately gain access to the server again.

**Job Control**

All third parties that process Personally Identifiable Information are subject to a Joint Controller Agreement, Independent Controller Agreement or Data Processing Agreement as appliable. Every new partner relationship that is established will be part of a due diligence process and will be subject to the Joint Controller Agreement, Independent Controller Agreement or Data Processing Agreement respectively. ShowHeroes Group has safeguards in place that will prevent EU traffic from being processed by any party without a Joint Controller Agreement, Independent Controller Agreement or Data Processing Agreement in place.

All Joint Controller Agreements, Independent Controller Agreements and Data Processing Agreements have language ensuring alignment with the requirements set by GDPR including but not limited to rights of audit, destruction of data upon termination of contract (where applicable) and documentation of security measures in place set by the 3rd Party.