

TERMS AND CONDITIONS FOR THE ENTRUSTMENT OF PERSONAL DATA PROCESSING WITH RELATION TO THE USE OF SELMO

§1. Introduction

1. The terms indicated below will hereafter have the following meanings:
 - i. **Controller** - a controller within the meaning of article 4 (7) GDPR, i.e. a Customer, as defined by the Selmo Terms and Conditions, which entrusts the Processor with the Data administered by the Customer entered into Selmo by the Customer or persons appointed by the Customer,
 - ii. **Selmo** - the Selmo browser application,
 - iii. **Audit** - the inspection of the correctness of the processing of Data by the Processor,
 - iv. **Auditor** - the person appointed by the Controller to carry out the Audit,
 - v. **Subprocessor** - another processor whose services are used by the Processor to perform Data processing activities on behalf of the Controller, as referred to in article 28(2) and (4) of the GDPR,
 - vi. **Data** - personal data within the meaning of article 4 (1) GDPR,
 - vii. **Third Country** - a country outside the European Economic Area,
 - viii. **Processor** - a processor within the meaning of article 4(8) of the GDPR, i.e. Selmo spółka z ograniczoną odpowiedzialnością, with its registered seat in Kraków (31-503), Lubicz 27/40, entered into the Register of Entrepreneurs of the National Court Register under KRS number: 0000942376, NIP: 6751756693, REGON: 520149870, which registration files are kept by the District Court for Kraków-Śródmieście in Kraków, XI Economic Division of the National Court Register, share capital: PLN 5150.
 - ix. **Regulations** - Regulations for Entrusting Personal Data Processing in connection with the use of Selmo,
 - x. **Selmo Terms and Conditions** – Terms and conditions for the conclusion of contracts and use of Selmo,
 - xi. **GDPR** - 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),
 - xii. **Parties** - the Controller and the Processor.
2. Regulations, being a model contract as referred to in Article 385 of the civil code, constitute another legal instrument governed by the law of a member state as referred to in article 28(3) of the GDPR.

§2. Representations of the Parties

1. The Controller declares that he is the Controller of the Data entered into Selmo by the Controller, as well as those which data subjects enter in connection with their use of Selmo, and declares that the Data was obtained by the Controller legally and that it has an appropriate legal basis for its processing.

2. The Controller entrusts the Data to the Processor in accordance with the principles set out in these Regulations.

§3. Nature and character of processing

1. The processing is entrusted in order to ensure that the Processor is able to properly provide the Controller with the service of granting access to Selmo.
2. Only so-called regular Data, i.e. not being data referred to in article 9(1) GDPR and article 10 GDPR, will be subject to processing.
3. The processing will include the following categories of persons: the Controller's customers and their representatives.
4. The Data will be processed in an IT system on the Processor's server, on a permanent basis.

§4. Processor's obligations

1. The Processor may carry out the Processing only upon the documented instruction of the Controller, whereby the mere conclusion of the agreement on the use of Selmo and the acceptance of the Regulations shall be understood as such an instruction, including the instruction to transfer Data to Third Countries, if this is necessary in order to carry out the services referred to in § 3(1).
2. The Processor declares that it has implemented appropriate technical and organisational measures to ensure that the processing of the Data meets the requirements of the GDPR, in particular any measures required under Article 32 of the GDPR.
3. The Processor undertakes to inform the Controller immediately if an instruction given to it constitutes a breach of the law.
4. The Processor shall ensure that the persons authorised to process the Data under the supervision of the Processor undertake to keep the Data confidential or are subject to an appropriate statutory obligation of secrecy.
5. The Processor shall cooperate with the Controller in carrying out the obligations referred to in Articles 32 to 36 of the GDPR, taking into account the nature of the processing and the scope of information held.
6. The Processor shall be obliged to assist the Controller in the implementation of the rights of data subjects referred to in Chapter III of the GDPR to the extent of its capabilities resulting from the scope of access to personal data.

§5. Subprocessing

1. The Controller grants its general consent to further entrustment of the processing of personal data.
2. The Processor shall notify the Controller via e-mail, at least five days in advance of any changes in the scope of the Subprocessors, and the Controller may object to the subprocessing for legitimate reasons within this period.
3. In the event of an objection as referred to in subparagraph 2, the Processor shall be entitled to terminate the agreement for the use of Selmo with immediate effect.
4. The Controller agrees to use the Subprocessors identified in Annex 3, as well as the Subprocessors that are subsidiaries or parent companies to those identified in Annex 3.
5. The Processor shall require the Subprocessors to comply with Data protection obligations in the course of processing of the Data at least on the same level as set out in the Regulations.

§6. Audit

1. The Controller is entitled to an Audit.
2. The Audit shall be carried out by a person authorised by the Controller.
3. An Audit requires at least 14 days' notice to the Processor.
4. The Processor shall provide the Auditor with access to all necessary premises, documents, IT systems and the possibility to contact persons employed at the Processor's company involved in the processing of the Data.
5. The Processor is obliged to actively participate in and contribute to the Audit.
6. The Audit conducted by the Controller shall be concluded with an audit protocol signed by the Auditor and a representative of the Processor.
7. The Auditor is obliged to sign a confidentiality statement prior to the commencement of the Audit in respect of the data of which the Processor is the controller and in respect of business secrecy of the Processor.
8. The Processor is obliged to make available to the Controller all information needed to demonstrate its compliance with the obligations referred to in Article 28 GDPR.
9. The Controller is obliged to reimburse the Processor for all costs related to the Processor's participation to the Audit, in particular the actual damage and lost benefits related to the exclusion of the Processor's employees from performing their duties.
10. The Processor shall have the right to require the Controller to advance the reasonable costs referred to in subparagraph (9), making admission to the Audit contingent thereon.

§7. Liability

1. The total amount of the Processor's obligations in the nature of compensation for non-performance or improper performance of obligations imposed by the Regulations (including by Subprocessors) towards the Controller, shall not exceed the total amount of remuneration paid under the Selmo Terms and Conditions in the last 6 months prior to the occurrence of the event causing the damage. The Controller's liability is limited to actual damage only, excluding lost profits.
2. The Processor is exempted from liability for damage caused by Data processing in breach of the law or the provisions of the Regulations if it proves that it is in no way at fault for the event that led to the damage.

§8. Duration of the processing

1. The entrustment of data processing is performed for the duration of the contract for the use of Selmo concluded between the Controller and the Processor.
2. Data entered by the Controller is stored in Selmo for a period of 90 days, after which it is deleted, unless the Controller requests its immediate deletion, subject to data that the Operator, for legally justified reasons, can or is obliged to store further. The Processor shall allow for the aforementioned period of time to retrieve Data stored in Selmo.

§9. Final provisions

1. The Processor may amend the Regulations. The provisions relating to amendment of the Selmo Terms and Conditions shall apply *mutatis mutandis*, with the exception of the provisions concerning the prohibition of aggravating the Controller's situation in relation to the paid access period to Selmo.
2. In matters not regulated by the Regulations, the provisions of Selmo Terms and Conditions shall apply, and further - the provisions of the law applicable in the Republic of Poland.