



Landesbeauftragter für
Datenschutz und
Informationsfreiheit
Baden-Württemberg

Article 26 (1) 1 General Data Protection Regulation (GDPR) Joint Controller Agreement between

Party 1

[insert name and contact details]

and

Party 2

[insert name and contact details]

Please note: This contract template uses definitions and terms as defined in Articles 4 and 5 of 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" or "GDPR"). The template is designed to be a two-party agreement. Where more than two parties enter into a joint controller agreement, the template should be rewritten and tailored accordingly.

Moreover, although not legally mandatory to constitute an effective agreement within the meaning of Article 26 (1) GDPR, this document has proven extremely useful in distinguishing between different operating ranges when drafting a joint controller agreement.

§ 1

(1) This agreement determines the rights and obligations of the controllers (hereinafter also referred to as "parties") for the joint processing of personal data. It applies to all activities of the parties, or processors appointed by a party, when processing personal data. The parties have jointly determined the purposes and means of processing personal data in accordance with Art. 26 GDPR.

(2) [Please fill in: Name of application/Name of project/name of system] processes personal data. Depending on the section of processing, this data is processed in the [Please fill in: system area and, if applicable, the explicit procedure within which joint controllership exists]. The parties determine the sections in which personal data are processed under joint controllership (Article 26 GDPR).

Note: A joint controllership can apply to an entire application or the whole project. However, if joint processing sections may be clearly distinguished from sections of processing not under joint control, then a joint controllership may affect only parts of the entire processing. If there are only common definitions of purposes and means of data processing in one specific segment, the following two sentences can be added for clarification.

For the other sections of processing, where the parties do not jointly determine the purposes and means of data processing, each contracting party is a controller pursuant to Article 4 No. 7 GDPR. As far as the contracting parties are joint controllers pursuant to Article 26 GDPR, it is agreed as follows:

§ 2

(1) In context of joint controllership, **Party 1** is competent for the processing of personal data in **operating range A**. Operating range A includes [Please specify the specific section of the system/data process and/or procedures over which Party 1 has factual influence]. The processing may concern the following categories of data: [Please specify the categories of personal data processed in the aforementioned section]. The legal basis for the processing of personal data is [Please specify legal basis for the processing].

(2) In the context of joint controllership, **Party 2** is competent for the processing of personal data in **operating range B**. Operating range B includes [Please specify the specific section of the system/ data process and/or procedures over which Party 2 has factual influence]. The processing may concern the following categories of data: [Please specify the categories of personal data processed in the aforementioned section]. The legal basis for the processing of personal data is [Please specify legal basis for the processing].

§ 3

Each party shall ensure compliance with the legal provisions of the GDPR, particularly in regards to the lawfulness of data processing under joint controllership. The parties shall take all necessary technical and organisational measures to ensure that the rights of data subjects, in particular those pursuant to Articles 12 to 22 GDPR, are guaranteed at all times within the statutory time limits.

§ 4

(1) The Parties shall store personal data in a structured, commonly used, and machine-readable format.

(2) [**Party 1** and/or **Party 2**] shall ensure that only personal data which are strictly necessary for the legitimate conduct of the process are collected [optional and useful in particular for public sector bodies: "and for which the purposes and means of processing are specified by Union or national law"]. Moreover, both contracting parties agree to observe the principle of data minimisation within the meaning of Article 5 (1) lit. c) GDPR.

§ 5

The Parties commit themselves to provide the data subject with any information referred to in Articles 13 and 14 of the GDPR in a concise, transparent, intelligible, and easily accessible form, using clear and plain language. The information shall be provided free of charge. The Parties agree that **Party 1** provides the information on the processing of personal data in **operating range A** and **Party 2** provides the information on the processing of personal data in **operating range B**.

Use case "online platform in joint controllership": It would be advisable that the party whose operating range includes the operation of the platform and/or opening of the interface to the data subjects be held responsible for providing the data subject with the information required by Articles 13 and 14 of the GDPR.

§ 6

The data subject may exercise his or her rights under Articles 15 to 22 GDPR against each of the joint controllers. *[If both parties shall comply with the request for information, the agreement could also include the following: "In principle, the data subject may receive the requested information from the contracting party to whom the request was made."]*

Note: The data subject may exercise his or her rights under the GDPR in respect of and against each of the controllers.

§ 7

(1) *[Party 1 and/or Party 2]* shall provide the data subject access according to Article 15 of the GDPR.

(2) Where the data subject requests access according to Article 15 GDPR, the parties *[alternatively, Party 1 or Party 2]* shall provide this information.

[Add a description of the precise procedure according to which the information is made available.]

If necessary, the parties shall provide each other with the necessary information from their respective operating range. Competent contact persons for the parties are *[Fill in contact persons and contact details of both parties]*. Each party must immediately inform the other of any change of the contact person.

§ 8

(1) If a data subject exercises his or her rights against one of the parties, in particular of the rights of access, correction, or deletion of his or her personal data, the parties are obliged to forward this request to the other party without undue delay. This applies irrespective of the general obligation to guarantee the right of data subjects. The party receiving the request must immediately provide the information within its operating range to the requesting party.

(2) If personal data are to be deleted, the parties shall inform each other in advance. A party may object to the deletion for a legitimate interest, for example, if there is a legal obligation to retain the data set for deletion.

§ 9

The parties shall inform each other immediately if they notice errors or infringements regarding data protection provisions during the examination of the processing activities *[and/or the order results]*.

Note: It might be useful to hold the party whose operating range includes the operation of the platform and/or opening of the interface to the data subjects responsible for providing the information to the data subjects.

§ 10

The parties undertake *[or party 1 or 2 undertakes]* to communicate the essential content of the joint controllership agreement to the data subjects (Article 26 (2) GDPR).

Note: It is advisable that this provision to the data subjects be carried out by the party whose operating range includes the operation and/or the opening of the interface to the data subjects.

§ 11

Both parties *[alternatively: designate a competent party]* are obliged to inform the supervisory authority and the data subjects affected by a violation of the protection of personal data in accordance with Articles 33 and 34 GDPR concerning their operating ranges *[alternatively: all operating ranges]*. The parties shall inform each other about any such notification to the supervisory authority without undue delay. The parties also agree to forward the information required for the notification to one another without undue delay.

§ 12

Note: This paragraph is not necessary if there is no obligation to conduct a data protection impact assessment in a particular case. In the interests of efficiency regarding conducting such an assessment, it is also possible to divide work contributions and/or establish specific information requirements.

If a data protection impact assessment pursuant to Article 35 GDPR is required, the parties shall support each other.

§ 13

Documentations within the meaning of Article 5 (2) GDPR, which serve as proof of proper data processing, shall be archived by each party beyond the end of the contract in accordance with legal provisions and obligations

§ 14

(1) Within their operating range, the parties shall ensure that all employees authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality in accordance with Articles 28 (3), 29, and 32 GDPR for the duration of their employment, as well as after termination of their employment. The parties shall also ensure that they observe the data secrecy provisions prior to taking up their duties and are familiarised with the data protection legislation and rules relevant to them.

(2) The parties shall independently ensure that they are able to comply with all existing storage obligations with regard to the data. For this purpose, they must implement appropriate technical and organisational measures (Article 32 et seq. GDPR). This applies particularly in the case of termination of the cooperation/agreement.

(3) The implementation, default-setting, and operation of the systems shall be carried out in compliance with the requirements of the GDPR and other regulations. In particular, compliance with the principles of data protection by design and data protection by default will be achieved through the implementation of appropriate technological and organisational measures corresponding to the state of the art.

(4) The parties agree to store personal data which are processed on *[name of the system]* in the course of the services on specially protected servers.

§ 15

Note: Optional addition if one of the parties has already engaged a processor at the time the contract is concluded: In this case, a corresponding contractual agreement must be agreed to regarding the processing itself (see model agreement on Article 28 (3) GDPR). This agreement can also be integrated into an overall agreement or framework agreement as to the complete project.

*In this context, **Z** is the parties' processor within the meaning of Article 28 GDPR. Each party undertakes to conclude a contract pursuant to Article 28 GDPR with regard to the processing of the personal data for which the party is responsible.*

§ 16

(1) The parties commit themselves to conclude a contract in accordance with Article 28 GDPR when engaging processors within the scope of this agreement (see § 1) and to obtain the written consent of the other party before concluding the contract.

Note: Optional addition: "Each party shall have the right to prohibit the engagement of a particular processor if there are important reasons to be held against it."

(2) The parties shall inform each other in a timely manner of any intended change with regard to the involvement or replacement of subcontracted processors. The parties shall only commission subcontractors who meet the requirements of data protection legislation and the provisions of this agreement. Services which the contracting parties use from third parties to support the execution of the contract, such as telecommunications services and maintenance, shall not be seen as services provided by subcontractors within the meaning of

this contract. However, the parties are obligated to make appropriate contractual agreements in accordance with the law and to take controlling measures to guarantee the protection and security of personal data, even in the case of additional third party services.

(3) Only processors who are subject to the legal obligation to appoint a data protection officer shall be commissioned to perform services in connection with this contract.

Note: Optional paragraph: This provision may be added to ensure the quality of the contractual relationship, but is not mandatory by law.

§ 17

Note: This procedure is already legally required by Article 30 (1) GDPR. Due to the importance of complete records of processing activities for the successful fulfilment of all data protection obligations, the inclusion in the contract text is also recommended.

The parties shall include the processing operations in the records of processing activities pursuant to Article 30 (1) GDPR, in particular, with a comment on the nature of the processing operation as one of joint or sole responsibility.

§ 18

Notwithstanding the provisions of this contract, the parties shall be liable for damages resulting from processing that fails to comply with the GDPR. In external relations they are jointly liable to the persons concerned.

Note: Liability between the parties and their internal relations may be controlled through individually contracted agreements. Accordingly, the following sentence is only one possible example.

In the internal relationship the parties are liable, notwithstanding the provisions of this contract, only for damages which have arisen within their operating range.