

# **Data Processing Agreement 2019**

## **Momice**

## Data processing agreement

The Parties,

- (i) [AGENCY'S NAME], a company having its principal place of business at [ADDRESS] and registered with the [COUNTRY'S] Chamber of Commerce under number [NUMBER], hereby duly represented by [NAME & FUNCTION], hereinafter referred to as: the “Agency”;

and

- (ii) Momice B.V., a Dutch company having its principal place of business at Hoogoorddreef 73B, 1101 BB in Amsterdam and registered with the Dutch Chamber of Commerce under number 34293210, hereby duly represented by R. Bremer (CEO), hereinafter referred to as: the “Momice”,

hereinafter collectively referred to as ‘Parties’ and individually ‘Party’,

whereas,

- the Agency provides services in the entertainment industry, such as promoting and organizing events by order of its customers;
- Momice provides services, including all-in-one event management software;
- Agency wishes to use Momice’s services in order to provide Agency’s services more efficient;
- in relation to Agency’s services, the Agency often processes personal data of various involved parties on behalf of its customers;
- in some cases, the Agency will use Momice’s services to process such personal data collected by Agency’s customers;
- the Agency wants Momice to process such personal data in accordance with the agreement (including Momice’s general terms and conditions), with number: [AGREEMENT NUMBER], as concluded between Parties (hereinafter: the ‘Agreement’);
- Momice is prepared to process the aforementioned personal data in accordance with the Agreement and this data processing agreement;
- customers of the Agency are hereby deemed to be the responsible party (data controller) within the meaning of article 4(7) of the General Data Protection Regulation (hereinafter: ‘GDPR’);
- the Agency is hereby deemed to be the data processor within the meaning of article 4(8) of the GDPR;
- Momice is hereby deemed to be the data sub-processor (another processor) within the meaning of article 28(2) and 28(4) of the GDPR;
- the Parties, having regard to the provisions of article 28(3) and 28(4) of the GDPR, wish to lay down their rights and duties in writing in this data processing agreement,

have agreed as follows,

### **Article 1. Terminology**

1. The terminology used in this data processing agreement, such as ‘processing’ and ‘personal data’, have the meaning as defined in the GDPR.

### **Article 2. Processing objectives**

1. Momice undertakes to process personal data on behalf of the Agency in accordance with the conditions laid down in this data processing agreement. The processing will be executed exclusively within the framework of the Agreement, and for all such purposes reasonably related thereto or as may be agreed to subsequently. In general the purposes of processing will consist of registering and contacting people that are interested in events organized by Agency on behalf of its customers.
2. The Agency undertakes to use Momice’s services to process the following categories of personal data: name, home address, contact information (email address, telephone number), name of the employer and job title.
3. The Agency undertakes to use Momice’s services to process personal data from the following categories of data subjects: people who may be interested in an event of a customer of the Agency, employees of such customers, board members and independent contractors of such customers, people working for clients or suppliers of such customers, employees of the Agency using Momice’s services.
4. The Agency will notify Momice of the processing purposes, as well as the categories of personal data and data subjects, to the extent these have not already been cited in this data processing agreement. Momice may use the personal data for quality purposes, such as surveying the data subjects or carrying out scientific or statistical research into the quality of its services.
5. Momice shall take no unilateral decisions regarding the processing of the personal data for other purposes.
6. Momice can under no circumstances be held liable for any damages or other consequences as a result of the processing of special categories of personal data (art 9 GDPR) on behalf of the Agency or the customer of the Agency.
7. All rights pertaining to the personal data processed by Momice on behalf of the Agency, shall remain with the Agency, the customer of the Agency and/or the concerning data subjects.

### **Article 3. Obligations of Momice**

1. With regard to the processing referred to in the previous article, the Agency and Momice will undertake to comply with the applicable privacy legislation such as the GDPR.
2. On request of the Agency and within a reasonable time thereof, Momice shall furnish the Agency with details regarding the measures it has adopted to comply with its obligations under this data processing agreement.
3. Momice’s obligations arising under the terms of this data processing agreement apply also to whomever processes the personal data under Momice’s instructions.

### **Article 4. Allocation of responsibility**

1. The permitted processing operations shall be semi-automated and performed under the control of Momice. Momice is solely responsible for the processing of personal data under this data **processing** agreement, in accordance with the instructions of the Agency and under the (final) responsibility of

customers of the Agency. Momice is not responsible for any other processing operations involving personal data, including the gathering of personal data by the Agency, processing for purposes that the Agency has not reported to Momice and processing by third parties and/or for other purposes not stated in this data processing agreement.

2. The Agency represents and warrants that it has a valid legal basis to process the relevant personal data and to engage Momice in relation to such processing of personal data. Furthermore, the Agency represents and warrants that the processing by Momice is not unlawful and does not infringe any rights of a third party. In this context, the Agency indemnifies Momice of all claims and actions of third parties related to the unlawful processing of personal data.
3. In case applicable privacy legislation requires a Privacy Impact Assessment to be conducted before the intended processing under the Agreement and this data processing agreement may be carried out, then Momice shall provide the Agency with assistance to the extent necessary and reasonable. Momice may charge reasonable costs for the aforementioned assistance.

#### **Article 5. Transfer of personal data**

1. Momice may process the personal data in countries inside the European Union (EU). In addition, Momice may also transfer the personal data to a country outside the EU, provided that the legal requirements for such transfer have been fulfilled.
2. Upon request, Momice shall notify the Agency as to which country or countries the personal data will be processed in.
3. Within the framework of the Agreement and this data processing agreement, Momice is hereby authorised to engage third parties (sub-processors). On request of the Agency, Momice shall inform the Agency about which sub-processors are engaged by Momice. Momice shall inform the Agency about any planned change in the used sub-processors, in which case the Agency has the right to object (in writing, within two weeks and supported by arguments) to the proposed change in sub-processors.
4. Should the Agency object to such change, then the Parties will jointly endeavour to find a reasonable solution. If Parties cannot come to a solution, then Momice is allowed to make the planned change in the used sub-processors and the Agency is allowed to terminate the Agreement (including this data processing agreement) on the date that Momice will actually make the change in the used sub-processors.
5. Momice undertakes to bind the relevant sub-processors to substantially the same obligations as Momice is bound to based on this data processing agreement.

#### **Article 6. Security measures Momice**

1. Momice will endeavour to take adequate technical and organisational measures against loss or any form of unlawful processing (such as unauthorised disclosure, deterioration, alteration or disclosure of personal data) in connection with the performance of processing personal data under this data processing agreement.
2. Momice will endeavour to ensure that the security measures are of a reasonable level, having regard to the state of the art, the sensitivity of the personal data and the costs related to the security measures.

3. With regard to the aforementioned paragraphs, Momice shall take the technical and organisational measures as mentioned in Momice's security policy. This security policy is available on Momice's website: [Website address], and may be updated from time to time.
4. Momice endeavours to only update its security policy for the better, taking into account paragraph 1 and 2 of this article, innovations in the security field and the user experience.
5. The aforementioned security policy may be added to this data processing agreement as an appendix for information purposes, however the security policy as made available on Momice's website will remain leading.
6. The Agency will only make the personal data available to Momice for processing if it is assured that the necessary security measures have been taken.

#### **Article 7. Duty to report**

1. In the event of a security breach, Momice shall, to the best of its ability, notify the Agency thereof without undue delay, after which the Agency shall determine whether or not to inform the data subjects and/or the relevant regulatory authority.
2. A 'security breach' as stated in this article 7 is a breach of Momice's security, leading to (a significant chance of) severe negative consequences for the protection of personal data, as referred to in article 33 and 34 GDPR.
3. If required by law and/or regulations, Momice shall cooperate in notifying the relevant authorities and/or data subjects. The Agency remains the responsible Party for any statutory obligations in respect thereof.
4. The duty to report a security breach includes in any event the duty to report the fact that a personal data breach has occurred, including details regarding:
  - a. the (suspected) cause of the breach;
  - b. the nature of the breach, including, where possible, the categories and approximate number of data subjects concerned, and the categories and approximate number of data records concerned;
  - c. the (currently known and/or anticipated) consequences thereof;
  - d. the (proposed) solution;
  - e. the measures that have already been taken to address the personal data breach, including, where appropriate, to mitigate its possible adverse effects.

#### **Article 8. Handling of requests from data subjects**

1. Where a data subject submits a request to Momice regarding his/her personal data (for example, to inspect, correct or delete the data, or to receive a copy of the data), Momice will forward the request to the Agency and the request will then be dealt with by the Agency. Momice may notify the data subject hereof. On request of the Agency, Momice will provide assistance with handling such request to the extent necessary and reasonable. Momice may charge reasonable costs for such assistance.

#### **Article 9. Non-disclosure and confidentiality**

1. All personal data processed within the framework of this data processing agreement by Momice (and/or its sub-processors) on behalf of the Agency is subject to a duty of confidentiality vis-à-vis third

parties. Momice shall bind its employees and/ or sub-processors, who will perform processing activities under this data processing agreement, to an obligation of confidentiality.

2. This duty of confidentiality will not apply in the event that the Agency has expressly authorised the furnishing of such information to third parties, where the furnishing of the information to third parties is reasonably necessary in view of the nature of the instructions and the implementation of this data processing agreement, or where there is a legal obligation to make the information available to a third party.

#### **Article 10. Auditing**

1. The Agency has the right to have audits performed by an independent third party bound by confidentiality to check Momice's compliance with this data processing agreement.
2. Such audits may only take place after:
  - the Agency has requested (from Momice) the similar audit reports from independent third parties that are already Momice's possession; and
  - the Agency has reviewed the aforementioned audit reports and can provide legitimate reasons to initiate an audit as mentioned in paragraph 1.
3. An audit as mentioned in paragraph 1, may only be undertaken once per calendar year. At least two weeks before an audit can take place, Agency shall inform Momice of the audit.
4. Momice shall cooperate with the audit and provide all information reasonably relevant for the audit, including supporting data such as system logs, and employees, as promptly as possible.
5. The findings further to the audit conducted will be assessed by the Parties in mutual consultation and, following on from this, may or may not be implemented by one of the parties or by both Parties together.
6. The costs of the audit, including the costs that Momice has to make to cooperate with the audit, shall be borne by the Agency.

#### **Article 11. Obligations of Agency**

1. The Agency takes adequate technical and organisational measures against loss or any form of unlawful processing (such as unauthorised disclosure, deterioration, alteration or disclosure of personal data) in connection with the performance of processing personal data on behalf of its customers.
2. The Agency ensures that its security measures are of a reasonable level, having regard to the state of the art, the sensitivity of the personal data and the costs related to the security measures.
3. The Agency guarantees that it, its employees and other people who are given access to Momice's services by the Agency, will keep their login information (such as a username and password) strictly confidential. In the event that the Agency suspects or reasonably should suspect that someone unlawfully has access to Momice services, the Agency must inform Momice hereof immediately.
4. In the event that the Agency concludes an agreement with its (potential) customer, based on which the Agency provides services to and processes personal information on behalf of such customer, then the Agency makes sure that it also concludes a data processing agreement with such customer in accordance with applicable law. With regard to the aforementioned, Momice hereby allows the Agency to use the data processing agreement example in appendix 1. Momice does not guarantee

that the aforementioned example is fully compliant with applicable law with regard to Agency's services.

5. The Agency indemnifies Momice and holds Momice harmless from any and all damages and/or claims resulting from a breach of the aforementioned obligations by Agency.

**Article 12. Term and termination**

1. This data processing agreement is an integral of the Agreement, which means that this data processing agreement is entered into for the duration set out in the Agreement and that additional provisions in the Agreement and Momice's general terms and conditions, such as the limitation of liability, are also directly applicable to this data processing agreement.
2. Thirty (30) days after an event of the Agency has come to an end, Momice will delete all (personal) data relating to this event from its systems. Within the aforementioned thirty day period, the Agency has the ability to export its (personal) data in Excel format.
3. After the expiry of this data processing agreement, Momice will (depending on the choice of the Agency) provide the Agency with the opportunity to obtain a copy of the relevant personal data (still available on Momice's systems on that point in time) in .CSV format, or delete the relevant personal data still available on Momice's systems, unless there is a legal obligation for Momice to retain the data.
4. This data processing agreement may not be terminated in the interim.
5. This data processing agreement may only be amended by the Parties subject to mutual consent.
6. Momice shall provide its full cooperation in amending and adjusting this data processing agreement in the event of new or changing privacy legislation.

**Article 13. Applicable law and dispute resolution**

1. This data processing agreement and the implementation thereof will be governed by Dutch law.
2. Any dispute arising between the Parties in connection with and/or arising from this data processing agreement will be referred to the competent Dutch court in the district where Momice has its registered office.
3. In the case of any inconsistency between documents and the appendices thereto, the following order of priority will apply:
  - a. the Agreement;
  - b. this data processing agreement;
  - c. additional conditions, where applicable.
4. Logs and measurements taken by Momice shall be deemed to be authentic, unless the Agency supplies convincing proof to the contrary.

was signed,

On behalf of the Agency: \_\_\_\_\_

On behalf of Momice: \_\_\_\_\_

Name:

Name:

Position:

Position:

Date:

Date: