Rodeo Software B.V. - Processor Agreement General Data Protection Regulation (GDPR)

Processing personal data

If Rodeo Software B.V. processes Personal Data on behalf of the Controller for the performance of the Agreement, the following terms and conditions are applicable in addition to our General Terms and Conditions and in compliance with the provisions of Article 28(3) GDPR.

1.   Definitions

The terms used above and below will have the following meaning:

1.1.	Annex:	an Annex to these terms and conditions, which forms an integral part thereof.
1.2.	Personal Data:	any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person (pursuant to Article 4(1) GDPR);
1.3.	Data Subject(s):	identified or identifiable natural person to whom the processed Personal Data relates, as referred to in Article 4(1) GDPR.
1.4.	Processing:	any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction, as referred to in Article 4(2) GDPR.
1.5.	Controller:	the contract party of Rodeo Software B.V. to the Agreement and the Controller as referred to in Article 4(7) GDPR.
1.6.	Processor:	Rodeo Software B.V. is the Processor as referred to in Article 4(8) GDPR.
1.7.	Agreement:	the agreement concluded between the Controller and Rodeo Software B.V. on the basis of which the Controller makes use of Rodeo's services.
1.8.	Data Breach:	A personal data breach, including but not limited to any breach of organisational and/or technical security measures taken (leading to the destruction, loss, alteration or unauthorised disclosure of, or unauthorised access to, and/or access to (transmitted, stored or otherwise processed) (personal) data).
1.9.	Supervisory Authority:	an independent public body that is responsible for supervising compliance with the law in relation to the processing of personal data. In the Netherlands, this is the Dutch Data Protection Authority (DPA).
1.10.	Legislation and Regulations:	This includes at least, but is not limited to, the General Data Protection Regulation (GDPR).
1.11.	Third party/parties:	a natural or legal person, public authority, agency or body other than the Data Subject, Controller or the Processor and persons who, under the direct authority of the Controller or Processor, are authorised to process personal data;
1.12.	Sub-Processor	another processor engaged by the Processor to perform specific processing activities.
1.13.	General Terms and Conditions	the Netherlands ICT Conditions
1.14.	Main User:	the main user designated by the Controller, who is entitled, among other things, to grant rights to Rodeo users designated by the Controller.

2. Scope

2.1.   The provisions of these terms and conditions which, by their very nature or scope are intended to remain effective even after the end of the Agreement, are and will remain in force after termination of the Agreement, to the extent required with the consent of the Controller.

2.2.   If any provision of these terms and conditions proves to be invalid or unenforceable, such invalidity or unenforceability will not affect the validity and enforceability of the remaining provisions set out in these terms and conditions, the Agreement and/or the General Terms and Conditions.

2.3.   In case of conflict between the provisions set out in these terms and conditions and the Agreement and/or the General Terms and Conditions, the provisions in these terms and conditions will prevail.

3. Processing of Personal Data

3.1.   The Processor processes the Personal Data only on behalf of the Controller and only in the context of performing the Agreement and for purposes that are reasonably related thereto or that are determined upon further consultation. In view of the nature of Rodeo, the Processor will process under the Agreement all Personal Data of all categories of Data Subjects that are stored with the use of Rodeo, or that are otherwise provided to the Processor for processing via Rodeo. Rodeo does not interfere in any way with the nature or content of this information. The Controller is able to add to, edit or delete the processed Data at any time.

3.2.   The Processor will follow the Controller's written instructions regarding the Processing and may not process the Personal Data in any other way, unless the Controller has given the Processor prior consent or instructions to do so.

3.3.   The Controller guarantees that it will comply with applicable legislation and regulations with regard to the Processing of Personal Data, including any written instructions given to the Processor, and in this respect will comply with the requirements and conditions for the Processing of Personal Data.

3.4.   The Controller will ensure and guarantee that the Data Subject will be able to exercise his/her rights in accordance with applicable legislation and regulations.

3.5.   Insofar as possible, the Processor will cooperate with the Controller to ensure that the Controller can comply - if applicable within the statutory time limits - with its obligations under the applicable legislation and regulations, including the Controller's obligations to respect the Data Subject's rights, such as, but not limited to, a request to view Personal Data or have the Personal Data corrected, supplemented, deleted or blocked or the right to make a valid registered objection; the Processor will further cooperate to ensure that it complies with its own obligations as referred to in Articles 32 to 36 of the GDPR. The Processor reserves the right to charge the costs associated with these efforts to the Controller.

3.6.   The Controller hereby grants the Processor permission to engage a Sub-Processor for processing the Personal Data. The Processor must inform the Controller about the Sub-Processors it has engaged.

3.7.   Before replacing a Sub-Processor or engaging a new Sub-Processor, the Processor must ensure that the overview on https://www.Rodeo.com/subverwerkers is updated. The Controller is responsible for regularly checking Sub-Processors on https://getrodeo.io/. If the Controller cannot reasonably agree with the intended change or addition of a certain Sub-Processor, the Controller is permitted to object. The Processor is allowed to propose an alternative within a period of 4 weeks. If the Processor does not offer an alternative, the Controller will be permitted to terminate the Agreement without being obliged to pay compensation to the Processor as a result of termination of the Agreement.

3.8.   When the Processor engages a Sub-Processor, the Processor will ensure that the Sub-Processor in any case undertakes to take appropriate technical and organisational measures in relation to the Processing of Personal Data and undertakes to maintain confidentiality.

3.9.   The Processor will not provide Personal Data to anyone - with the exception of Sub-Processors - other than the Controller, unless at the written request of the Controller, or with the latter's written consent or when this is necessary in order to comply with the Agreement and/or a legal requirement.

4. Personal Data Security

4.1. The Parties are obliged to ensure that the Personal Data are adequately secured and are obliged to take appropriate technical and organisational measures to prevent loss and unlawful Processing.

4.2. Once every two years, the Controller is entitled, in consultation with the Processor, to carry out an audit or to have an audit carried out in order to determine whether the processing of Personal Data complies with the applicable legislation and regulations and the provisions set out in these terms and conditions. The costs incurred by the Processor as a result of this are for the Controller's account, whereby the time spent by the Processor will be charged to the Controller at the Processor's hourly rate applicable at that time.

4.3. Checking the overall Processing of Personal Data by the Processor can, in addition to the audit, also be carried out by means of a self-evaluation by the Processor,

4.4. The parties will consult with each other if a change in (organisational and/or technical) security measures is necessary.

4.5. The Processor will not process Personal Data outside the European Union, except with the prior written consent of the Controller.

5. Confidentiality

5.1. The Processor will keep the Personal Data it processes in the context of the performance of the Agreement confidential and will take the necessary measures to ensure the confidentiality of the Personal Data. The Processor will also impose the confidentiality obligation on its employees and all other persons and Sub-Processors it has engaged.

5.2. The confidentiality obligation referred to in this Article does not apply where Personal Data are provided to a Sub-Processor, if the Controller has given its express consent to disclose the Personal Data to a Third Party, or if there is a legal obligation to provide the Personal Data to a Third Party or if the data concerned are not of a secret or confidential nature, are already general knowledge, or confidentiality is not possible on the grounds of a legal obligation.

6. Data Breaches

6.1. In the event of a discovering a possible Data Breach, the Processor must inform the Controller without unreasonable delay as soon as it has become aware of the Breach in connection with the Personal Data.

6.2 The information to be provided by the Processor to the Controller as referred to in Article 6.1, will be provided to the e-mail address of the Main User known to the Processor and must include (in so far as this information is available):
a description of the potential Data Breach, including a possible cause and the likely consequences;whether, and if so, what categories of Personal Data are involved in the potential Data Breach, including, (if available and approximate) an indication of the number of Data Subjects; what the (known or expected) consequences are of the potential Data Breach as well as the (proposed) solution;
-what measures are being proposed and/or have already been taken;
-contact details of the Processor for the follow-up to the report.

6.3. The Processor will update the Controller with any new developments concerning the Data Breach and the Processor will keep the Controller informed of the measures it has taken to limit and finish the Data Breach and to prevent a similar incident in the future.

6.4. The Processor will not notify a Data Breach to the Supervisory Authority on its own initiative, nor will it inform the Data Subject(s) of a Data Breach on its own initiative. This responsibility lies with the Controller.

7.   Liability

7.1.   The Controller, if necessary by way of derogation from the provisions set out in the Agreement and the General Terms and Conditions, is liable for all damage suffered by the Processor as a result of failure to comply with the applicable legislation and regulations and the provisions set out in these terms and conditions.

7.2.   The Controller is liable and will indemnify the Processor against any fine and/or penalty imposed on the Processor by the Supervisory Authority if the imposition of this fine and/or penalty is attributable to the Controller, for example in the case of unlawful or negligent acts by the Controller.

7.3.   The Controller will indemnify the Processor against all claims by Third Parties, including but not limited to, Data Subject(s), Sub-Processors or other persons and organisations the Controller has entered into a relationship with or whose Personal Data are processed, if the claim is attributable to the Controller, for example in the case of unlawful or negligent acts by the Controller.

7.4.   If the Processor, on any basis whatsoever, is liable for the damage and costs that the Controller suffers or has suffered in connection with the performance of these terms and conditions, including any fines and/or penalties imposed on the Controller as a result of actions by the Processor, the provisions on limitation of liability and compensation in the Agreement and the General Terms and Conditions shall apply mutatis mutandis. On the understanding that the amount of the compensation (for damages) to be paid by the Processor, on whatever basis, will never exceed the amount to be paid out by the insurance for the relevant claim, or will never exceed the amount paid by the Controller to the Processor over the period of six months prior to the time of the relevant claim.

7.5.   The Processor excludes liability for indirect damage, including but not limited to consequential damage, consequential loss, trading loss, lost profits, lost savings, loss of goodwill, loss due to business interruption, loss as a result of claims by third parties and reputational damage.

8.   Return of Personal Data and retention period

8.1.   At the first request of the Controller and in any event after the end of the Agreement, all the Personal Data in the possession of the Processor must, at the request of the Controller, be returned or provided to the Controller or to a third party to be designated by the Controller, or must be destroyed.

8.2.   Until the moment that this Agreement ends, the Processor will fully cooperate with regard to transferring to the Controller or a successive processor, the Processor's activities as set out in these terms and conditions and shall cooperate in such a way that from the moment that transfer takes place, continuity of the service is guaranteed as much as possible, or at any rate will not be hindered by actions or omissions on the part of the Processor. The costs incurred by the Processor as a result of this are for the Controller's account, whereby the time spent by the Processor will be charged to the Controller at the Processor's hourly rate applicable at that time.

If you have any questions about Rodeo Software B.V.'s Processor Agreement, please contact us via our e-mail address info@getrodeo.io.