Translation from German

[\_\_\_\_] parts to be edited and/or references to be checked
[\_\_\_\_] helpful information for input fields, options and alternatives
[\_\_\_\_] alternative clauses for the Contractor's benefit

[\_\_\_\_] alternative clauses for the Customer's benefit

AGREEMENT ON RIGHTS TO USE AND EDIT WORKS

entered into by and between

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_((company) name),

a company established under \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(e.g. Austrian) law,

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_(Business Register Number), \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(competent court),

registered office in \_\_\_\_\_\_\_\_\_\_(town or city)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(address)

(hereinafter referred to as the **"**Contractor**"**)

and

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_((company) name),

a company established under \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(e.g. Austrian) law,

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_(Business Register Number), \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(competent court),

registered office in \_\_\_\_\_\_\_\_\_\_(town or city)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(address)

(hereinafter referred to as the "Customer")

either of them hereinafter referred to as a "Party" and the two together as the "Parties"

Nouns are to be understood as gender-neutral. The male form is used for reasons of convenience only.

1. DEFINITIONS
	1. "Trade and Business Secret" means information which is (i) secret because it is not generally known to or easily accessible for persons belonging to groups that normally deal with this kind of information, neither in its entirety nor in the exact arrangement or composition of its parts; (ii) of commercial value because it is secret, and (iii) the subject matter of reasonable secrecy measures that are appropriate under the given circumstances and taken by the person who is the lawful controller of such information [and (iv) marked as such by the party providing the same, e.g. as "secret" or the like].
	2. "Third Parties" means all legal entities or natural persons, except for the Parties and their employees. Employees or officers of the Parties are understood as being covered by the term "Party" and are not regarded as Third Parties, in particular with respect to granting of rights.
	3. "Rights of Use" means the rights to or related to the Work that are granted to the Customer by the Contractor under Clause 3 of this Agreement.
	4. "Written Form" or "In Writing" means the form of a non-certified personal signature. [According to the second set of eyes principle that applies the signatures of two authorised persons are required in any case.] [Means any text format, including electronic text formats, to the extent that the recipient can store it]. The time at which the document is received, or available for retrieval, by the recipient shall be decisive for its legal effect.
	5. "Proprietary Rights" means intellectual property rights, [including, without limitation,] copyrights, patents, designs, utility models, proprietary rights for varieties, industrial property rights for semiconductors and/or trademarks or marks [as defined in Annex 1.5] [and other rights to the Work, including, without limitation, personal rights required or useful for use or exploitation of the Work].
	6. "Effective Date" means the day on which this Agreement is signed by the Contractor and the Customer. If signing does not take place on one day, it means the day on which the last signature is affixed.
	7. ["Affiliate(s)" means business entities which according to the provisions on full consolidation of the annual financial statements of affiliated entities (pursuant to Section 244 of the Austrian Business Code [*Unternehmensgesetzbuch/UGB*]) must be included in the consolidated financial statements of a parent company that is required to prepare consolidated financial statements as the ultimate parent for the largest group as defined in Sections 244 to 267 *UGB*, even if no consolidated financial statements are prepared. This provision applies *mutatis mutandis* where the ultimate parent's registered office is not in Austria. Subsidiaries which are not included pursuant to Section 249 *UGB* are also considered Affiliates.] [The companies belonging to the Customer's group of companies listed in Annex 1.6.]
	8. "Agreement" means the present contractual arrangement between the Parties, including all annexes.
	9. "Work" means an object (as defined in Clause 2.1) to which the Contractor holds relevant rights and which the Customer is supposed to exploit under the present Agreement.
2. SUBJECT MATTER DER VEREINBARUNG
	1. The Contractor has created the Works specified in Annex 2.1 or had them created and holds rights to these Works, and the Contractor represents that it will transfer the Works to the Customer on [date, time] at [place] and the rights thereto as described in Clause 3 and/or that it will grant the Customer such rights; and the Customer represents that it will accept the transfer/granting of rights in accordance with the present Agreement.
	2. Where possible, the Contractor shall deliver the Works to the Customer in accordance with the provisions of this Agreement by physical or symbolic delivery at the place and time agreed in Clause 2.1 [and take all other measures that may be necessary for the transfer/granting of rights]. To the extent [required/ useful] the Parties shall make all declarations or statements and fulfil all formal requirements that may be [required/ useful] in order to enable/carry out the agreed transfer/granting of rights [or that are suitable for helping the Customer's in providing evidence of the transfer/granting of rights].
	3. The Customer is [\*description of the Customer\*] and intends to exploit the Works on the basis of the present Agreement [without being required to do so; however, this shall in no case affect the payment obligation laid down in Clause 5].
3. GRANTING OF RIGHTS
	1. In accordance with the provisions of this Agreement the Contractor shall [irrevocably/ for a period until [\*]] and [non-]exclusively transfer to the Customer [including its Affiliates] any and all rights to the Works as defined in Clause 2.1 in particular within the limitations defined in Clause 3.2 and otherwise unencumbered [("Title Transfer")]. Rights to own, exploit (reproduce, distribute, rent/lend, broadcast, perform, provide or use for business purposes) and edit the Work or related to the Work shall be granted. Due to the exclusive granting of rights the Contractor shall itself abstain from exploiting the Works to the extent of the rights granted. The granting of rights shall extend to any and all rights to exploit the Works known at the time of conclusion of this Agreement and all future rights to exploit the Works to the extent that this is [required / useful] under Clause 3.2 . The granting of rights shall [not] cover the subcontracting of the Works or the right to transfer or sublicence the rights, with the Customer in that case being required to ensure that the transferee fully assumes the Customer's obligations vis-à-vis the Contractor; the Customer shall hold harmless and indemnify the Contractor in this regard, irrespective of fault.
	2. The granting of rights as defined in Clause 3.1 shall be subject to the following restrictions:
* The Customer shall not be permitted to remove or change any marking(s) of the Contractor on or in connection with the Work. The Customer shall exploit the Works as marked by the Contractor or mark them accordingly in the course of exploitation.
* In terms of content the Rights of Use merely cover exploitation by the Customer through [factual limitations such as exploitation in the form of a book, for an advertising campaign, at a(n) (series of) event(s), etc.].
* In terms of territory the Rights of Use exclusively cover the territory of [territorial limitations]; however, a mere physical transportation of the Works shall not be covered by such territorial limitation.
* In terms of time the granting of rights shall be limited until [limitation of duration] so that the Works and rights thereto must be (re-)transferred from the Customer to the Contractor no later than by this time.
* The right to edit the Works merely covers the non-distorting edits and edits that safeguard the Contractor's interests and shall in no case extend to parts that were or are used by the Contractor for marking the Works (in particular protection of title and creator marking).
* Independent of the granting of rights and any secrecy obligations the Contractor shall be entitled to use [(a copy of) the] Work free of charge [for research and teaching purposes/ as a reference of the creator of the Work/ [\*other ways of exploitation\*]] worldwide and in a transferable and/or sublicensable manner, including in a form edited by the Contractor.]
	1. [The granting of rights by the Contractor to the Customer shall be effected concurrently with full payment of the fee as laid down in Clause 5 (retention of rights/title).]
	2. The Customer shall be entitled to have the granting of rights as agreed herein registered in rights-displaying registers at its own cost, with the Contractor being required, upon the Customer's request, to make any declarations or statements that may be necessary for that purpose in a timely manner and in the required form, with the Customer being required to promptly reimburse any expenses and/or fees related thereto against presentation of receipts. In the case of a re-transfer, if any, after the end of the term the Customer shall cancel any registrations that may have been made or to cause them to be deleted.
	3. To the extent that the Customer is entitled to its own rights to the Work, in particular on account of editing, the Customer shall transfer or grant the same to the Contractor no later than at the end of the term of this Agreement as agreed and without any registrations whatsoever.
1. OBLIGATION TO MAINTAIN SECRECY AND TO REFRAIN FROM USE;
DATA PROTECTION
	1. It has to be assumed that in the course of (performance of) this Agreement the Parties will obtain knowledge of Trade and Business Secrets of the respective other Party. Therefore, the Parties mutually agree to keep secret all Trade and Business Secrets received and to use them exclusively for the purpose of cooperation under this Agreement and to refrain from exploiting them or have them exploited for their own use in any way whatsoever and from providing them to uninvolved parties or tolerate such provision the prior consent of the other Party In Writing. However, this shall only apply to the extent that it is not in conflict with the granting of rights to the Performance Target as defined in Clause 3.
	2. The Customer may disclose Trade and Business Secrets of the Contractor to employees of its entities [and Affiliates], but only to the extent that such information is necessary for exploitation of the Work as agreed herein. The Customer shall ensure that the persons who may get access to such Trade and Business Secrets shall be put under an obligation In Writing to maintain secrecy and refrain from use that is at least equal to the way agreed herein, which obligation shall continue to apply after they leave the company.
	3. The obligation to maintain secrecy and to refrain from use shall not apply to information for which there is proof that
* it was known to the receiving Party before its transmission;
* it was publicly known at the time of transmission;
* it has become publicly known after transmission through no fault of the receiving Party;
* it was lawfully made available to the receiving Party by a Third Party after transmission and without any restriction in terms of secrecy or use;
* it was developed independently by the receiving Party; or
* it has to be disclosed on the basis of statutory provisions, court decisions or official orders; in that case the Party required to disclose the same shall immediately notify the other Party of such disclosure to the extent that this is permitted by law.
	1. The above provisions on secrecy and non-use shall continue to be effective even after termination of this Agreement [for an unlimited period of time / for a period of five years], unless and until the information comes into the public domain.
	2. According to the Parties' mutual understanding no personal data will be processed in connection with the Work and performance of the Agreement, which means that data protection law is not applicable.
1. FEE
	1. As a [lump-sum] consideration for the transfer of the Works and the granting of rights the Contractor shall be paid the [one-off] fee laid down in Annex 5.1 [which is time-dependent but independent of use/ dependent on the turnover generated by the Customer by means of the Work]. The agreed fee shall cover all expenses and costs of the Contractor.
	2. The services will be invoiced [exclusive of/inclusive of] value added tax. [If "exclusive of" applies: If it turns out that the services or parts of the services provided by the Contractor are subject to value added tax after all, the Contractor shall be entitled to invoice value added tax subsequently. The Customer agrees to pay value added tax subsequently.]
	3. The Customer shall issue an invoice that is in compliance with the law no later than upon delivery as defined in Clause 2.1. The invoice shall be payable without any deduction within [30/ 60] days. Payments shall be made, without exception, by transfer to an account with a bank in the EU to be advised by the Contractor on the invoice.
	4. In the case of late payment, even through no fault, the Contractor shall be entitled to interest on the outstanding amount at the statutory rate applicable in B2B transactions from the end of the payment period.
2. LIABILITY
	1. [The statutory warranty provisions shall apply. /Warranty shall be excluded unless it is expressly promised in this Agreement.]
	2. The Contractor [represents/ guarantees to the best of its knowledge and ability] that it holds the relevant rights and/or authorisations required under this Agreement. This means, in particular, that no Proprietary Rights of Third Parties will be directly or indirectly infringed upon by the Work and/or its agreed exploitation, i.e. that either no such rights exist or that such rights have been granted comprehensively by the Third Parties to the Contractor and by the latter to the Customer. [If Third Parties assert claims for infringement of rights due to a violation of statutory provisions or this Agreement, the Contractor shall indemnify the Customer in this regard upon first demand irrespective of fault.]
	3. The Parties shall notify each other of any infringement of a Proprietary Right in connection with the Work of which they obtain knowledge and/or which is presumed and/or alleged. [The Contractor shall warn the Customer if the Contractor realises that the Work (as a whole or by parts of it) and/or its agreed exploitation might infringe third-party Proprietary Rights.] Either Party undertakes to immediately inform the other Party comprehensively In Writing if it is held liable for infringement of Proprietary Rights in connection with the Work. In that case the Party held liable will coordinate any further steps with the other Party. The other Party may join, or intervene in, the relevant proceedings if permitted by law. [In any case, the Contractor shall coordinate all procedural steps with the Customer and follow the instructions given by the Customer; the Customer shall indemnify the Contractor against any consequences of such instructions.] Conclusion of settlements and refraining from continuing such proceedings shall require the other Party's consent insofar as there may be legal consequences for the other Party.
	4. Should rights of Third Parties have actually been infringed in connection with the Work or its agreed exploitation, the following shall apply: the Contractor shall, [where reasonable and technically feasible], create, deliver and grant rights in conformity with the Agreement to a "New Work" [at its own cost/ for a reasonable fee if it is not at fault,] which is comparable to the Work in terms of exploitation but free of any rights of Third Parties, [and fully indemnify and hold harmless the Customer irrespective of fault]. With respect to the New Works the requirements of this Agreement shall apply *mutatis mutandis*.
	5. The Contractor shall be liable in accordance with the statutory provisions on damages for harm to life, limb or health, and in accordance with any mandatory liability laws that may be applicable, such as the Austrian Product Liability Act [*Produkthaftungs-gesetz/PHG*], or explicit representations, warranties or guarantees, and in the case of malice and/or wilful intent and/or blatantly gross negligence. For the rest, liability on the part of the Contractor shall be excluded, [with the Contractor bearing the burden of proving the degree of fault].
3. CHOICE OF LAW; JURISDICTION
	1. Austrian law shall apply; the conflict of laws rules and UN Sales Law shall be excluded.
	2. The exclusive place of jurisdiction shall be the registered office of the [Customer/ Contractor].
4. FINAL PROVISIONS
	1. The Parties waive their right to avoid the Agreement on account of mistake (including any mistake in calculation) [but not on account of *laesio enormis* [translator's note: under the legal concept of *laesio enormis* a contract may be challenged based on the argument that the value of the item delivered is less than 50% of the consideration paid]] or frustration of contract or any other present or future grounds for avoidance or root defects.
	2. This Agreement and all its documents, including, without limitation, the Annexes, to which it refers or which it states to be integral parts hereof, contain all contractual arrangements made by and between the Parties. [General Terms and Conditions of Purchase, if any, and similar pre-worded clauses shall not apply.] No oral side agreements exist.
	3. If a Party fails to exercise rights or asserting claims in a specific case, that Party will not be impeded from exercising such rights in other cases; non-exercise (even repeatedly) shall in no case be deemed a waiver.
	4. This Agreement contains all contractual arrangements made by and between the Parties regarding the object of the Performance Target. Drafts, correspondence preceding signing, etc. may not be used for interpretation of this Agreement.
	5. Modifications of or amendments to this Agreement, including any abolishment of the requirement of Written Form, shall be made In Writing in order to be effective.
	6. If any provision of this Agreement is or becomes ineffective, void, unlawful or unenforceable, the validity of the remaining provisions of this Agreement shall not be affected. The ineffective, void, unlawful or unenforceable provision(s) shall be replaced by an arrangement which comes as close as possible to the will of the Parties to the extent permitted by law and which reflects the commercial effect of the ineffective, void, unlawful or unenforceable provision(s) in the best possible way.
	7. If (legal transaction) fees or the like are incurred in connection with this Agreement and/or its consummation, they shall be borne by the [Contractor/ Customer] or reimbursed upon first demand.
	8. This Agreement will be executed in two (2) counterparts, each of which will be deemed an original and of which each Party will be given one.
5. SIGNATURES
	1. The undersigned warrant that the Party for which they sign will be bound by their signature *ipso jure*.

For the Customer

Date: \_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_   \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Name and job title/position] [signature]

For the Contractor

Date: \_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_    \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Name and job title/position] [signature]