Free template:
Data protection confidentiality letter in accordance with the GDPR

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# Commitment to Confidentiality and Data Protection

The obligation includes:

* Maintaining confidentiality and observing data protection (Art. 5 (1) (f), 32 (4) GDPR)
* Protection of business secrets under German law (§§ 2 Nr. 1, 4, 23 GeschGehG)

Dear Ms/Mr [first name] [last name],

We hereby draw your attention to the obligations for confidentiality which you must observe in the course of your employment with us. These obligations continue to apply even after your employment with us has ended.

The duties relevant to you are:

* **Maintaining confidentiality, integrity and compliance with data protection (Art. 5 (1) (f), Art. 32 (4) GDPR)**
* **The protection of business secrets (§§ 2 No. 1, 4, 23 GeschGehG)**

In particular, violations of data protection regulations can be punished with imprisonment or fines. At the same time, a breach of these obligations will in most cases constitute a breach of your employment contract obligations, which is why you must also expect measures under labour law, up to and including summary dismissal (cf. information sheet).

We may be subject to heavy fines for data protection violations. If such a case is based on a culpable breach on your part, this may trigger claims for compensation against you.

* **You declare that you have been informed of the content of the aforementioned provisions and that you have received the associated information sheet.**
* **You have been informed that it is prohibited to process protected personal data without authorisation for a purpose other than that which is part of the respective lawful fulfilment of tasks.**
* **You have also been advised that these obligations continue after you have ceased to work for us.**
* **You undertake to comply with these provisions.**

**By signing below, you acknowledge the accuracy of this information and receipt of a copy of this obligation and the relevant excerpts of the aforementioned regulations.**

Please return a signed copy of this letter to the Human Resources Department.

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

Place, date Signature of responsible person

I have been informed of my obligation to maintain confidentiality, observe data protection and the resulting conduct. I have received the leaflet on the Obligation for the Preservation of Confidentiality and the Observance of Data Protection with the printout of the regulations mentioned here. I undertake to fulfil these obligations conscientiously.

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

Place, date Signature of the obligated person

# Commitment

## Maintaining confidentiality and respect for data protection

As you may come into contact with personal data in the course of your work, you are obliged to observe data protection, in particular to maintain confidentiality.

This duty is comprehensive. You may not process personal data without authorisation and you may not disclose or make this data available to other persons without authorisation. In particular, you are obliged to comply with the data protection requirements and instructions of the company.

The EU General Data Protection Regulation (GDPR) defines "processing" as 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.

"Personal data" within the meaning of the GDPR means any information relating to an identified or identifiable individual; an identifiable individual 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 his physical, physiological, genetic, mental, economic, cultural or social identity.

Personal data may only be processed if consent or a legal regulation permits the processing or if the processing of such data is mandatory.

The principles of the GDPR for the processing of personal data are laid down in Art. 5 (1) GDPR (see leaflet).

Violations of data protection regulations can be punished with imprisonment or a fine. Data protection violations can at the same time mean a violation of labour or service law obligations and have corresponding consequences, such as a warning or even (summary) dismissal.

Data protection violations are also threatened with potentially very high fines, which may lead to claims for compensation against you.

Your obligation continues without time limit and even after you have ceased to work.

## Obligation to maintain business secrets

You must maintain confidentiality - even after termination of your employment - about company matters, such as details of the company, as well as about business transactions and figures of the internal accounting system and all transactions to be defined as business secrets according to § 2 No. 1 GeschGehG, provided that this information has not previously become public knowledge. This also includes transactions relating to third-party companies with which you are involved in the course of your duties. All records, transcripts, business documents, photocopies, official or business transactions relating to official activities that are given to you or made by you must be protected from inspection by unauthorised persons. You have taken note of these obligations. You are aware that you may be liable to prosecution if you violate them, in particular in accordance with § 23 GeschGehG.

Your obligation continues without time limit and even after you have ceased to work.

# LEAFLET - Excerpts of the statutory provisions

## Re 1: Transcript of the General Data Protection Regulation (GDPR), the Federal Data Protection Act (BDSG) and other criminal provisions from the Criminal Code

### Art. 4 GDPR Definitions

For the purposes of this Regulation:

1. ‘personal data’ means 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;
2. ‘processing’ means 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;

### Art. 5 GDPR Principles for the processing of personal data

1. Personal data shall be:
	1. processed lawfully, fairly and in a transparent manner in relation to the data subject (‘lawfulness, fairness and transparency’);
	2. collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes; further processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes shall, in accordance with Article 89(1), not be considered to be incompatible with the initial purposes (‘purpose limitation’);
	3. adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed (‘data minimisation’);
	4. accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay (‘accuracy’);
	5. kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed; personal data may be stored for longer periods insofar as the personal data will be processed solely for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes in accordance with Article 89(1) subject to implementation of the appropriate technical and organisational measures required by this Regulation in order to safeguard the rights and freedoms of the data subject (‘storage limitation’);
	6. processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures (‘integrity and confidentiality’).
2. The controller shall be responsible for, and be able to demonstrate compliance with, paragraph 1 (‘accountability’).

### Art. 32 GDPR Security of processing

(...)

1. The controller and processor shall take steps to ensure that any natural person acting under the authority of the controller or the processor who has access to personal data does not process them except on instructions from the controller, unless he or she is required to do so by Union or Member State law.

### Art. 83 GDPR General conditions for the imposition of fines

(...)

1. Infringements of the following provisions shall, in accordance with paragraph 2, be subject to administrative fines up to 10 000 000 EUR, or in the case of an undertaking, up to 2 % of the total worldwide annual turnover of the preceding financial year, whichever is higher:
	1. the obligations of the controller and the processor pursuant to Articles 8, 11, 25 to 39 and 42 and 43;
	2. the obligations of the certification body pursuant to Articles 42 and 43;
	3. the obligations of the monitoring body pursuant to Article 41(4).
2. Infringements of the following provisions shall, in accordance with paragraph 2, be subject to administrative fines up to 20 000 000 EUR, or in the case of an undertaking, up to 4 % of the total worldwide annual turnover of the preceding financial year, whichever is higher:
	1. the basic principles for processing, including conditions for consent, pursuant to Articles 5, 6, 7 and 9;
	2. the data subjects' rights pursuant to Articles 12 to 22;
	3. the transfers of personal data to a recipient in a third country or an international organisation pursuant to Articles 44 to 49;
	4. any obligations pursuant to Member State law adopted under Chapter IX;
	5. non-compliance with an order or a temporary or definitive limitation on processing or the suspension of data flows by the supervisory authority pursuant to Article 58(2) or failure to provide access in violation of Article 58(1).
3. Non-compliance with an order by the supervisory authority as referred to in Article 58(2) shall, in accordance with paragraph 2 of this Article, be subject to administrative fines up to 20 000 000 EUR, or in the case of an undertaking, up to 4 % of the total worldwide annual turnover of the preceding financial year, whichever is higher.

### § 42 BDSG - Penal provisions

1. The following actions done deliberately and without authorization with regard to the personal data of a large number of people which are not publicly accessible shall be punishable with imprisonment of up to three years or a fine:
	1. transferring the data to a third party or
	2. otherwise making them accessible

for commercial purposes.

1. The following actions done with regard to personal data which are not publicly accessible shall be punishable with imprisonment of up to two years or a fine:
	1. processing without authorization, or
	2. fraudulently acquiring

and doing so in return for payment or with the intention of enriching oneself or someone else or harming someone.

1. Such offences shall be prosecuted only if a complaint is filed. The data subject, the controller, the Federal Commissioner and the supervisory authority shall be entitled to file complaints.
2. A notification pursuant to Article 33 of Regulation (EU) 2016/679 or a communication pursuant to Article 34 (1) of Regulation (EU) 2016/679 may be used in criminal proceedings against the person required to provide a notification or a communication or relatives as referred to in Section 52 (1) of the Code of Criminal Procedure only with the consent of the person required to provide a notification or a communication.

### § 43 BDSG - Provisions on administrative fines

1. Intentionally or negligently engaging in the following shall be deemed an administrative offence:
	1. in violation of Section 30 (1) failing to treat a request for information properly, or
	2. in violation of Section 30 (2), first sentence, failing to inform a consumer or doing so incorrectly, incompletely or too late.
2. An administrative offence may be punished by a fine of up to fifty thousand euros.
3. Authorities and other public bodies as referred to in Section 2 (1) shall not be subject to any administrative fines.
4. A notification pursuant to Article 33 of Regulation (EU) 2016/679 or a communication pursuant to Article 34 (1) of Regulation (EU) 2016/679 may be used in proceedings pursuant to the Administrative Offences Act against the person required to provide a notification or a communication or relatives as referred to in Section 52 (1) of the Code of Criminal Procedure only with the consent of the person required to provide a notification or a communication.

## Ad 2: Transcript of §§ 2 No. 1; 4; 23 GeschGehG

### § 2 GeschGehG - Definitions

For the purposes of this Act

* 1. Trade secret

information

1. which is not generally known or readily accessible, either as a whole or in the precise arrangement and composition of its component parts, to persons in the circles which normally handle this type of information and is therefore of economic value, and
2. which is the subject of confidentiality measures appropriate in the circumstances by its rightful owner, and
3. where there is a legitimate interest in confidentiality;

(...)

### § 4 GeschGehG - Prohibited actions

1. A trade secret may not be obtained by
2. unauthorised access to, appropriation of or copying of documents, objects, materials, substances or electronic files which are under the legitimate control of the trade secret owner and which contain the trade secret or from which the trade secret can be derived, or
3. any other conduct which, in the circumstances, is not in accordance with the principle of good faith having regard to honest market practice.
4. A trade secret may not be used or disclosed by anyone who
5. the trade secret by an own act according to paragraph 1
	1. Number 1 or
	2. Number 2

has attained,

1. breaches an obligation to restrict the use of the trade secret; or
2. breaches an obligation not to disclose the trade secret.
3. A trade secret may not be obtained, used or disclosed by anyone who has obtained the trade secret through another person and who knows or ought to have known at the time of obtaining, using or disclosing that the other person has used or disclosed the trade secret contrary to paragraph 2. This applies in particular if the use consists in the production, offering, putting on the market or import, export or storage for these purposes of infringing products.

### § 23 GeschGehG - Violation of business secrets

1. A custodial sentence not exceeding three years or a monetary penalty shall be imposed on anyone who, in order to promote his own or another person's competition, acts out of self-interest, for the benefit of a third party or with the intention of causing damage to the owner of an enterprise,
2. obtains a trade secret in contravention of § 4(1)(1),
3. uses or discloses a trade secret in contravention of § 4(2)(1)(a), or
4. in contravention of § 4(2)(3), as a person employed by an undertaking, discloses a trade secret which has been entrusted to him or has become accessible to him in the course of his employment during the period of validity of his employment
5. Any person who, in order to promote his own or another person's competition, for his own benefit, for the benefit of a third party or with the intention of causing damage to the owner of an enterprise, uses or discloses a trade secret which he has acquired through an act of another person in accordance with paragraph 1 number 2 or number 3 shall also be punished.
6. A custodial sentence not exceeding two years or a monetary penalty shall be imposed on any person who, in order to promote his own or another person's competition or for personal gain, uses or discloses, contrary to § 4(2)(2) or (3), a trade secret which is a secret document or rule of a technical nature entrusted to him in the course of trade.
7. A custodial sentence not exceeding five years or a monetary penalty shall be imposed on anyone who
8. acts in a professional capacity in the cases referred to in paragraph 1 or paragraph 2,
9. in the cases referred to in paragraph 1(2) or (3) or in paragraph 2, knows at the time of disclosure that the trade secret is to be used abroad, or
10. in the cases of paragraph 1 number 2 or paragraph 2, uses the trade secret abroad.
11. The attempt is punishable.
12. Aiding and abetting acts of a person referred to in § 53(1), first sentence, number 5 of the Code of Criminal Procedure are not unlawful if they are limited to the receipt, evaluation or publication of the trade secret.
13. § 5 number 7 of the Criminal Code shall apply mutatis mutandis. §§ 30 and 31 of the Criminal Code shall apply mutatis mutandis if the offender acts to promote his own or another's competition or for his own benefit.
14. The offence shall only be prosecuted upon application unless the prosecuting authority deems it necessary to intervene ex officio due to the special public interest in the prosecution.