

## Contract

### for the Standardized Measurement of the Utilization of sites\*

between	and
<b>INFOOnline GmbH</b> <b>Brühler Straße 9</b> <b>53119 Bonn</b> <b>Germany</b>	
- hereafter INFOOnline- or Contractor	- hereafter the Customer- or Client

#### Site

For the site:

URL:

Operating system app:

#### Site Type:

#### Contract Data:

Contract closed on

Customer contract confirmed:

Price list confirmed:

SLA confirmed:

#### Authorized Customer

Name:

Authorization confirmed:

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\*Site is an umbrella term for stationary sites, apps and mobile enabled websites (MEW)

## 1. Scope of Services

INFOOnline GmbH is the service organization for the collection of performance values for the online media in Germany. For this purpose, a specific measurement system called “Skalierbares Zentrales Messverfahren” (germ. SZM  $\triangleq$  engl.: scalable central measurement system), which is operated by INFOOnline in a 24/7/365 organization, is used.

INFOOnline ensures the correct measurement of the specified key values and collects these for the customer in accordance with the guidelines of the IVW e.V. (germ.: Informationsgemeinschaft zur Feststellung der Verbreitung von Werbeträgern  $\triangleq$  engl.: Association for the Distribution of Advertising Material) and the regulations of the AGOF e.V. (germ.: Arbeitsgemeinschaft Online-Forschung  $\triangleq$  engl.: Online Research Group). Currently, the standardized units of Page Impressions and visits are specified as market-relevant values by the panels of the IVW e.V. and the AGOF e.V..

The adding of further performance values is possible pursuant to No. 3. This depends on whether the bodies of the AGOF and the IVW decide on new marketing-relevant values for the German online advertising market.

The measurement results from INFOOnline will be made available online for the customer at short intervals. For this purpose an analysis component is available at the INFOOnline customer center. Additional possibilities for the data provision and data analysis can be agreed with the customer as required and are not a part of the scope of services for the SZM measurement.

Both the integration of the tags and libraries required for the IVW and AGOF membership in the site, as well as counting of the accesses is carried out in accordance with the established rules of the IVW and AGOF. INFOOnline ensures that all technical requirements for a regular measurement are met. Furthermore, initial and periodic quality assurance measures, as well as functional tests, will be carried out on the part of INFOOnline in consultation with the customer.

During normal office hours, all customers can make use of technical and administrative support. For this purpose, the employees of the Service & Support department are available at the central telephone number 0228 / 410 29 77 or via e-mail at [service@INFOOnline.de](mailto:service@INFOOnline.de).

INFOOnline is represented in all relevant bodies that advise on the further development of performance values, and thus ensures that the technical implementation of new or modified values is guaranteed.

You can find further information about SZM measurement at [www.INFOOnline.de](http://www.INFOOnline.de).

## 2. Measurement System

INFOOnline runs the scalable central measurement system SZM within the framework of the present technical and operational possibilities.

With the scalable central measurement system SZM, a reliable and modern instrument is made available for your site in order to enable the valid collection of utilization figures in digital media. It is quickly adaptable, developed continually and can provide a wide range of metrics.

### 3. Modification of the Measuring System

The SZM is subject to permanent technical advancement. INFOOnline is entitled to carry out software updates and modify the SZM technical development.

INFOOnline is authorized to carry out measures such as maintenance, patches, bug fixes and software updates on the system, insofar as these are necessary from a technical standpoint. A change or expansion of the measurement system (e.g., the collection of new performance values), will be notified to the customer in a timely manner via e-mail, prior to the introduction of essential revisions.

If a customer, for whatever reason, does not agree with the change, they may terminate this contract in writing by registered mail until the expiration of six weeks as of the date of notification of change. If the customer does not exercise this right prior to the expiration of the deadline, the change shall be deemed approved. Claims for compensation in the case of extraordinary termination due to the change in the measuring system are excluded.

### 4. Participation of Third Parties

INFOOnline is authorized to involve third parties in the fulfillment of contractual obligations. The hiring of third parties will be effected through INFOOnline. The party to the contract has the right to check the professional qualifications of the third party and request replacement in justified cases. The employees or third-parties assigned by INFOOnline for the project shall be bound exclusively to the instructions from INFOOnline.

The customer shall be responsible for the actions of its assistants and third parties, who become active in INFOOnline's area of business upon initiation or toleration by the customer. INFOOnline shall not be liable to the customer if INFOOnline cannot fully or partly, or in a timely manner fulfill its obligations to the customer because of the behavior of one of the aforementioned third parties.

### 5. Deadlines

Deadlines for the provision of services by INFOOnline may only be assured by the responsible contact person.

The contracting parties shall determine deadlines in writing to the greatest possible extent. Deadlines (binding dates) shall always be defined in writing and designated as binding, if these effect a party's default without warning in accordance with § 286 paragraph 2 German Civil Code, in case a contracting party does not meet the deadline.

Delays in performance due to force majeure (e.g., strikes, lockouts, administrative orders, general telecommunications disruptions, etc.) and due to circumstances in the control of the customer (e.g., untimely performance of cooperation services, delays by third parties attributed to the customer, etc.) are outside of INFOOnline's responsibility and entitle INFOOnline to postpone the agreed-upon services for the duration of the hindrance in addition to a reasonable lead-in time. INFOOnline shall notify the customer of delays in performance due to force majeure.

## 6. Customer's Cooperation Obligations and Liability

In order to achieve the best possible service and support, and to quickly and reasonably react in the event of a malfunction, INFOOnline is dependent of the cooperation of the customer. Therefore, the following is agreed:

INFOOnline provides the customer an electronic interface for the modification and supplementation of the master data of the site (Customer Center). The customer is obligated to independently update his master data and to appoint designated contact persons for the respective area via the customer center. Delays, which are not due to non-updated information, will be at the expense of the customer. Declarations, which are sent to the customer's designated e-mail address, will be deemed received.

The customer is responsible for the integration of the SZM-Tag and the installation of the measurement library, each in compliance with the legally valid guidelines of the control organization.

The customer is therefore responsible for ensuring that the implementation of the SZM-Tag respectively of the Library is correct, even if the pages or apps are changed. Counts that are technically not covered on the basis of an incorrect implementation will remain outside of consideration. A subsequent correction of the measurement results is excluded.

The customer shall inform INFOOnline as quickly as possible if data supplied by INFOOnline is used in business-critical processes or if business decisions with significant effects depend on the data. INFOOnline shall support the customer in the provision of services in appropriate manner and inform of disruptions of services as quickly as possible. Disruption, in the meaning of the SLA (Attachment 2), is a deviation of the respective application from the contractually specified service descriptions.

INFOOnline will invoice support services to customers, if the customers have caused these through incompetent handling of the accessible components in connection with this contract. The customer shall fulfill its cooperation actions at its own expense.

## 7. Warranty Claims

INFOOnline grants the warranty that the SZM conforms to the services described in No. 1 in consideration of the limitations mentioned in No. 3.

If a disruption of one of the services, for which INFOOnline is responsible, lasts longer than 24 hours and if this is in INFOOnline's responsibility, the customer will be entitled to prorated price reduction of the monthly charges. The customer has the right under the statutory conditions to withdraw from the contract or demand damage compensation, only if INFOOnline is responsible for a breach of duty. No. 8 applies to the scope of the claim for compensation.

In the case of cancellation, according to the nature of this contract as a continuing obligation, a reversal is excluded.

Withdrawal because of an insignificant defect is excluded.

## 8. Limitation of Liability

INFOOnline is liable for damages caused by itself and its assistants, regardless of their legal grounds, only in the case INFOOnline or its assistants culpably violate a substantive contractual obligation (a so-called cardinal obligation) in a manner that jeopardizes the purpose of the contract or if the damage is caused by gross negligence. If the culpable violation of a cardinal obligation is not gross negligent or intentional, the liability shall be limited to an amount for such typical contract damages, which were reasonably foreseeable at the time of the conclusion of this contract. The foreseeable damage is quantified at a maximum of 10,000 Euros per damage event.

In each case, the liability is limited to the agreed remuneration.

INFOOnline is not liable for loss of data and/or programs, insofar as the damage is due to the fact that the customer has failed to carry out data backups and thereby ensure that the lost data can be restored with reasonable effort.

The limitations of liability do not apply to damages caused by INFOOnline, their legal representative, or assistants, which arise from injury of life, limb, or health, and neither to the liability according to the Product Liability Act. Likewise, the limitations of liability do not apply in the case of fraudulent deceit, the assumption of a procurement risk, or an assurance guaranteeing certain properties.

To the extent the liability of INFOOnline is effectively excluded or limited, this also applies to the personal liability of workers, other staff, bodies, representatives and assistants of INFOOnline.

The limitation period for non-essential breaches of contract is limited to two years.

## 9. Payment Modalities/Remuneration

For the implementation of the measuring system and the provision of the results the customer shall pay a remuneration to INFOOnline in accordance with the currently valid price list, which can be viewed on INFOOnline's website and which is enclosed to this contract in its currently valid version as Attachment 1.

Changes to the price list will become effective one month after written notification. INFOOnline reserves the right to increase the charges stated in the currently valid price list for the implementation of the measuring system within a period of two years each by a total of 10 percent. In addition, there is the possibility of greater price adjustment with the expansion of the sites or special changes. The customer may exceptionally terminate the contract as of the time of the effective date of the price increase applicable to it. The right of termination expires if the customer does not exercise it within one month of the notification of the change.

Furthermore, the customer is responsible for all expenses such as travel and accommodation and all third-party expenses related to the implementation of the contract. Travel expenses will only be reimbursed if the travel distance is more than 50 km from INFOOnline's registered offices. Pure travel time will not be compensated. For the fulfillment of orders with third parties, whose costs are directly passed on to the customer, INFOOnline may charge a handling fee in the amount of 10%.

The customer may only offset claims of INFOOnline against counterclaims that are undisputed or determined to be legally valid. The assertion of a right of retention is also only possible for a claim that is undisputed or determined to be legally valid.

Invoices will be due upon receipt without reductions.

If the customer does not pay the invoice amount within 30 days of receipt, the customer will be in default, without prejudice to the statutory automatic default according to § 286 paragraph 3 German Civil Code. If the customer is in default, interest in the amount of 8% above the respective base rate of the European Central Bank will due, in reservation of a further claim of default damages. INFOOnline reserves the right to the enforcement of additional claims for payment default.

## 10. Data Protection

The customer is responsible for the admissibility of the measurement system used and the data communication in accordance with the provisions of the data protection laws. The specific agreements for commissioned processing are specified in the Commissioned-processing contract.

Additional current information on the topic of data protection can be found on our website.

## 11. Trademark Rights Infringements

INFOOnline indemnifies the customer from all third-party claims (patents, licenses and other rights) arising from trademark infringements at INFOOnline's own expense. The customer will inform INFOOnline of legitimate third-party claims without delay. If the customer does not immediately inform INFOOnline regarding legitimate claims, the right to indemnification will expire.

In the case of proprietary rights infringements, INFOOnline – without prejudice to any damage compensation claims by the customer – at its own choice and cost, may make changes to the affected performance, which guarantee that a proprietary rights infringement will no longer be present or it may acquire the necessary use rights for the customer, and shall do so after prior consultation with the customer and with due regard for the customer's interests.

## 12. Use of the Data by INFOOnline

INFOOnline collects data specific for pages or applications regarding the various websites and applications within the framework of the SZM. This is necessary for the accurate measurement and monthly aggregations.

In return, INFOOnline restricts the disclosure of customer data to third parties in such a way that:

- INFOOnline can analyze the anonymized data generated by the measuring system for the purposes of market research and further system development, make the anonymized data accessible to third parties, and publish it on its own in anonymized form;
- a specific designation or disclosure of data to third parties by INFOOnline in stating the name of sites is excluded.

In order to allow for a further data analysis by the IVW and AGOF, the customer authorizes the disclosure of the data to the AGOF and/or the IVW by this contract, insofar a membership exists. In addition to contact and company data, INFOOnline is authorized to pass on measurement data corresponding to the specifications of AGOF and/or IVW, which is viewable to the respective organizations.

The customer as the operator indemnifies INFOOnline from all third-party claims, which arise from the disclosure of this data supplied to the AGOF and/or IVW.

The further processing of the data is the exclusive responsibility of the respective recipient of the transmission.

### **13. Software User Agreement**

INFOOnline makes software in the form of so-called SZM-Tags or software libraries – as the basis for the measurement – available to the customer.

The customer is responsible for the integration of the tags and libraries in stationary sites, mobile-enabled websites and/or responsible mobile apps. For the orderly implementation, INFOOnline makes specific instructions available in the form of manuals, integration guides, and also tutorials. Proper measurement is only possible if the software remains unchanged and is installed according to the instructions. The customer is therefore also responsible for ensuring that the implementation of the tags and libraries in stationary websites, mobile-enabled websites and/or mobile apps is correct with regard to changes to the page or application.

### **14. Use of Logos**

For the duration of the contract, INFOOnline may use the customer's logo within its website for the purpose of its own free advertising. If the customer is opposed to this use, the customer may be mentioned by naming the site in the default font on the INFOOnline website.

### **15. Confidentiality**

INFOOnline and the customer mutually agree for indefinite period to keep all business and trade secrets of the other side secret and not passing them on to third parties. The documents and other information received by the other contract party on basis of the business relationship, without prejudice of the other contract provisions, may only be used within the framework of the respective purpose of the contract.

The customer is responsible for keeping the ID and passwords secret. The customer may only reveal them within the necessary scope to selected employees if the customer has likewise obliged them to maintain confidentiality beforehand. If the customer or one of the authorized persons has the suspicion that unauthorized knowledge of a password has been gained, they will be obliged to immediately change it. If an unauthorized person has gained knowledge of a password, the customer will be obligated to immediately inform INFOOnline. The customer must fully repair any possible damage due to a lack of maintaining the confidentiality of IDs and passwords. Press releases, information, etc, in which a contracting party references the other, are only allowed with prior-written consent (e-mail also permitted).

### **16. Assignment**

An assignment of claims arising from this contract without the consent of INFOOnline is not permitted.



## 17. Contract Term and Termination

### Test Phase

The first three months of this contract are the "test phase". The contract can be canceled during the test phase without time limits. In absence of a cancellation or an extension of the test phase confirmed by INFOOnline, the contract will continue for an indefinite period of time.

### Contract Term after the Test Phase

The contract, after the expiration of the test phase, is concluded for an indefinite period of time. It can be canceled with a notice period of four weeks to the end of the quarter.

The cancellation can be declared in electronic form in accordance with § 126a German Civil Code or in writing by registered mail.

The right of cancellation for important reasons without notice is unaffected. For INFOOnline an important reason especially exists if:

- the customer does not comply with an essential obligation of the contract after a reminder;
- the customer is found to be insolvent;
- the customer has so manipulated the measurement system so that the measurement is altered or an important part of the system is non-functional;
- the customer misuses the measurement results and this behavior is suitable to discredit the reputation of INFOOnline.

## 18. Side Agreements and Contract Changes

Verbal subsidiary agreements to this contract do not exist. In the case of conflict between this contract and its Attachments, this contract shall take precedence.

Changes and/or additions to this agreement, including this provision, must be made in writing to be effective. The customer will be informed of the contract changes by mail sent to the place named by the customer and will take effect one month after the communication. If the contract changes are at the customer's disadvantage, it may cancel the contract from the point in time of the effective date of the contract changes. The right of termination will expire if the customer does not make use of it within one month of the notification of change.

## 19. Severability Clause

Should the individual provisions of this contract be or become ineffective, this shall not affect the validity of the rest of the contract. In place of the ineffective provisions, as well as for amending omission, a legally valid provision shall apply, which, as far as possible, corresponds to what the parties would have intended according to the meaning and purpose this contract if they had been aware of this omission.



## 20. Arbitration Clause

The parties agree that in case of any differences in opinion from or in connection with this contract, for contract extensions or amendments, which they cannot settle among themselves, the Arbitration Office of the Deutsche Gesellschaft für Recht und Informatik e.V. (DGRI) (engl: German Society for Law and Informatics Inc. Soc.) shall be called upon to settle the dispute fully, partly or conclusively in accordance with the arbitration rules valid at the time when an arbitration proceeding is initiated.

To enable arbitration, the parties mutually waive the defenses of the limitation period for all claims arising from the disputed legal facts from the arbitration request, up to a month after the end of the arbitration procedure. The waiver will effect the suspension of the statute of limitation.

## 21. Final Provisions

The exclusive place of jurisdiction for all disputes arising from this contract is INFOOnline's place of registration, provided the customer is a merchant, legal entity under public law or special assets under public law. INFOOnline can also assert their claim in the courts in general jurisdiction of the customer. Any exclusive place of jurisdiction remains unaffected thereof.

The relationship between the customer and INFOOnline GmbH is governed by the laws of the Federal Republic of Germany, as it applies between domestic persons in exclusion of the UN Convention on Contracts for the International Sale of Goods.

### Attachments:

1. Price list INFOOnline GmbH
2. SLA - Service Level Agreement