

936-031219

□ Procedure No.: PS/00135/2020

RESOLUTION R/00301/2020 TERMINATION OF THE PROCEDURE FOR PAYMENT

VOLUNTEER

In sanctioning procedure PS/00135/2020, instructed by the Agency

Spanish Data Protection to SCHOOL FITNESS HOLIDAY & FRANCHISING,

S.L.U., having regard to the complaint filed by the CITY COUNCIL OF MADRID - UNIT OF

CONSUMPTION, and based on the following,

BACKGROUND

FIRST: On June 16, 2020, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against SCHOOL FITNESS

HOLIDAY & FRANCHISING, S.L.U. (hereinafter, the claimed party), through the Agreement

which is transcribed:

<<

Procedure No.: E/00135/2020

935-240719

AGREEMENT TO START A SANCTION PROCEDURE

Of the actions carried out by the Spanish Data Protection Agency before

SCHOOL FITNESS HOLIDAY & FRANCHISING, S.L. with CIF: B82887514, (in

hereinafter, "the entity claimed"), by virtue of the claim presented by the

MADRID CITY COUNCIL (BUREAU OF HEALTH SERVICES AND

CONSUMO) (hereinafter, "the claimant"), and based on the following:

FACTS

The Health Services and Consumption Bureau of the Madrid City Council has

sent to this Agency two written complaints against the entity claimed by the

same facts. These two writings have given rise to the opening, in this Agency, of

two investigation files: E/0065/2019 and E/3498/2019.

A) Regarding Procedure E/0065/2019:

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FIRST: On 11/26/18, you had entry into this Agency in writing submitted by

the claimant, which, among others, indicated:

“Inspection visits carried out by the Quality and Consumption Technical Services to the establishment and owner of reference on dates 04/16/18 and 05/09/18, it was noticed and required the merchant to file for the purpose of correcting irregularities of abusive clauses in the contract presented, specifically in the following clauses:

(...) NINTH: All partners are required to show their DNI to

requirement of the employees of the center, both at the entrance and during your stay on the premises. Failure to comply with this rule will make it impossible to access or permanence in the gym as long as said

requirement. Upon acceptance of the contract, each partner will be required to read the biometric parameters of your fingerprint that will be used for the acceptance of the same and later for its entry and exit from the centers,

through the mechanism provided for it. In accordance with article 5.1 of the

Law 15/1999, the member is informed that the data corresponding to the employer

biometric that is provided will be included in an automated file called

"customers and suppliers" that will be used for access by users of the

gym and that in no case will be transferred to third parties. reading the data

biometrics does not imply the recording of the fingerprint and the data obtained is not in no case treatable as a fingerprint. The obligation to show the DNI, without specifying valid reasons to require the employees, when for the acceptance of the contract and for the entrance and exit of the centers the biometric data reading,

(...) TWELFTH: By signing this contract, the partner grants authorization for the company to use indistinctly all the images, photographs, videos, voice files, graphic material, etc., (in forward the images) in which it intervenes, or part of them, and include your data in a file duly registered in the Spanish Agency of Data Protection, in accordance with the provisions of the Organic Law 15/1999, of December 13, on the Protection of Personal Data.

Likewise, the member authorizes the communication or transfer of the images to the people that the company considers appropriate, with the same purpose indicated in the previous section, expressly informing you that in some cases For said assignment, international data transfers will be made. In concrete. These data may be communicated to third parties, without any additional consent from you, provided that this communication is limited to this purpose.

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The partner grants this authorization with a broad territorial and temporal scope, so the company may use the images, or part of them, in

all the Spanish territory and in all the countries of the world without limitation geography of any kind. The partner grants this authorization for the use of the images in which it appears, or part of them, in the scope and purposes of both communication and dissemination of the activity of the business. like any other project, understood in its most wide, intended in an enunciative way, but not limited to the promotion of the activities of the company, in its own centers, its website and in any other means that the company considers, and may be exploited in all currently known means and those that could be developed in the future, all with the sole exception and limitation of those uses or applications that could violate the right to honor, morality and to public order, in the terms provided in the legislation in force in each country.

This authorization is understood to be made free of charge. The partner exempts expressly hold the company harmless for any use that can make a third of the images, outside the territorial scope. temporary and material covered by this contract. Image rights are regulated in Organic Law 1/1982. of May 5. on civil protection of the Right to Honor. to personal and family intimacy and to one's own image. All of them by themselves They are fundamental rights protected in art. 18.1 of the Spanish constitution. They are inalienable, inalienable and imprescriptible. The essential principle is imperative for what is related to the treatment of the image, the express and unequivocal consent of the owner to obtain, reproduce or publish by any means or support the image of a person. art. 2.2, art. 6 LO 1/1982 the owner of the right has granted the effect your express consent. Clause between the general conditions that

does not allow the express and unequivocal consent of the owner of the image (lack of transparency), not expressing themselves formally and explicitly. Clause abusive that links the treatment of one's own image to the will of the entrepreneur, Art. 85.3 TRLGDCU, which imposes with the exemption of responsibility to the company. the waiver or limitation of the rights of the consumer and user, Art. 86.7 TRLGDCU, which imposes declarations of reception or conformity or adherence of the consumer, to a consent of which he has not had the opportunity to take real knowledge of his rights nor of the consequences derived from these declarations or can affect. Art. 89.1 TRLGDCU. Being the responsible body the AEPD, 60 transfers a copy of this document conditioned to the effect of the appropriate actions within the scope of its powers.

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THIRTEENTH: According to the provisions of Organic Law 15/1999 of Protection of Personal Data (LOPD), the data provided by the partner, including those corresponding to the biometric pattern, will be incorporated into! file "customers and suppliers" whose owner is SCHOOL FITNESS HOLIDAY FRANCHISING S.L.U., with address in Las Rozas (28290) Las Rozas, Madrid, calle Rozabella nº 6. Parque Europa Empresarial. For this purpose, it is considered that the data that the partner/& provides are certain... The biometric pattern data

FOURTEENTH: The partner authorizes the company to assign its rights and

obligations to a third party. By means of this transfer, the

rights and obligations of partners.

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5

December, of Protection of Personal Data and guarantee of the digital rights that

A mechanism has been foreseen, prior to the admission for processing of the claims that are

formulated before the Spanish Agency for Data Protection, consisting of transferring them

to the Data Protection Delegates designated by those responsible or

in charge of the treatment, or to these when they have not been designated, with a date

On 01/09/19, the claim submitted to the claimed entity was transferred to

to proceed with its analysis and respond to the claimant and to this Agency.

THIRD: On 02/22/19, this Agency received a written statement of allegations,

filed by the respondent entity, in which it stated, among others, the following:

“Conditioned adapted to data protection regulations. In the request for information

mation, we are requested to modify the ninth, twelfth, and tenth clauses.

third and fourteenth for its adaptation to Regulation 679/2016 of April 27

(GDPR). In compliance with the requirements, we have proceeded to modify said contract.

dicted and to adapt it to current regulations. In proof of this we send them as

DOC 1 of this writing copy of the condition in its new terms.

To give greater protection and security to the client and ensure that acceptance is free,

voluntary, informed and unequivocal of the specific treatment of your data, it has been introduced

In addition to the modifications of the clauses, a specific annex called

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“data protection sheet” that all new registrations sign either in person

or via the web. We enclose a copy of said file as DOC 2.

In relation to existing contracts and for their adaptation to the new regulations,

have adopted the following measures, which are in the implementation phase

due to the volume of clients: iii) Subscription of annex notifying the modification

of the conditions of the contract regarding data protection and file communication

of data protection. It is being done in person at gyms. Re-

electronic communication mission to all customers informing of the need for

expressly accept consent for the processing of your data. require-

personal service to subscribers through access control (turns) for subscription

Cryption of the "Data Protection" file and capturing your signature well in support for

paper or Tablet support All measures are in the implementation phase

and will take a while to fully implement because: The campaign of

mailing has been poorly received by subscribers Not all subscribers go to

to the gym every day.

FOURTH: On 03/01/19, by the Director of the Spanish Agency for

Data Protection, a resolution is issued to file actions within the framework of the

tooth, E/0065/2019, considering that the initiation of a sanctioning procedure

tioner as the claim filed by the respondent has been addressed.

A) Regarding Procedure E/03498/2019:

FIFTH: On 09/26/19, this Agency had entry, the second pre-

stated by the claimant, which led to the opening of file E/3498/2019 in

which, among others, indicated:

It is verified in these last inspections that the registered company continues

issuing with the consumers and you would use the same and identical pre-

provided, that the reasoned presumed violation of the recognized rights of property

Data protection in the 2018 gym inspection and control campaign.

Received the letter from the AEPD dated 03.01.19, informing of the correction by the company in the modification of the conditions and adoption of measures corrective actions in what is of interest in their competences, solving the file of actions tuations. This Consumer Unit must proceed to report again to

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the AEPD of what was found in the supply by the denounced company, of information inaccurate or false and non-compliance with the remediation requirements.

Studying the file, originated by the actions of the Technical Services of Inspection of Quality and Consumption of this Latin District in the Campaign of inspection tion and Control of Gyms 2019, and the documentation attached to it, is verified that the registered company continues to issue with consumers and users the same and identical predisposed contract, that motivated the inhibition in the 2018 Gym Inspection and Control Campaign, for the inclusion of clauses abusive in the conditions of the contract submitted to the file, according to the Real Legislative Decree 1/2007, of November 16, which approves the Consolidated Text of the General Law for the Defense of Consumers and Users and other complementary laws. (TRLGDCU), according to the analysis of the Districts and assessment of the institute Municipal of Consumption.

SIXTH: In accordance with article 65.4 of Organic Law 3/2018, of December 5, December, Protection of Personal Data and guarantee of the digital rights that

A mechanism has been foreseen, prior to the admission for processing of the claims that are

formulated before the Spanish Agency for Data Protection, consisting of transferring them to the Data Protection Delegates designated by those responsible or in charge two of the treatment, or to these when they have not been designated, dated 10/24/19, the claim submitted was transferred to the claimed entity so that it could proceed give its analysis and respond to the claimant and to this Agency.

SEVENTH: On 11/26/19, this Agency received a written statement of allegations, pre-seated by the defendant entity, in which it stated, among others, the following:

“On February 20, 2019, this company replied to the General Subdirectorate of Inspection of the AEPD notifying that we had proceeded to adapt the General conditional on data protection regulations. sending a copy of the new conditioned along with a data protection sheet and we communicated the measures that we had adopted and that these were in the implementation phase.

Specifically, we explained that the specific actions were being carried out and the times necessary for it, indicating that:

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In relation to existing contracts and for their adaptation to the new regulations, have adopted the following measures, which are in the implementation phase due to the volume of clients:

- Subscription of annex notifying the modification of the conditions of the contract.

treatment related to data protection and communication of the protection file of data. It is being done in person at gyms.

- Sending of electronic communication to all clients informing of the

need to expressly accept the consent for the treatment of your data.

- Personal request to subscribers through access control (all mos) for the subscription of the file, "Data Protection" and capturing your sign either on paper or on a tablet

All measures are in the implementation phase and will take some time to complete. put them into effect completely since the mailing campaign has been poorly received by subscribers Not all subscribers go to the gym every day. The control in lathes it is done in blocks of people to avoid collapsing the accesses.

The adaptation works that have been carried out between the month of February 2019 and the present are the following:

- Modification of clauses on the website for online contracting —> He- We proceeded to modify the clause of general conditions and the file of data protection on the website so that online contracts are equipped with all the guarantees and adapted to the new regulations. accompanies- We show screenshot as DOC 2.

- Acquisition of all the new tablets with the appropriate software for capturing signature capture of new subscribers and signature capture of subscribers. res that already had a contract by signing an annex to the main contract. We accompany invoices of the new tablets as DOC 3

- Implementation of the cloud software in a central storage server with secure communication between the administrative center and the operational centers (a total of twenty gyms). We accompany invoice of the computer consultancy which updates management software such as DOC 4

As of today, we can certify that the implementation campaign has concluded in

all its phases with success, both in central services and in each of the VEIN-

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YOU (20) gyms HOLIDAY GYM.

It is worth noting in this report our surprise to see that the complainant has been the Consumption Department of the Madrid City Council, from its district of Aluche. And we say this because our company is in communication with the Department of Consumption of the Madrid City Council, Chamartín district, located in Calle del Príncipe de Vergara nº 140 to whom we have gone precisely to request help so as not to breach any legal obligation regarding consumption and protection against sinks.

We can state that part of the process of implementing the new conditions has gone through holding meetings with people from that Department of Consumption of the district of Chamartín, who have helped us to specify much better the terms and conditions to prevent our company from committing irregularities or infractions in this matter.

It should be noted that on November 5, 2019 we have held a meeting with them in order to inform them of this unpleasant situation and to indicate the appropriate guidelines in case we were committing any irregularity. In particular, to This meeting was attended by the coordinating Technical Counselor of the 21 districts of Consumer Affairs of Madrid, the Head of the Sanctioning Procedure Unit, the Technician of consumption of Príncipe de Vergara district and representatives of Holiday Gym.

Today we are waiting to receive the approval from said Office

of the Consumer, to the contract that at the time the AEPD dated March 1, 2019 filed for giving approval to the proposed condition. Ultimately, none irregularity has committed this company, although although we must recognize that the implementation process has been slower than projected.

We have been required a copy of the last contracts of September 2019 and thus the we contribute, indicating that they do not meet the required requirements because are contracts signed in the gym resulting in the operating software with the new vo system and conditioned has not been operational until the end of October 2019. We enclose a copy of these contracts as DOC 5.

To demonstrate that the company has correctly implemented the new condition

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We enclose as DOC 6 a copy of the last contracts signed in the month of November, where the fulfillment of our obligations can be verified.

In short, we assume the delay in the implementation, but we show that we have

We have complied with our obligations to adapt.”

Within the DCO 6 provided together with the pleadings brief, the following is verified:

following sections:

"(...) NINTH. All partners are required to identify themselves sufficiently

at the request of the employees of the center, in order to be able to verify

bar the identity, where appropriate, of the partner who has breached the rules. The

Non-observance of this rule will make it impossible to access or remain in the

gym as long as said requirement is not met. Upon acceptance of the contract

each member who so wishes will be required to read the biometric parameters

fingerprints that will be used for your entry and exit from the centers.

others, through the mechanism provided for it. The partner is informed that the data

corresponding to the biometric pattern that is provided will be used to access

so of the users of the gym and that in no case will be transferred to third parties.

The reading of the biometric data does not imply the recording of the fingerprint and the

data obtained are in no case treatable as a fingerprint.

(...) TWELFTH. By signing this contract, the partner grants authorization

ization so that the company can use all the images indistinctly.

photos, videos, voice files, graphic material, etc., (hereinafter the images

genes) in which it intervenes, or is part of them. Likewise, the partner

authorizes the communication or transfer of the images to the people who em-

prey deems appropriate, with the same purpose indicated in the previous section.

above, expressly informing you that in some cases for said assignment

will carry out international data transfers. Specifically, these data

may be communicated to third parties, without any additional consent by your

party, provided that this communication is limited to this purpose. The partner with

grants this authorization with a broad territorial and temporal scope, for which the

The company may use the images, or part of them, throughout the territory

Spanish and in all the countries of the world without geographical limitation of any

class. The partner grants this authorization for the use of the images in

the ones that appear, or part thereof, in the scope and purposes of both co-

communication and dissemination of the company's activity, as of any other

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Project. understood in its broadest form, intended in an enunciative way
tive, but not limited to the promotion of the company's activities, in its
own centers, its website and in any other medium that the company, con-
sidere, being able to be exploited in all currently known media.
and those that could be developed in the future, all with the only exception
quality and limitation of those uses or applications that could threaten the
right to honor, morality and/or public order, in the terms provided in
current legislation in each country. This authorization is understood to be made with
gratuitous character. As a consequence of the assignment, the partner expressly exempts
mind the company from all responsibility for any use that may
make a third of the images, outside the territorial, temporal and material
rial object of this contract. All this under the provisions of the Law
Organic 1/1982, of May 5. of Civil Protection of the Right to Honour, to the
Personal and Family Privacy and Self Image. as well as the RGPD and others
applicable data protection regulations.

THIRTEENTH. In accordance with the provisions of current regulations
in Protection of Personal Data, the company informs that the
data of the partners will be incorporated into the treatment system owned by
the company HOLIDAY M. OESTE, S.L, and registered office located at Calle Roza-
bella, nº 6, 28290, Las Rozas de Madrid, Madrid, for the purpose of processing
of the customer database, to facilitate the management and control of services
vices provided by HOLIDAY M. OSTE, S.L as well as for communications
commercial and promotional advertising. In compliance with
regulations in force, the company informs that the data will be kept during

for the period strictly necessary to comply with the aforementioned precepts.

previously created based on legitimate interest. As long as the partner does not communicate

Unless otherwise, it will be understood that your data has not been modified, com-

promising to notify any variation and giving the company its consent.

ment to use them for the aforementioned purposes. The company informs

that it will treat the data in a lawful, loyal, transparent, adequate, pertinent manner.

mind. limited, accurate and up-to-date. That is why it undertakes to adopt

all reasonable measures so that these are suppressed or rectified without delay.

tion when they are inaccurate. In accordance with the rights conferred by the

current regulations on data protection, the member may exercise the rights

of access, rectification, limitation of treatment, deletion, portability and

Opposition to the processing of your personal data, as well as the consent

feeling provided for the treatment of the same, directing your request

to the legal department of HOLIDAY M. OESTE, SL. at the address calle Ro-

Zabella, nº 6, 28290, Las Rozas de Madrid, Madrid, or by email

***EMAIL.1.You can also contact the competent Control Authority

to present the claim that it deems appropriate in the event that

consider that their data protection rights are infringed (Regulation

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EU 2016/679, of April 27, 2016).

The client can expressly accept the use of the biometric pattern for the ac-

I go to the gym. The biometric reading does not imply the recording of the fingerprint

fingerprint and the data obtained are in no case treatable as a fingerprint.

tilar. In information technology (IT) "biometric authentication" or

"computer biometrics" is the application of mathematical and statistical techniques

on the physical or behavioral traits of an individual for authentication.

tion, that is, to "verify" your identity. The data will be used to comply

support for the provision of services contracted by the partner, as well as the

commercial management and the sending or communication of advertising or information of

commercial nature or satisfaction surveys by any means. In

If the member wishes to receive publicity or commercial information, they must-

You will have to check the box corresponding to the acceptance of the contract. The acceptance

of the contract implies the consent of the partner for the communication of its

personal data to any company of the HOLIDAY GYM group. with the final

ability to allow access to gyms. In addition to the above purposes

indicated mind.

FOURTEENTH. The partner authorizes the company to assign its rights and obligations

tions to a third party. By means of this transfer, the rights

rights and obligations of the partners.

EIGHTH: In view of the reported facts, in accordance with the evidence

that is available, the Data Inspection of this Spanish Agency for the Protection of

Data considers the above, does not comply with current regulations, therefore

that the opening of this sanctioning procedure proceeds.

FOUNDATIONS OF LAW

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In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 of the

European Parliament and of the Council of April 27, 2016, regarding the protection of

individuals with regard to the processing of personal data and the free

circulation of these data (GDPR), applicable from May 25, 2018, recommends

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recognizes each control authority, it is competent to resolve this claim the Director of the Spanish Agency for Data Protection, in accordance with article 12.2, sections i) and j) of Royal Decree 428/1993, of March 26, approving the Statute of the Data Protection Agency (RD 428/1993) and the Provision First transitory of the Organic Law 3/2018, of December 5, on the Protection of Data Personal data and guarantee of digital rights (LOPDGDD).

In accordance with the provisions of article 55 RGPD, the Spanish Agency for Data Protection is competent to perform the functions assigned to it in its article 57, among them, that of enforcing the Regulation and promoting the awareness of controllers and data processors about the obligations incumbent on them, as well as dealing with the claims presented by a concerned and investigate the reason for them.

II

In the present case, it must be taken into account that, prior to the initiation of this sanctioning file (PS/135/2020), it had been previously processed an investigation file for the same facts, in this Agency, (E/0065/2019), during which the claimed entity was notified to process Give your analysis and answer. In addition, he was also required to report of the measures they would adopt to avoid similar situations in the future. The process of all the actions followed in the two files has been as follows:

following:

1.- On 04/16/18 and 05/09/18, the Quality and Consumption Technical Services of the Madrid City Council carried out two inspection visits to the entity claiming day by day detecting a series of irregularities in the clauses of the contract that ban with customers and that violated data protection regulations.

2.- On 11/26/18, the Technical Services for Quality and Consumption of the City Council of Madrid notified this Agency of the facts detected in said inspections.

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3.- On 01/09/19, by this Agency, the claimed entity was required to information about the reported facts.

4.- On 02/22/19, the respondent entity states that they had already modified the abusive clauses of the contract with clients, specifically the clauses denouncing for not being adapted to the new RGPD (the ninth, twelfth, thirteenth th and fourteenth).

5.- On 03/01/19, this Agency proceeded to file the updates previous investigations (E/0065/2019), considering that it had been attended to with correctly the requirement.

6.- On 09/26/19, this Agency received a new complaint from of the Technical Services for Quality and Consumption of the Madrid City Council, indicating do that in the last inspections carried out on the registered company, it had been verified again that it continues to issue the same predisposed contract.

7.- On 10/24/19, this fact was reported to the entity claimed so that it

proceed to its analysis and respond to this Agency.

8.- On 11/26/19, this Agency received a brief of allegations, presented by the entity claimed, alleging that:

- In relation to the old contracts, already existing until the month of February

2019, the denounced clauses were eliminated and a new

drafting of them. But his adaptation was not quite complete.

quality, since, as it is carried out in person, and due to the large number of

number of members distributed among the 20 gyms that the entity has in the Co-

community of Madrid, many of whom do not regularly attend the centers

Others, this process was lengthening in time.

- In the contracts signed from February 2019 to October 2019, the entity

entity alleges that "they did not meet the required requirements because the

operating software installed on the entity's computer network has not been

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operational until the end of October 2019", a date that coincides with the

receipt of the second request by this Agency.

- Regarding the contracts signed as of November 2019, it is provided

copy of the same, being able to verify the modification of the clauses de-

announced and their adaptation to the new RGPD.

Well, it is verified that the entity claimed was aware of the irregularities.

des in their contracts with customers in April/May 2018, through the minutes of

inspection carried out by the Sanitary Services Bureau of the Madrid City Council

drid and where he was also required to correct the deficiencies and adapt the abusive clauses to the current regulations on data protection.

Later, in February 2019, by this Agency, it was required to correct irregularities detected. The respondent entity stated on that occasion that, attended the request and proceeded to eliminate the abusive clauses denounced and to draft new ones in accordance with the RGPD, but it is not until November 2019, after receiving the second request from this Agency, (the 10/24/19), when, according to the entity, the new contracts are definitively implemented. cough.

Consequently, one year and 5 months after the Sanitation Services Bureau representatives of the Madrid City Council required the entity, twice, to modify abusive clauses contrary to data protection regulations and 8 months after this Agency required its modification for the first time, the entity re-cried, proceeds to modify the contracts. If we add to this that many of the anti-old contracts, made before the month of November 2019, with the old clauses cells are still active, the facts denounced are clearly contrary to the stipulations do in the GDPR.

III

The exposed facts could constitute an infraction, attributable to the claimed, for violation of article 13 of the RGPD, where the information that must be provided to the interested party at the time of collection of your personal data, indicating therein that:

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"1. When personal data relating to him is obtained from an interested party, the responsible for the treatment, at the time these are obtained, will provide

all the information indicated below:

- a) the identity and contact details of the person in charge and, where appropriate, of their representative;
- b) the contact details of the data protection delegate, if any;
- c) the purposes of the treatment to which the personal data is destined and the legal basis of the treatment;
- d) when the treatment is based on article 6, paragraph 1, letter f), the interests legitimate of the person in charge or of a third party;
- e) the recipients or the categories of recipients of the personal data, in their case;
- f) where appropriate, the intention of the controller to transfer personal data to a third party country or international organization and the existence or absence of a decision to adequacy of the Commission, or, in the case of transfers indicated in the Articles 46 or 47 or Article 49, paragraph 1, second paragraph, reference to the adequate or appropriate warranties and the means to obtain a copy of these or to the fact that they have been borrowed.

2. In addition to the information mentioned in section 1, the person in charge of the treatment will facilitate the interested party, at the moment in which the data is obtained personal, the following information necessary to guarantee data processing fair and transparent

- a) the period during which the personal data will be kept or, when it is not possible, the criteria used to determine this period;

b) the existence of the right to request from the data controller access to the personal data relating to the interested party, and its rectification or deletion, or the limitation of its treatment, or to oppose the treatment, as well as the right to portability of the data;

c) when the treatment is based on article 6, paragraph 1, letter a), or article 9, paragraph 2, letter a), the existence of the right to withdraw consent in any time, without affecting the legality of the treatment based on the consent prior to its withdrawal;

d) the right to file a claim with a supervisory authority;

e) if the communication of personal data is a legal or contractual requirement, or a necessary requirement to sign a contract, and if the interested party is obliged to provide personal data and is informed of the possible consequences of not provide such data;

f) the existence of automated decisions, including profiling, to which referred to in article 22, sections 1 and 4, and, at least in such cases, information about applied logic, as well as the importance and consequences provisions of said treatment for the interested party.

3. When the controller plans the further processing of data personal data for a purpose other than that for which they were collected, you will provide the interested party, prior to such further processing, information on that other purpose and any additional information relevant under paragraph 2.

4. The provisions of sections 1, 2 and 3 shall not apply when and in the

to the extent that the interested party already has the information.

For its part, article 72.1.h) of the LOPDGDD considers it very serious, for the purposes of prescription, “the omission of the duty to inform the affected party about the treatment of your personal data in accordance with the provisions of articles 13 and 14 of the RGPD”.

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In accordance with the precepts indicated, and without prejudice to what results from the instruction of the procedure, in order to set the amount of the sanction to be imposed in the present case, it is considered appropriate to graduate the sanction to be imposed in accordance with the following criteria established in article 83.2 of the RGPD:

a).- As aggravating criteria:

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The nature, seriousness and duration of the offence, taking into account the nature, scope or purpose of the processing operation in question, as well as the number of stakeholders affected and the level of damage and damages they have suffered. In our case, the respondent entity knew since May 2018, through inspections by the City Council of Madrid the existence of abusive clauses in the contract signed with customers (section a).

The intentionality or negligence in the infringement. In the present case we are

before negligent action because it is not until the second requirement of this

Agency, when the entity claimed modifies the clauses contrary to the

new RGPD, (section b).

The categories of personal data affected by the infringement.

The data processed is of a highly personal nature and therefore

person identifiers, (section g).

The way in which the supervisory authority became aware of the infringement. The

way in which this AEPD has been aware has been through communication

of the infringement by the Madrid City Council, (section h).

b) As mitigating criteria:

- Measures taken by the person in charge or in charge of the treatment to alleviate

the damages suffered by the interested parties, upon verifying that

modified the contract adapting it to the current RGPD, (section c).

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The non-existence of a previous infraction committed by the person in charge or the person in charge

of the treatment, for the same facts, (section e).

- The degree of cooperation with the supervisory authority in order to remedy

to the infraction and mitigate the possible adverse effects, (section f).

The balance of the circumstances contemplated in article 83.2 of the RGPD, with

Regarding the infraction committed by violating the provisions of article 13, it allows

set a penalty of 5,000 euros, (five thousand euros).

Therefore, in accordance with the foregoing, by the Director of the Agency

Spanish Data Protection,

HE REMEMBERS:

START: SANCTIONING PROCEDURE against the entity SCHOOL FITNESS

HOLIDAY & FRANCHISING, S.L. with CIF: B82887514, for the violation of article 13

of the RGPD, sanctionable in accordance with the provisions of art. 83 of the aforementioned standard.

APPOINT: Ms. A.A.A. as Instructor, and Secretary, if applicable, Ms. B.B.B.,

indicating that any of them may be challenged, as the case may be, in accordance with

established in articles 23 and 24 of Law 40/2015, of October 1, on the Legal Regime

of the Public Sector (LRJSP).

INCORPORATE: to the disciplinary file, for evidentiary purposes, the claim

filed by the claimant and his documentation, the documents obtained and

generated by the Subdirector General for Data Inspection during the

investigations, all of them part of this administrative file.

WHAT: for the purposes provided in art. 64.2 b) of Law 39/2015, of October 1, of the

Common Administrative Procedure of the Public Administrations, the sanction that

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could correspond would be a fine of 5,000 euros, (five thousand euros), without

prejudice to what results from the instruction.

NOTIFY: this agreement to initiate sanctioning proceedings to the entity

SCHOOL FITNESS HOLIDAY & FRANCHISING, S.L., granting it a term of

hearing of ten business days to formulate the allegations and present the

tests you deem appropriate.

If within the stipulated period it does not make allegations to this initial agreement, the same may be considered a resolution proposal, as established in article 64.2.f) of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations (hereinafter, LPACAP).

In accordance with the provisions of article 85 of the LPACAP, in the event that the sanction to be imposed was a fine, it may recognize its responsibility within the term granted for the formulation of allegations to this initial agreement; it which will entail a reduction of 20% of the sanction to be imposed in this procedure, equivalent in this case to 1,000 euros. with the app of this reduction, the sanction would be established at 4,000 euros, resolving the procedure with the imposition of this sanction.

Similarly, you may, at any time prior to the resolution of this procedure, carry out the voluntary payment of the proposed sanction, which will mean a reduction of 20% of the amount of the same, equivalent in this case to 1,000 euros. With the application of this reduction, the sanction would be established in 4,000 euros and its payment will imply the termination of the procedure.

The reduction for the voluntary payment of the penalty is cumulative with the corresponding apply for the acknowledgment of responsibility, provided that this acknowledgment of the responsibility is revealed within the period granted to formulate arguments at the opening of the procedure. The voluntary payment of the referred amount in the previous paragraph may be done at any time prior to the resolution. In In this case, if it were appropriate to apply both reductions, the amount of the penalty would be set at 3,000 euros (three thousand euros).

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In any case, the effectiveness of any of the two reductions mentioned will be conditioned to the abandonment or renunciation of any action or resource in via administrative against the sanction.

If you choose to proceed to the voluntary payment of any of the amounts indicated above, you must make it effective by depositing it in account number ES00 0000 0000 0000 0000 opened in the name of the Spanish Agency for the Protection of Data in Banco CAIXABANK, S.A., indicating in the concept the number of reference of the procedure that appears in the heading of this document and the cause of reduction of the amount to which it is accepted.

Likewise, you must send proof of payment to the General Subdirectorate of Inspection to proceed with the procedure in accordance with the quantity entered.

The procedure will have a maximum duration of nine months from the date of the start-up agreement or, where appropriate, of the draft start-up agreement.

Once this period has elapsed, it will expire and, consequently, the file of performances; in accordance with the provisions of article 64 of the LOPDGDD.

Finally, it is pointed out that in accordance with the provisions of article 112.1 of the LPACAP,

There is no administrative appeal against this act.

Sea Spain Marti

Director of the Spanish Agency for Data Protection.

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: On July 2, 2020, the claimant has proceeded to pay the

SECOND

sanction in the amount of 3,000 euros making use of the two planned reductions

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in the Startup Agreement transcribed above, which implies the recognition of the responsibility.

THIRD: The payment made, within the period granted to formulate allegations to the opening of the procedure, entails the waiver of any action or resource in via administrative action against the sanction and acknowledgment of responsibility in relation to the facts referred to in the Initiation Agreement.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and as established in art. 47 of the Organic Law 3/2018, of 5 December, of Protection of Personal Data and guarantee of digital rights (in hereinafter LOPDGDD), the Director of the Spanish Agency for Data Protection is competent to sanction the infractions that are committed against said Regulation; infractions of article 48 of Law 9/2014, of May 9, General Telecommunications (hereinafter LGT), in accordance with the provisions of the article 84.3 of the LGT, and the infractions typified in articles 38.3 c), d) and i) and 38.4 d), g) and h) of Law 34/2002, of July 11, on services of the society of the information and electronic commerce (hereinafter LSSI), as provided in article 43.1 of said Law.

Article 85 of Law 39/2015, of October 1, on Administrative Procedure

Common to Public Administrations (hereinafter, LPACAP), under the rubric

"Termination in sanctioning procedures" provides the following:

"1. A sanctioning procedure has been initiated, if the offender acknowledges his responsibility, the procedure may be resolved with the imposition of the sanction to proceed.

2. When the sanction is solely pecuniary in nature or fits

impose a pecuniary sanction and another of a non-pecuniary nature but it has been justified the inadmissibility of the second, the voluntary payment by the alleged perpetrator, in any time prior to the resolution, will imply the termination of the procedure, except in relation to the replacement of the altered situation or the determination of the compensation for damages caused by the commission of the infringement.

3. In both cases, when the sanction is solely pecuniary in nature,

the competent body to resolve the procedure will apply reductions of, at least 20% of the amount of the proposed sanction, these being cumulative each. The aforementioned reductions must be determined in the notification of initiation of the procedure and its effectiveness will be conditioned to the withdrawal or Waiver of any administrative action or recourse against the sanction.

The reduction percentage provided for in this section may be increased regulations.

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According to what was stated,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: TO DECLARE the termination of procedure PS/00135/2020, of

in accordance with the provisions of article 85 of the LPACAP.

SECOND: NOTIFY this resolution to SCHOOL FITNESS HOLIDAY &

FRANCHISING, S.L.U.

In accordance with the provisions of article 50 of the LOPDGDD, this

Resolution will be made public once it has been notified to the interested parties.

Against this resolution, which puts an end to the administrative procedure as prescribed by

the art. 114.1.c) of Law 39/2015, of October 1, on Administrative Procedure

Common of the Public Administrations, the interested parties may file an appeal

contentious-administrative before the Contentious-administrative Chamber of the

National Court, in accordance with the provisions of article 25 and section 5 of

the fourth additional provision of Law 29/1998, of July 13, regulating the

Contentious-Administrative Jurisdiction, within a period of two months from the

day following the notification of this act, as provided in article 46.1 of the

aforementioned Law.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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