

□ File No.: PS/00089/2022

## RESOLUTION OF TERMINATION OF THE PROCEDURE FOR PAYMENT

### VOLUNTEER

Of the procedure instructed by the Spanish Agency for Data Protection and based on  
to the following

### BACKGROUND

FIRST: On February 23, 2022, the Director of the Spanish Agency for  
Data Protection agreed to initiate a sanctioning procedure against FREE SUN ENERGY  
SL (hereinafter, the claimed party), through the Agreement that is transcribed:

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File No.: PS/00089/2022

### AGREEMENT TO START A SANCTION PROCEDURE

Of the actions carried out by the Spanish Data Protection Agency and in  
based on the following

### FACTS

FIRST: A.A.A. (hereinafter, the complaining party) dated March 28, 2021  
filed a claim with the Spanish Data Protection Agency.

The claim is directed against FREE SUN ENERGY S.L. with NIF B67572669 (in  
hereafter, the party claimed).

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The grounds on which the claim is based are as follows:

An email has been received informing you that your

electronic invoice, but the invoice you receive is that of another client, providing all your data, name, surnames, address, NIF, your consumption data, prices and amount.

Enclosed with your claim:

- Printing of email dated March 3, 2021 sent by

\*\*\*EMAIL.1 to \*\*\*EMAIL.2 (hereinafter, the claimant's email) in which

indicates that the invoice is attached.

- Copy of a "Free energy by NACE" invoice dated 02/25/2021 that the

claimant indicates that it appeared as an attachment to the previous email. on this bill

a person who is not the claimant appears as the owner.

The information that appears on this invoice, among others, is the following: name and

surnames of the owner, NIF, supply address, CUPS, access rate, number of

meter, payment method, consumption data and IBAN without the last four digits.

- Printing of email dated March 26, 2021 sent by email

of the claimant to \*\*\*EMAIL.3 in which he informs that he has received the invoice from

another client and requests to exercise their right of article 15 of organic law 3/2018 (which

is the right of deletion) because you have received the invoice from another customer.

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

December, of Protection of Personal Data and guarantee of digital rights (in

hereinafter LOPDGDD), said claim was transferred to the claimed party, to

to proceed with its analysis and inform this Agency within a month of the

actions carried out to adapt to the requirements set forth in the regulations of

Data Protection.

The transfer, which was carried out in accordance with the regulations established in Law 39/2015, of

October 1, of the Common Administrative Procedure of the Administrations

Public (hereinafter, LPACAP), was collected on 05/16/2021 as recorded in the

acknowledgment of receipt that works in the file.

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No response has been received to this transfer letter.

THIRD: On July 23, 2021, in accordance with article 65 of the

LOPDGDD, the claim filed by the claimant was admitted for processing.

FOURTH: The General Subdirectorate for Data Inspection proceeded to carry out

of previous investigative actions to clarify the facts in

matter, by virtue of the investigative powers granted to the authorities of

control in article 57.1 of Regulation (EU) 2016/679 (General Regulation of

Data Protection, hereinafter RGPD), and in accordance with the provisions of the

Title VII, Chapter I, Second Section, of the LOPDGDD, having knowledge of the

following ends:

On February 22, 2022, the respondent entity submits the following

manifestations:

The complaining party received the mail dated March 3, 2021 indicating in its

claim due to an error in the automatic assignment of the identifier of

invoices, which generated two invoices with the same identifier for two clients and CUPS

different.

The origin of the incident is in the update of the application that performs the

billing functions, which repeated some billing numbers until they were

detected the incident and it was solved by taking action on the database.

This incident was not identified as a security breach until the

transfer of this claim and, for this reason, the delegate of

data protection nor was its scope analyzed to assess the notification to the

interested parties or the AEPD.

The respondent entity considers that the security measures implemented by

PARTNERTEC S.L., which is the company that provides the CRM software service

(Customer Relationship Management or Customer Relationship Management), despite

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be adequate, they did not serve to prevent the incident because it was caused by a

change in the application.

A software license contract is provided that includes the implementation, integration and

hosting between PARTNERTC S.L. and VISALIA ENERGÍA S.L.U. dated May 14,

2019, and confidentiality agreement between them dated June 22, 2018. And

it is indicated that this contract applies to FREE ENERGÍA as it is a group company

business VISALIA ENERGÍA S.L.U.

The respondent entity states that after evaluating this incident, it considers that

there is a risk to the rights and freedoms of those affected, and that there is no record of the

use of the data by third parties apart from the presentation of this claim

before the AEPD.

The respondent entity notes that there is no record of other incidents

Similar.

Finally attached print email dated February 17, 2022

sent by \*\*\*EMAIL.2 to the claimant's email with an attached document, which is

indicates that it has the following content:

"In response to your request for data protection, we inform you that, in accordance with the same, FREE ENERGÍA has proceeded to process the deletion of your data personal.

Notwithstanding the foregoing, and in accordance with the provisions of article 17.3 RDPG, we will proceed to keep your data for the fulfillment of the obligations legal that may arise from your legal relationship with the company, as well as in your case, comply with judicial requirements.

For all these reasons, and given that FREE ENERGÍA wants to scrupulously respect the exercise of your rights, we inform you that we remain at your disposal to

Any clarification you need."

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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 according to the provisions of articles 47 and 48 of the LOPDGDD, the Director of the Spanish Agency for Data Protection is competent to initiate and to resolve this procedure.

II

The principles relating to the processing of personal data are regulated in the Article 5 of the RGPD where it is established that "personal data will be:

"a) processed in a lawful, loyal and transparent manner in relation to the interested party ("lawfulness,

loyalty and transparency»);

b) collected for specific, explicit and legitimate purposes, and will not be processed subsequently in a manner incompatible with those purposes; according to article 89, paragraph 1, the further processing of personal data for archiving purposes in public interest, scientific and historical research purposes or statistical purposes are not deemed incompatible with the original purposes ("purpose limitation");

c) adequate, pertinent and limited to what is necessary in relation to the purposes for which that are processed ("data minimization");

d) accurate and, if necessary, updated; all measures will be taken reasonable to eliminate or rectify without delay the personal data that are inaccurate with respect to the purposes for which they are processed ("accuracy");

e) kept in a way that allows the identification of the interested parties during longer than necessary for the purposes of the processing of personal data; the

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Personal data may be kept for longer periods provided that it is processed exclusively for archival purposes in the public interest, research purposes scientific or historical or statistical purposes, in accordance with Article 89, paragraph 1, without prejudice to the application of the appropriate technical and organizational measures that

This Regulation is imposed in order to protect the rights and freedoms of the interested party ("limitation of the retention period");

f) processed in such a way as to ensure adequate security of the data including protection against unauthorized or unlawful processing and against

its loss, destruction or accidental damage, through the application of technical measures or appropriate organizational ("integrity and confidentiality").

The data controller will be responsible for compliance with the provisions of section 1 and able to demonstrate it ("proactive responsibility")."

Article 72.1 a) of the LOPDGDD states that "according to what is established in the article 83.5 of Regulation (EU) 2016/679 are considered very serious and will prescribe after three years the infractions that suppose a substantial violation of the articles mentioned therein and, in particular, the following:

a) The processing of personal data violating the principles and guarantees established in article 5 of Regulation (EU) 2016/679".

III

Security in the processing of personal data is regulated in article 32 of the RGPD where the following is established:

"1. Taking into account the state of the art, the application costs, and the nature nature, scope, context and purposes of the treatment, as well as risks of probability variable and seriousness for the rights and freedoms of natural persons, the responsible The controller and the data processor will apply appropriate technical and organizational measures. to guarantee a level of security appropriate to the risk, which, where appropriate, includes yeah, among others:

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- a) pseudonymization and encryption of personal data;
- b) the ability to ensure confidentiality, integrity, availability and resilience

permanent treatment systems and services;

c) the ability to restore the availability and access to the personal data of

quickly in the event of a physical or technical incident;

d) a process of regular verification, evaluation and assessment of the effectiveness of the

technical and organizational measures to guarantee the security of the treatment.

2. When evaluating the adequacy of the security level, particular account shall be taken

of the risks that the treatment of data presents, in particular as a consequence

of the accidental or unlawful destruction, loss or alteration of personal data transmitted

stored, stored or otherwise processed, or unauthorized communication or access

to said data.

3. Adherence to a code of conduct approved under article 40 or to a mechanism

certification body approved under article 42 may serve as an element for

demonstrate compliance with the requirements established in section 1 of this

Article.

4. The person in charge and the person in charge of the treatment will take measures to guarantee that

Any person acting under the authority of the person in charge or the person in charge and having

access to personal data can only process said data following instructions

of the person in charge, unless it is obliged to do so by virtue of Union Law or

member states.”

Article 73.f) of the LOPDGDD, under the heading "Infringements considered serious

has:

“According to article 83.4 of Regulation (EU) 2016/679, they will be considered serious and

Infractions that suppose a substantial violation will prescribe after two years.

of the articles mentioned therein, and in particular the following:

f) The lack of adoption of those technical and organizational measures that result

appropriate to guarantee a level of security appropriate to the risk of the treatment,



in the terms required by article 32.1 of Regulation (EU) 2016/679

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IV

In accordance with the evidence available at the present time, and

without prejudice to what results from the instruction of this sanctioning procedure,

considers that the claimed entity when sending by email an invoice from another

client to the claimant, where personal data such as name and surnames are included

of the holder, NIF, supply address, CUPS, access rate, meter number,

form of payment, consumption data and IBAN without the last four digits, it is

violating the confidentiality required in the processing of personal data, and with

This violates article 5.1 f) of the RGPD, which governs the principle of integrity and

confidentiality, so that the data is treated in such a way as to guarantee a

adequate security of personal data, including protection against

unauthorized or unlawful treatment and against loss, destruction or accidental damage,

through the application of appropriate technical or organizational measures.

It should also be noted that the entity claimed has stated that this

incident was not identified as a security breach until transfer was received

of this claim and, for this reason, the data protection officer was not informed.

data nor was its scope analyzed to assess the notification to the interested parties or to the

AEPD.

Likewise, the respondent entity considers that the security measures implemented

by PARTNERTEC S.L., which is the company that provides the CRM software service

(Customer Relationship Management or Customer Relationship Management), despite  
be adequate, they did not serve to prevent the incident because it was caused by a  
change in the application.

The respondent entity considers that there is no risk to the rights and freedoms  
of those affected, and that there is no record of the use of the data by third parties apart from the  
presentation of this claim before the AEPD.

Despite what has been indicated, this Agency considers that the existence of a single case is  
sufficient to denote that the security measures of the claimed entity were not  
adequate at the time of the occurrence of the incident that is the subject of the claim and must

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be improved because it is confirmed that they have not been sufficient to avoid the  
reported facts.

Thus, this Agency considers that the entity claimed, without prejudice to what  
result of the instruction, has violated articles 5.1 f) and 32 of the RGPD, by violating the  
principle of integrity and confidentiality, as well as not adopting measures of  
security necessary to guarantee the protection of personal data  
of your customers.

v

Article 58.2 of the RGPD provides the following: "Each control authority will have  
of all the following corrective powers indicated below:

d) order the person in charge or in charge of the treatment that the operations of  
treatment comply with the provisions of this Regulation, where appropriate,

in a certain way and within a specified period;

i) impose an administrative fine under article 83, in addition to or instead of the measures mentioned in this section, according to the circumstances of each case particular;

SAW

This infraction can be sanctioned with a fine of €20,000,000 maximum or, in the case of a company, an amount equivalent to a maximum of 4% of the global total annual turnover of the previous financial year, opting for the of greater amount, in accordance with article 83.5 of the RGPD.

Likewise, it is considered appropriate to graduate the sanction to be imposed in accordance with the following criteria established by article 83.2 of the RGPD, considering as aggravating circumstance according to article 76.2 b) LOPDGDD, the relationship of the person responsible with the treatment of personal data.

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Therefore, based on the foregoing,

By the Director of the Spanish Data Protection Agency, IT IS AGREED:

FIRST: START A SANCTION PROCEDURE against FREE SUN ENERGY S.L.,

with NIF B67572669, for the alleged infringement in accordance with the provisions of the article 58.2.b) of the RGPD, for the alleged infringement of article 5.1.f) of the RGPD, typified in article 83.5.a) of the RGPD.

SECOND: INITIATE PUNISHMENT PROCEDURE against FREE SUN ENERGY

S.L., with NIF B67572669, in accordance with the provisions of article 58.2.b) of the RGD, for the alleged infringement of article 32 of the RGD, typified in article 83.4.a) of the GDPR.

THIRD: APPOINT B.B.B. and, as secretary, to (...), indicating that any of them may be challenged, where appropriate, in accordance with the provisions of Articles 23 and 24 of Law 40/2015, of October 1, on the Legal Regime of the Public Sector (LRJSP).

FOURTH: INCORPORATE to the disciplinary file, for evidentiary purposes, the claim filed by the claimant and his documentation, the documents obtained and generated by the General Subdirector for Data Inspection during the investigation phase, as well as the report of previous Inspection actions.

FIFTH: THAT for the purposes provided in art. 64.2 b) of Law 39/2015, of 1 October, of the Common Administrative Procedure of the Public Administrations, C/ Jorge Juan, 6

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A penalty of €5,000 (five thousand euros) would apply, for the infringement of article 5.1 f) of the RGD, without prejudice to what results from the instruction.

SIXTH: THAT for the purposes provided in art. 64.2 b) of Law 39/2015, of 1 October, of the Common Administrative Procedure of the Public Administrations,

A penalty of €5,000 (five thousand euros) would apply, for the infringement of article 32 of the RGD, without prejudice to what results from the instruction.

SEVENTH: NOTIFY this agreement to FREE SUN ENERGY S.L., with NIF

B67572669, granting him a hearing period of ten business days to formulate the allegations and present the evidence it deems appropriate. In his writing of allegations you must provide your NIF and the procedure number that appears in the header of this document

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, you may recognize your responsibility within the term granted for the formulation of allegations to the this initiation agreement; which will entail a reduction of 20% of the sanction to be imposed in this proceeding. With the application of this reduction, each sanction would be established at €4,000, 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 its amount. With the application of this reduction, each sanction would be established at €4,000 and its payment will imply the termination of the process.

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

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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 each penalty would be set at 3,000 euros.

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.

In case you chose to proceed to the voluntary payment of any of the amounts indicated above €4,000 or €3,000 each sanction, which would imply a total of €8,000 or €6,000 respectively, you must make it effective by paying into the account number ES00 0000 0000 0000 0000 0000 opened in the name of the Spanish Agency of Data Protection in the banking entity CAIXABANK, S.A., indicating in the concept the reference number of the procedure that appears in the heading of this document and the reason for the reduction of the amount to which it avails itself.

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.

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Director of the Spanish Data Protection Agency

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SECOND: On April 11, 2022, the claimed party has proceeded to pay the sanction in the amount of 6,000 euros making use of the two planned reductions 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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In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter RGPD), grants each control authority and as established in articles 47 and 48.1 of the Law Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD), is competent to initiate and resolve this procedure the Director of the Spanish Data Protection Agency.

Likewise, article 63.2 of the LOPDGDD determines that: "The procedures processed by the Spanish Agency for Data Protection will be governed by the provisions in Regulation (EU) 2016/679, in this organic law, by the provisions

regulations issued in its development and, as long as they do not contradict them, with a subsidiary, by the general rules on administrative procedures.”

## II

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. Started a sanctioning procedure, if the offender acknowledges his responsibility, the procedure may be resolved with the imposition of the appropriate sanction.

2. When the sanction is solely pecuniary in nature or it is possible to impose a pecuniary sanction and another of a non-pecuniary nature, but 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.

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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 with each other.

The aforementioned reductions must be determined in the notification of initiation of the procedure and its effectiveness will be conditioned to the withdrawal or resignation of any administrative action or recourse against the sanction.

The reduction percentage provided for in this section may be increased



regulations."

According to what was stated,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: TO DECLARE the termination of procedure PS/00089/2022, of

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

SECOND: NOTIFY this resolution to FREE SUN ENERGY S.L.

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.

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