

□ File No.: EXP202208750

## 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 September 15, 2022, the Director of the Spanish Agency  
of Data Protection agreed to start a sanctioning procedure against ALPA 57  
PRODUCTIONS, S.L. (hereinafter, the claimed party), through the Agreement that  
transcribe:

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File No.: EXP202208750

### AGREEMENT TO START THE SANCTION PROCEDURE

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

### FACTS

FIRST: As a consequence of a claim filed with the Agency  
Spanish Data Protection Agency, appreciating indications of a possible non-compliance  
of the provisions of Regulation (EU) 2016/679 (General Regulation of Protection  
of Data, hereinafter GDPR), proceedings were initiated with file number  
EXP202103411. In accordance with the provisions of article 65 of the Organic Law  
3/2018, of December 5, Protection of Personal Data and guarantee of the  
digital rights (LOPDGDD hereinafter), the claim was transferred to the  
person in charge or to the Data Protection Delegate that may have been designated.  
The claim was admitted for processing on November 26, 2021.

SECOND: The General Subdirectorate of 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 the aforementioned GDPR, and in accordance with the provisions of the Title VII, Chapter I, Second Section, of the aforementioned LOPDGDD.

Within the framework of the investigative actions, 57

PRODUCTIONS, S.L. with NIF B13512892 (hereinafter, the claimed party) two information requirements so that within a period of ten working days before this Agency the information and documentation indicated therein. He

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The first of them was registered for departure on May 5, 2022, while the second was registered on June 14, 2022.

THIRD: The information requirements, which were notified in accordance with the norms established in Law 39/2015, of October 1, on the Procedure Common Administrative of Public Administrations (hereinafter, LPACAP), were collected by the person in charge with dates May 5, 2022 and June 28, 2022, as stated in the Notific@ certificates that are in the file.

FOURTH: Regarding the required information, the claimed party has not submitted any response to this Spanish Data Protection Agency.

FIFTH: According to the report collected from the AXESOR tool, the entity ALPA 57 PRODUCTIONS, S.L. is an SME, established in 2010, and with a sales volume of 1,502,778 euros in the year 2020.

## FUNDAMENTALS OF LAW

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### Competence

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter GDPR), grants each control authority and as established in articles 47, 48.1, 64.2 and 68.1 of the Organic Law 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 Protection Agency of data.

Likewise, article 63.2 of the LOPDGDD determines that: "The procedures processed by the Spanish Data Protection Agency will be governed by the provisions in Regulation (EU) 2016/679, in this organic law, by the provisions regulations dictated in its development and, insofar as they do not contradict them, with character subsidiary, by the general rules on administrative procedures."

II

### breached obligation

In accordance with the evidence available at the present time of agreement to start the disciplinary procedure, and without prejudice to what results from the instruction, it is considered that the claimed party has not procured to the Agency Spanish Data Protection Agency the information requested.

With the indicated conduct of the claimed party, the investigative power that the Article 58.1 of the GDPR gives the control authorities, in this case, the AEPD, has been hampered.

Therefore, the facts described in the "Facts" section are considered to constitute an infraction, attributable to the claimed party, for violation of article 58.1 of the

GDPR, which provides that each control authority will have, among its powers of investigation:

“a) order the person responsible and the person in charge of the treatment and, where appropriate, the representative of the manager or manager, who provide any information that it requires for the performance of its functions; b) carry out investigations in form of data protection audits; c) carry out a review of the certificates issued under article 42, paragraph 7; d) notify the responsible or the person in charge of the treatment the alleged infractions of the present Regulation; e) obtain from the person in charge and the person in charge of the treatment access to all personal data and all the information necessary for the exercise of their functions; f) obtain access to all the premises of the person in charge and of the person in charge of the processing, including any data processing equipment and means, of accordance with the procedural law of the Union or of the Member States.”

Classification and classification of the offense

## II

In accordance with the evidence available at the present time of agreement to start the disciplinary procedure, and without prejudice to what results from the investigation, it is considered that the facts exposed could constitute a infringement, attributable to the claimed party.

This infringement is typified in article 83.5.e) of the GDPR, which considers as such: "no facilitate access in breach of article 58, section 1".

The same article establishes that this infraction can be sanctioned with a fine.

twenty million euros (€20,000,000) maximum or, in the case of a company, of an amount equivalent to four percent (4%) maximum of the total annual global business volume of the previous financial year, opting for the of greater amount.

For the purposes of the limitation period for infringements, the alleged infringement prescribes after three years, in accordance with article 72.1 of the LOPDGDD, which qualifies as the following behavior is very serious:

"ñ) Failing to facilitate access by data protection authority personnel competent to personal data, information, premises, equipment and means of treatment that are required by the data protection authority for the exercise of its investigative powers.

o) The resistance or obstruction of the exercise of the inspection function by the authority of competent data protection."

IV.

Sanction proposal

In accordance with the facts exposed, without prejudice to what results from the instruction of the procedure, it is considered that it corresponds to charge the party claimed by the violation of article 58.1 of the GDPR typified in article 83.5 e) of the GDPR. The sanction that should be imposed is an administrative fine.

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The fine imposed must be, in each individual case, effective, proportionate

and dissuasive, in accordance with the provisions of article 83.1 of the GDPR. In Consequently, the sanction to be imposed must be graduated according to the criteria established in article 83.2 of the GDPR, and with the provisions of article 76 of the LOPDGDD, with respect to section k) of the aforementioned article 83.2 GDPR. In the initial assessment, it can be seen that no mitigation or mitigation is applicable. aggravating.

Therefore, based on the foregoing,

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

INITIATE SANCTIONING PROCEDURE

FIRST:

ALPA 57

PRODUCCIONES, S.L., with NIF B13512892, for the violation of article 58.1 of the GDPR, typified in art. 83. 5 e) of the aforementioned GDPR.

SECOND: APPOINT A.A.A. and, as secretary, to B.B.B.,

indicating that any of them may be challenged, if applicable, in accordance with the established in articles 23 and 24 of Law 40/2015, of October 1, on the Regime Legal Department of the Public Sector (LRJSP).

THIRD: INCORPORATE into the disciplinary file, for evidentiary purposes, the information requirements issued by the Sub-directorate General of Inspection of Data in the framework of actions with file number EXP202103411; and the accreditation of having made your notification.

FOURTH: THAT for the purposes provided for in art. 64.2 b) of Law 39/2015, of 1 October, of the Common Administrative Procedure of Public Administrations (LPACAP, hereinafter), the corresponding sanction would be, for the alleged violation of article 58.1 of the GDPR, typified in article 83.5 of said regulation, administrative fine amounting to 3,000.00 euros.

FIFTH: ORDER ALPA 57 PRODUCCIONES, S.L. that, according to the power of investigation provided for in article 58.1.a) of the GDPR, is provided, within the period of ten business days, the information required in the requirements made in the framework of actions with file number EXP202103411 and to which referred to in the description of the facts of this initiation agreement.

SIXTH: NOTIFY this agreement to ALPA 57 PRODUCCIONES, S.L., with NIF B13512892, granting a hearing period of ten business days to formulate the allegations and present the evidence it deems appropriate. In his writing of allegations must provide your NIF and the procedure number that appears in the heading of this document.

If, within the stipulated period, he does not make allegations to this initial agreement, the same may be considered a resolution proposal, as established in article 64.2.f) of the LPACAP.

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

After this period, its expiration will occur and, consequently, the file of performances; in accordance with the provisions of article 64 of the LOPDGDD.

In accordance with the provisions of article 85 of the LPACAP, you may recognize your responsibility within the period granted for the formulation of allegations to the present initiation agreement; which will entail a reduction of 20% of the sanction that should be imposed in this proceeding. With the application of this

reduction, the sanction would be established at 2,400.00 euros, resolving the procedure with the imposition of this sanction.

In the same way, it 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, the sanction would be established at 2,400.00 euros and its payment will imply the termination of the procedure.

The reduction for the voluntary payment of the penalty is cumulative to the corresponding apply for acknowledgment of responsibility, provided that this acknowledgment of the responsibility is revealed within the period granted to formulate allegations at the opening of the procedure. 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 both reductions were to be applied, the amount of the penalty would remain established at 1,800.00 euros.

In any case, the effectiveness of any of the two aforementioned reductions will be conditioned to the withdrawal or resignation of any action or appeal via administrative against the sanction.

In the event that you choose to proceed with the voluntary payment of any of the amounts indicated above (2,400.00 euros or 1,800.00 euros), you must make it effective by depositing it in the account number ES00 0000 0000 0000 0000 0000 opened to name of the Spanish Data Protection Agency in the bank CAIXABANK, S.A., indicating in the concept the reference number of the procedure that appears in the heading of this document and the cause of reduction of the amount to which it receives.

Likewise, you must send proof of income to the General Subdirectorate of Inspection to continue with the procedure in accordance with the quantity



entered.

In compliance with articles 14, 41 and 43 of the LPACAP, it is noted that, as regards successively, the notifications that are sent to you will be made exclusively in a electronically, through the Unique Authorized Electronic Address ([dehu.redsara.es](mailto:dehu.redsara.es)) and the Electronic Notification Service ([notifications.060.es](mailto:notifications.060.es)), and that, if you do not access their rejection will be recorded in the file, considering the process completed and following the procedure. You are informed that you can identify before this Agency an email address to receive the notice of making available to the notifications and that failure to practice this notice will not prevent the notification be considered fully valid.

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Finally, it is noted that in accordance with the provisions of article 112.1 of the LPACAP, there is no administrative appeal against this act.

Mar Spain Marti

Director of the Spanish Data Protection Agency

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SECOND: On September 21, 2022, the claimed party has proceeded to the payment of the penalty in the amount of 1800 euros making use of the two reductions provided for in the initiation Agreement transcribed above, which implies the recognition of 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 appeal via  
against the sanction and acknowledgment of responsibility in relation to  
the facts referred to in the Commencement Agreement.

## FUNDAMENTALS OF LAW

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### Competence

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679  
(General Data Protection Regulation, hereinafter GDPR), grants each  
control authority and as established in articles 47, 48.1, 64.2 and 68.1 of the  
Organic Law 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 Protection Agency  
of data.

Likewise, article 63.2 of the LOPDGDD determines that: "The procedures  
processed by the Spanish Data Protection Agency will be governed by the provisions  
in Regulation (EU) 2016/679, in this organic law, by the provisions  
regulations dictated in its development and, insofar as they do not contradict them, with character  
subsidiary, by the general rules on administrative procedures."

## II

### Termination of the procedure

Article 85 of Law 39/2015, of October 1, on Administrative Procedure  
Common for Public Administrations (hereinafter, LPACAP), under the heading

"Termination in disciplinary proceedings" provides the following:

"1. Initiated a disciplinary procedure, if the offender acknowledges his responsibility,  
The procedure may be resolved with the imposition of the appropriate sanction.

2. When the sanction has only a pecuniary 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 presumed perpetrator, in any moment 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 offence.

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 penalty, these being cumulative among themselves. 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 resource against the sanction.

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

According to what has been stated,  
the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: DECLARE the termination of procedure EXP202208750, in accordance with the provisions of article 85 of the LPACAP.

SECOND: NOTIFY this resolution to ALPA 57 PRODUCCIONES, S.L.

In accordance with the provisions of article 50 of the LOPDGDD, this Resolution will be made public once the interested parties have been notified.

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

the art. 114.1.c) of Law 39/2015, of October 1, on Administrative Procedure  
Common of Public Administrations, interested parties may file an appeal  
administrative litigation before the Administrative Litigation 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 for in article 46.1 of the  
referred Law.

Mar Spain Marti

Director of the Spanish Data Protection Agency

936-040822

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