

POWER DATA PROCESSING AGREEMENT

BY AND BETWEEN

**POWER AS
'CONTROLLER'**

AND

.....
'PROCESSOR'



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1 Purpose of the DPA

Controller and Processor have concluded an agreement between where this DPA forms an attachment to (“the Main Agreement”).

The purpose of this Data Processing Agreement (“**DPA**”) is to regulate the processing of Personal Data by the Processor on behalf of the Controller pursuant to the Main Agreement and in accordance with the Privacy Laws (as defined in Section 6 below).

2 Definitions

Personal Data: means any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

Controller: means the natural or legal person, public authority, agency or any other body which alone or jointly with others determines the purposes and means of the processing of personal data. In this Agreement, the entity named above as ‘Controller’ is understood to be Controller pursuant to this definition.

Processor: means a natural or legal person, public authority, agency or any other body which processes personal data on behalf of the Controller. In this Agreement, the entity named as Processor above is understood to be Processor pursuant to this definition.

Processing: means any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

Main Agreement: means the agreement referred to as “the Main Agreement” in Section 0 above.

3 Purpose of the Processing

The purpose of the Processing of Personal Data is for the Processor to render services to the Controller in accordance with the Main Agreement. In **Annex 1** the purposes of the Processing is to be detailed further by describing

- what types of Personal Data are to be Processed by the Processor; and
- the Processing activities to be carried out by the Processor.

4 The Controller’s Obligations

The Controller is obliged to ensure that the Processing of data as described in this DPA is permitted by the Privacy Laws and other applicable laws and regulations.

The Controller is responsible towards the data subjects and any data protection authorities, for obligations applicable to the “Controller” under the Privacy Laws. This entails, inter alia, that the Controller shall be able to document the legal basis for the Processing, and shall ensure that the data subjects are informed about the Processing of Personal Data and have given their consent thereto as required by the Privacy Laws.

The Controller shall give the Processor lawful and documented instructions on the Processing, that shall comply with this DPA and the Privacy Laws.

5 The Processor's Obligations

The Processor shall comply with this DPA, the Main Agreement, the Privacy Laws and all laws and regulations that apply to the Processor regarding the Processing, and shall follow the lawful and documented instructions given by the Controller in accordance with this DPA.

The Processor shall

- inform the Controller immediately if an instruction by the Controller, in the Processor's opinion, infringes the Privacy Laws;
- Process Personal Data only for the purpose and in the manner expressly agreed with the Controller pursuant to this DPA, and shall not store Personal Data longer than necessary to perform the services under the Main Agreement, unless otherwise required by the Controller or applicable laws;
- not disclose or allow access to the Personal Data for any third party, except if and to the extent disclosure is required by law.
- ensure that persons authorised to Process Personal Data on behalf of the Controller have committed themselves to confidentiality obligations as least as strict as the confidentiality requirements following from this DPA, or are under an appropriate statutory obligation of confidentiality;
- assist the Controller as necessary for the Controller to ensure compliance with its legal obligations under the Privacy Laws, such as, obligations regarding fulfilment of the rights of the data subjects, data breach notifications, data protection assessments and prior consulting obligations, to the extent required by the Privacy Laws, and taking into account the nature and scope of the Processing conducted by the Processor under this DPA.
- assist the Controller in obtaining approval from data protection authorities, if required, and cooperate with data protection authorities to the extent required by law;
- keep accurate records of the Processing activities performed on behalf of the Controller as necessary in order to ensure compliance with this DPA and the Privacy Laws;
- ensure that appropriate technical and organisational measures are in place for the Processing to be performed in accordance with this DPA and the Privacy Laws, and give the Controller access to written documentation of security measures implemented by the Processor.

6 Compliance with Laws

Both parties shall comply with all laws and regulations, collectively referred to as "**Privacy Laws**", which includes:

- all laws, including international, provincial and local Laws, as well as all applicable rules, regulations, directives and governmental requirements currently in effect and as they become effective relating in any way to the privacy, confidentiality or security of Personal Data. This includes the General Data Protection Regulation (Regulation EU 2016/679); the European Union Directives governing general data protection (Directive, 1995/46/EC); e-Privacy (Directive 2002/58/EC as revised by Directive 2009/136/EC) and any national data protection laws implementing the above-mentioned regulations and directives applicable to the parties;
- any sector-specific laws, regulations, industry practices and guidelines concerning privacy, data protection, confidentiality or information security, relevant to the parties;
- all recommendations provided by legislators or a relevant supervising authority regarding Processing of Personal Data;

- applicable provisions in the Processor's or Controller's privacy policies, statements or notices, to the extent those have been made available to the other party.

7 Use of Sub-Processors

Any sub-processors currently in use by the Processor for Processing activities of relevance to this DPA, at the time this DPA is signed by the parties, shall be described in **Annex 2**.

The Processor shall inform the Controller of any intended changes concerning the addition or replacement of sub-processors.

The Processor shall enter into a data processing agreement with each sub-processor used for the Processing which binds the sub-processor to obligations at least as strict as those applicable to the Processor under this DPA.

8 Information Security

The Processor shall implement planned, systematic, organisational, physical and technical measures to ensure adequate information security with regard to confidentiality, integrity and availability in accordance with the Privacy Laws, and to protect against accidental or unlawful loss, misuse, alteration, access or erasure, or unauthorized disclosure ("**Personal Data Breach**").

Documentation of such measures shall upon request be made available to the Controller and its auditors and to relevant supervising authorities. The Processor shall be obliged to keep the Controller's data separate from any potential third party data, in order to mitigate the risk of a Personal Data Breach. Any access by Processor's employees or others that have no need for such information in the course of their work for the Processor shall be considered a Personal Data Breach.

In case of any disagreement about the adequacy of security, the relevant supervising authority shall be consulted.

9 Personal Data Breach and notification

The Processor shall report any Personal Data Breach to the Controller without undue delay, however no later than within 24 hours after becoming aware of a Personal Data Breach. The Controller is responsible for reporting the Personal Data Breach to the relevant supervising authority, if required by the Privacy Laws.

The Processor shall promptly take all necessary and advisable corrective actions, and shall cooperate with the Controller in all reasonable efforts to prevent, mitigate or rectify a Personal Data Breach.

The Processor's report to the Controller regarding a Personal Data Breach shall include:

- a description of the nature of the Personal Data Breach, including if possible, the categories and approximate number of Personal Data records concerned;
- information on what measures are taken by the Processor to rectify the Personal Data Breach, eliminate the cause of the Personal Data Breach and prevent its recurrence;
- the name and contact details of the Processor's data protection officer, if relevant, or other contact point where further information can be obtained;
- a reasonably detailed summary of the likely consequences of the breach on the services provided under the Main Agreement.

Where, and in so far as, it is not possible to provide the information at the same time, the abovementioned information may be provided in phases without undue delay.

10 Security Audits

The Controller shall have the right to audit the Processor's Processing activities to the extent provided for in the Privacy Laws or other laws or regulations, however limited to what is necessary to enable the Controller to verify that the Processor is complying with its obligations under this DPA and the Privacy Laws. The Parties shall agree well in advance on the time and other details relating to the conduct of such audits.

The Processor shall immediately inform the Controller if, in the Processor's opinion, an instruction given in relation to an audit infringes the Privacy Laws.

Audits shall be conducted in such a manner that the Processor's undertakings towards third parties or authorities are in no way jeopardized. All the Controller's representatives or external auditors participating in the Audit shall execute customary confidentiality undertakings towards the Processor.

11 Transfer of Personal Data

Personal Data shall not be transferred to countries outside the European Economic Area (EEA), or given access to for any person or entity located outside the EEA, without the prior written consent of the Controller.

In case of transfer of Personal Data outside the EEA ("**Third Country**"), the Processor shall, when deemed relevant by the Controller, collaborate with the Controller in conjunction with the execution of data transfer agreements based on the EU Standard Contractual Clauses for the transfer of Personal Data to processors established in Third Countries or any replacement or alternative clauses approved by the European Commission.

Further, the Processor will enter into any written agreements, declarations or statements that are necessary to comply with Privacy Laws concerning any cross-border transfer of Personal Data.

12 Duration of the agreement

This DPA enters into force once signed by both parties' authorized representatives and shall remain in force as long as the Main Agreement is in force. This DPA shall nonetheless remain in force as long as the Processor Processes Personal Data on behalf of the Controller.

The Controller may terminate this DPA and the Main Agreement with immediate effect, if the Processor is in material breach of its obligations pursuant to this DPA or the Privacy Laws, and such breach is not remedied within 30 days of the Processor having received a written termination notice from the Controller. The Processor shall notify the Controller without undue delay if it is or is likely to become unable to comply with any of its obligations under this DPA.

Upon expiration or termination of this DPA, the Processor shall ensure that all data provided by Controller to the Processor pursuant to this Agreement is made available to the Controller for 90 days ("**Storage Period**") so that the Controller can extract its data. After expiry of the Storage Period, or after the Controller has extracted its data, the Controller's account will be disabled and all data will be deleted, unless the Processor is required by law to store Personal Data for any period after termination or expiration of this DPA. Any Personal Data stored on the Processor's back-up servers, will be safely erased in accordance with the Processor's normal back-up routines, which shall be in accordance with relevant industry practices and available to the Controller upon request.



The Processor shall confirm in writing that deletion and destruction of data has been carried out in accordance with the aforementioned.

13 Limitation of Liability

In the event of breach of this DPA, or obligations pursuant to the applicable Privacy Laws, the relevant provisions regarding breach in the Main Agreement shall apply. The limitations of liability set out in the Main Agreement shall apply also to this DPA.

Notwithstanding the above, the Processor agrees to indemnify and hold the Controller harmless from and against any sanctions imposed on the Controller by a supervising authority, as a consequence of the Processor’s breach of the Privacy Laws or this DPA.

14 Changes to this DPA

If required because of changes in the Privacy Laws, either party shall have the right to demand such changes to this DPA as are necessary in order to comply with the Privacy Laws that apply at any time.

The parties may otherwise agree to changes to this DPA in writing.

This Agreement has been drawn up in 2 – two copies, of which the parties retain one copy each.

Place and date:

Place and date:

.....

.....

Controller

Processor

Annex 1 – Description of the information to be processed

The following data shall be processed:

(to be inserted by Data Processor)

The following processing shall be included by this DPA:

(to be inserted by Data Processor)

The following limitations shall apply for the Data Processor's processing of Personal Data:

(to be inserted by Data Controller)

Annex 2 – Use of sub-processors

(to be inserted by Data Processor if applicable)