

Data Processing Agreement

Preamble

- A. This Data Processing Agreement (the “DPA”) is an integrated part of, and an appendix to, Customer’s Sales Agreement or other main agreement (“Agreement”) pursuant to which Supplier shall provide services to Customer.
- B. This DPA sets out the terms and conditions for the processing of Personal Data by Supplier on behalf of Customer under the Agreement.
- C. Supplier acts as Data Processor and Customer acts as Data Controller, the concepts of which are further defined in the Data Protection Regulation.

1 Definitions

1.1 Data Protection Laws means the EU Regulation (EU) 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data ("GDPR");

1.2 Personal Data Breach means a breach of security attributable to the Processor leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Personal Data transmitted, stored or otherwise processed by the Processor;

1.3 Standard Contractual Clauses of EU mean the current contractual clauses issued by the European Commission by the decision for international transfers of Personal Data, or any related legal instrument permitting the lawful transfer of Personal Data to international organizations and countries not part of the European Economic Area or European Union;

1.4 Supervisory Authorities mean any competent authorities under the Data Protection Laws.

1.5 Any terms not defined herein shall be given the meaning specified in the Agreement, or in Data Protection Laws. Further details and terms governing processing in conjunction with the actual Services are set out in the Agreement.

2 Rights and Responsibilities of the Data Controller

2.1 Customer as Data Controller undertakes to instruct Data Processor to process Personal Data in a manner compliant with the Data Protection Laws. Data Controller shall process the Personal Data in compliance with the Data Protection Laws and good data processing practice.

2.2 Customer shall provide and maintain through Data Processor's Customer Service channels the name and contact details of the person(s) to be contacted with respect to any incidents and Personal Data Breaches under this DPA, including the name and contact details of Customer's Data Protection Officer, if any.

3 Rights and Responsibilities of the Data Processor

3.1 General principles applying to the processing of Personal Data

3.1.1 Data Processor shall process Personal Data with due care and skill, diligence, and prudence in compliance with the requirements of the applicable Data Protection Laws, and in Article 28(3) of the Data Protection Regulation.

3.1.2 To the extent that Data Processor cannot comply with Data Controller's request or a change to Data Controller's documented instructions without incurring significant additional costs or burden, Data Processor shall inform the Data Controller thereof. Any such change shall be handled and agreed through an appropriate change control procedure.

3.1.3 Where Data Processor believes that Data Controller's documented instructions would be in breach of applicable law, Data Processor shall notify Data Controller of such belief without undue delay. Data Processor shall be entitled to suspending performance on such instruction until Data Controller confirms or modifies such instructions.

3.2 Categories of Personal Data and Data Subjects

3.2.1 Data Controller may submit Personal Data to be processed by Data Processor in connection with the Services specified in the Agreement, which may include, depending on the Services, Personal Data relating to the following data subjects and categories:

- (a) Data subjects - employees and other individuals associated with the Customer or its clients, suppliers, or other business partners;
- (b) Categories of data - name, title, office address, telephone and mobile numbers, email address, date of birth, and other identifiers, service use history and details, bank account and payment details, customer interview details and service call recordings, IT equipment or application management details including technical identifiers, user name, location, contact details, technical events related to the services provided including system and application logs and email and communication data and metadata, Security and Service management details such as security log information, facility and system surveillance information, security incident information, service incident alerts and reports, User data, or other voluntarily provided details such as user-generated content and associated metadata and site activity information.

3.2.2 Where necessary, Data Controller shall have the right to specify in the Agreement or in this Data Processing Agreement later more in detail the Personal Data it submits to be processed by Data Processor.

3.3 Data security

3.3.1 Data Processor shall implement technical and organizational measures to ensure an appropriate level of security in the Data Processor's processing of Personal Data and to protect Personal Data against unauthorized or unlawful processing and against accidental loss, destruction, damage, alteration, or disclosure. Data Controller shall be provided in the Annex to this DPA the description of these technical and organizational measures to verify that such measures meet the requirement of a level of security appropriate to the risk.

3.3.2 Due to the requirement of cost-efficiency in the provision of Services, Data Processor implements appropriate technical and organizational measures in its Services in a uniform manner across the customer base, considering any mandatory requirements of specific customer groups deriving from the Data Protection Laws. Data Processor reserves the right to modify the measures and safeguards implemented, provided, however, that the level of security shall not be less protective than initially agreed upon.

3.3.3 Data Processor shall ensure that any person acting under the authority of Data Processor who has access to Personal Data shall not process them except in accordance with this DPA and such person commits to confidentiality at least on the level agreed in this DPA.

3.4 Notification obligation

3.4.1 In case the Data Subjects or the Supervisory Authority make a request concerning Personal Data, Data Processor shall, promptly inform the Data Controller of all such requests prior to any response or other action concerning Personal Data, or afterwards as soon as reasonably possible in case Data Protection Laws prescribe an immediate response.

3.4.2 In the event of a Personal Data Breach, Data Processor shall without undue delay after becoming aware of it, notify Data Controller.

3.4.3 The Personal Data Breach notification shall contain at least the information stipulated in **Article 33(3)** of the Data Protection Regulation.

3.4.4 The Data Processor shall take all the necessary steps to protect the Personal Data after having become aware of the Personal Data Breach and take appropriate measures to secure the Personal Data and limit any possible detrimental effect to the Data Subjects. Data Processor will cooperate with Data Controller to respond to the Personal Data Breach.

3.5 Return or destruction of Personal Data

3.5.1 Upon the termination of the Agreement, or upon Data Controller's written request, Data Processor shall either destroy or return, to Data Controller, all Personal Data, unless otherwise stipulated in the Agreement or required by Data Protection Laws.

4 Transfers of Personal Data

4.1 Data Processor shall not engage a sub-processor other than the subcontractors agreed in writing by the Parties in conjunction with the Agreement and this DPA. The list of Data Processor's agreed sub-processors is in the Annex accessible through the link at the end of this DPA. Data Processor shall inform Data Controller of any intended changes concerning sub-processors, thereby giving Data Controller the opportunity to object to such changes. If Data Controller objects to the change, Data Processor may give written notice of a price change to correspond with any change in the data processing cost as may result from Data Controller's rejection of the change of a sub-processor. If the Parties are not able to agree on the change or the cost, Data Controller has the right to terminate the Agreement. If Data Controller has not terminated the Agreement before sixty (60) days have passed from the date on which Data Processor informed Data Controller about the change of sub-processor, Data Controller shall be deemed to have accepted the change. Data Processor maintains a consolidated list of its sub-processors and provides a notice of any changes to its sub-processors in the customer service portal, on its website, or otherwise electronically, and Customer's contact person for the Services or other representative is provided notice thereof and has access to such notices.

4.2 Where Data Controller requires or consents to the transfer of Personal Data outside the borders of European Economic Area to a third country that is not covered by an adequacy decision pursuant to Article 45(3) of the GDPR, Data Controller authorizes Data Processor to enter into a contract with the relevant third party in the name and on behalf of Data Controller ("Data Transfer Agreement"). Such a Data Transfer Agreement shall include the Standard Contractual Clauses of EU (as defined in the preamble of this DPA).

4.3 Regardless of Section 4.1 above, when necessary for the performance of its obligations under the Agreement, Data Processor may engage its subsidiaries within the European Economic Area as sub-processors and Data Controller consents to such subsidiaries as sub-processors.

5 Audits

5.1. Where audits or inspections by Data Controller or an auditor appointed by the Data Controller are necessary, such audits and inspections will be conducted during regular business hours, and without interfering with the Supplier's operations, upon reasonable prior written notice. Supplier may also determine that such audits and inspections are subject to the execution of a confidentiality undertaking protecting the data of other customers and the confidentiality of the technical and organizational measures and safeguards implemented. Data Processor shall be entitled to reject auditors which are competitors of Data Processor. Subject to as may be required due to serious Personal Data breaches or Supervisory Authority requirements, audits shall be conducted in accordance with Data Processor's Audit Procedure Description which is available upon request.

Annexes to the Data Processing Agreement available online at
<https://cash.nomentia.com/appendices>

- Technical and Organizational Measures
- List of Subcontractors

Along with

- GDPR Compliance for Customers