



Data Protection Terms

Data Protection Terms for Data Processor Contracts

The UK General Data Protection Regulation (GDPR) became effective in the UK on 1 January 2021. As of this date, all data control and processing that takes place in the UK must be compliant with the provisions of the GDPR. The GDPR requirements include an obligation on controllers to ensure that their data is not processed by third parties unless there is a written contract in place containing clauses compliant with the GDPR. There is also an obligation on processors not to process third party data without the written authority of the controller.

For any contract where the provisions of the Data Protection Legislation apply to personal data processed in relation to the performance of the contract, the following conditions supplement the conditions of the contract

1. DEFINITIONS

- 1.1 **Applicable Laws:** means laws relating to the processing of Personal Data in the UK and applicable to the Contractor.
- 1.2 **Data Protection Legislation:** means (i) unless and until the UK GDPR is no longer directly applicable in the UK, the UK GDPR, the Data Protection Act 2018 and any other national implementing laws, regulations and secondary legislation, as amended from time to time, in the UK and then (ii) any successor legislation to the UK GDPR or the Data Protection Act 2018.
- 1.3 **Personal Data:** means personal data as defined in the Data Protection Legislation.

2. DATA PROTECTION

- 2.1 Both Parties shall comply with all applicable requirements of the Data Protection Legislation. This clause 2 is in addition to, and does not relieve, remove or replace, a Party's obligations under the Data Protection Legislation.
- 2.2 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Contractor is the processor and the Authority is the controller (where controller and processor have the meanings as defined in the Data Protection Legislation). Schedule 1 sets out the scope, nature and purpose of processing by the processor, the duration of the processing and the types of Personal Data and categories of data subject.

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- 2.3 Without prejudice to the generality of clause 2.1, the controller will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the processor for the duration and purposes of this Contract.
- 2.4 Without prejudice to the generality of clause 2.1, the processor shall, in relation to any Personal Data processed in connection with the performance of its obligations under this Contract:
 - 2.4.1 process that Personal Data only on the written instructions of the controller, including with regard to transfers of personal data to a third country or an international organisation, unless the processor is required by the Applicable Laws to process Personal Data. Where the processor is relying on the Applicable Laws as the basis for processing Personal Data, the processor shall promptly notify the controller of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the processor from so notifying the controller;
 - 2.4.2 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
 - 2.4.3 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the controller, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

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- 2.4.4 not transfer any Personal Data outside of the UK unless the prior written consent of the controller has been obtained and the following conditions are fulfilled:
- (a) the controller or the processor have provided appropriate safeguards in relation to the transfer;
 - (b) the data subject has enforceable rights and effective legal remedies;
 - (c) the processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (d) the processor complies with reasonable instructions notified to it in advance by the controller with respect to the processing of the Personal Data;
- 2.4.5 assist the controller in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 2.4.6 notify the controller without undue delay on becoming aware of a Personal Data breach;
- 2.4.7 at the written direction of the controller, delete or return all Personal Data and copies thereof to the controller on termination of the Contract unless required by the Applicable Laws to store the Personal Data;
- 2.4.8 maintain complete and accurate records and information to demonstrate its compliance with this clause 2 and allow for audits by the controller or the controller's designated auditor; and
- 2.4.9 immediately inform the controller if, in its opinion, an instruction infringes the Applicable Laws.

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- 2.5 The controller consents to the processor appointing third-party processors of Personal Data under this Contract. As between the controller and the processor, the processor shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 2.5. The processor confirms that:
- 2.5.1 it will notify the controller of the identity of any proposed third-party processor prior to its appointment and will not appoint the third-party processor if the controller objects in writing to the appointment; and
- 2.5.2 it will enter with the third-party processors into written agreements incorporating terms which are substantially similar to those set out in this clause 2.
- 2.6 The controller may, at any time on not less than 30 days' notice, revise this clause 2 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this Contract).
- 2.7 The provisions of this condition shall apply for the duration of the Contract and indefinitely after its expiry or termination.

SCHEDULE 1

THE PROCESSING OF PERSONAL DATA

This schedule sets out the scope, nature and purpose of the processing of Personal Data by the processor on behalf of the controller and constitutes the written instructions of the controller referred to in clause 2.4.1. The processor may only process Personal Data on behalf of the controller in accordance with the requirements of clause 2 and this schedule.

1. THE SCOPE, NATURE AND PURPOSE OF PROCESSING

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- 1.1 The processor may process Personal Data in order to [set out how the processor may process Personal Data, the purpose of that processing and any limitations on the processing that may be undertaken]

2. **THE DURATION OF PROCESSING**

- 2.1 The processor may process Personal Data for the duration of the Contract.

3. **THE TYPES OF PERSONAL DATA**

- 3.1 The processor may process Personal Data of the following types:

- (a) [personal details]
- (b) [family, lifestyle and social circumstances]
- (c) [financial details]
- (d) [employment and education details]
- (e) [goods or services provided]

- 3.2 The processor [may not process sensitive Personal Data] [may process sensitive Personal Data of the following types:

- (a) [physical or mental health details]
- (b) [racial or ethnic origin]
- (c) [religious or philosophical beliefs]
- (d) [trade union membership]
- (e) [political opinions]
- (f) [genetic data]
- (g) [biometric data]

- (h) [sex life and sexual orientation]]

4. **THE CATEGORIES OF DATA SUBJECT**

4.1 The processor may process Personal Data relating to the controller's:

- (a) [employees]
- (b) [customers and clients]
- (c) [suppliers and service providers]
- (d) [advisors, consultants and other professional experts]
- (e) [complainants and enquirers]