



Data Processing Agreement

Last update: 6th October 2021

Definitions

IN THIS AGREEMENT:

Applicable Law	means: any law, statute, regulation, byelaw or subordinate legislation in force from time to time to which a party is subject and/or in any jurisdiction that the Services are provided to or in respect of; the common law and laws of equity as applicable to the parties from time to time; any binding court order, judgment or decree; any applicable industry code, policy or standard; or any applicable direction, policy, rule or order that is binding on a party and that is made or given by any regulatory body having jurisdiction over a party or any of that party's assets, resources or business;
Complaint	means a complaint or request relating to either party's obligations under Data Protection Laws relevant to this Agreement, including any compensation claim from a Data Subject or any notice, investigation or other action from a Supervisory Authority;
Data Controller	has the meaning given to that term (or to the term 'controller') in Data Protection Laws;
Data Processor	has the meaning given to that term (or to the term 'processor') in Data Protection Laws;
Data Protection Laws	means any Applicable Law relating to the processing, privacy, and use of Personal Data, as applicable to the Customer, the Supplier and/or the Services, including: in the United Kingdom: the Data Protection Act 1998 and the Privacy and Electronic Communications (EC Directive) Regulations 2003, SI 2003/2426, and any laws or regulations implementing Directive 95/46/EC (Data Protection Directive) or Directive 2002/58/EC (ePrivacy Directive); and/or the General Data Protection Regulation (EU) 2016/679 (GDPR), and/or any corresponding or equivalent national laws or regulations (Revised UK DP Law); and

any judicial or administrative interpretation of any of the above, any guidance, guidelines, codes of practice, approved codes of conduct or approved certification mechanisms issued by any relevant Supervisory Authority;

Data Protection
Losses

means all liabilities and other amounts, including all:

costs (including legal costs), claims, demands, actions, settlements, interest, charges, procedures, expenses, losses and damages (including relating to material or non-material damage);

loss or damage to reputation, brand or goodwill;

to the extent permitted by Applicable Law:

administrative fines, penalties, sanctions, liabilities or other remedies imposed by a Supervisory Authority;

compensation paid to a Data Subject (including compensation to protect goodwill and ex gratia payments); and

costs of compliance with investigations by a Supervisory Authority; and

the costs of loading Customer *Data*, to the extent the same are lost, damaged or destroyed, and any loss or corruption of Customer Data (including the costs of rectification or restoration of Customer Data);

Data Subject

has the meaning given to that term in Data Protection Laws;

Data Subject
Request

means a request made by a Data Subject to exercise any rights of Data Subjects under Data Protection Laws;

International
Organisation

means an organisation and its subordinate bodies governed by public international law, or any other body which is set up by, or on the basis of, an agreement between two or more countries;

International
Recipient

has the meaning given to that term in clause 6.1;

Personal Data

has the meaning given to that term in Data Protection Laws;

Personal Data
Breach

means any breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, any Protected Data;

Processing

has the meanings given to that term in Data Protection Laws (and related terms such as process have corresponding meanings);

Processing
Instructions

has the meaning given to that term in clause 2.1.1;

Protected Data means Personal Data received from or on behalf of the Customer, or otherwise obtained in connection with the performance of the Supplier's obligations under this Agreement; and

Supervisory Authority means any local, national or multinational agency, department, official, parliament, public or statutory person or any government or professional body, regulatory or supervisory authority, board or other body responsible for administering Data Protection Laws.

Specific Interpretive Provision(s)

IN THIS AGREEMENT:

(a) references to any Applicable Laws (including to the Data Protection Laws and each of them) and to terms defined in such Applicable Laws shall be replaced with or incorporate (as the case may be) references to any Applicable Laws replacing, amending, extending, re-enacting or consolidating such Applicable Law (including particularly the GDPR and/or the Revised UK DP Law) and the equivalent terms defined in such Applicable Laws, once in force and applicable;

(b) a reference to a law includes all subordinate legislation made under that law; and

(c) clauses 1 to 10 (inclusive) shall survive termination (for any reason) or expiry of this Agreement (or of any of the Services).

DATA PROCESSING PROVISIONS

1 Data Processor and Data Controller

1.1 The parties agree that, for the Protected Data, the Customer shall be the Data Controller and the Supplier shall be the Data Processor.

1.2 The Supplier shall comply with all Data Protection Laws in connection with the processing of Protected Data, the Services and the exercise and performance of its respective rights and obligations under this Agreement.

1.3 The Customer shall comply with all Data Protection Laws in respect of the performance of its obligations under this Agreement.

2 Instructions and details of processing

2.1 Insofar as the Supplier processes Protected Data on behalf of the Customer, the Supplier:

2.1.1 unless required to do otherwise by Applicable Law, shall (and shall ensure each person acting under its authority shall) process the Protected Data only on and in accordance with the Customer's documented instructions as set out in this clause 2 and the Schedule (Data Processing Details), and as updated from time to time by the written agreement of the parties (**Processing Instructions**); and

2.1.2 if Applicable Law requires it to process Protected Data other than in accordance with the Processing Instructions, shall notify the Customer of any such requirement before processing the Protected Data (unless Applicable Law prohibits such information on important grounds of public interest).

2.2 The Supplier shall immediately inform the Customer in writing if, in the Supplier's opinion, a Processing Instruction infringes the Data Protection Laws or any other Applicable Laws relating to data protection and explain the reasons for its opinion, provided that this shall be without prejudice to clause 1.2.

- 2.3 The processing to be carried out by the Supplier under this Agreement shall comprise the processing set out in the Schedule (Data Processing Details), and such other processing as agreed by the parties in writing from time to time.
- 3 Technical and organisational measures
- 3.1 The Supplier shall implement and maintain, at its cost and expense, appropriate technical and organisational measures in relation to the processing of Protected Data by the Supplier:
- 3.1.1 such that the processing will meet the requirements of Data Protection Laws and ensure the protection of the rights of Data Subjects;
- 3.1.2 so as to ensure a level of security in respect of Protected Data processed by it that is appropriate to the risks that are presented by the processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data transmitted, stored or otherwise processed; and
- 3.1.3 without prejudice to clause 5.1, insofar as is possible, to assist the Customer in the fulfilment of the Customer's obligations to respond to Data Subject Requests relating to Protected Data.
- 3.2 Without prejudice to clause 3.1, the Supplier shall, in respect of the Protected Data processed by it under this Agreement comply with the requirements regarding security of processing set out in Data Protection Laws (as applicable to Data Processors) and in this Agreement.
- 4 Using staff and other processors
- 4.1 The Supplier shall be at liberty to engage another Data Processor (or any replacement) for carrying out any processing activities in respect of the Protected Data.
- 4.2 The Supplier shall ensure that the Supplier Personnel and all other persons authorised by it to process Protected Data are subject to a binding written contractual obligation with the Supplier to keep the Protected Data confidential (except where disclosure is required in accordance with Applicable Law, in which case the Supplier shall, where practicable and not prohibited by Applicable Law, notify the Customer of any such requirement before such disclosure).
- 4.3 Without prejudice to any other provision of clauses 1 to 10 (inclusive), the Supplier shall ensure that the Supplier Personnel processing Protected Data are reliable and have received adequate training on compliance with clauses 1 to 10 (inclusive) and the Data Protection Laws applicable to the processing.
- 4.4 The Supplier shall ensure that access to Protected Data is limited to the authorised persons who need access to it to supply the Services.
- 5 Assistance with the Customer's compliance and Data Subject rights
- 5.1 The Supplier shall (at no cost to the Customer):

- 5.1.1 promptly record and then refer all Data Subject Requests it receives to the Customer within five Business Days of receipt of the request;
 - 5.1.2 provide such information and cooperation and take such action as the Customer reasonably requests in relation to each Data Subject Request, within the timescales reasonably required by the Customer; and
 - 5.1.3 not respond to any Data Subject Request or Complaint without the Customer's prior written approval.
- 5.2 Without prejudice to clause 2.1, the Supplier shall, at its cost and expense, provide such information, co-operation and other assistance to the Customer as the Customer reasonably requires (taking into account the nature of processing and the information available to the Supplier) to ensure compliance with the Customer's obligations under Data Protection Laws, including with respect to:
 - 5.2.1 security of processing;
 - 5.2.2 data protection impact assessments (as such term is defined in Data Protection Laws);
 - 5.2.3 prior consultation with a Supervisory Authority regarding high risk processing; and
 - 5.2.4 any remedial action and/or notifications to be taken in response to any Personal Data Breach and/or Complaint, including (subject in each case to the Customer's prior written authorisation) regarding any notification of the Personal Data Breach to Supervisory Authorities and/or communication to any affected Data Subjects.
- 6 International data transfers
 - 6.1 The Supplier shall not transfer any Protected Data to any country outside the United Kingdom or to any International Organisation (an **International Recipient**) without the Customer's prior written consent.
- 7 Records, information and audit
 - 7.1 The Supplier shall maintain complete, accurate and up to date written records of all categories of processing activities carried out on behalf of the Customer, containing such information as the Customer may reasonably require, including:
 - 7.1.1 the name and contact details of the Data Processor(s) and of each Data Controller on behalf of which the Data Processor is acting, and of the Supplier's representative and data protection officer (if any);
 - 7.1.2 the categories of processing carried out on behalf of each Data Controller;
 - 7.1.3 where applicable, details of transfers of Protected Data to an International Recipient; and
 - 7.1.4 a general description of the technical and organisational security measures referred to in clause 3.1.

- 7.2 The Supplier shall make available to the Customer on request in a timely manner (and in any event within five Business Days):
- 7.2.1 copies of the records under clause 7.1; and
 - 7.2.2 such other information as the Customer reasonably requires to demonstrate the Supplier's and the Customer's compliance with their respective obligations under Data Protection Laws and this Agreement.
- 7.3 The Supplier shall at no cost to the Customer:
- 7.3.1 allow for and contribute to audits, including inspections, conducted by the Customer or another auditor mandated by the Customer for the purpose of demonstrating compliance by the Supplier and the Customer with their respective obligations under Data Protection Laws and under clauses 1 to 10 (inclusive); and
 - 7.3.2 provide (and procure) reasonable access for the Customer or such other auditor (where practicable, during normal business hours) to:
 - (a) the facilities, equipment, premises and sites on which Protected Data and/or the records referred to in clause 7.1 are held, and to any other equipment or facilities used in the provision of the Services (in each case whether or not owned or controlled by the Supplier); and
 - (b) to the Supplier Personnel,
 - 7.3.3 provided that the Customer gives the Supplier reasonable prior notice of such audit and/or inspection.
- 7.4 If any audit or inspection reveals a material non-compliance by the Supplier with its obligations under Data Protection Laws or a breach by the Supplier of any of clauses 1 to 10 (inclusive), the Supplier shall pay the reasonable costs of the Customer or its mandated auditors, of the audit or inspection.
- 7.5 The Supplier shall promptly resolve, at its own cost and expense, all data protection and security issues discovered by the Customer and reported to the Supplier that reveal a breach or potential breach by the Supplier of its obligations under any of clauses 1 to 10 (inclusive).
- 8 Breach notification
- 8.1 In respect of any Personal Data Breach, the Supplier shall:
- 8.1.1 notify the Customer of the Personal Data Breach without undue delay (but in no event later than 12 hours after becoming aware of the Personal Data Breach); and
 - 8.1.2 provide the Customer without undue delay (wherever possible, no later than 24 hours after becoming aware of the Personal Data Breach) with such details as the Customer reasonably requires regarding:

- (a) the nature of the Personal Data Breach, including the categories and approximate numbers of Data Subjects and Protected Data records concerned;
 - (b) any investigations into such Personal Data Breach;
 - (c) the likely consequences of the Personal Data Breach; and
 - (d) any measures taken, or that the Supplier recommends, to address the Personal Data Breach, including to mitigate its possible adverse effects,
- 8.1.3 provided that, (without prejudice to the above obligations) if the Supplier cannot provide all these details within the timeframes set out in this clause 8.1.2, it shall (before the end of such timeframes) provide the Customer with reasons for the delay and when it expects to be able to provide the relevant details (which may be phased), and give the Customer regular updates on these matters.
- 8.2 The Supplier shall promptly (and in any event within three Business Days) inform the Customer if it receives a Complaint and provide the Customer with full details of such Complaint.
- 9 Deletion or return of Protected Data and copies
- 9.1 The Supplier shall (and shall ensure that all persons acting on its behalf and all Supplier Personnel shall) without delay (and in any event within three days), at the Customer's written request, either securely delete or securely return all the Protected Data to the Customer in such form as the Customer reasonably requests after the earlier of:
 - 9.1.1 the end of the provision of the relevant Services related to processing of such Protected Data; or
 - 9.1.2 once processing by the Supplier of any Protected Data is no longer required for the purpose of the Supplier's performance of its relevant obligations under this Agreement,
- 9.2 and securely delete existing copies (unless storage of any data is required by Applicable Law and, if so, the Supplier shall inform the Customer of any such requirement).
- 10 Liability and indemnities
- 10.1 The Supplier shall indemnify and keep indemnified the Customer in respect of all Data Protection Losses suffered or incurred by, awarded against or agreed to be paid by, the Customer arising from or in connection with:
 - 10.1.1 any breach by the Supplier of any of its obligations under clauses 1 to 9 (inclusive); or
 - 10.1.2 the Supplier (or any person acting on its behalf) acting outside or contrary to the lawful Processing Instructions of the Customer in respect of the processing of Protected Data.

10.2 This clause 10 is intended to apply to the allocation of liability for Data Protection Losses as between the parties, including with respect to compensation to Data Subjects, notwithstanding any provisions under Data Protection Laws to the contrary, except:

10.2.1 to the extent not permitted by Applicable Law (including Data Protection Laws); and

10.2.2 that it does not affect the liability of either party to any Data Subject.

11 Conflicts

11.1 Unless otherwise expressly stated in this Agreement:

11.1.1 the Supplier's obligations and the Customer's rights and remedies under clauses 1 to 10 (inclusive) are cumulative with, and additional to, any other provisions of this Agreement;

11.1.2 nothing in this Agreement relieves the Supplier of any responsibilities or liabilities under any Data Protection Laws; and

11.1.3 clauses 1 to 10 (inclusive) shall prevail over any other provision of this Agreement in the event of any conflict.

The Schedule

DATA PROCESSING DETAILS

1. Subject-matter of processing:

Processing customer data for the purposes of maintaining a subscription to utilise Encodian supplied products and services.

2. Duration of the processing:

From creation of an Encodian subscription to termination of the Encodian subscription.

3. Nature and purpose of the processing:

For identification of the Customer and billing and required contact activities (Email, Phone, etc.)

4. Type of Personal Data:

Company Name, Customer Name, Customer Email Address, Customer Role, Office Address and Phone Number.

5. Categories of Data Subjects:

Customers

6. Processing Instructions

Any specific instructions to be notified.