

Data Processing Agreement (DPA) Template v.1

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This document should not be considered legal advice and should not be used in the determination of compliance or adherence to CCPA or CPRA, it is information and intended to be an overview and guide for businesses to use in assisting with compliance efforts. For questions please contact Data Privacy Institute and info@dataprivacyinsitute.org.

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DATA PROCESSING AGREEMENT

Between





(as “Data Controller”)

AND



(as “Data Processor”)

BETWEEN:

-  (the “Data Controller”); and
-  (the “Data Processor”), (each a “Party”, and together the “Parties”).

WHEREAS:

- The Data Processor is to provide Services to the Data Controller pursuant to this Agreement.
- This Agreement is entered into to ensure adequate safeguards with respect to the protection of privacy and security of Personal Data passed from the Data Controller to the Data Processor for Processing or accessed by the Data Processor on the authority of the Data Controller for Processing or otherwise received by the Data Processor for Processing on the Data Controller’s behalf.
- This Agreement further defines certain service levels and safeguards to be applied to all Personal Data and services provided by the Data Processor to the Data Controller.

Definitions:

- (a) “Data Protection Laws” means all applicable privacy, anti-spam, data security, and data protection laws, rules, regulations, jurisprudence, orders, ordinances, regulatory guidance, and industry self-regulations.
- (b) “Personal Information” means any information received by Data Processor/Company from or on behalf of [REDACTED] that identifies, relates to, describes, or can be reasonably linked to a person, a household, or a person’s device. The term includes similar terms, such as “Personal Data” and “Personally Identifiable Information”, as defined under Data Protection Laws.
- (c) “Sell” means selling, renting, releasing, disclosing, disseminating, making available, transferring, or otherwise communicating orally, in writing, or by electronic or other means, an individual’s Personal Information to another person for monetary or other valuable consideration (or as otherwise defined in Data Protection Laws).
- (d) “CCPA” shall mean the California Consumer Privacy Act, Cal. Civ. Code § 1798.100 et seq., and its implementing regulations;
- (e) “CPRA” shall mean the California Privacy Rights Act, Cal. Civ. Code § 1798.140 et seq., and its implementing regulation
- (f) “Data Controller” shall mean the entity which determines the purposes and means of the Processing of Personal Data which for the purposes of this Agreement means the Parties acknowledge and agree that Data Controller is a “Business,” as defined in “CCPA” and “CPRA”;
- (g) “Data Processor” shall mean the entity which Processes Personal Data on behalf of the Data Controller, including as applicable any “service provider” as that term is defined by the CCPA and the CPRA; and the Parties acknowledge and agree that Data Processor is a “Contractor” or “Service Provider,” as defined in CPRA;
- (h) “Data Subject” shall mean an identified or identifiable natural person who is the subject of Personal Data, and includes a “Consumer,” as that term is defined in “CCPA” and “CCPR;”
- (i) “Instruction” shall mean the written instruction, submitted by the Data Controller to the Data Processor, and directing the same to perform a specific action with regard to Personal Data (including depersonalizing, blocking, deleting, making available, etc.);

Definitions:

(j) “Personal Data” shall mean any information relating to an identified or identifiable natural person and shall include, without limitation, any and all “personal information” as that term is defined in the “CCPA” and “CPRA”; an identifiable 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 his or her physical, physiological, genetic, mental, economic, cultural or social identity and as defined under applicable Privacy Laws;

(k) “Personal Data Breach” shall mean a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Personal Data transmitted, stored or otherwise processed;

(l) “Process”/“Processing” shall mean any operation or set of operations which is performed upon the Personal Data, whether or not by automatic means, such as collection, recording, organization, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction;

- Data Processor is authorized to process Personal Information relating to , customers, end users, employees, applicants, and contractors during the duration of Data Processor's services agreement(s) with , as necessary to provide the Services. Personal Information may include Personal Identifiers, transaction or commercial data, internet or network activity data, audio/video data, and marketing information or inferences.

- Data Processor will and ensure that any person acting under processors authority will:
 - (a) Handle Personal Information in compliance with all Data Protection Laws. Data processor will advise [REDACTED] within 5 days if Data Processor determines it can no longer meet its obligations under Data Protection Laws.
 - (b) Retain, use, disclose, transfer or otherwise process the Personal Information, including aggregated, anonymized, pseudonymized, or de-identified Personal Information only
 - (i) as needed to provide the Services, and
 - (ii) in accordance with [REDACTED] instructions, including as set forth in any agreement and related schedules or statements of work and this DPA. Data Processor will not combine Personal Information with other information and will logically separate Personal Information in its or any of its external parties' (Subprocessors') databases not used exclusively for [REDACTED] matters. Data processor will take reasonable measures to ensure that any aggregated, anonymous, de-identified, or pseudonymous Personal Information that it receives from or on behalf of [REDACTED] or that it generates through providing the Services, cannot be re-associated or re-identified with an individual and will publicly commit to not attempt to re-identify such information.
 - (c) Require through a non-disclosure agreement, employee agreement, or confidentiality agreement any persons accessing or processing the Personal Information to hold the information confidential.
 - (d) Implement technical and organizational safeguards that protect Personal Information against unauthorized loss, destruction, alteration, access or disclosure. Data Processor will notify [REDACTED] of suspected unauthorized access or misuse of Personal Information.
 - (e) Within 30 days of a written request from [REDACTED] (email sufficient), implement or honor all consumer requests that are provided by [REDACTED]. Data Processor will promptly (and in any case within 10 days) notify [REDACTED] of any requests or complaints with respect to use of Personal Information, including any request to exercise privacy rights under Data Protection Laws. Data processor will not respond to any such request or complaint other than to direct such to [REDACTED] unless expressly authorized by [REDACTED]. Data processor will assist [REDACTED] in complying with privacy rights requests and data breach requirements as necessary.
 - (f) Assist [REDACTED] in the event of an investigation by any government entity or regulator relating to Personal Information handled by Data processor on [REDACTED] behalf. Upon reasonable request from [REDACTED], Data processor will demonstrate its compliance with applicable Data Protection laws and this DPA. Data processor will cooperate with reasonable audits or assessments conducted by [REDACTED], including completing privacy risk or impact assessments.

- Data processor will promptly notify Data Controller of any Personal Data Breach of which it becomes aware. Such notification shall include, taking into account the nature of the Processing and the information available to the Data Processor, any information relevant to assist the Data Controller with its own notification obligations under applicable law:
- Data processor will not sell or share Personal Information nor use, disclose, or retain Personal Information for: (i) any purposes outside of providing the Services; (ii) for its own commercial purposes; or (iii) outside of the direct business relationship between Data processor and [REDACTED],
- [REDACTED] authorizes Data processor to disclose or transfer Personal Information to, or allow access to Personal Information by, Subprocessors, solely for purposes of providing the Services. Prior to any disclosure, Data processor will impose on the Subprocessor, in writing, obligations concerning Personal Information substantially similar to those in this DPA and consistent with Data Protection Laws. Data processor will notify [REDACTED] prior to the engagement of a new Subprocessor and respond in good faith to any reasonable objections by [REDACTED].
- Upon request from [REDACTED] during the term of the relationship, Data processor will delete Personal Information upon [REDACTED] request within 45-days from receipt of the request (or as otherwise required by Data Protection Laws). At the end of the relationship, [REDACTED] will be entitled to retrieve its Personal Information and Data processor will promptly delete Personal Information from its systems. Data processor is permitted to retain Personal Information solely to the extent necessary (i) for Data processor to meet its warranty obligations to individuals (to the extent applicable); or (ii) for Data processor's internal legal or business record keeping purposes. When these business or legal purposes no longer exist, Personal Information will be deleted in accordance with Data processor's documented retention and deletion policies.
- [REDACTED] shall take appropriate action in the event that Data processor misuses personal information or otherwise breaches a contract, such as suspension of sharing Personal Information or termination of use of Data processor.
- In event of a conflict between this DPA and any other agreement between [REDACTED] and Data processor, this DPA will control.

The obligations of this DPA shall survive for as long as the Data processor holds or processes Personal Information.



DATA CONTROLLER

By: _____

Signature of Officer or Other Authorized Employee

Print Name: _____

Title: _____

Date: _____



DATA PROCESSOR:

By: _____

Signature of Officer or Other Authorized Employee

Print Name: _____

Title: _____

Date: _____