

DATA PROCESSING AGREEMENT (“DPA”)

between

Business Partner and

Tech Data Denmark ApS

Banevænget 13

3460 Birkerød

(“Tech Data” or “Processor”)

Preamble

Tech Data and Business Partner entered into an Agreement for the provisioning of certain services by Tech Data. This DPA specifies the data protection obligations of the Parties, which arise from the processing of personal data by Tech Data in connection with the services. Any term not defined in this DPA shall have the meaning ascribed to them under the General Data Protection Regulation (EU 2016/679) (“GDPR”). References to Articles of GDPR herein [Art....GDPR] shall apply only to the extent that EEA Personal Data is involved – for all other relevant jurisdictions the corresponding applicable Data Protection Laws apply.

1. Definitions

“**Agreement**” means any written or other agreement including Statement of Work (SoW) or service specification entered into between the Parties for the provisioning of services by Tech Data, including conclusion of the Agreement by implied acceptance through Business Partner’s usage of Tech Data’s services offerings, or any other means of conclusion of a contract.

“**Approved Third Country**” means any member state of the European Economic Area (“EEA”) or any third country which is approved by the European Commission as providing adequate protection for personal data pursuant to Article 45(3) of the General Data Protection Regulation. Following a final Brexit decision of the UK, not involving a contractual regulation of Privacy adequacy, UK will not be deemed an Approved Third Country until European Commission’s published adequacy decision in line with Art. 45 GDPR.

“**Business Partner**” means the contract partner of Tech Data entering into this DPA acting as the Controller by procuring a service from Tech Data involving processing of Personal Data either for own use or for further services provisioning to Clients.

“**Clients**” means Business Partner’s Customers or such Customers’ End Users.

“**Details of Processing**” depending on the service, can be found either (i) in Exhibit 1.2. to this DPA, (ii) the Agreement or SOW relevant for the service or otherwise **as provided by Processor**; Details of Processing include all information relevant in connection with the processing as to Art. 28 GDPR including information on Sub-(sub)processors.

“**EEA Personal Data**” means Personal Data which originates from a member state of the EEA, the UK (if not a member of the EEA) or Switzerland.

“**EU Model Contract - Controller to Processor**” means the standard contractual clauses for the transfer of Personal Data to Processors established in third countries of the European Parliament and of the Council (decision 2010/87/EU), in the form set out in **Exhibit 2 which must be executed unless Processor is located in an Approved Third Country**.

“**Privacy Law**” means all applicable laws and regulations relating to the processing of Personal Data and privacy that may exist in the relevant jurisdictions; if EEA Personal Data is processed GDPR regulations apply.

“TOMs” means the technical and organizational measures applicable to the service which can be found in the Details of Processes or in Exhibit 1.3 -to this DPA.

2. Scope

- 2.1. This DPA applies to the processing of Personal Data by Tech Data on behalf of Business Partner being with regard to the Personal Data (a) itself a Controller or (b) a Processor in relation to and on behalf of Clients being the Controller for the Personal Data processed hereunder.
- 2.2. Nature, purpose and subject matter of Processing are defined in this DPA, the Agreement and its attachments. Categories of Data Subjects, types of Personal Data, Special Categories of Personal Data, TOMs and Sub-(sub)processors - where relevant - can be found in the Details of Processing. The duration of the Processing corresponds to the duration of the Service, unless otherwise stated in the Details of Processing or the Agreement.

3. Obligation of Controller / Business Partner

- 3.1. Controller shall be solely responsible for complying with all statutory obligations of a Controller in view of the Processing according to Applicable Data Privacy Laws, shall, upon termination or expiration of the Service Agreement and by way of issuing an instruction, stipulate the measures to return Personal Data carrier media or to delete stored Personal Data, and will notify Processor without undue delay of any errors or irregularities it gains knowledge of in connection with the Processing of Personal Data by the Processor. The Controller acknowledges and agrees that some instructions from the Controller, including destruction or return of data, assisting with audits, inspections or DPIAs by the Processor, may result in additional fees. In such case, the Processor will notify the Controller of its fees for providing such assistance in advance, unless otherwise agreed.
- 3.2. If Business Partner is not himself the Controller with regard to the Personal Data but processes Personal Data in connection with the Service on behalf of Clients, Business Partner warrants to have all contracts in place and to have all necessary permissions and authorizations of Client(s)
 - to act in relation to Tech Data as the Controller under this DPA and exercise all rights as a Controller towards Tech Data and its Sub-(sub)processors with regard to the DPA;
 - to use Tech Data as a Processor to process Personal Data as set out in the Agreement and this DPA, in light of the technical and organizational measures (“TOMs”) and Sub-(sub)processors applicable to the Service;
 - to be the single point of contact to Tech Data for all instructions, notices, information and communication in connection with this DPA and to interface relevant communication between Clients and Tech Data, where legally required. Tech Data shall be discharged of any obligation to inform or notify a Client when Tech Data has provided such information or notice to Business Partner. Tech Data will serve as a single point of contact in view of Tech Data’s Sub-(sub)processors.
 - to authorize Tech Data to execute the EU Model Contract on behalf of Clients as Data Exporters;
 - to exercise Exporters’ rights according to the EU Model Contract towards (i) Tech Data and / or (ii) its Sub-(sub) processors via Tech Data on behalf of Exporter;
 - to ensure that the EU Model Contracts – where applicable including any claims arising from them, are subject to the terms of the Agreement or DPA including the exclusions and limitations of liability and shall otherwise indemnify Processor and its Sub-(sub)processors in case of direct claims from Data Exporters exceeding the limitation in the Agreement.
- 3.3. Business Partner will not use the Services in conjunction with Personal Data to the extent that doing so would violate Privacy Laws and will oblige its Clients accordingly.
- 3.4. Business Partner will maintain an up-to-date record of its Clients being Controller including name and contact details. Where necessary for Processor or Sub-(sub)processors to comply with its mandatory obligations in accordance with Privacy Law, Business Partner will provide such record upon request to Tech Data without undue delay.

4. Obligations of Processor

- 4.1. **Compliance with Processor obligations.** Processor will comply with all obligations applicable to Processors according to European Economic Area (EEA) data Privacy Laws in respect of the Services. Processor is not responsible for determining the requirements of laws applicable to Business Partner's or Clients' business or industry or that Processor's provision of the Services meet the requirements of such laws.
- 4.2. **Instructions.** Processor shall not use Personal Data for any other purposes than agreed in the Agreement and this DPA and shall process Personal Data only in accordance with Business Partner's written instructions, which are defined by the Agreement, this DPA including its Exhibits and – if applicable – Business Partner's, Clients' or other Controllers' authorized use and configuration of the Services. Business Partner may provide further instructions if required by applicable Data Protection Laws (Additional Instructions). Additional instructions may be subject to extra costs to be borne by Business Partner. If Processor notifies Business Partner that an Additional instruction is not feasible or Business Partner doesn't accept the costs for Additional Instructions, Business Partner may terminate the affected Service with a 30 prior notice within 1 month of notification. Processor shall inform the Business Partner if Processor believes Business Partner's Instruction to be in violation of applicable Data Protection Law, and/or of contractual duties under the Agreement or this DPA. Processor is entitled to suspend the implementation of such Instruction until it is examined by the Business Partner and confirmed or changed as a result.
- 4.3. **Disclosure/Access.** Processor shall not disclose personal data to any third party, unless authorized by Business Partner or required by law. If a government, court or Supervisory Authority demand access to personal data, Processor will notify Business Partner prior to disclosure, unless prohibited by law. Unless legally obliged to do so, Processor shall not disclose or release any Personal Data in response to such request served on Processor without first consulting with Business Partner. Where Business Partner's Personal Data becomes subject to search and seizure, confiscation during bankruptcy or insolvency proceedings, or similar events or measures by third parties while being processed, Processor shall inform Business Partner without undue delay.
- 4.4. **Duty of confidence.** Processor requires all of its personnel and persons being entrusted with the processing of Personal Data, to commit themselves to confidentiality - unless a statutory obligation of confidentiality applies - and not to process such Personal Data for any other purpose except on instructions from Business Partner or otherwise required by law.
- 4.5. **Data Subject Rights.** Processor shall reasonably assist Business Partner upon Business Partner's request and as legally required, in providing data subject access and to respond to any requests, complaints or other communications from a Data Subject, including requests from data subjects seeking to exercise their rights under Privacy Laws. If any such request, complaint or communication is received by or otherwise made to Processor, Processor shall inform Business Partner without undue delay, if Processor is able to correlate data subject to Business Partner or Business Partner Clients.
- 4.6. **Data Breach.** Processor will notify Business Partner without undue delay after becoming aware of any Personal Data Breach ("Data Breach") affecting Business Partner's Personal Data. Processor shall take such measures and actions as appropriate to remedy or mitigate the effects of the Personal Data Breach and shall cooperate with Business Partner by providing regular updates and other reasonably requested information. Any press release, notification, public or regulatory announcement or communication concerning a Personal Data Breach shall be made by Controller at Controller's sole discretion, except as otherwise required by Applicable Laws.
- 4.7. **Assistance with Controller obligations.** Processor shall reasonably assist Business Partner upon Business Partner's request, with Controller's obligations regarding security of processing and Data Protection Impact assessment taking into account the information available to Tech Data and the nature of processing. Processor will provide assistance in connection with audits of any competent supervisory authority to the extent such audit relates to the processing of Personal Data by the Processor under this Agreement and as reasonably requested by the Business Partner. Processor's assistance may be subject to reasonable charge unless Processor's assistance is already addressed in the Service Agreement accordingly.
- 4.8. **End of Contract.** Processor shall, at the choice of Business Partner, delete or return all Personal Data to Business Partner upon termination or expiry of the Agreement, and delete existing copies unless EU or

member state law requires Processor's storage of the Personal Data. The Processor shall at the choice of the Controller, upon receipt of a written request received within 30 days the end of the provision of the Solution and Services relating to processing, delete or return Personal Data to the Controller. The Processor shall in any event delete all copies of Personal Data in its systems within 12 months of the effective date of termination of the Agreement unless: (i) applicable law or regulations require storage of the Personal Data after termination; or (ii) partial Personal Data of the Customer is stored in backups, then such Personal Data shall be deleted from backups 1 year after the effective date of termination of the Agreement.

5. Technical and Organizational Security Measures and Data Breach

- 5.1. Processor shall implement and maintain technical and organizational measures ("TOMs") to ensure a level of security appropriate to the risks that are presented by Tech Data's scope of responsibility taking into account the nature of processing. The TOMs relevant for a service are set forth either in an Exhibit to this DPA or otherwise can be found in the Details of Processing. TOMs may be amended in the specific service descriptions. Sub-(sub)processor TOMs may be applicable for specific aspects of the services if and as stipulated in the Exhibit or the Details of Processing.
- 5.2. TOMs are subject to technical progress and further development. Processor reserves the right to modify the measures and safeguards implemented, provided, however, that the functionality and security of the Services are not degraded. Any substantial security-related decisions on the organization of data processing and the applied procedures shall be notified to Business Partner.
- 5.3. By using a Service, Business Partner approves the TOMs as published according to this DPA and confirms that the TOMs provide an adequate level of protection in respect to the risks associated with the Processing of Personal Data.

6. Documentation and Audit Obligations

- 6.1. Upon Business Partner's request, Processor shall make available to Business Partner, or an authorized third party acting on Business Partner's behalf, information necessary for Business Partner or clients to comply with their own audit obligations under applicable Data Protection Laws or a Supervisory Authority's request, and shall allow for and contribute to reviews and audits including inspections as stipulated below.
- 6.2. Business Partner may request Processor to provide relevant information on the technical and organizational measures including - where available - auditor's certificates, reports or excerpts from reports provided by independent bodies (e.g. auditor, Data Protection Officer, IT security department, data privacy auditor, quality auditor).
- 6.3. To the extent it is not possible to otherwise satisfy an audit obligation mandated by Applicable Privacy Law, Business Partner or its mandated auditor may conduct personal on-site audits on individual basis, usually not more often than once a year, during regular business hours, with only minimal interference with Processor's operations and upon reasonable prior notice. Processor may 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. Processor shall be entitled to rejecting auditors which are competitors of Processor or its Sub-(sub)processors.
- 6.4. Business Partner shall inform Processor without undue delay about any errors or irregularities detected during an audit.
- 6.5. Each Party shall bear its own costs. Processor shall be entitled to requesting a reasonable remuneration for Processor's support in conducting inspections other than according to Section 6.1. and 6.2..

7. Sub-processor

- 7.1. Business Partner herewith authorizes Processor to a) retain other Tech Data Affiliate(s) and b) either directly or via Tech Data Affiliates engage other processors for carrying out specific processing activities in connection with the Agreement ("Sub-processor"). A list of the current Sub-processors is set out in the Details of Processing or the Agreement.
- 7.2. Processor shall inform Business Partner of any new assignments or replacements of Sub-processors in writing (incl. email or documented electronic form).
- 7.3. Business Partner shall be entitled to object to a Sub-processor within 30 days of notification and for materially important reasons. Otherwise Business Partner shall be deemed to have approved such new assignment or

change. Where a material reason for an objection exists, and failing an amicable resolution of this matter by the parties, Business Partner shall be entitled to terminating the Service Agreement for the concerned service.

- 7.4. Processor shall enter into written agreements with each Sub-processor containing data protection obligations in line with applicable Data Protection Laws, especially Art. 28 GDPR, being not less protective than those stipulated in this DPA. Such contract shall in particular provide sufficient guarantees to implement appropriate technical and organizational measures in such a manner that the Processing will meet the requirements of applicable Data Protection Laws and this DPA.
- 7.5. Processor shall remain fully liable for the performance of Sub-processor's obligations as if Processor was performing the services itself. Processor shall examine Sub-processor's compliance with its data protection obligations and document the results of such examinations. The results shall be made available to Business Partner upon request.
- 7.6. If a Sub-processor involves further processors (jointly referred herein as "Sub-(sub)processor") the requirements of this Clause 7 shall equally apply.

8. International Data Transfer

- 8.1. Any processing of Personal Data outside the country or region where Business Partner is located may be subject to an adequate data transfer mechanism as required by applicable Privacy law. If such data transfer mechanism identified by Processor is no longer recognized as valid, the Parties will agree on an alternative solution permitting the Processor to continue to Process the Personal Data in said country/countries.
- 8.2. When EEA Personal Data is concerned by a transfer to (or access from) a country other than an Approved Third country,

(i) because Processor is located in a country not deemed an Approved Third Country, EU Model Contract must be executed between Tech Data and Business Partner by completion and signature of Exhibit 2. By execution of Exhibit 2, Business Partner enters into the EU Model Contract on its own behalf if being Controller of the Personal Data and/or on behalf of Clients being the Controller and Exporter. Processor enters into the EU Model Contract as Importer. Exhibit 2 shall be left intentionally blank if Processor is located and processes Personal Data in an Approved Country;

(ii) because Sub-(sub-) processor processes the Personal Data in a country other than an Approved Country, Processor shall enter into EU Model Contract with Sub-processors and shall oblige Sub-processors accordingly with regard to further processors.

In order for Business Partner and / or Clients becoming a direct party to and beneficiary as "Controller" and "Exporter" under the EU Model Contract with Sub- (sub-) processors, Business Partner authorizes Processor and – where relevant – Sub-processor by agreeing to this DPA to execute the EU Model Contract with further processors on behalf of and representing Business Partner and/or Clients in such a way that either (i) the respective "Controller" accedes as "Controller" / "Exporter" to EU Model Contracts concluded by Processor (or Sub-processor) with further processors or (ii) EU Model Contracts are executed in the name of and on behalf of Business Partner or Clients (as "Controller" / "Exporter") being legally represented by Processor or Sub-processor.

- 8.3. If the EU Model Contract applies as to the scenarios 8.2. (i) and (ii) the following will apply:
 - Sub-processing by Data Importer under Clause 11 of the EU Model Contract will be in accordance with the provisions of this DPA.
 - The terms of this DPA are not intended to amend or modify the EU Model Contract but provide clarity in terms of processes and procedures for complying with the EU Model Contract. In the event of any conflict between the terms of this DPA.

9. Remedies and Liabilities

- 9.1. Liability of Processor and its Sub-(sub)processors vis a vis Business Partner including any indemnification obligations other than those in this Clause 9, for any claim and damage, including costs and reasonable attorneys' fees, as a result of any breach or violation of Processor or Sub-(sub)processors' obligations under

the DPA, according to applicable Privacy Law or as Data Exporters under the EU Model Contract - where applicable - is subject to the aggregate limitation of liability as stipulated herein.

- 9.2 To the extent permitted by applicable law and unless willful misconduct or gross negligence is the cause of damage or in case of personal injuries and death due to negligence, under no circumstances is Processor liable for any special, incidental, exemplary, indirect damages, for any economic consequential damages, including but not limited to lost profits, loss of business, revenues, goodwill, anticipated savings or for any punitive damages imposed on Business Partner or Clients – even if Processor has been advised of the possibility of such damages.
- 9.3 Processor’s aggregated liability under this DPA and the EU-Model Contract shall in any way not exceed the amount of any actual direct damages up to the greater of Euro 1.000,000 or the fees for the Services for the previous 12 months leading up to the claim.
- 9.4 Where according to statutory regulations liability for violation of material contractual obligations may not be limited or excluded as such, compensation for damages resulting out of violation of material contractual obligations shall be limited to damages and loss typically foreseeable at the conclusion of the DPA.
- 9.5 Nothing in this Clause shall affect any rights of Data Subjects according to applicable Privacy Law and – where applicable - the third party beneficiary provisions of the EU Model Contract to the extent such limitation is prohibited by applicable Privacy Law.
- 9.6 Business Partner shall ensure by including appropriate wording in its contracts with Clients, that the EU Model Contracts including any claims arising from them, are subject to the limitation of liability as to this Clause 9 including the exclusions and limitations of liability and shall otherwise indemnify Processor and its Sub-(sub)processors if being Data Importer in case of direct claims from Data Exporters exceeding the limitations agreed herein.

10. General Provisions

- 10.1. Confidentiality. Parties shall not disclose any confidential information shared in connection with this DPA except (i) as required in this DPA or Parties’ instruction, (ii) as required by law, (iii) in response to a competent authority or regulatory or government agency, and (iv) for disclosures to its employees, agents and contractors that are bound by confidentiality on a need-to-know basis. The Parties are entitled to disclose to a competent authority this DPA and Privacy or Security related sections of the Agreement and the EU Model Contract – if applicable - as necessary in connection with regulatory notification or approval.
- 10.2. Applicable Law. This Agreement is subject to the laws of the country where the Processor is established. The Parties exclusively submit to the courts of the seat of the Processor.
- 10.3. Term. The term of this DPA will end simultaneously and automatically with the termination of the Agreement, but Processor will continue to protect Personal Data in accordance with the terms of this DPA until all Personal Data is deleted or otherwise not accessible anymore by Processor.
- 10.4. Assignment. None of the Parties may assign or transfer any of the rights or obligations under this DPA without the prior written consent of each of the other Parties’ authorized representative.
- 10.5. Modifications. Any changes to this DPA and its attachments/Schedules, and any side agreements, must be made in writing. Processor may change this DPA especially in view of changes in law, after prior written notice (including email or electronic form) of 30 calendar days. Business Partner shall be deemed to have accepted the modifications or amendments if not objecting within the notification period.
- 10.6. Precedence. In the event of any conflict between the terms of the Service Agreement and this DPA, the terms of this DPA shall prevail.
- 10.7. Severance. Should any provision of this DPA be invalid or unenforceable, then the remainder of this Addendum shall remain valid and in force. The invalid or unenforceable provision shall be either (i) amended as necessary to ensure validity and enforceability, while preserving the Parties intentions as closely as possible or, if this is not possible, (ii) construed in a manner as if the invalid or unenforceable part had never been contained therein.

10.7. This Agreement consists of this DPA and

Exhibit 1.1 Data Protection Officer – only relevant for Tech Data GmbH & Co OHG in Germany.

Exhibit 1.2 Details of Processing

Exhibit 1.3 Technical and Organizational Measures

Exhibit 2 EU Model Contract – left intentionally blank if Processor is located in an Approved Third Country

	Business Partner	Processor
Authorized Signature:		
Name:		
Title:		
Date:		

Exhibit 1.2 Details of Processing

Exhibit 1.3 Technical and Organizational Measures

EXHIBIT 2 TO DPA

EU Model Contract - Standard Contractual Clauses

By way of executing this Exhibit 2, the Parties of the DPA agree to be bound by the regulations of the EU Model Contract (Processor as Data Importer and Business Partner as Data Exporter for himself or on behalf of Clients) in the form as can be found under <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32010D0087&from=EN>.

APPENDIX 1 TO THE EU MODEL CONTRACT

This Appendix forms part of the Standard Contractual Clauses which are incorporated and agreed between the Parties of the DPA by reference and signature of Exhibit 2 to the DPA.

Data exporter

The data exporter is: Business Partner if itself being the Controller and Business Partners' Clients if being the Controller of Personal Data herein represented by Business Partner if Personal Data is processed by Tech Data Affiliate on their behalf and sub-processed in connection with Data Importer's services.

Data importer

Tech Data as a data importer in connection with the processing of personal data as described in Exhibit 1.2 to the DPA – which shall be incorporated in this Appendix 1 by reference.

Data subjects

The personal data transferred concern the following categories of data subjects (please specify):
As described in Exhibit 1.2 to the DPA – which shall be incorporated in this Appendix 1 by reference.

Categories of data

The personal data transferred concern the following categories of data (please specify):
As described in Exhibit 1.2 to the DPA – which shall be incorporated in this Appendix 1 by reference.

Special categories of data (if appropriate)

The personal data transferred concern the following special categories of data (please specify):
As described in Exhibit 1.2 to the DPA – which shall be incorporated in this Appendix 1 by reference.

Processing operations

The personal data transferred will be subject to the following basic processing activities (please specify):
As described in Exhibit 1.2 to the DPA – which shall be incorporated in this Appendix 1 by reference.

APPENDIX 2 TO THE EU MODEL CONTRACT

This Appendix forms part of the Standard Contractual Clauses which are incorporated and agreed between the Parties of the DPA by reference and signature of Exhibit 2 to the DPA..

The Technical and Organizational Measures as described in Exhibit 1.3 of the DPA shall be incorporated in this Appendix 2 by reference.

	Data Exporter	Data Importer
Authorized Signature:		
Name:		
Title:		

Date: