Data Processing Agreement (DPDP Act)

India version

This Data Processing Agreement (“DPA”) between _____ (the “Data Fiduciary”) and _____ (the “Data Processor”) forms part of _____. It applies whenever the Data Processor processes digital personal data on the Data Fiduciary’s behalf, as required by section 8(2) of the Digital Personal Data Protection Act, 2023. In the rest of this DPA, the Data Fiduciary is called the “Controller” and the Data Processor the “Processor”.

1. Details of the processing

_____

2. Instructions

The Processor will process personal data only on the Controller’s documented instructions, including this DPA and the main agreement, unless required by law, in which case it will inform the Controller first where legally allowed. The Processor will tell the Controller if it believes an instruction breaks data protection law.

3. Confidentiality of staff

The Processor will ensure that everyone authorised to process the personal data is bound by confidentiality.

4. Security

The Processor will implement appropriate technical and organisational measures to protect personal data, including, as appropriate, encryption, access controls, resilience, backups and regular testing of these measures.

5. Sub-processors

The Controller authorises the following sub-processors:

_____

The Processor will give at least 30 days’ notice of any new sub-processor, during which the Controller may object on reasonable grounds. The Processor will impose equivalent data protection terms on each sub-processor and remains responsible for them.

6. Data subject requests

The Processor will promptly pass on any request from an individual exercising their rights and help the Controller respond, taking into account the nature of the processing.

7. Personal data breaches

The Processor will notify the Controller without undue delay, and in any case within _____ hours, after becoming aware of a personal data breach, with the information the Controller needs to meet its own reporting duties.

8. Assistance

The Processor will help the Controller with security, breach notification, data protection impact assessments and consultations with regulators, to the extent related to the processing.

9. International transfers

The Data Processor will not transfer personal data to any country or territory that the Central Government has restricted under section 16 of the Digital Personal Data Protection Act, 2023.

10. Deletion or return

When the services end, the Processor will, at the Controller's choice, delete or return all personal data and delete existing copies, unless the law requires it to keep them.

11. Audits

The Processor will make available the information needed to demonstrate compliance with this DPA and allow reasonable audits, on at least 30 days' notice and no more than once a year unless required by a regulator or after a breach.

12. Changes and waiver

Any change to this agreement must be in writing and signed by all parties, which may be done electronically. A failure or delay in enforcing any part of this agreement is not a waiver of that right.

13. Severability

If any part of this agreement is found to be invalid or unenforceable, that part will be limited to the minimum extent necessary and the rest of the agreement will remain in effect.

14. Disputes

The parties will first try in good faith to resolve any dispute through discussion for 30 days. Failing that, the dispute may be referred to arbitration by a sole arbitrator under the Arbitration and Conciliation Act, 1996, seated at _____, in English, or taken to the courts named in this agreement.

15. Governing law and jurisdiction

This agreement is governed by the laws of India, including the Indian Contract Act, 1872. Each party submits to the jurisdiction of the courts at _____, India, which will have exclusive jurisdiction.

16. Electronic signatures and counterparts

This agreement may be signed electronically and in counterparts, each of which is an original and which together form one agreement. The parties agree that electronic signatures are valid and binding under the Information Technology Act, 2000, and have the same effect as handwritten signatures.

17. Signatures

Signed by the parties on the dates shown below.

Processor

Full name

Company

Designation

Date

Controller

Full name

Company

Designation

Date