

44-Data Processing Agreement: Governs processing of personal data between parties.

Data Processing Agreement (DPA)

Effective Date: [Date]

Between:

Controller: [Controller's Full Name or Company Name], located at [Controller's Address].

Processor: [Processor's Full Name or Company Name], located at [Processor's Address].

1. Definitions

- **1.1 "Personal Data":** Any information relating to an identified or identifiable natural person ("Data Subject") that is processed under this Agreement.
 - **1.2 "Processing":** Any operation or set of operations performed on Personal Data, such as collection, recording, storage, alteration, retrieval, disclosure, and erasure.
 - **1.3 "Applicable Data Protection Laws":** All laws and regulations concerning data protection and privacy, including but not limited to the General Data Protection Regulation (GDPR) (EU) 2016/679 and the California Consumer Privacy Act (CCPA), if applicable.
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2. Subject Matter and Purpose

- **2.1** The Controller has engaged the Processor to perform the following data processing activities (the "Services"):
 - a. [Description of services involving data processing, such as data storage, management, analytics, etc.]
 - **2.2** The purpose of this Agreement is to ensure that the Processor processes the Personal Data in compliance with the Applicable Data Protection Laws.
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3. Data Processing Details

- **3.1 Categories of Data Subjects:** The Personal Data relates to the following categories of Data Subjects:
 - [Employees, customers, users, etc.]
- **3.2 Types of Personal Data:** The following types of Personal Data will be processed:
 - a. [Contact details, such as name, address, email, phone number].
 - b. [Financial information, such as credit card details].

- c. [Other specific data types].
 - **3.3 Nature and Purpose of Processing:** The Processor shall process Personal Data solely for the purpose of [purpose of data processing, such as providing software services, analyzing user behavior, etc.].
 - **3.4 Duration of Processing:** The Processor shall retain and process the Personal Data for the duration of the Agreement or until the Controller instructs the Processor to delete or return the data, whichever is sooner.
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4. Obligations of the Processor

- **4.1 Compliance:** The Processor agrees to process Personal Data only in accordance with the Controller's written instructions and in compliance with Applicable Data Protection Laws.
 - **4.2 Confidentiality:** The Processor shall ensure that all personnel authorized to process Personal Data are subject to confidentiality obligations and have received proper training on data protection.
 - **4.3 Security Measures:** The Processor shall implement appropriate technical and organizational measures to protect Personal Data against unauthorized or unlawful processing, accidental loss, destruction, or damage. These measures include:
 - a. Encryption of Personal Data.
 - b. Access controls and security protocols.
 - c. Regular backups and disaster recovery plans.
 - **4.4 Sub-Processors:** The Processor may engage sub-processors to assist in fulfilling its obligations under this Agreement only with the Controller's prior written consent. The Processor shall enter into a written agreement with each sub-processor that imposes the same data protection obligations as set forth in this Agreement.
 - **4.5 Data Breach Notification:** In the event of a data breach, the Processor shall notify the Controller without undue delay and provide sufficient information to assist the Controller in fulfilling its data breach reporting obligations under Applicable Data Protection Laws.
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5. Obligations of the Controller

- **5.1 Lawfulness of Processing:** The Controller warrants that the Personal Data provided to the Processor has been collected and is being processed lawfully, and the Controller has obtained any necessary consents from the Data Subjects.
 - **5.2 Instructions to the Processor:** The Controller shall provide clear and lawful instructions to the Processor regarding the processing of Personal Data.
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6. Data Subject Rights

- **6.1 Assistance with Requests:** The Processor shall, to the extent possible, assist the Controller in responding to requests from Data Subjects exercising their rights under Applicable Data Protection Laws, including but not limited to:
 - a. Right of access.
 - b. Right to rectification or erasure.
 - c. Right to restriction of processing.
 - d. Right to data portability.
 - **6.2 Request Handling:** The Processor shall notify the Controller of any Data Subject requests received directly from the Data Subject without responding to the request, unless authorized to do so by the Controller.
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7. Data Transfers

- **7.1 Transfers Outside the EEA:** The Processor shall not transfer Personal Data outside the European Economic Area (EEA) or to any country not deemed by the European Commission to provide an adequate level of protection without the Controller's prior written consent. If such transfers are necessary, the Processor agrees to implement appropriate safeguards, such as Standard Contractual Clauses (SCCs) or Binding Corporate Rules (BCRs).
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8. Return or Deletion of Data

- **8.1 Data Deletion or Return:** Upon termination or expiration of this Agreement, the Processor shall, at the Controller's option, either return all Personal Data to the Controller or securely delete it, unless otherwise required by law to retain the data.
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9. Audit Rights

- **9.1 Audits:** The Controller has the right to audit the Processor's compliance with this Agreement, including inspecting the Processor's security measures and procedures. The Processor shall provide reasonable access to its premises and systems, subject to prior written notice from the Controller.
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10. Liability and Indemnification

- **10.1 Liability:** The Processor shall be liable for any breach of this Agreement that results in the violation of Applicable Data Protection Laws or the rights of Data Subjects.

- **10.2 Indemnification:** The Processor agrees to indemnify and hold harmless the Controller from any claims, fines, or damages arising from the Processor's breach of this Agreement or failure to comply with Applicable Data Protection Laws.
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11. Term and Termination

- **11.1 Term:** This Agreement shall commence on the Effective Date and remain in effect until the termination or expiration of the main services agreement between the parties, unless terminated earlier in accordance with the terms of this Agreement.
 - **11.2 Termination:** Either party may terminate this Agreement with [Number] days' written notice in the event of material breach by the other party.
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12. Governing Law and Jurisdiction

- **12.1 Governing Law:** This Agreement shall be governed by and construed in accordance with the laws of [State/Country], without regard to its conflict of law principles.
 - **12.2 Jurisdiction:** Any disputes arising out of or related to this Agreement shall be subject to the exclusive jurisdiction of the courts of [Jurisdiction].
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13. Miscellaneous

- **13.1 Entire Agreement:** This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all prior agreements or understandings, whether written or oral.
 - **13.2 Amendments:** Any amendments to this Agreement must be made in writing and signed by both parties.
 - **13.3 Severability:** If any provision of this Agreement is found to be invalid or unenforceable, the remaining provisions shall remain in full force and effect.
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14. Signatures

By signing below, the parties acknowledge that they have read and fully understand the terms of this Data Processing Agreement and agree to be bound by them.

Controller

Signature: _____

Name: [Controller's Full Name]

Title: [Title]

Date: _____

Processor

Signature: _____

Name: [Processor's Full Name]

Title: [Title]

Date: _____

Disclaimer: This template is provided for informational purposes only and does not constitute legal advice. Data processing agreements can involve significant legal and financial obligations, and it is recommended to consult a qualified attorney to ensure that any agreement meets all legal requirements and addresses the specific needs of both parties.