



## SAMPLE DATA PROTECTION OFFICER SERVICE AGREEMENT

Key: Language to be inserted in yellow

Note: This is not legal advice. Please feel free to use and modify for your own purposes, and at your own risk. The endnotes may provide insights or guidance in drafting or customising certain of the sections of this Agreement. They are not intended to be included in actual contracts.

THIS PAGE INTENTIONALLY LEFT BLANK

# DATA PROTECTION OFFICER SERVICE AGREEMENT

This contract (the “Agreement”) is made between \_\_\_\_\_ (“the Company”) and \_\_\_\_\_ (“the Service Provider”) to provide the Company with a Data Protection Officer (“DPO”) under EU Regulation 2016/679 (“GDPR” or “the Regulation”).

## 1.0 Legal Basis for the Agreement

The duties of the Data Protection Officer may be assigned by service contract under Article 37 (6) of the Regulation. The Company hereby appoints \_\_\_\_\_ its Data Protection Officer pursuant to Article 37 [(1) or (4)] of the Regulation and [relevant national law], as described in Sections 1.1 and 2.0 of this Agreement.

## 1.1 Qualifications of the Data Protection Officer

Article 37(5) of the Regulation requires that the Data Protection Officer be designated on the basis of professional qualities, in particular expert knowledge of data protection law and practices, and have the ability to fulfill the tasks set down in Article 39 of the Regulation. The Service Provider certifies that the DPO meets the requirements of the Regulation as a result of the following:

- (a) [Education]
- (a) [Certifications]
- (a) [Privacy Law knowledge]
- (a) [Previous experience]
- (a) Etc.

## **2.0 Duties of the Data Protection Officer**

Service Provider agrees that the DPO will perform, at a minimum, the following tasks on behalf of the Company:

- (a) Inform and advise the Company, and employees of the Company who carry out processing, of their obligations pursuant to the Regulation and any other obligations required by Union or Member State data protection provisions;
- (b) Monitor compliance with the Regulation, with other Union or Member State data protection provisions, and the policies of the Company in relation to the protection of personal data, including the assignment of responsibilities, awareness-raising and training of Company staff involved in processing operations, and related audits;
- (c) Provide advice where requested regarding any data protection impact assessments and monitor its performance pursuant to Article 35 of the Regulation;
- (d) Cooperate with the relevant supervisory authority or authorities;
- (e) Act as the contact point for the supervisory authority or authorities on issues relating to processing, including the prior consultation referred to in Article 36 of the Regulation, and to consult, where appropriate, with regard to any other matter;
- (f) Respond to the requests of data subjects pertaining to the processing of their personal data and the exercise of their rights under the Regulation.

### **2.0.1 Training**

The DPO shall [design/implement] a training program for employees of the Company who are engaged in the processing of personal data. The training program shall familiarize all employees engaged in the processing of personal data with the relevant data protection obligations imposed by Union and Member State law.

### **2.0.2 Data Mapping and Inventory**

After beginning employment with the Company, the DPO shall create a report, to be provided to \_\_\_\_\_ within \_\_\_\_\_ months, that details

the Company's current data processing activity, including the type of personal data being processed, the location of processing, the identity of any employees that are engaged in processing, and the current compliance status of the company in relation to applicable data protection law.

### **2.0.3 Privacy Policy**

The DPO will [draft/review] the Company's Privacy Policy and data protection practices and ensure that it complies with the data protection obligations imposed by Union and Member State law. The DPO will regularly review the Company's Privacy Policy and data protection practices to ensure continued compliance with relevant data protection obligations.

### **2.0.4 Data Subject Requests and Complaints**

The DPO shall be responsible for all complaints and requests made by data subjects pursuant to their rights under the Regulation. Upon receiving each request or complaint, the DPO shall undertake a complete investigation of the underlying facts and shall respond to the data subject within a reasonable period of time. The DPO shall notify \_\_\_\_\_ of any complaint or request received, and maintain a record of their disposition.

### **2.0.5 Report to Management**

The DPO shall report directly to \_\_\_\_\_; [in addition, the DPO shall issue an [annual/bi-annual/quarterly] report to [the Board of Directors]<sup>1</sup>, detailing the Company's compliance with the Regulation and other Union and Member State data protection obligations].

### **2.0.6 External Representation**

In matters of data protection, the DPO may represent the Company before any external agencies, and shall handle all relevant inquiries and contacts from the relevant supervisory authority or authorities.<sup>2</sup>

## **2.1 Article 38 Duties of the Parties**

Service Provider shall, on Company's behalf and included in the Fees for Services, provide the resources necessary to carry out the tasks set forth in Section 2.0 and for the DPO to maintain [his or her] expert knowledge.

Company agrees not to instruct the DPO in the exercise of [his or her] tasks; to provide DPO with the opportunity to directly report to the highest levels of management of the Company; to provide access to personnel and other resources at the Company to adequately support the DPO in carrying out the tasks in Section 2.0; and to assist the DPO with notifying data subjects and supervisory authorities, as appropriate, with the DPO's contact information.

## **3.0 Confidentiality**

The DPO's work is confidential. Service Provider shall not, without the permission of the Company, reveal any work product created or portion thereof, or any information obtained as a result of the DPO's position, to persons or organizations outside of the Company, except as required by law. Service Provider shall comply with all applicable data protection, privacy, and security laws and regulations, and its own internal privacy and security policies.

## **4.0 Delegation**

The DPO may delegate the tasks assigned to him by this Agreement and by Union and Member State law to his employees, or to other individuals with the prior written permission of the Company. Any person performing a task delegated by the DPO shall be subject to this Agreement and bound by the same obligation to confidentiality as the DPO.

## **5.0 Personal Services; Substitution of DPO**

The Parties agree that DPO services are personal services and that Service Provider's assignment of the DPO is a material component of this Agreement. The Parties acknowledge that if the DPO named in Section 1.0 and Annex 1 of this Agreement is unable or unavailable to perform his or her duties for any reason, the Service Provider may propose an appropriately qualified person to serve in [his or her] place for the duration of the disability or unavailability, subject to the

Company's prior approval Company, which shall not be unreasonably withheld. The substituted DPO shall be subject to all obligations of this Agreement and may exercise DPO powers only for the Term.

## **6.0 Limitation of Liability**

Neither Party shall be liable to the other for any special, indirect, incidental, consequential, or punitive damages, or any damage other than direct damages, arising out of this Agreement. [Except in the case of Service Provider's negligence,] Service Provider will not be liable for any damages whatsoever resulting from the Company's failure to comply with the Company's obligations under the GDPR or Member State law, including for any fines or fees imposed on the Company by a regulatory authority or any liability incurred by the Company to any data subject. The Company will indemnify and hold harmless Service Provider and DPO for any liability sustained resulting from or arising out of performance under this Agreement.<sup>3</sup>

## **7.0 Fees and Expenses**

Beginning on [date], DPO shall work up to a maximum of [\_\_\_\_] hours every [week/month/12 months]. The Company shall pay Service Provider a monthly fee of \_\_\_\_ [USD/EUR] for DPO's services; hours worked in excess of \_\_\_\_ in any [bi-weekly/monthly/quarterly] period shall be documented separately and the Company will compensate the Service Provider at an hourly rate of \_\_\_\_\_. At the end of any 12-month period, unused hours shall [expire/be credited to the new term, if the contract is renewed].

Representation of the Company by Service Provider in administrative or judicial proceedings shall be billed and invoiced separately, at a rate of \_\_\_\_\_.

### **7.0.1 Reimbursement**

Time and travel expenses for work conducted outside of [City] shall be reimbursed by [Company or Service Provider]. Travel expenses shall be invoiced separately by DPO and provided to [Company or Service Provider].

### **7.0.2 Invoicing**

Service Provider shall issue invoices for DPO's services at the end of each [month/quarter/12-month period], which are due and payable within two weeks of issue.

## **8.0 Term and Termination**

### **8.0.1 Term**

In order to protect the independence of the DPO required by the Regulation, this Agreement cannot be terminated before [date]. After [date] the Agreement may be extended for a 12-month period by the agreement of the parties. The Agreement may only be canceled by written notice given by the canceling party a minimum of three months before the end of the current 12-month term, [or, in the event of the DPO's resignation, per the procedure laid out in Section 9.0 of the Agreement.]

### **8.0.2 Termination**

Prior to the expiration of the Term of any extension thereof, this Agreement may be terminated only for cause, including failure to carry out the duties specified in this Agreement or other serious professional or criminal misconduct, or failure of Service Provider to provide an appropriately qualified replacement for the DPO named in Section 1.0 and Annex 1 in the event of that DPO's inability to perform, unavailability, termination of employment, or resignation. If this Agreement is terminated by Company under this Section 8.2, Company shall be entitled to receive pro-rated reimbursement of any payment for services not yet performed.<sup>4</sup> This Agreement may also be terminated at any time by mutual written agreement of the Parties.



## **9.0 Choice of Law**

[Country] national law applies. Any changes to this Agreement must be in written form and agreed to by all parties.

In the event that a provision of this Agreement is determined to be invalid, the Agreement as a whole shall remain in effect, and with the invalid provision stricken. A valid provision equivalent in financial effect may be substituted, subject to the agreement of the parties. The legal venue for any dispute pertaining to this Agreement is [city/state/province/country]<sup>5</sup>.

THIS PAGE INTENTIONALLY LEFT BLANK

## **Annex 1 – Designation of the Data Protection Officer**

\_\_\_\_\_ (undersigned) agrees to be designated as the Data Protection Officer, and certifies that they possess all qualifications required by Article 37(5) and [relevant national law].

\_\_\_\_\_, signing on behalf of the Company, agrees to the appointment of the undersigned as Data Protection Officer.

\_\_\_\_\_  
Signature of DPO

\_\_\_\_\_  
Date

\_\_\_\_\_  
[Title of Company Representative]

-----  
Date

## **Endnotes**

1. If the DPO does not report directly to the Board, the Working Party's guidance suggests that some mechanism of communication with the Board may nonetheless be required.
2. There is some uncertainty as to whether a company's DPO may "represent" the company before external agencies or authorities in all circumstances. Be sure to check local laws regarding the unlicensed practice of law, as well as any relevant rulings on conflicts of interest.
3. Other options might include (1) a provision here that cuts off the DPO's liability after a certain point, or (2) requires either the service provider or the company to acquire an applicable insurance policy on the DPO's behalf.
4. How desirable a termination clause is would depend on the importance of the specific DPO.
5. If an arbitration clause is desired, this is where it should be included.