

Digital Services

DPA

Status
Security
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1.0



Digital Services DPA

Definitions

Agreement	Has the meaning set out in the terms to which this DPA applies.
Data Protection Impact Assessment	An assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.
Data Protection Legislation	(i) General Data Protection Regulation (Regulation (EU) 2016/679) ("EU GDPR"), the General Data Protection Regulation as retained by the European Union (Withdrawal) Act 2018 including any modifications and amendments ("UK GDPR"), and Law Enforcement Directive (Directive (EU) 2016/680), and any applicable national implementing Laws as amended from time to time; (ii) the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; and (iii) all applicable Law about the processing of personal data and privacy.
Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer	As defined in the GDPR.
Customer	For the purposes of this DPA only, references to "Customer" includes Customer Affiliates (if and to the extent only that Kainos processes Personal Data for which such Customer Affiliates qualify as the Controller pursuant to Data Protection Legislation).
Data Loss Event	Any event that results, in unauthorized access to Personal Data held by Kainos under this DPA and/or actual loss and/or destruction of Personal Data in breach of this DPA, including any Personal Data Breach.
Data Subject Access Request	A request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.
Kainos Personnel	All directors, officers, employees, agents, consultants and contractors of Kainos and/or of any sub-contractor engaged in the performance of its obligations under this DPA.
Law	Any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, byelaw, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the contractor is bound to comply.
Protective Measures	Appropriate technical and organizational measures which may include: pseudonymizing and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it.
Regulatory Authority	Means the ICO, a supervisory authority or any other regulatory body responsible for the oversight of Data Protection Legislation.
Restricted Transfer	A transfer of Personal Data from Customer as Controller (data exporter) to Kainos as a Processor (data importer) where such transfer would at the time of the transfer be prohibited by applicable Data Protection Laws in the absence of an approved method of transfer, including (a) an adequacy decision granted to a third country by a competent Regulatory Authority; (b) the Standard Contractual Clauses; or (c) such other appropriate safeguard refer to in the Data Protection Legislation as may be agreed for use between the parties.
Standard Contractual Clauses	Means, as applicable, the EU Standard Contractual Clauses (for any Restricted Transfer subject to the EU GDPR) or the UK Standard Contractual Clauses (for any Restricted Transfers subject to the UK GDPR) and any amendment or replacement thereto either (a) pursuant to Data Protection Legislation or (b) issued by a competent Regulatory Authority.
Sub-processor	Any third party appointed to process Personal Data on behalf of Kainos related to this DPA.

1. DATA PROTECTION

- 1.1 Under this DPA, and in line with Data Protection Legislation, the Customer is the Controller and Kainos is the Processor. The only processing that Kainos is authorized to undertake is determined by the Customer, not by Kainos and is set out in the Data Processing Table completed by the Customer at the start of the Project (**Data Table**).
- 1.2 Kainos shall notify the Customer immediately if it considers that any Customer instructions infringe the Data Protection Legislation.
- 1.3 Where required pursuant to Data Protection Legislation, Kainos shall provide all reasonable chargeable assistance to the Customer in the preparation of any Data Protection Impact Assessment before commencing any processing. Such assistance may, at the discretion of the Customer, include:
 - 1.3.1 a systematic description of the envisaged processing and the purpose of the processing;
 - 1.3.2 an assessment of the need for and the proportionality of the processing in relation to the services defined in the Agreement;
 - 1.3.3 an assessment of the risks to the rights and freedoms of Data Subjects;
 - 1.3.4 the measures proposed to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 1.4 To the extent required under Data Protection Legislation, Kainos shall, in relation to any Personal Data processed in connection with its obligations under this DPA:
 - 1.4.1 process that Personal Data only in accordance with the Data Table, unless Kainos is required to do otherwise by Law. If it is so required Kainos shall promptly notify the Customer before processing the Personal Data unless prohibited by Law;
 - 1.4.2 ensure that it has in place Protective Measures, which have been reviewed and approved by the Customer as appropriate to protect against a Data Loss Event having taken account of the:
 - 1.4.2.1 nature of the data to be protected;
 - 1.4.2.2 harm that might result from a Data Loss Event;
 - 1.4.2.3 state of technological development;
 - 1.4.2.4 cost of implementing any measures;
 - 1.4.3 ensure that:
 - 1.4.3.1 Kainos Personnel do not process Personal Data except in accordance with this DPA;
 - 1.4.3.2 it takes all reasonable steps to safeguard the reliability and integrity of any Kainos Personnel who have access to the Personal Data and ensure that they:
 - 1.4.3.2.1 are aware of and comply with Kainos' duties under this clause;
 - 1.4.3.2.2 are subject to appropriate confidentiality undertakings with Kainos or any Sub-processor;
 - 1.4.3.2.3 are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Customer or as otherwise permitted by this DPA;
 - 1.4.3.2.4 have undergone adequate training in the use, care, protection and handling of Personal Data;
 - 1.4.4 subject to clause 1.7, not transfer Personal Data outside of the European Economic Area (EEA) or the UK to a third country without an adequacy decision, unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
 - 1.4.4.1 the Customer or Kainos has provided appropriate safeguards in relation to the transfer (in accordance with GDPR Article 46) as determined by the Customer;
 - 1.4.4.2 the Data Subject has enforceable rights and effective legal remedies;
 - 1.4.4.3 Kainos complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred;
 - 1.4.4.4 Kainos complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data.
 - 1.4.5 at the written direction of the Customer, delete or return Personal Data (and any copies of it) to the Customer on termination of the Agreement unless Kainos is required by Law to retain the Personal Data.
- 1.5 Subject to clause 1.6, Kainos shall notify the Customer without undue delay if it:
 - 1.5.1 receives a Data Subject Access Request (or purported Data Subject Access Request);
 - 1.5.2 receives a request to rectify, block or erase any Personal Data;
 - 1.5.3 receives any other request, complaint or communication relating to either party's obligations under the Data Protection Legislation;
 - 1.5.4 receives any communication from a Regulatory Authority in connection with Personal Data processed under the Agreement;
 - 1.5.5 receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;
 - 1.5.6 becomes aware of a Data Loss Event.
- 1.6 Kainos' obligation to notify under clause 1.5 shall include the provision of further information to the

- Customer in phases, as details become available.
- 1.7 The Parties agree that, in the absence of an adequacy decision, the Standard Contractual Clauses shall apply in respect of any applicable Restricted Transfers between Customer and Kainos and are deemed to be contracted by the parties on signature of the Agreement. For clarity;
- 1.7.1 In respect of the UK Standard Contractual Clauses;
- 1.7.1.1 Customer shall be the "data exporter" and Kainos shall be the "data importer";
- 1.7.1.2 The Data Table set out in the Agreement shall serve as Appendix 1 and for any other relevant parts of the UK Standard Contractual Clauses; and
- 1.7.1.3 Any and all general references to European directives and regulations, references to laws of Member States, and any obligations determined by Member States shall be references to and shall have the same meaning as the equivalent references in Data Protection Legislation and Law applicable to the UK.
- 1.7.2 In respect of the EU Standard Contractual Clauses;
- 1.7.2.1 the applicable module and associated clauses shall be Module Two (Transfer Controller to Processor);
- 1.7.2.2 Customer shall be the "data exporter" (role of Controller) and Kainos shall be the "data importer" (role of Processor);
- 1.7.2.3 The Data Table set out in the Agreement shall serve as Annex I.B and for any other relevant parts of the EU Standard Contractual Clauses and Annexes.
- 1.8 Considering the nature of the processing and the information available to Kainos, Kainos shall provide the Customer with chargeable assistance in relation to the Controller's obligations under Data Protection Legislation and any complaint, communication or request made under clause 1.5 (and insofar as possible within the timescales reasonably required by the Customer) including by promptly providing;
- 1.8.1 the Customer with full details and copies of the complaint, communication or request;
- 1.8.2 such assistance as is reasonably requested by the Customer to enable the Customer to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
- 1.8.3 the Customer, at its request, with any Personal Data it holds in relation to a Data Subject;
- 1.8.4 assistance as requested by the Customer following any Data Loss Event;
- 1.8.5 assistance as requested by the Customer with respect to any request from a Regulatory Authority, or any consultation by the Customer with a Regulatory Authority.
- 1.9 Kainos shall allow for an annual audit of its Data Processing activity by the Customer or the Customer's designated auditor, on reasonable notice to Kainos, which is to take place during normal business hours and causing minimal business disruption.
- 1.10 Kainos shall be responsible for all acts or omissions of any Sub-processor. Before allowing any Sub-processor to process any Personal Data related to the Agreement, Kainos must:
- 1.10.1 notify the Customer in writing of the intended Sub-processor and processing (excluding authorised Kainos Affiliates);
- 1.10.2 obtain the written consent of the Customer (excluding authorised Kainos Affiliates);
- 1.10.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this policy such that they apply to the Sub-processor;
- 1.10.4 provide the Customer with such information regarding the Sub-processor as the Customer may reasonably require.
- 1.11 The parties may agree to revise this DPA by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this DPA).
- 1.12 The parties agree to take account of any guidance issued by a Regulatory Authority and may amend this DPA to ensure that it complies with any guidance issued by a Regulatory Authority.

2. APPLICATION AND SCOPE OF THIS DPA

- 2.1.1 By entering into the Agreement, Customer enters into this DPA on behalf of its itself and its Affiliates, if and only to the extent required under applicable Data Protection Legislation where Kainos processes such Personal Data for which such Customer Affiliates would qualify as a separate Controller. Customer Affiliates remain a third party under the Agreement in all other respects.
- 2.1.2 Each party's and its Affiliates' liability, taken together in the aggregate, arising out of or related to the DPA (and all DPAs between Customer and Kainos as the case may be, including any Standard Contractual Clauses should they be deemed contracted as set out above) is subject to the limitations of liability set out in the Agreement and is not a 'per Affiliate' limitation.