

Data Processing Agreement (DPA)

Pursuant to art. 28 General Data Protection Regulation (GDPR)

by and between

.....
the Controller

[if applicable: Authorised Representative as of art. 27 GDPR:

.....]

Internxt SL

the Processor

1.- Subject matter, term, personal data processed, and categories of data subjects

(1) Subject matter

The subject matter of this DPA consists of the appointment of the Processor by the Controller and the provision of instructions for the processing of personal data. The processing activities that the Processor shall carry out are strictly limited to those necessary to fulfil the scope of the main contract signed by the parties on the date in which the controller acquired the processor cloud storage services.

(2) Term

The term of this DPA corresponds to the term of the main contract.

(3) Categories of personal data

The categories of personal data processed are:

- Personally identifiable information (e.g. name, surname, email)
- Statistical or other usage data observed on the internet (e.g. via analytics, services etc.)
- Customer history
- Billing, invoicing and payment data

(4) Categories of Data Subjects

The personal data collected and processed related to:

- Customers
- Potential customers
- Internet users
- Employees, associates, staff members
- Internal consultants
- Authorized agents

2.- Data Transfer Abroad

At the date of signature of the present agreement, the Controller acknowledges that it has been informed that the following data processing activities, carried out by the Processor on its behalf, will take place in and outside of the EEA.

3.- Technical and Organisational Measures

(1) Prior to the execution of this DPA, the Processor undertakes to adopt all the necessary technical and organisational security measures and to provide the Controller with a document whereby all such measures are described in detail, also in specific reference to the present agreement.

Such measures are subject to the Controller's scrutiny and to its prior approval. Upon the Controller's approval, such security measures, documented as above, will become an integral and substantial part of this agreement and are hereby incorporated by reference. Insofar as an inspection/audit by the Controller shows the necessity for amendments, such amendments shall be implemented by mutual agreement.

(2) The Processor warrants that it has taken all the security measures in accordance with Article 28 Paragraph 3 Point c, and Article 32 GDPR in particular in conjunction with Article 5 Paragraph 1, and Paragraph 2 GDPR. Such measures shall guarantee data security and a protection level adequate to the level of risk concerning confidentiality, integrity, availability, and resilience of the systems. According to Article 32, par. 1 GDPR the following must be taken into account when assessing the appropriateness of the security measures adopted: whether or not the measures can be reasonable considered to be state-of-the-art, the implementation costs, the nature, scope and purposes of processing as well as the likelihood of data breaches and the severity of risks to the rights and freedoms of natural persons.

(3) The technical and organisational measures are subject to technical and technological progress and development. Hence, the Processor may adopt alternative adequate measures which are up to date with the changed technological environment. When doing so, the processing security level may not be reduced. Substantial changes must be documented.

4.- Data subjects rights

(1) The Processor undertakes to provide full cooperation and assistance, as it may be reasonably possible, in order to assist the Controller in responding to data subjects' requests for the exercising of their rights.

(2) In particular, the Processor undertakes to (i) immediately communicate to the Controller any request received by data subjects concerning the exercising of their rights and, if feasible and appropriate, to (ii) enable the Controller to design and deploy all the technical and organisational measures necessary to answer the data subjects' requests.

(3) Notwithstanding the fact that the Controller bears the responsibility to respond to the data subjects' requests, the Processor can accept to be tasked with the fulfilment of some specific requests, provided that such tasks do not require disproportionate efforts from the Processor and that the Controller provides detailed instructions in writing.

5.- Further duties of the Processor

The Processor is not required to appoint a Data Protection Officer. Mr Fran Villalba Segarra (fran@internxt.com) is designated as the Contact Person on behalf of the Processor.]

Confidentiality

Processing activities under this DPA shall only be performed by individuals (such as employees, agents, or staff members) that have been instructed by the Processor on the appropriate way to process data and have been contractually subjected to confidentiality pursuant to art. 28 par. 3 (b) and art. 32 GDPR. The Processor, and any person acting under its authority who has access to the personal data, shall not process that data unless acting upon instructions given by the Controller — including the powers granted under this DPA — unless they are required to do so by statutory law.

Technical and Organizational Measures

Implementation of, and compliance with, all appropriate technical and organisational measures in the framework of this DPA, in particular as set forth at art. 32 GDPR. The Processor shall periodically monitor the internal processes and the technical and organisational measures to ensure that processing activities pertaining to it are carried out in accordance with the requirements of applicable data protection law and the protection of data subjects' rights. The Processor shall grant verifiability of the technical and organisational measures to the Controller as part of the Controller's supervisory powers referred to in sec. 7 of this contract.

Cooperation with Supervisory Authorities

The Controller and the Processor shall cooperate, on request, with the supervisory authority. The Controller shall be informed immediately of any inspections and measures executed by the supervisory authority, insofar as they relate to the activities under this DPA. This also applies insofar as the Processor is under investigation or is party to an investigation by a competent authority in connection with infringements to any provision regarding the processing of personal data in connection with the processing of this DPA. Insofar as the Controller is subject to an inspection by the supervisory authority, an administrative fine, a preliminary injunction or criminal procedure, a liability claim by a Data Subject or by a third party or any other claim in connection with the processing of data by the Processor as of this DPA, the Processor shall make every effort to support the Controller.

6. Sub-processors

(1) The Controller authorizes the Processor to outsource part of the processing activities pursuant to this DPA to sub-processors. The sub-processors shall, as legally required, be subject to the same contractual obligations resulting from this agreement, pursuant to art. 28 par. 4 GDPR.

(2) It is understood between the parties that the communication of personal data to any sub-processor shall only take place after all conditions set out in paragraph (1) for the appointment of sub-processors have been met.

(3) The Processor must maintain and keep updated a list of sub-processors. The Controller shall be notified of any change to such list without undue delay, giving the Controller the option to object. In case of objection, the Processor retains the right to terminate the contract in place with the Controller without notice.

(4) The Processor shall bear full responsibility and liability for the activities of its sub-processors *vis a vis* the Controller.

(5) Should a sub-processor provide its services outside the EU/EEA, the Processor shall ensure compliance with the rules regarding data transfer abroad, as described under sec. 2 of this DPA.

7. Audits

(1) The Controller has the right to carry out inspections or to have them carried out by an auditor appointed on a case-by-case basis. The auditor shall assess the Processor's compliance with this DPA in its business operations by means of random checks, of which the Processor will be notified in advance.

(2) The Processor shall allow the Controller to verify compliance with its obligations as provided by Article 28 GDPR. The Processor undertakes to give the Controller the necessary information on request and, in particular, to demonstrate the implementation of the technical and organizational measures.

(3) Evidence of the implementation of such measures, which may not only concern the activities under this DPA, may also be provided by

- Compliance with approved Codes of Conduct pursuant to Article 40 GDPR;
- Certification according to an approved certification procedure in accordance with Article 42 GDPR;

- Current auditor's certificates, reports or excerpts from reports provided by independent bodies (e.g. auditor, data protection officer, IT security department, data protection auditor);

- A suitable certification by IT security or data protection auditing.

(4) The Processor may charge a reasonable fee to the Controller for enabling inspections.

8.- Assistance to the Controller

(1) The Processor shall assist the Controller in complying with the obligations concerning the security of personal data, reporting of data breaches, data protection impact assessments and prior consultations set forth at Articles 32 to 36 of the GDPR, including

- Ensuring adequate protection standards through technical and organisational measures, taking into account the type, circumstances and purposes of processing, the likelihood of data breaches and the severity of the risk to natural persons possibly resulting thereof

Ensuring immediate detection of infringements
Reporting data breaches without undue delay to the Controller
Assisting the Controller in answering to data subjects' requests for the exercising of their rights

(2) The Processor may charge the Controller a reasonable fee for support services which are not included in the description of the services and which are not attributable to the Processor's misconduct, mistakes or infringements.

9. Directive powers of the Controller

(1) The Processor shall not process any personal data under this DPA except on the Controller's documented instructions, unless required to do so by Union or Member State law.

(2) In case the Controller should require any change in the processing of personal data set forth by the documented instructions mentioned at sec. 2, the Processor shall immediately inform the Controller if it considers such changes likely to result in infringements to data protection provisions. The Processor may refrain from carrying out any activity that may result in any such infringement.

10. Liability

(1) Each party to this DPA commits to indemnify the other party for damages or expenses resulting from its own culpable infringement of this DPA, including any culpable infringement committed by its legal representative, subcontractors, employees or any other agents. Furthermore, each party commits to indemnify the other party against any claim exerted by third parties due to, or in connection with, any culpable infringement by the respectively other party.

(2) Art. 82 GDPR stays unaffected.

11. Deletion and return of personal data

(1) The Processor shall not create copies or duplicates of the data without the Controller's knowledge and consent, except for backup copies, insofar as they are necessary for ensuring that data is processed correctly, and where the retention of such data is required by law.

(2) After conclusion of the provision of services, the Processor shall, at the Controller's choice, either delete in a data-protection compliant manner or return to the Controller, all the personal data collected and processed under this DPA, unless any applicable legal provision requires further storage of the personal data.

(3) In any case, the Processor may retain beyond termination of the contract all the information necessary to demonstrate the compliance of the processing activities carried out.

(4) The documentation referred to under point (3) above, shall be stored by the Processor in accordance with the applicable retention periods, statutory or otherwise determined. The Processor may hand the documentation over to the Controller upon termination of the agreement. In such case, the Processor is relieved from any obligation to keep such documentation.