

PERSONAL DATA PROTECTION AGREEMENT – PARTNERS & SERVICE PROVIDERS
ESI (Controller) – Co-contractor (Processor)
(Online version)

This personal Data Protection Agreement ("**the DPA**") are agreed between the entity ESI ("**ESI**") and the Co-contractor ("**Co-contractor**"), both designated in the contract signed between the Parties (the "**Contract**").

PURPOSE:

Under the terms of the Contract, the Parties are required to process personal data.

The Co-contractor is committed to protecting the privacy and data security in compliance with applicable data protection laws and regulations.

ARTICLE 1 - SCOPE AND HIERARCHY OF DOCUMENTS

The DPA applies to the processing of personal data carried out by the Co-contractor acting as a processor for ESI in relation to the services provided (the "**Services**") under the Contract.

The DPA consists of these contractual terms and conditions and the appendices. It forms an integral part of the Contract. In the event of any conflict within the DPA, the Annexes to the DPA shall prevail over the contractual terms of the DPA. In the event of any conflict between the Contract and the DPA, the DPA shall prevail over the Contract.

The DPA describes the rights and obligations of the Co-contractor and ESI with regard to the protection of personal data concerning the processing operations referred to in the attached DPA. All other rights and obligations relating to the Services are governed exclusively by the Contract.

ARTICLE 2 - COMPLIANCE WITH THE LAW

The Co-contractor and ESI will comply with the laws and regulations on the protection of personal data directly applicable to the Services.

The Co-contractor is responsible for its compliance with the regulations as a processor of ESI within the meaning of the said applicable regulations. For its part, ESI is considered to be the data controller within the meaning of the aforementioned applicable regulations.

ARTICLE 3 - DURATION AND TERMINATION

The DPA has the same duration as the Contract.

Upon expiry of the Contract, and unless otherwise agreed between the Parties to the Contract, the Co-contractor will delete all personal data made available to it or obtained or generated by it on behalf of ESI in the context of the Services.

ARTICLE 4 - PROCESSING DETAILS

Details of the processing operations provided by the Co-contractor, including the purpose of the processing, the nature and purpose of the processing, the types of personal data processed and the categories of data subjects, are set out in Appendix 1 of the DPA.

The Co-contractor shall not process personal data for any purpose other than what is consented to by ESI or as required by law.

ARTICLE 5 - DOCUMENTED INSTRUCTIONS

The Co-contractor will only process Personal Data in accordance with ESI's documented instructions. The Contract and the DPA constitute ESI's documented instructions to the Co-contractor for the processing of Personal Data.

Any additional or alternative instructions must be agreed in writing between the Parties.

ARTICLE 6 - CONFIDENTIALITY OF PROCESSING

The Co-contractor will ensure that the staff responsible for processing personal data :

- preserves the confidentiality of said data,
- processes the said data in the manner described in the documented instructions (referred to above),
- has received appropriate training in the protection of personal data.

ARTICLE 7 - TECHNICAL AND ORGANISATIONAL MEASURES

Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of the processing, as well as the risk of varying probability and seriousness for the rights and freedoms of natural persons, the Co-contractor implements the appropriate technical and organizational measures to guarantee a level of security appropriate to the risk linked to the performance of the Services.

Co-contractor shall in relation to the concerned Personal Data implement appropriate technical and organizational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1) of the GDPR.

The technical and organizational measures implemented by the Co-contractor for this purpose are described in Appendix 2 of the DPA.

The technical and organizational measures are subject to the state of the art and therefore to technical progress. As a result, the Co-contractor is entitled to implement appropriate alternative measures, as long as the level of security of the measures is maintained.

For its part, ESI is responsible for implementing and maintaining appropriate technical and organizational measures for the items it provides or controls, such as implementing physical and system access control measures for its own premises, assets and IT systems or configuring the Services to ESI's individual requirements.

ARTICLE 8 - SUBSEQUENT SUBCONTRACTING

The Co-contractor acknowledges and accepts that it may not call upon a subsequent sub-contractor (hereinafter referred to as the "**Subsequent Sub-Contractor**") to process concerned personal data without having first obtained ESI's explicit written authorization.

In the event of authorization being granted in accordance with the preceding provision, the Co-contractor undertakes to impose on the Subsequent Sub-contractor the same level of protection of personal data as that initially agreed between ESI and the Co-contractor, in accordance with the requirements of the General Data Protection Regulation (GDPR) and applicable data protection laws.

The Co-contractor remains fully responsible for all the activities of the Subsequent Sub-contractor with regard to the processing of concerned personal data. The Co-contractor undertakes to indemnify and hold harmless ESI for any breach by the Subsequent Sub-contractor of any legal or contractual obligations relating to this DPA.

ARTICLE 9 - INTERNATIONAL DATA TRANSFERS

9.1 Transfer of personal data within the EU and the EEA or to a country recognized as adequate by the EU

In the event of a transfer of personal data :

- (i) within the EU or EEA or
- (ii) to a country recognized as suitable by the EU

between the Co-contractor and ESI or between the Co-contractor and its Subsequent Sub-contractor, the protection of personal data is governed by the European regulations applicable to personal data: the European General Data Protection Regulation.

The transfer of personal data will therefore be subject to the provisions of the DPA and the Contract.

9.2 Transfer of personal data from the EU to a country outside the EU or the EEA without an adequacy decision

Data controllers and processors may transfer data outside the European Union ("EU") and the European Economic Area ("EEA") provided that they ensure a sufficient and appropriate level of data protection.

Any transfer of personal data made in such a case will be subject to the Standard Contractual Data Protection Clauses adopted by the European Commission (the "SCC"), thus providing the appropriate guarantee for such a transfer of personal data.

Data transfers between the Co-contractor and ESI :

If the Co-contractor, a party to this DPA and the Contract, is located outside the EEA or outside a country subject to an adequacy decision, then ESI and the Co-contractor hereby enter into Module 2 of the SCC.

If ESI itself acts as a subcontractor for its own authorized entities, the Parties hereby also enter into Module 3 of the SCC.

To this end, the standard contractual clauses available for Modules 2 and 3 at the European Commission's address [L_2021199EN.01003101.xml \(europa.eu\)](https://eur-lex.europa.eu/legal-content/EN/LEX/summary/L_2021199EN.01003101.xml) are incorporated into the DPA by reference. It is understood between the Parties that the optional clauses and articles do not apply within the framework of the DPA.

Annexes 1, 2 and 3 of the DPA constitute respectively Annexes I to III of the SCC.

The Parties agree on the following details:

- Optional Article 7 of the SCC, the "Membership Clause", is not incorporated herein;
- Application of option 1 of Article 9 ;
- The optional wording of Article 11 of the SCC is not incorporated herein;
- In accordance with Article 17 of the SCC, the parties agree that the EU SCC shall be governed by French law and select Option 2 to this effect;
- Under Article 18 of the SCC, the data exporter and data importer agree that any dispute will be resolved by the French courts. The term "Member State" as used in the SCC should not be interpreted to exclude data subjects in Switzerland from asserting their rights in their place of habitual residence (Switzerland) in accordance with clause 18 in the SCC;

Transfer of data between the Co-contractor and its Subsequent Sub-contractor:

It is the responsibility of the Co-contractor to conclude with its Subsequent Sub-contractor the SCC opening the relevant processing activities for the relevant Services.

Without prejudice to the legal rights of the persons concerned, the limitations of liability contained in the DPA also apply to the liability of the Co-contractor and its Subsequent Subcontractors to ESI under the SCC.

ARTICLE 10 - RIGHTS OF THE PERSONS CONCERNED

Insofar as permitted by law, the Co-contractor will inform ESI as soon as possible and at the latest within two working days if the Co-contractor receives a request from a data subject with a view to exercising his/her rights (*such as the right of access, rectification, erasure or restriction of processing*).

Taking into account the nature of the processing and the information available to the Co-contractor, the Co-contractor will reasonably assist ESI with appropriate technical and organizational measures, as far as possible, to fulfil ESI's obligation to respond to requests to exercise the data subject's rights.

ARTICLE 11 - REQUESTS FOR ACCESS FROM THIRD PARTIES

If the Co-contractor receives an order from a third party to disclose concerned personal data, the Co-contractor :

- 1) will endeavor, as far as possible, to redirect the third party to request the data directly from ESI ;
- 2) will promptly notify ESI, unless prohibited from doing so by applicable law, and, if prohibited from notifying ESI, will use all lawful efforts to obtain the right to waive the prohibition in order to provide as much information as possible to ESI in a timely manner;
- 3) use all legitimate and reasonable efforts to challenge the disclosure order on the basis of any legal deficiencies under the laws of the requesting party or any relevant conflict with applicable law.

ARTICLE 12 - VIOLATION OF PERSONAL DATA

The Co-contractor will inform ESI without delay and at the latest within two working days of a breach of concerned personal data. "Breach" means a breach of security resulting in the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of or access to personal data transmitted, stored or otherwise processed.

The Co-contractor will reasonably assist ESI in complying with its obligations in relation to personal data breaches in accordance with applicable data protection legislation and will take necessary and reasonable remedial action.

ARTICLE 13 - AUDITS

Subject to a right of control of public order being provided for by the law applicable to the protection of personal data, ESI has the right to control, by appropriate means, the compliance of the Co-contractor and its Subsequent Sub-contractor with the obligations regarding the protection of personal data. These audits are limited to the information and personal data processing systems that are relevant to the provision of the Services to ESI and are limited to one audit per year.

In order to comply with ESI's imperative right of audit, the Co-contractor and its Subsequent Sub-contractor may call upon auditors (internal or external) to carry out audits in order to verify compliance with the obligations regarding the protection of personal data. Each audit gives rise to the drafting of an audit report ("**Audit Report**"). At ESI's request, the Co-contractor will provide the relevant Audit Reports for the Services concerned.

ESI accepts that these Audit Reports are used primarily to respond to the exercise of the Co-contractor's right to audit as provided for in this article.

The Co-contractor will authorize additional audits to these Audit Reports, including on-site audits at the Co-contractor's facilities and premises by ESI or an independent and accredited third party, during normal business hours, with reasonable notice from ESI (in excess of two working days).

The Audit Reports and any other information or documentation provided in the course of an audit constitute confidential information and may only be provided to the Additional Auditors under confidentiality obligations substantially equivalent to the confidentiality obligations contained in the Contract and the DPA.

APPENDIX I - DESCRIPTION OF TREATMENT OPERATIONS

(and, where applicable, Annex 1 of the SCC)

This Annex specifies the processing operations provided for in the DPA (including, but not limited to, the purpose of the processing, the nature and purpose of the processing, the type of personal data and the categories of data subjects).

A. LIST OF PARTIES

ESI *(and, where the standard contractual clauses apply, the data exporter) :*

Name, address and name, position and contact details of the contact person: The name and address of ESI and the contact details of a contact person are set out in the Contract.

The contact point for questions relating to data protection is the ESI GROUP Data Protection Officer: dataprotection@esi-group.com

Role : ESI acts as controller for the processing activities provided by the Co-contractor to ESI and, where applicable, as processor under the instructions of its own data controllers.

The Co-contractor *(and, where the standard contractual clauses apply, the data importer) :*

Name, address and name of contact person, function and contact details: The Co-contractor providing the processing services hereunder is the entity specified in the DPA.

The contact point for questions relating to data protection is the Data Protection Officer specified in the Contract

Role : The Co-contractor acts as a processor of personal data on behalf of ESI and, where applicable, ESI's other data controllers.

B. DESCRIPTION OF TRANSFER/PROCESSING OPERATIONS

Categories of data subjects whose personal data are transferred/processed

The persons concerned specified in the Contract.

Categories of personal data transferred

The categories of personal data transferred/processed are specified in the Contract.

Sensitive data transferred (if applicable)

The Services are not intended for the processing of sensitive personal data.

The frequency of the transfer (for example, whether the data is transferred on a one-off or continuous basis)

If the Service provided involves the provision of Services, the Co-contractor may only access personal data in connection with the provision of the Service in question, unless otherwise specified in the Contract.

Nature of the processing and purpose(s) of the transfer and further processing of the data

Subject to prior, written and specific authorization, the Co-contractor and its Subsequent Sub-contractor will process personal data for the proper performance of the Services provided for in the Contract.

How long the personal data will be kept or, if this is not possible, the criteria used to determine this period.

Personal data is kept for the duration of the Contract.

ESI may correct, delete or restrict the processing of personal data. The Co-contractor may also correct, delete or restrict the processing of personal data in accordance with ESI's instructions.

For transfers to Third-Party Processors, also specify the purpose, nature and duration of the processing.

The purpose, nature and duration of the treatment are specified in Annex III of the DPA.

C. Where SCC applies : COMPETENT CONTROL AUTHORITY

Where the SCC applies, the supervisory authority responsible for ESI acts as the competent supervisory authority under the SCC. A list of EU supervisory authorities is available at the following address:
https://ec.europa.eu/justice/article-29/structure/data-protection-authorities/index_en.htm

ANNEX II - TECHNICAL AND ORGANISATIONAL MEASURES
(and, where applicable, Annex 2 of the SCC)

This document describes the technical and organizational measures implemented by the Co-contractor to protect the processing of personal data:

The following main technical and organizational measures are specified in the Contract.

APPENDIX III - LIST OF APPROVED SUBSEQUENT SUB-CONTRACTOR

(and, where applicable, Annex 3 of the SCC)

No Subsequent Sub-Contractor is authorized as it stands.

Any request to use a Subsequent Sub-contractor must follow the provisions of the DPA.

APPENDIX IV: NATIONAL LEGAL SPECIFICITIES

UNITED KINGDOM

For transfers of personal data from the UK, the SCC will apply subject to the following changes:

- the SCC are amended as specified in Part 2 of the International Data Transfer Rider to the European Commission's standard contractual clauses issued under Section 119A of the UK Data Protection Act 2018, as it may be amended or replaced at any time (the "UK Rider") ;
- the information set out in tables 1 to 3 of Part 1 of the UK Addendum corresponds respectively to that set out in the Addendum and the Contract (as the case may be); and
- table 4 of part 1 of the UK Rider is completed by selecting "neither party".

UNITED STATES

If the Co-contractor processes personal data of US residents, it makes the following additional undertakings to ESI: the Co-contractor will process the personal data on behalf of ESI and will not retain, use or disclose it for any purposes other than those set out in the Contract and DPA as permitted by US data protection law.

These additional terms do not limit or reduce the Co-contractor's obligations to ESI with respect to the protection of personal data under the DPA or the Contract entered into between ESI and the Co-contractor. The Co-contractor hereby certifies that it understands the restrictions contained herein and that it will comply therewith.

BRAZIL

Each Party undertakes to :

- comply with its obligations under the Brazilian General Data Protection Law, nº 13.709 de 2018 (Lei Geral de Proteção de Dados Pessoais) ("LGPD") ;
- keep a register of the personal data processing operations it carries out;
- appoint a Data Protection Officer; and
- adopt security, technical and administrative measures to protect personal data against unauthorised access and against accidental or unlawful destruction, loss, alteration, disclosure or any form of inappropriate or unlawful processing, including applicable minimum technical standards as defined by the national authority.

To the extent that ESI transfers personal information from Brazil to the Co-contractor, established outside Brazil, the Co-contractor will comply with the principles, data subject rights and data protection regime set out in the GDPR, unless the Parties can rely on another mechanism or basis for transfer under data protection laws.