

# Schedule 6 (Data Processing Agreement)

Sell more with less effort.

Last updated February 2023.

---

comgem®

# Schedule 6: Data Processing Agreement

---

This Data Processing Agreement (“DPA”) is made by and between the parties to any Service Agreement or Terms incorporating this DPA by reference and this DPA shall be in addition to any obligations set out in any Service Agreement or Terms.

This DPA outlines the obligations between the parties where Comgem acts as a data processor in providing Services to the Client insofar as it relates to Client contact personal data.

## Definitions

All capitalised terms in this DPA shall have the meaning as prescribed by the Comgem Terms as located at <https://www.comgem.com/agreements-terms> or as otherwise agreed between the parties, unless otherwise specified below.

Applicable Law means as applicable and binding on the Client, Comgem and/or the Services:

(a) any law, statute, regulation, byelaw or subordinate legislation in force from time to time to which a party is subject and/or in any jurisdiction that the Services are provided to or in respect of, as may be specified in Terms;

(b) the common law and laws of equity as applicable to the parties from time to time;

(c) any binding court order, judgment or decree; or

(d) any applicable direction, policy, rule or order that is binding on a party and that is made or given by any regulatory body having jurisdiction over a party or any of that party’s assets, resources or business;

Data Controller means the party determining the processing activities conducted in relation to Personal Data, as may be more described under applicable Data Protection Laws;

Data Processor means the party conducting processing activities at the instruction of the Data Controller in relation to Personal Data, as may be more described under applicable Data Protection Laws;

Data Protection Laws means as applicable and binding on the Client, Comgem and/or the Services:

(a) for Services supplied by Comgem Limited, the General Data Protection Regulation (EU) 2016/679 (the “GDPR”), the Data Protection Act 2018, the “UK GDPR” as defined in section 3(1) of the Data Protection Act 2018 (supplemented by section 205(4)), the Privacy and Electronic Communications (EC Directive) Regulations 2003 and/or any corresponding or equivalent national laws or regulations;

(b) specifically in relation to the Client, all data protection and/or privacy laws in which recipient Data Subjects are contacted through the Services are located;

(c) any Applicable Laws replacing, amending, extending, re-enacting or consolidating any of the above Data Protection Laws from time to time;

**Data Protection Losses means:**

(a) administrative fines, penalties, sanctions, liabilities or other remedies imposed by a Supervisory Authority; and/or

(b) compensation which is ordered by a Supervisory Authority to be paid to a Data Subject;

Data Subject means the individual to whom Personal Data relates (as may be further defined by applicable Data Protection Laws, whether defined under the same term or as an equivalent term);

Data Subject Request means a request made by a Data Subject to exercise any rights of Data Subjects under Data Protection Laws;

Personal Data has the meaning given to that term in Data Protection Laws, or, where that term is not identically defined in the applicable Data Protection Law, the meaning given to the equivalent defined term in that applicable Data Protection Law;

Personal Data Breach means any breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, any Protected Data;

Processing has the meanings given to that term in Data Protection Laws (and related terms such as process have corresponding meanings);

Processing Instructions has the meaning given to that term in clause 3.2.1;

Protected Data means Personal Data received from or on behalf of the Client in connection with the performance of Comgem's obligations under this DPA;

EU SCCs means the standard contractual clauses for the transfer of personal data to third countries authorised by the Commission Decision of 4 June 2021 pursuant to Regulation (EU) 2016/679 (2010/87/EU), or such alternative clauses as may be approved by the European Commission from time to time;

Sub-Processor means another Data Processor engaged by Comgem for carrying out processing activities in respect of the Protected Data on behalf of the Client;

Supervisory Authority means any local, national or multinational agency, department, official, parliament, public or statutory person or any government or professional body, regulatory or supervisory authority, board or other body responsible for administering Data Protection Laws;

UK SCCs means the Information Commissioner's Office's ("ICO") International Data Transfer Agreement ("IDTA") for the transfer of personal data from the UK and/or the ICO's International Data Transfer Addendum to EU Commission Standard Contractual Clauses, or such alternative clauses as may be approved by the UK from time to time.

References to any Applicable Laws (including to the Data Protection Laws and each of them specifically, as the case may be) and to terms defined in such Applicable Laws shall be replaced with or incorporate (as the case may be) references to any Applicable Laws replacing, amending, extending, re-enacting or consolidating such Applicable Law (including any new Data Protection Laws from time to time) and the equivalent terms defined in such Applicable Laws, once in force and applicable. A reference to a law includes all subordinate legislation made under that law.

## **1. Interaction with the Agreement**

1.1 This DPA will take effect from the date on which the Client accepts the terms of this DPA (or signs a Service Agreement incorporating the terms of this DPA) and shall continue until the end of Comgem's provision of the Services (including any period of suspension, where relevant) ("Term").

1.2 Except for the changes made by this DPA, the Terms and Service Agreement remain in full force and effect. To the extent that there is any conflict between this DPA and the Terms, the order of precedence shall be, the clauses of this DPA and then the Terms.

## **2. Data Processor and Data Controller**

2.1 The parties agree that in relation to Protected Data (as it may be applicable to the parties under Data Protection Laws), the Client shall be the Data Controller and Comgem shall be the Data Processor.

2.2 Comgem shall process Protected Data in compliance with:

2.2.1 the obligations of Data Processors under Data Protection Laws in respect of the performance of its obligations herein; and

2.2.2 the terms of this DPA, the Terms and the Service Agreement which sets out the Client's instructions in relation to such processing activities.

2.3 The Client shall comply with:

2.3.1 all Data Protection Laws in connection with the processing of Protected Data, use of the Services and the exercise and performance of its respective rights and obligations under this DPA, including maintaining all relevant regulatory registrations and notifications as required under Data Protection Laws; and

2.3.2 the terms of this DPA.

2.4 The Client warrants, represents and undertakes, that:

2.4.1 all data sourced by the Client for use in connection with the Services shall comply in all respects, including in terms of its collection, storage and processing (which shall include the Client providing all of the required fair processing information to, and obtaining all necessary consents from, Data Subjects), with Data Protection Laws; and

2.4.2 all instructions given by it to Comgem in respect of Personal Data shall at all times be in accordance with Data Protection Laws.

2.5 The Client shall not unreasonably withhold, delay or condition its agreement to any change or amendment requested by Comgem in order to ensure the Services and Comgem (and each Sub-Processor) can comply with Data Protection Laws.

## **3. Instructions and details of processing**

3.1 By entering into this DPA, Client instructs Comgem to process Client Protected Data only in accordance with Applicable Law:

3.1.1 To provide the Services;

3.1.2 As further specified by Client's use of the Services or the Software;

3.1.3 As documented in the form of the terms and this DPA; and

3.1.4 As further documented in any other written instructions provided by the Client and acknowledged by Comgem as being instructions for the purposes of this DPA.

3.2 Insofar as Comgem processes Protected Data on behalf of the Client, Comgem:

3.2.1 unless required to do otherwise by Applicable Law, shall (and shall take steps to ensure each person acting under its authority shall) process the Protected Data only on and in accordance with the Client's documented instructions as set out in this clause, as updated from time to time as agreed between the parties ("Processing Instructions");

3.2.2 if Applicable Law requires it to process Protected Data other than in accordance with the Processing Instructions, shall notify the Client of any such requirement before processing the Protected Data (unless Applicable Law prohibits such information on important grounds of public interest); and

3.2.3 shall inform the Client if Comgem becomes aware of a Processing Instruction that, in Comgem's opinion, infringes Data Protection Laws, provided that:

(a) this shall be without prejudice to clauses 3 and 2.4; and

(b) to the maximum extent permitted by mandatory law, Comgem shall have no liability howsoever arising (whether in contract, tort (including negligence) or otherwise) for any losses, costs, expenses or liabilities (including any Data Protection Losses) arising from or in connection with any processing in accordance with the Client's Processing Instructions following the Client's receipt of that information.

3.3 The subject matter and details of the processing of Protected Data to be carried out by Comgem under this DPA shall comprise the processing set out in Schedule 1 (Data Processing details), as may be updated from time to time as agreed between the parties.

3.4 Further to the above, Comgem acknowledges that its processing of Protected Data is limited to that as set out in this DPA in order to supply the Services to the Client and will not retain, use or disclose Protected Data other than specified under this DPA, or (for the purposes of US Data Protection Laws) "sell" Protected Data, as that term is defined under the CCPA.

#### **4. Technical and organisational measures**

4.1 Comgem shall implement and maintain, at its cost and expense and in relation to the processing of Protected Data by Comgem, technical and organisational measures taking into account the nature

of the processing, to assist the Client insofar as is possible in the fulfilment of the Client's obligations to respond to Data Subject Requests relating to Protected Data.

## **5. Using Sub-Processors**

5.1 Subject to the remainder of this clause 5, Comgem shall not engage any Sub-Processor for carrying out any processing activities in respect of the Protected Data without the Client's written authorisation (such authorisation not to be unreasonably withheld, conditioned or delayed).

5.2 Client specifically authorises the engagement of Comgem's affiliates and associated group companies as Sub-Processors and also authorises the appointment of any of the Sub-Processors listed at <https://www.comgem.com/agreements-terms>

5.3 Comgem shall ensure:

5.3.1 via a written contract that the Sub-Processor only accesses and processes Protected Data to perform the obligations subcontracted to it and does so in accordance with the measures contained in this DPA that is enforceable by Comgem; and

5.3.2 remain fully liable for all the acts and omissions of each Sub-Processor as if they were its own.

5.4 When any new Sub-Processor is engaged by Comgem during the Term, Comgem shall give Client 30 days' prior notice of the appointment of any new Sub-processor, including details of the Processing to be undertaken by the Sub-Processor, via email.

5.5 Client may object (on reasonable grounds and only relating to data protection) to any new Sub-Processor appointed per clause 5.4. above within 14 days of Comgem's notice; If Client notifies Comgem in writing of any objections to the proposed appointment:

5.5.1 Comgem shall work with Client in good faith to make available a commercially reasonable change in the provision of the Services which avoids the use of that proposed Sub-Processor; and

5.5.2 where such a change cannot be made within 14 days of Comgem's receipt of Client's notice, Client may by written notice to Comgem with immediate effect terminate the Service Agreement to the extent that it relates to the Services which require the use of the proposed Sub-Processor. This termination right is Client's sole and exclusive remedy to Client's objection of any Sub-Processor appointed by Comgem during the Term

## **6. International data transfers**

6.1 The Client agrees that Comgem may transfer any Protected Data to Sub-Processors located in countries outside the United Kingdom (UK) (a "UK International Recipient"), provided all transfers by Comgem of Protected Data to a UK International Recipient shall (to the extent required under Data Protection Laws) be subject to and in compliance with the UK SCCs and other requirements of Data Protection Laws including, but not limited to, data transfer impact assessments, third country assessments and agreeing additional safeguards as necessary.

## **7. Staff**

7.1 Comgem shall ensure that all persons authorised by it (or by any Sub-Processor) to process Protected Data are subject to a binding written contractual obligation to keep the Protected Data confidential (except where disclosure is required in accordance with Applicable Law, in which case Comgem shall, where practicable and not prohibited by Applicable Law, notify the Client of any such requirement before such disclosure).

## **8. Assistance with the Client's compliance and Data Subject rights**

8.1 Comgem shall refer all Data Subject Requests it receives to the Client within three Business Days of receipt of the request.

8.2 Further to the above and notwithstanding anything to the contrary in the Terms, Comgem reserves the right to disclose the identity of the Client to any relevant Data Subject following any such request from a Data Subject.

8.3 Comgem shall provide such reasonable assistance as the Client reasonably requires (taking into account the nature of processing and the information available to Comgem) to the Client in ensuring compliance with the Client's obligations under Data Protection Laws with respect to:

8.3.1 security of processing;

8.3.2 data protection impact assessments (as such term is defined in Data Protection Laws);

8.3.3 prior consultation with a Supervisory Authority regarding high risk processing; and

8.3.4 notifications to the Supervisory Authority and/or communications to Data Subjects by the Client in response to any Personal Data Breach.

## **9. Records, information and audit**

9.1 Comgem shall maintain, in accordance with Data Protection Laws binding on Comgem, written records of all categories of processing activities carried out on behalf of the Client.

9.2 Comgem shall, in accordance with Data Protection Laws, make available to the Client such information as is reasonably necessary to demonstrate Comgem's compliance with the obligations of Data Processors under Data Protection Laws, and allow for and contribute to audits, including inspections, by the Client (or another auditor mandated by the Client) for this purpose, subject to the Client:

9.2.1 giving Comgem reasonable prior notice of such information request, audit and/or inspection being required by the Client;

9.2.2 ensuring that all information obtained or generated by the Client or its auditor(s) in connection with such information requests, inspections and audits is kept strictly confidential (save for disclosure to the Supervisory Authority or as otherwise required by Applicable Law);

9.2.3 ensuring that such audit or inspection is undertaken during normal business hours, with minimal disruption to Comgem's business and the business of other Clients of Comgem; and

9.2.4 paying Comgem's reasonable costs for assisting with the provision of information and allowing for and contributing to inspections and audits on-site, calculated on a time & materials basis.

## **10. Breach notification**

10.1 In respect of any Personal Data Breach involving Protected Data, Comgem shall, without undue delay (but in any event within 72 hours) from when Comgem becomes aware of the same:

10.1.1 notify the Client of the Personal Data Breach; and

10.1.2 provide the Client, where possible, with details of the Personal Data Breach.

10.2 Notice of a Personal Data Breach as contemplated under 10.1.1 above shall include:

10.2.1 the nature of the Personal Data Breach (including, where possible, the categories and approximate number of data subjects and data records concerned);

10.2.2 the likely consequences of the Personal Data Breach; and

10.2.3 the measures taken or proposed to be taken to address the Personal Data Breach, including, where appropriate, measures to mitigate its possible adverse effects; and

10.2.4 such other information as may be required by Data Protection Law.

## **11. Deletion or return of Protected Data and copies**

11.1 Comgem shall, at the Client's written request, or provide facilities for the Client to either delete or return all the Protected Data to the Client in such form as the Client reasonably requests within a reasonable time after the earlier of:

11.1.1 the end of the provision of the relevant Services related to processing; or

11.1.2 once processing by Comgem of any Protected Data is no longer required for the purpose of Comgem's performance of its relevant obligations under the Service Agreement, and delete existing copies (unless storage of any data is required by Applicable Law and, if so, Comgem shall inform the Client of any such requirement).

## **12. Liability**

12.1 Any claims brought under or in connection with this DPA shall be subject to the terms and conditions, including, but not limited to, the exclusions and limitations set out in the Terms.



12.2 Notwithstanding the foregoing, the limitations specified in 12.1 above shall not apply to Data Protection Losses. In no event shall any party limit its liability with respect to any individual's data protection rights under this DPA or otherwise.

12.3 Any Data Protection Losses incurred by one party arising from or in connection with the other's failure to comply with its obligations under this DPA or any applicable Data Protection Laws shall be considered a liability to the non-compliant party.

### **13. Cooperation**

13.1 If a party receives a compensation claim from an individual or Supervisory Authority relating to processing of Protected Data, it shall promptly provide the other party with notice and full details of such claim. The party with conduct of the action shall:

13.1.1 make no admission of liability nor agree to any settlement or compromise of the relevant claim without the prior written consent of the other party (which shall not be unreasonably withheld or delayed); and

13.1.2 consult fully with the other party in relation to any such action.

### **14. Government Requests**

14.1 Comgem does not, as a matter of course, voluntarily supply government authorities, agencies or law enforcement access to or information relating to Comgem Client accounts or Protected Data. If Comgem receives a compulsory request (whether via court order, warrant, or other valid legal process) from any government authority, agency or law enforcement for access to or information relating to a Client account (including Protected Data) belonging to a Client (hereafter, a "Government Request"), Comgem shall take all such reasonable steps as necessary to confirm the validity of such a request.

14.2 In the event that Comgem satisfies itself that a Government Request is valid, Comgem shall:

14.2.1 inform the government authority, agency or law enforcement that Comgem is a processor of the Protected Data;

14.2.2 attempt to redirect the government authority, agency or law enforcement to request the data directly from the Client; and

14.2.3 notify Client via email of the Government Request to allow Customer to seek their own appropriate remedy, whereby Comgem may provide the Client's contact information.

14.3 Comgem shall not be required to comply with the provisions of clauses 14.1 or 14.2 above if:

14.3.1 Comgem is legally prohibited from doing so; or

14.3.2 if Comgem has a reasonable and good-faith belief that urgent access is necessary to prevent an imminent risk of serious harm to any individual, the safety of the public, or Comgem's Services or property.