Data Processing Agreement Client (Global)

1. Interpretation & definitions

In this Schedule:

(a) the terms '**Controller**', '**Processor**', '**Data Exporter**', '**Data Importer**', '**Data Subject**', '**Personal Data', '**Personal Data Breach**', '**Processing**', '**(Supervisory) Authority**' and '**appropriate technical and organisational measures**' have the meanings given to those terms, or any equivalent terms, in the Privacy Laws.;

(b) **Adequacy Decision** means a determination by an Authority in accordance with Article 45 of the GDPR;

(c) **Agreement**: When not explicitly referenced otherwise, this refers to the complete set of documents agreed upon within the framework of the services as offered by NCC and procured by the Client, including the Statement of Work.

(d) **Authority** means any Commonwealth, State, regional or local government department, body or instrumentality or any other public authority, statutory body or certifying body which has relevant jurisdiction, and includes any Regulator;

(e) **Business Days** means a day that is not a Saturday, Sunday or public holiday in the applicable country (or if applicable: region) where NCC Group Services are performed;

(f) **Business Hours** means 9.00am to 5.00pm on a Business Day;

(g) **Delete** means deletion, destruction or, in the context of back-ups of data, ensuring said data is not readily available or accessible (for example, by only holding it as part of an encrypted general system back-up);

(h) **DPA** means this Data Processing Agreement, including a DPA Appendix as required by Article 28(3) of the GDPR;

(i) **DPA Appendix** means the annex to this DPA that sets out the details of the Processing activity such as subject matter, duration, nature and purpose of the Processing, the type of Personal Data and categories of Data Subjects, and if applicable, any Sub-Processors and data transfers;

(j) **GDPR** means the European Union General Data Protection Regulation *2016/679*;

(k) **Notice** means a notice, demand, consent, approval or communication in writing, in English, signed by a person duly authorised by the sender, and, hand delivered, or sent by prepaid post or email to the recipient's registered address for Notices specified in the Agreement;

(l) **Party** means, either NCC Group or the Client (as the context requires) and in each case, Parties means both of them;

(m) **Privacy Laws** means all applicable legislation, regulations, regulatory guidance, or requirements in any jurisdiction (to the extent that either Party is subject to it), which affects data protection, privacy, confidentiality or any Personal Data (including the collection, storage, use or Processing of that Personal Data) including but not limited to:

  (i) the GDPR together with any transposing, implementing or supplemental legislation;

  (ii) any ancillary legislation, codes of conduct (to the extent adhered to by NCC Group), recommendations or directives made pursuant to the Laws contemplated above; and

  (iii) any other Law giving right to an actionable right of privacy;

(n) **Standard Contractual Clauses** means, in respect of the:

  (i) European Union, the 'Standard Contractual Clauses' set out in the *Commission Implementing Decision (EU) 2021/914* of 4 June 2021 on standard contractual clauses for the transfer of Personal Data to third countries pursuant to the GDPR, found here, as amended or replaced from time to time by a competent Authority under the relevant Privacy Laws (**EU SCCs**); or

  (ii) United Kingdom, the:

    (A) EU SCCs, as amended by the International Data Transfer Addendum to the EU SCCs issued by the UK Information Commissioner; or

    (B) the UK International Data Transfer Agreement (IDTA),

  each found here, as amended or replaced from time to time, pursuant to Article 46 of the UK GDPR (in each case, the **UK SCCs**);

(o) **Third Country Transfer** has the meaning a Personal Data transfer from either the Client to NCC Group; or NCC Group (as Processor) to a Sub-Processor); and concerning a transfer from

  (i) EEA to any country, territory, or international organisation outside of the EEA (under the GDPR)

  (ii) UK to any country, territory, or international organisation outside of the UK (under the UK GDPR)

(p) **UK GDPR** means the GDPR, as transposed into the national law of the United Kingdom through the operation of section 3 of the *European Union (Withdrawal) Act 2018* (UK) and as amended by the *Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019* (UK);

(q) **UK ITDA** means the International Data Transfer Agreement issued by the UK Information Commissioner, as amended or replaced from time to time, pursuant to Article 46 of the UK GDPR.

2. Application and scope

2.1 Governing law and courts

The Parties acknowledge and agree this DPA will be governed by and construed in accordance with the laws of England and Wales and will be subject to the exclusive jurisdiction of the English courts;

(a) except insofar the Agreement is with one of the following entities:

  (i) Fox-IT B.V.;

  (ii) NCC Group A/S;

  (iii) NCC Group Cyber Security Portuguesa Unipessoal LDA; or

  (iv) NCC Group Deutschland GmbH;

  (v) NCC Group Security Services España, S.L.;

  in which the DPA will be governed by and construed in accordance with the laws of the Netherlands and will be subject to the exclusive jurisdiction of the Dutch courts; and

(b) except where and to the extent otherwise required by Applicable Data Protection Laws.

2.2 Application of this Data Processing Agreement

(a) The Parties acknowledge and agree that this DPA is applicable if and insofar as NCC Group processes Personal Data on behalf of the Client in connection with the Agreement or a particular Statement of Work.

(b) To the extent this DPA is applicable in accordance with clause 2.2(a) above, the parties acknowledge and agree that:

  (i) the Client is assigned the role of Controller and NCC Group is assigned the role of Processor within the meaning of the GDPR; and

  (ii) they shall further specify the Personal Data Processing activities in a DPA Appendix as part of this DPA; and

  (iii) clause 5 below will apply in respect of any Third Country Transfers of Personal Data effected in connection with the relevant Statement of Work.

(c) The parties acknowledge and agree that this DPA does not apply if and insofar NCC Group acts in the capacity of a Controller.

2.3 DPA Appendix

The Parties acknowledge and agree that:

(a) by signing the Agreement or a particular Statement of Work, the Client acknowledges that the DPA including DPA Appendix forms part of the Agreement. Insofar NCC Group acts as a Processor, it is bound by the instructions of the Client as described under the details of Processing activity in the DPA Appendix

(b) to the extent that there is any inconsistency between the details of the processing activity as described in the DPA Appendix and the Agreement, the DPA Appendix will govern, where a specific Statement of Work may supplement;

(c) the Client must immediately notify NCC Group of any changes relating to the Processing of Personal Data by NCC Group in connection with the Agreement; and

(d) unless explicitly approved or confirmed by an authorised representative of NCC Group, this DPA and the DPA Appendix may not be amended or supplemented, nor shall any of its provisions be deemed to be waived or otherwise modified.

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3. NCC Group obligations

3.1 Processing of Personal Data as a Processor

Where the Client is a Controller and NCC Group is a Processor within the meaning of the GDPR, in regard to Personal Data disclosed by the Client, NCC Group will:

(a) process the Personal Data only on documented instructions from the Client, unless Processing is required by law and regulations to which NCC Group is subject. In such a case, NCC Group shall inform the Client of that legal requirement before Processing, insofar as this is permitted;

(b) immediately notify the Client if, in NCC Group's opinion, it considers that any of the Client's instructions infringe the Privacy Laws;

(c) only undertake a Third Country Transfer if the conditions as set out in the Privacy Laws have been met, for instance:
  (i) an Adequacy Decision has been made in respect of the relevant country; or
  (ii) NCC Group has entered into an agreement with the recipient of the Third Country Transfer, which ensures a level of protection for Personal Data which is equivalent to the GDPR, such as the EU SCC's or UK IDTA;

(d) put in place appropriate technical and organisational measures in such a manner that any Processing undertaken by NCC Group in connection with the Agreement ensures a level of security appropriate to the risk, taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons; which does not prejudice the Client's responsibilities to take appropriate technical and organisational measures, in particular with regard to information Processing systems of the Client or any party for which the Client is responsible.

(e) ensure that persons authorised to process the Personal Data received from the Client have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;

(f) notify the Client as soon as reasonably practicable of NCC Group becoming aware of a Personal Data Breach ("Data Breach") by NCC Group or its Sub-Processors. NCC Group will investigate such Data Breach and provide a report to the Client with the results of such investigation as soon as reasonably practicable. If a Data Breach was caused, in whole or in part, by the Client's actions, the Client will pay for the work part of such investigation by or at the instructions of NCC Group. Such work shall be compensated by the Client in accordance with the applicable (hourly) rates;

(g) provide reasonable assistance to the Client or shall make available information requested on reasonable grounds and that is necessary to demonstrate fulfilment by NCC Group of the obligations set forth in the Privacy Laws, where the Privacy Laws require NCC Group (as the Processor) to do so, taking into account the nature of Processing and the information available to NCC Group, including by providing reasonable assistance to the Client in relation to its obligations regarding:
  (i) keeping Personal Data secure;
  (ii) notifying Data Breaches to the relevant Authority;
  (iii) notifying Data Breaches to relevant Data Subjects;

  insofar as the Client itself does not have access to the relevant information and NCC Group has that information available, and provided that the Client acknowledges and agrees that NCC Group will not be required to assist with the Client's own compliance, security, technology and related processes, in respect of which NCC Group has no insight, other than as required by the Privacy Laws. NCC Group may require that the information be reviewed at NCC Group's premises only and is entitled to impose reasonable further conditions to such request in order to safeguard the confidentiality and integrity of such information.

(h) assist the Client by appropriate technical and organisational measures, insofar this is possible and applicable, to assist the Client to respond to requests from individuals to exercise their rights under the Privacy Laws ("Data Subject Rights"). NCC Group will notify the Client without delay if NCC Group receives a request from a Data Subject under the Privacy Laws if it relates to Personal Data processed in the performance of its obligations under the Agreement, and shall not respond to such request, except based on the Client's documented instructions or where this is required by applicable law and/or legislation, in which case NCC Group will notify the Client of that legal obligation before accommodating the request, insofar this is permitted.

(i) permit and contribute to the Client (or its nominee auditor) conducting audits and inspections as required by the Privacy Laws (including in respect of the scope of such audits):
  (i) not more frequently than once a year;
  (ii) on the provision of not less than ten Business Days' Notice to NCC Group;
  (iii) during Business Hours only; and
  (iv) at the Client's expense,

  provided that the Client acknowledges and agrees that NCC Group will not be required to provide any assistance, or disclose any information to the Client (or its auditors) in connection with such an audit, if doing so may (in the opinion of NCC Group) cause NCC Group to breach any obligation of confidentiality or privacy owed to any person, or compromise the functionality, availability, quality or security of NCC Group Services or NCC Group's systems;

(j) promptly notify the Client on receipt of a legally binding request to access Personal Data from a Public Authority, including law enforcement agencies, regulators, courts or tribunals, to provide the Client a reasonable opportunity to challenge any such access or disclosure, unless otherwise legally prohibited. Where law prohibits notification, NCC Group will take appropriate steps to challenge the access to or disclosure of Client's Personal Data through judicial action or other means and provide the minimum amount of information permissible if its challenge fails.

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4. Third parties Processing

4.1 Sub-Processors

Where the Client is a Controller and NCC Group is a Processor of any Personal Data disclosed by the Client to NCC Group for the purposes of the Agreement, NCC Group may engage another party to perform Processing activities on behalf of NCC Group (Sub-Processor). This means that the Client acknowledges and agrees that:

(a) as part of Global Service Delivery, Personal Data may be accessed through different NCC Group entities and locations;

(b) its entry into this agreement constitutes the Client's general written authorisation for NCC Group to appoint Sub-Processors as listed at https://www.nccgroup.com/uk/terms-and-conditions/sub-processors/ and within the relevant DPA Appendix.

(c) NCC Group will:
  (i) ensure such Processing by any Sub-Processor is governed by an agreement with that Sub-Processor including sufficient guarantees that the Sub-Processor will implement appropriate technical and organisational measures in a manner compliant with the Privacy Laws;
  (ii) notify the Client of any intended changes concerning the addition or replacement of Sub-Processors at least 20 Business Days in advance, thereby giving the Client the opportunity to object to such changes on reasonable grounds, which Notice the Parties expressly agree may be provided via any medium, including email, a public website or a web-based client portal
  (iii) insofar as that contract involves a Third Country Transfer, ensure the conditions of the Privacy Laws for data transfers are incorporated into the agreement between NCC Group and the Sub-Processor, in accordance with clause 3.1 under b above.

5. Third Country Transfers

5.1 GDPR Third Country Transfers

The Parties acknowledge and agree that, with respect to Third Country Transfers subject to the GDPR:

(a) the EU SCCs are hereby incorporated into this DPA by reference;

(b) the description of such Third Country Transfer (Annex 1 of the EU SCCs) is as set out in the DPA Appendix and/or Agreement; and

(c) for the purposes of Modules 2 and 3 of the EU SCCs where NCC Group acts as a Processor (Data Importer):
  (i) clause 7 of the EU SCCs and the optional language in clause 11(a) of the EU SCCs shall not apply;
  (ii) for the purposes of clause 9 of the EU SCCs, the Parties select Option 2 (general authorization);
  (iii) the Authority for the purposes of clause 13(a) of the EU SCCs shall be the Netherlands;
  (iv) the governing Law and choice of forum and jurisdiction shall be that of the Netherlands and the technical and organisational security measures set out in this DPA shall apply;
  (v) the frequency of the Third Country Transfer may be continuous as necessary to fulfil the obligations of the Agreement; and
  (vi) retention of Personal Data by NCC Group will be determined by the Client, except where NCC Group is required by Law to retain such Personal Data or the required retention is not technically feasible in which parties will consult.

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5.2 UK GDPR Third Country Transfers

The Parties acknowledge and agree that, with respect to Third Country Transfers subject to the UK GDPR:

(a) the UK SCCs are hereby incorporated into this DPA by reference;
(b) the description of such Third Country Transfer is as set out in the DPA Appendix and/or the relevant Statement of Work (as the case may be); and
(c) for the purposes of Annex B of the Controller UK SCCs and Appendix 1 of the Processor UK SCCs and/or any equivalent UK IDTA:
  (i) where the Client acts as Controller (Data Importer) under the Controller UK SCCs:
    (A) at clause 2(h) of the Controller SCCs, the Parties select option (iii);
    (B) the Data Subjects, categories of Personal Data and the purposes of the relevant Third Country Transfer are as specified in the DPA Appendix and/or the relevant Statement of Work;
    (C) the recipients are the recipients to whom it is necessary to disclose data to achieve the relevant purposes; and
    (D) the contact points for data protection enquiries are the usual business contacts for each Party; and
  (ii) where NCC Group acts as Processor (Data Importer) under the Controller UK SCCs, Appendices 1 and 2 of the Processor SCCs shall be deemed to incorporate respectively, the:
    (A) relevant Data Subjects;
    (B) categories of Personal Data and Processing operations set out in the DPA Appendix and/or the relevant Statement of Work; and
    (C) organisational and technical measures described in clauses 3.1(c) and 3.1(f) above.

6. Client obligations

6.1 Warranties

The Client warrants to NCC Group that, in order to disclose any Personal Data to NCC Group and to otherwise allow NCC Group to carry out its obligations under and incidental to the Agreement, the Client:

(a) has all requisite Authority and has obtained and will maintain (including by way of incorporating into all materials and processes through which Personal Data is captured) all necessary consents required, or otherwise has a valid lawful basis for such disclosure in accordance with the Privacy Laws, in respect of the disclosure of Personal Data in connection with the Agreement;
(b) will immediately notify NCC Group should any such consents be revoked, including where any Data Subjects exercise their right to object to the Processing of their Personal Data by NCC Group or its Sub-Processors;
(c) has complied with, and will comply with, all of its obligations under the Privacy Laws; and
(d) will not do, or omit to do, anything that would place NCC Group in breach of the Privacy Laws.

6.2 Client breach

The Client acknowledges and agrees that if it:

(a) does not complete the DPA Appendix in accordance with clause 2.2 (b) above; or
(b) fails to comply with any obligations or requirements set out in this DPA; or
(c) gives NCC Group the Notice contemplated at clause 6.1(b) above,

then NCC Group may:

(i) proceed to deliver NCC Group Services without Processing any Personal Data on behalf of the Client, to the extent technically possible and commercially reasonable and in doing so, the Fees shall remain payable in full in accordance with the Agreement; or
(ii) terminate the Agreement or relevant Statement of Work with Notice to the Client.

7. Retention and deletion

7.1 Retention, deletion and return of Personal Data

Unless otherwise required or permitted by applicable laws or otherwise agreed (and only to the extent so required or permitted), NCC Group will, at the end of the relevant Service Term:

(a) at the Client's choice and expense, delete or return the processed Personal Data to the Client within a reasonable timeframe; and/or
(b) delete existing copies of processed Client Personal Data;

If, upon termination of the Contract, the Client has failed to announce in writing that it wants to have the Personal Data returned, NCC Group is entitled to delete the Personal Data or arrange for the data to be deleted.

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