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|  | | PDPA – Data Processing Agreement | |
| Doc Date: | 10 JAN 2023 | Document Owner: | Bernard Collin |
| Revision and Date: | 01 MAR 2023 | Document Approvers: | Bernard Collin |
| Doc ID | PDPA-T-0104 | SafeComs Network Security Consulting Co., Ltd. | |

| Revision History | | | |
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| Rev | Description of Change | Author | Effective Date |
| 0.0 | First Issue V001 | Bernard Collin | NOV 2022 |
| 1.0 | Version 2.0 - Approved | Bernard Collin | FEB 2023 |

Here is a template for a Data Processing Agreement for a third-party data processor for PDPA compliance in Thailand:


DATA PROCESSING AGREEMENT

This Data Processing Agreement (“Agreement”) is made and entered into on [insert date] by and between [insert name of Data Controller], (“Data Controller”) and [insert name of Data Processor], (“Data Processor”).

Purpose of Agreement: The purpose of this Agreement is to set forth the terms and conditions for the processing of Personal Data by the Data Processor on behalf of the Data Controller in accordance with the provisions of the Personal Data Protection Act B.E. 2562 (“PDPA”) of Thailand.

Definitions:

- “Personal Data” means any information relating to an identified or identifiable natural person.
- “Processing” means any operation or set of operations which is performed on Personal Data or on sets of Personal Data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.


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Obligations of Data Processor:

1. Processing of Personal Data: The Data Processor shall process Personal Data only on the documented instructions from the Data Controller, unless required to do so by the laws of Thailand.
2. Confidentiality: The Data Processor shall ensure that all persons authorized to process Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.
3. Security Measures: The Data Processor shall implement appropriate technical and organizational measures to protect the Personal Data against unauthorized or unlawful processing and against accidental loss, destruction, or damage.
4. Sub-processors: The Data Processor shall not engage any third party to process Personal Data on behalf of the Data Controller without the prior written consent of the Data Controller.
5. Deletion or Return of Personal Data: Upon termination of this Agreement, the Data Processor shall delete or return all Personal Data to the Data Controller and shall destroy any existing copies unless storage of the Personal Data is required by the laws of Thailand.

Obligations of Data Controller:

1. Compliance with PDPA: The Data Controller shall ensure that the processing of Personal Data is carried out in accordance with the PDPA.
2. Instructions: The Data Controller shall provide the Data Processor with all necessary instructions regarding the processing of Personal Data.
3. Liability: The Data Controller shall be liable for any damage arising from the processing of Personal Data by the Data Processor.

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Warranties:

1. Representations: Each party represents and warrants that it has the legal power to enter into this Agreement.
2. Compliance with Laws: The Data Processor represents and warrants that it shall comply with all applicable laws, including but not limited to the PDPA.

Limitation of Liability:


1. Limitation: Except for liability arising from the breach of confidentiality, neither party shall be liable for any indirect, incidental, special or consequential damages, or loss of profits, arising from or in connection with this Agreement.
2. Total Liability: The total liability of each party for all claims arising from or in connection with this Agreement shall not exceed the total fees paid by the Data Controller to the Data Processor under this Agreement during the twelve (12) months prior to the date of the claim.

Amendments: This Agreement may only be amended in writing and signed by both parties.

Governing Law: This Agreement shall be governed by and construed in accordance with the laws of Thailand.

Entire Agreement: This Agreement constitutes the entire agreement between the parties and supersedes all prior negotiations, understandings, and agreements between the parties, whether written or oral, relating to the subject matter of this Agreement.

Termination: This Agreement shall remain in full force and effect until terminated by either party upon written notice to the other party. Upon termination, the Data Processor shall

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immediately cease all processing of Personal Data and shall delete or return all Personal Data to the Data Controller.


Notices: All notices under this Agreement shall be in writing and shall be delivered by email or by registered mail to the address set forth below:

[Insert contact information of Data Controller and Data Processor]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

[Insert signature blocks of Data Controller and Data Processor]

Please note that this is just a template and should be tailored to your specific business and the personal data you collect and process. It is important to carefully review and understand the requirements of the PDPA to ensure compliance. A Data Processing Agreement is a legally binding contract between a data controller and a data processor that outlines the terms and conditions for the processing of personal data. It helps to ensure that personal data is processed in a secure and compliant manner.

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| 2.0 | Version 2.0 - Approved | Bernard Collin | Dec 2022 |

Template 1 – Data Processing Agreement – European GDPR *Sample for reference purposes only!*

Data Processing Agreement — Your Company

This Data Processing Agreement (“**Agreement**”) forms part of the Contract for
Services (“**Principal Agreement**”) between


(the “**Company**”) and

(the “Data Processor”)

(together as the “**Parties**”)

WHEREAS

- A. The Company acts as a Data Controller.
- B. The Company wishes to subcontract certain Services, which imply the processing of personal data, to the Data Processor.


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- C. The Parties seek to implement a data processing agreement that complies with the requirements of the current legal framework in relation to data processing and with the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation).
- D. The Parties wish to lay down their rights and obligations.

IT IS AGREED AS FOLLOWS:

1. Definitions and Interpretation

- 1.1. Unless otherwise defined herein, capitalized terms and expressions used in this Agreement shall have the following meaning:
- 1.1.1. “Agreement” means this Data Processing Agreement and all Schedules;
 - 1.1.2. “Company Personal Data” means any Personal Data Processed by a Contracted Processor on behalf of Company pursuant to or in connection with the Principal Agreement;
 - 1.1.3. “Contracted Processor” means a Subprocessor;
 - 1.1.4. “Data Protection Laws” means EU Data Protection Laws and, to the extent applicable, the data protection or privacy laws of any other country;
 - 1.1.5. “EEA” means the European Economic Area;
 - 1.1.6. “EU Data Protection Laws” means EU Directive 95/46/EC, as transposed into domestic legislation of each Member State and as amended, replaced or superseded from time to time, including by the GDPR and laws implementing or supplementing the GDPR;
 - 1.1.7. “GDPR” means EU General Data Protection Regulation 2016/679;

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1.1.8. “Data Transfer” means:

1.1.8.1. a transfer of Company Personal Data from the Company to a Contracted Processor; or

1.1.8.2. an onward transfer of Company Personal Data from a Contracted Processor to a Subcontracted Processor, or between two establishments of a Contracted Processor, in each case, where such transfer would be prohibited by Data Protection Laws (or by the terms of data transfer agreements put in place to address the data transfer restrictions of Data Protection Laws);

1.1.9. “Services” means the _____ services the Company provides.

1.1.10. “Subprocessor” means any person appointed by or on behalf of Processor to process Personal Data on behalf of the Company in connection with the Agreement.

1.2. The terms, “Commission”, “Controller”, “Data Subject”, “Member State”, “Personal Data”, “Personal Data Breach”, “Processing” and “Supervisory Authority” shall have the same meaning as in the GDPR, and their cognate terms shall be construed accordingly.

2. Processing of Company Personal Data

2.1. Processor shall:


2.1.1. comply with all applicable Data Protection Laws in the Processing of Company Personal Data; and

2.1.2. not Process Company Personal Data other than on the relevant Company’s documented instructions.

2.1.3. The Company instructs Processor to process Company Personal Data.

3. Processor Personnel

Processor shall take reasonable steps to ensure the reliability of any employee, agent or contractor of any Contracted Processor who may have access to the Company Personal

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Data, ensuring in each case that access is strictly limited to those individuals who need to know / access the relevant Company Personal Data, as strictly necessary for the purposes of the Principal Agreement, and to comply with Applicable Laws in the context of that individual's duties to the Contracted Processor, ensuring that all such individuals are subject to confidentiality undertakings or professional or statutory obligations of confidentiality.

4. Security

4.1. 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, Processor shall in relation to the Company 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.

4.2. In assessing the appropriate level of security, Processor shall take account in particular of the risks that are presented by Processing, in particular from a Personal Data Breach.


5. Subprocessing

5.1. Processor shall not appoint (or disclose any Company Personal Data to) any Subprocessor unless required or authorized by the Company.

6. Data Subject Rights

6.1. Taking into account the nature of the Processing, Processor shall assist the Company by implementing appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Company obligations, as reasonably understood by Company, to respond to requests to exercise Data Subject rights under the Data Protection Laws.

6.2. Processor shall:

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6.2.1. promptly notify Company if it receives a request from a Data Subject under any Data Protection Law in respect of Company Personal Data; and

6.2.2. ensure that it does not respond to that request except on the documented instructions of Company or as required by Applicable Laws to which the Processor is subject, in which case Processor shall to the extent permitted by Applicable Laws inform Company of that legal requirement before the Contracted Processor responds to the request.

7. Personal Data Breach


7.1. Processor shall notify Company without undue delay upon Processor becoming aware of a Personal Data Breach affecting Company Personal Data, providing Company with sufficient information to allow the Company to meet any obligations to report or inform Data Subjects of the Personal Data Breach under the Data Protection Laws.

7.2. Processor shall co-operate with the Company and take reasonable commercial steps as are directed by Company to assist in the investigation, mitigation and remediation of each such Personal Data Breach.

8. Data Protection Impact Assessment and Prior Consultation Processor shall provide reasonable assistance to the Company with any data protection impact assessments, and prior consultations with Supervising Authorities or other competent data privacy authorities, which Company reasonably considers to be required by article 35 or 36 of the GDPR or equivalent provisions of any other Data Protection Law, in each case solely in relation to Processing of Company Personal Data by, and taking into account the nature of the Processing and information available to, the Contracted Processors.

9. Deletion or return of Company Personal Data

9.1. Subject to this section 9 Processor shall promptly and in any event within (ten) business days of the date of cessation of any Services involving the Processing of Company

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Personal Data (the “Cessation Date”), delete and procure the deletion of all copies of those Company Personal Data

10. Audit rights

10.1. Subject to this section 10, Processor shall make available to the Company on request all information necessary to demonstrate compliance with this Agreement, and shall allow for and contribute to audits, including inspections, by the Company or an auditor mandated by the Company in relation to the Processing of the Company Personal Data by the Contracted Processors.

10.2. Information and audit rights of the Company only arise under section 10.1 to the extent that the Agreement does not otherwise give them information and audit rights meeting the relevant requirements of Data Protection Law.


11. Data Transfer

11.1. The Processor may not transfer or authorize the transfer of Data to countries outside the EU and/or the European Economic Area (EEA) without the prior written consent of the Company. If personal data processed under this Agreement is transferred from a country within the European Economic Area to a country outside the European Economic Area, the Parties shall ensure that the personal data are adequately protected. To achieve this, the Parties shall, unless agreed otherwise, rely on EU approved standard contractual clauses for the transfer of personal data.

12. General Terms

12.1. Confidentiality. Each Party must keep this Agreement and information it receives about the other Party and its business in connection with this Agreement (“Confidential Information”) confidential and must not use or disclose that Confidential Information without the prior written consent of the other Party except to the extent that:

- (a) disclosure is required by law;
- (b) the relevant information is already in the public domain.

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12.2. Notices. All notices and communications given under this Agreement must be in writing and will be delivered personally, sent by post or sent by email to the address or email address set out in the heading of this Agreement at such other address as notified from time to time by the Parties changing address.

13. Governing Law and Jurisdiction

13.1. This Agreement is governed by the laws of _____.

13.2. Any dispute arising in connection with this Agreement, which the Parties will not be able to resolve amicably, will be submitted to the exclusive jurisdiction of the courts of _____, subject to possible appeal to _____.

IN WITNESS WHEREOF, this Agreement is entered into with effect from the date first set out below.

Your Company

Signature _____
Name _____
Title _____
Date Signed _____

Processor Company

Signature _____
Name _____
Title _____
Date Signed _____