



Energage Data Processing Agreement

Energage

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Introduction

This Data Processing Agreement (“DPA”), by and between Energage, LLC (“Energage”) and the Energage Controller or Customer (“Controller” or “Customer”) identified on the applicable Energage Subscription Agreement or other ordering document (the “Agreement”) and is intended to ensure that Processing is conducted in accordance with applicable data protection laws and respects the rights of individuals whose Personal Data is Processed under the Agreement. Any terms not defined in this DPA shall have the meaning assigned to them in the Agreement.

1.0 Definitions

- a. **“Agreement”** means Energage’s General Terms, or other written or electronic agreement, which govern the provision of the Service to Controller, as such terms or agreement may be updated from time to time.
- b. **“Controller”** means the natural or legal person, customer, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data.
- c. **“CCPA”** means the California Consumer Privacy Act of 2018 (California Civil Code § 1798.100 et seq.), as amended by the California Privacy Rights Act “CPRA” of 2020, and its implementing regulations.
- d. **“Data Protection Laws”** means all laws and regulations relating to or impacting the Processing, privacy or security of Personal Data, in each case as may be amended or replaced from time to time, including (a) EU Data Protection Laws, (c) Swiss Data Protection Laws, (d) UK Data Protection Laws, and (d) the CCPA.
- e. **“Data Subject Request”** means a request by a Data Subject to exercise rights afforded by Data Protection Laws with respect to the Data Subject’s Personal Data.
- f. **“Data Subject”** the individual or consumer who may be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, or an online identifier.
- g. **“EU Data Protection Laws”** means GDPR together with any applicable implementing legislation or regulations, as well as European Union or Member State laws, as amended from time to time.
- h. **“GDPR”** means the General Data Protection Regulation (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.)
- i. **“Personal Data”** means any Controller Data relating to an identified or identifiable natural person that is Processed by Energage on behalf of Controller in connection with providing the Services to Controller, when such information is protected as “personal data” or “personal information” or a similar term under Data Protection Law(s).

- j. **“Process” or “Processing”** means any operation or set of operations which is performed upon Personal Data, whether or not by automatic means, such as collection, recording, organization, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction.
- k. **“Processor”** a natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller.
- l. **“Security Breach” or “Personal Data Breach”** means a confirmed breach of Energage’s information security measures leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to Personal Data covered by this DPA.
- m. **“Services”** means the services provided by Energage to Controller under the Agreement.
- n. **“Standard Contractual Clauses” or “SCCs”** means the model clauses for the transfer of Personal Data to processors established in third countries approved by the European Commission, the approved version of which is set out in the European Commission Implementing Decision 2021/914 of 4 June 2021.
- o. **“Subprocessor”** means any person appointed by or on behalf of Processor to process Personal Data on behalf of Energage in connection with the Agreement.
- p. **“Swiss Data Protection Laws”** means all laws relating to data protection, the Processing of Personal Data, privacy and/or electronic communications in force from time to time in Switzerland, including the Federal Act on Data Protection of June 19, 1992 and its ordinances, and, once it entered into force, in accordance with Article 16 paragraph 2 letter d of the future revised Swiss Federal Act on Data Protection dated 25 September 2020 (collectively, “FADP”).
- q. **“UK Data Protection Laws”** means all laws relating to data protection, the Processing of Personal Data, privacy and/or electronic communications in force from time to time in the United Kingdom (“UK”), including the UK GDPR and the Data Protection Act 2018.
- r. **“UK GDPR”** means the United Kingdom General Data Protection Regulation, as it forms part of the law of the United Kingdom by virtue of section 3 of the European Union (Withdrawal) Act 2018.

The terms "**Commission**", "**Member State**", and "**Supervisory Authority**" shall have the meanings given to them under the applicable Data Protection Law. Any capitalized terms herein that are not defined in this DPA shall have the meanings associated with them in the Agreement and are hereby adopted by reference in this Addendum.

2.0 Processing of Controller Personal Data

2.1 Controller obligations

The Controller of Personal Data shall provide instructions at a minimum; specify:

- a. determine the purpose and means of the Processing of Personal Data in accordance with the Agreement;
- b. be responsible for the accuracy and updating of Personal Data
- c. provide instructions on the duration of processing.
- d. the categories of Personal Data to be processed.
- e. comply with all its obligations under applicable Data Protection Laws.

2.2 Energage Obligations

Energage is the Processor of Personal Data and shall:

- a. only process Personal Data in accordance with the documented instructions of Controller, unless waived in a written requirement or required to do so by Applicable Data Protection Laws.
- b. comply with its obligations under Data Protection Laws. A description of the processing of Personal Data intended to be carried out under this DPA is set out in Annex I.B. of Exhibit 1 attached hereto. The parties agree that the Agreement, including this DPA, together with Controller's use of the Services in compliance with the Agreement, constitute Controller's complete and final written instruction to Energage in relation to the Processing of Personal Data, and additional instructions outside the scope of these instructions shall require a prior written and mutually executed agreement between Controller and Energage. In the event Energage reasonably believes there is a conflict with any Data Protection Law and Controller's instructions, Energage will inform Controller promptly and the parties shall cooperate in good faith to resolve the conflict and achieve the goals of such instruction.
- c. not use Personal Data, except for usage of Personal Data pursuant to Controller's instructions, as permitted under the Agreement and as necessary to bring and defend claims, to comply with requirements of the legal process, to cooperate with regulatory authorities, and to exercise other similar permissible uses as expressly provided under Data Protection Laws.
- d. not: (i) sell or share (as such terms are defined by Data Protection Laws) Personal Data, (ii) retain, use, or otherwise disclose Personal Data for any purpose other than to provide the services as specified in the Agreement or outside of the direct business relationship between Energage and Controller; or (iii) combine Controller Personal Data with Personal Data Energage receives from, or on behalf of, another person or persons, or which Energage collects from its own interactions with an individual, except as expressly agreed by Controller and permitted by applicable Data Protection Laws. Energage certifies that it understands the restrictions in this Section 2.2(d) and will comply with them.
- e. return or securely destroy Personal Data, in accordance with Controller's instructions, upon Controller's request, unless Personal Data must be retained to comply with applicable legal requirements.
 - i. if any law, regulation, or government or regulatory body requires Energage to retain any documents or materials or Personal Data that Energage would

otherwise be required to return or destroy, it will notify the Controller in writing of that retention requirement, giving details of the documents, materials or Personal Data that it must retain, the legal basis for retention, and establishing a specific timeline for deletion or destruction once the retention requirement ends.

- ii. the Data Processor shall confirm to the Data Controller in writing via email to support@energage.com the completion of the chosen action (return or destruction) within 35 business days (in alignment with the backup retention schedule) of receiving the instruction and acknowledging the request.

Processor shall not, without the prior written consent of Controller, transfer any Personal Data to a third party, except to Subprocessors engaged by Processor in accordance as outlined below.

2.3 Sub-processors

- a. Authorized Sub-processors
 - i. Controller agrees that Energage is generally authorized to engage Sub-processors to process Controller Data on Controller's behalf. The Sub-processors currently engaged by Energage and authorized by the Controller are available [here](#).
- b. Sub-processor Update Notice
 - i. Energage shall notify Controller if it adds or removes Sub-processors at least 30 days prior to any such changes so long as the Controller opts in to receive such notifications by clicking [here](#). Upon Controller's objection, the parties shall work together in good faith to address Controllers' concerns.
 - ii. if Controller does not subscribe to such notifications, Controller waives any right it may have to receive prior notice of changes to Energage's sub-processors.
- c. Sub-processor Agreements
 - i. Energage shall enter into a written agreement with each Sub-processor containing data protection obligations that provide at least the same level of protection for Controller Data as those in this DPA, to the extent applicable to the nature of the service provided by such Sub-processor.

3.0 Data Protection

3.1 Security Measures

- a. Energage shall implement and maintain appropriate technical and organizational security measures that are designed to protect Controller Data from Security Incidents and to preserve the security, availability, integrity and confidentiality of Controller Data, the details of which are set forth at the following link: <https://security.energage.com/>.

- b. in assessing the appropriate level of security, Energage shall consider the risks that are presented by Processing, in particular from a Personal Data Breach.

3.2 Confidentiality

Energage shall ensure persons authorized by Energage to process Personal Data are under a duty of confidentiality with respect to the Personal Data.

3.3 Security Breach or Personal Data Breach

Upon becoming aware of a Security Breach, Energage shall:

- i. notify the Controller without undue delay, and where feasible, within 72 hours of awareness;
- ii. investigate the Security Breach;
- iii. provide the Controller with necessary details about the Security Breach as required by applicable law; and
- iv. take reasonable actions to prevent a recurrence of the Security Breach.
- v. Energage agrees that the Controller has the sole right to determine whether to provide notice on its own behalf of the accidental, unauthorized or unlawful processing and/or the Personal Data Breach to any Data Subjects, the relevant Supervisory Authority, other in-scope regulators, law enforcement agencies or others, as required by law or regulation or in the Controller's discretion, including the contents and delivery method of the notice.

3.4 Controller Security Responsibility

Notwithstanding the above, Controller agrees that except as provided by this DPA, Controller is responsible for the secure use of Service, including securing the account authentication credentials, and is responsible for protecting the security of the Controller's data.

4.0 Data Transfers

- a. For purposes of this DPA, "Standard Contractual Clauses" means the Standard Contractual Clauses set forth in Exhibit 4 to this DPA and "UK Addendum" means the addendum to the Standard Contractual Clauses issues pursuant to Section 119A of the United Kingdom Data Protection Act.
- b. Controller (as data exporter) and Energage (as data importer) shall comply with the Standard Contractual Clauses with respect to Personal Data exported from the European Economic Area to the United States of America or other third country that has not been deemed by the European Commission to ensure an adequate level of protection for such Personal Data. The Standard Contractual Clauses are hereby incorporated into this Agreement by this reference.
- c. With respect to Personal Data of data subjects in the United Kingdom exported from the United Kingdom to the United States or any other third country that has not

been deemed by the United Kingdom to ensure an adequate level of protection for such Personal Data, (i) the Standard Contractual Clauses shall apply to such transfers as provided in Section 4(b), above, (ii) the UK Addendum shall be deemed executed between the parties, and (iii) the Standard Contractual Clauses shall be deemed amended as specified by the UK Addendum in respect of the transfer of such Personal Data from the United Kingdom to countries that have not been the subject of an adequacy decision.

- d. With respect to the transfer between the Parties of Relevant Personal Data from or originating in Switzerland, the Standard Contractual Clauses shall apply as provided in Section 4(b), above and as deemed amended as follows:
 - i. References to the Clauses means this Section 4(d) as it amends the Standard Contractual Clauses;
 - ii. References to “Regulation (EU) 2016/679”, or “that Regulation” shall be read as “FADP”; References to specific Article(s) of, or obligations under, the GDPR are replaced with the equivalent Article of, or obligation under, the FADP;
 - iii. References to “Regulation (EU) 2018/1725” are removed;
 - iv. the data subject rights referred to in Clause 10 of the Standard Contractual Clauses shall be deemed amended so as to refer to the rights granted to data subjects under the FADP;
 - v. Clause 13(a) and Part C of Annex I of the Standard Contractual Clauses are not used and the competent supervisory authority for purposes of Clause 13 of the Standard Contractual Clauses shall be the Swiss Federal Data Protection and Information Commissioner;
 - vi. References to “Union”, “EU”, and “EU Member State” are to be replaced with “Switzerland”;
 - vii. For purposes of Clause 17 of the Standard Contractual Clauses the governing law shall be that of Switzerland;
 - viii. Clause 18 is replaced to state: “Any dispute arising from these clauses shall be resolved by the courts of Switzerland. A data subject may also bring legal proceedings against the data exporter and/or data importer before the courts of Switzerland. The parties agree to submit themselves to the jurisdiction of such courts”;
 - ix. where the Standard Contractual Clauses use terms that are defined in the FADP, those terms shall be deemed to have the equivalent meaning for those terms as defined in the FADP; and
 - x. the footnotes to the Standard Contractual Clauses shall not apply.
- e. Where any mechanism for international transfers of Personal Data ceases for any reason to be a valid means of complying with the restrictions on transferring Personal Data to a third country as set out in Data Protection Laws, or otherwise ceases to apply for any reason, the parties shall act in good faith to agree the implementation of an alternative solution to enable both parties to comply with Data Protection Laws.

5.0 Rights of Data Subjects

- a. Taking into account the nature of the Processing, Energage shall assist Controller by implementing appropriate technical and organizational measures, insofar as possible, for the fulfillment of Controller's obligations, to enable Controller to respond to requests to exercise Data Subject rights under applicable data protection laws, including subject access rights, the rights to rectify, port and erase personal data, object to the processing and automated processing of personal data, and restrict the processing of personal data and to comply with information or assessment notices served on the Controller by the relevant Supervisory Authority under data protection legislation.
- b. In regard to [Data Subject Requests](#), Energage shall:
 - i. promptly notify Controller if it receives a request from a Data Subject under any applicable data protection laws in respect of Controller Personal Data and/or any complaint, notice or communication that relates directly or indirectly to the processing of the Personal Data or to either party's compliance with data protection legislation; and
 - ii. ensure that it does not respond to any request from a Data Subject except on documented instructions of Controller or as required by applicable data protection laws to which Energage is subject, in which case, Energage shall, to the extent permitted by applicable data protection laws, inform Controller of that legal requirement before responding to the request.

5.1 Data Protection Impact Assessment

- a. upon Controller's reasonable request, Energage shall provide Controller with commercially reasonable cooperation and assistance needed to fulfill Controller's obligation under the GDPR to carry out a data protection impact assessment related to Controller's use of the Services, to the extent Controller does not otherwise have access to the relevant information, and to the extent such information is available to Energage.
- b. Energage shall provide commercially reasonable assistance to Controller in the cooperation or prior consultation with the Supervisory Authority to the extent required under the GDPR or other applicable data protection laws.

6.0 Security Reports and Audits

- a. Energage will permit the Controller or a representative to audit Energage's compliance with this DPA, on at least seven days' prior written notice and not more than once in any twelve (12) month period. Energage will give the Controller all necessary assistance to conduct such audits. If such an audit occurs, Controller shall bear all of its own costs of conducting the audit or those of its representative. The assistance may include, but is not limited to:
 - i. access to and meetings with any of Energage's personnel reasonably necessary to provide all explanations and perform the audit effectively; and

- ii. makes available to the controller all information necessary to demonstrate compliance with the obligations laid down in this DPA and allow for and contribute to audits, including inspections, conducted by the controller or another auditor mandated by the controller.
- b. The limitation on conducting one audit in any twelve (12) month period will not apply if:
 - i. the Controller reasonably believes that a Personal Data Breach occurred,
 - ii. if such audit is mandated by the relevant Supervisory Authority.
- c. If a Personal Data Breach occurs or is occurring or Energage becomes aware of a breach of any of its obligations under this DPA or any applicable data protection laws, Energage will:
 - i. notify Controller promptly as detailed above;
 - ii. promptly conduct its own audit to determine the cause;
 - iii. remedy any deficiencies identified by the audit within a reasonable amount of time.

7.0 LIMITATION OF LIABILITY

Notwithstanding anything to the contrary in the Agreement or this DPA and to the maximum extent permitted by law, each Party's liability, in the aggregate, arising out of or related to this DPA, whether in contract, tort or under any other theory of liability, will remain subject to the limitation of liability section of the Agreement.

Exhibit 1 - Description of Processing Activities

This exhibit describes the parties involved, and types of personal data that will be processed, the purpose of the processing, and the duration of the processing.

Annex I

A. List of Parties

Data exporter(s)	Data importer(s)
Name: Customer as identified on Agreement/ order form	Name: Energage LLC.
Address: Customer address as identified on Agreement/ order form	Address: 397 Eagleview Blvd #200, Exton PA 19341
Contact person's name, position, and contact details: Signatory as identified on Agreement/ order form	Contact person's name, position, and contact details: Acting Chief Information Security Officer 397 Eagleview Blvd #200 Exton PA 19341
Activities relevant to the data transferred under these Clauses: Activities necessary to provide the Services described in the Agreement.	Activities relevant to the data transferred under these Clauses: Activities necessary to provide the Services described in the Agreement.
Signature and date: Incorporated by Reference	Signature and date: Incorporated by Reference
Role: Controller	Role: Processor

B. Description of Transfer

i. Categories of Data Subjects:

Data exporter may submit Personal Data to Energage, the extent of which is determined and controlled by the data exporter in its sole discretion, and which may include, but is not limited to Personal Data relating to the following categories of data subjects:

- Prospective and current employees of Customer;
- Third parties that have, or may have, a commercial relationship with Customer (e.g. advertisers, customers, corporate subscribers and contractors).
- Participants in surveys run on behalf of Customer by Energage;

ii. Categories of Personal Data:

Data exporter may submit Personal Data to Energage, the extent of which is determined and controlled by the data exporter in its sole discretion, and which may include, but is not limited to the following categories of Personal Data:

- name,
- email address,
- company department information,
- tenure,
- job grade (team member / manager / senior manager),
- hours (part time / full time),
- salary band,
- demographic information,
- region of customer location,
- IP address,
- any other survey data and personal data contained in notes provided by the data exporter regarding the foregoing.

iii. Special Categories of Personal Data:

Data exporter may submit Special Categories of Personal Data to Energage, the extent of which is determined and controlled by the data exporter in its sole discretion, and which may include, but is not limited to the following categories of Personal Data:

- sexual orientation,
- racial,
- ethnic origin,
- age,
- gender

iv. Nature of the Processing:

The personal data transferred will be subject to the following basic processing activities:

Data importer is a hosted cloud SaaS solution (as further described in the General Terms) that processes and stores Customer Personal Data on behalf of the data exporter, permitting Energage the use of personal information it collects to communicate with you and to carry out Services for our customers.

v. Purpose(s) of the Data Transfer and Further Processing:

The purpose of the transfer and further processing is to provide the Energage Service pursuant to the Agreement, in accordance with the DPA, and as instructed by data exporter or data exporter's user(s) in their use of the Energage Service.

vi. Period for Which Personal Data Will be Retained

Data importer will retain Customer Personal Data as stipulated in the Agreement and DPA and agreed by the Parties.

vii. For Transfers to (Sub-)Processors, Specify Subject Matter, Nature, and Duration of the Processing:

As stipulated in the Agreement and DPA, and agreed by the Parties, Subprocessors may process and store Customer Personal Data in order to support and/or improve the Energage Service.

Information regarding data importer's current subprocessors, can be found available here:

<https://www.energage.com/trust/energage-subprocessors/>

C. Competent Supervisory Authority

Identify the competent supervisory authority/ies in accordance with Clause 13: Irish Data Protection Commission.

Exhibit 2 - Technical and Organizational Measures

Processor will maintain reasonable administrative, physical, and technical safeguards for protection of the security, confidentiality, and integrity of personal data transferred to Processor as described in this DPA and at the following link:

<https://security.energage.com>.

Exhibit 3 – Sub-processors

By entering into this DPA, the Customer has authorized the use of the listed Sub-processors found here: [Energage Sub-processors](#).

Exhibit 4 – Standard Contractual Clauses

The relevant provisions contained in the Standard Contractual Clauses are incorporated by reference and are an integral part of the DPA. Energage's SCC's can be found at the following link: <https://www.energage.com/trustdocs/Standard-Contractual-Clauses-ENERGAGE-LLC-SIGNED.pdf>