

# CENDYN DATA PROCESSING AGREEMENT

Version 11 from 21<sup>st</sup> of January of 2022

This Cendyn Data Processing Agreement (this “**DPA**”), including all its exhibits and appendices, is entered into by and between Cendyn Group, LLC, a limited liability company organized under the laws of the State of Delaware, and its relevant affiliates (collectively, “**Cendyn**”) and Cendyn’s counterparty to the Master Services Access Agreement (“**Agreement**”) (“**Customer**”) (each, a “**Party**” and, collectively, the “**Parties**”). This DPA will become effective when the last Party signs the Agreement(s) or the Cendyn Data Processing Agreement Accession Addendum (“**DPA Accession Addendum**”) (the “**DPA Effective Date**”). This DPA supersedes and restates any existing data processing agreement, in any form, that Cendyn may have executed with Customer.

## BACKGROUND

- (A) This DPA forms part of the Agreement between Customer and Cendyn to provide certain services as that term is defined in the Agreement (the “**Services**”).
- (B) In the course of providing the Services to Customer pursuant to the Agreement, Cendyn may Process Customer Personal Data on behalf of Customer.
- (C) The parties wish to set forth in this DPA the additional requirements applicable to Customer Personal Data Processed by Cendyn in connection with the provision of the Services.

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound, the parties agree as follows:

## 1. Definitions

1.1. For the purposes of this DPA:

- (a) “**Aggregate Customer Data**” means information processed by Cendyn or one of its sub-processors on behalf of Customers that relates to a group or category of Data Subjects, from which individual identities have been removed, that is not linked or reasonably linkable to any Data Subject or household, including via a device. For the avoidance of doubt, Aggregate Customer Data does not constitute Customer Personal Data.
- (b) “**Applicable Data Protection Laws**” means all foreign, national, state, regional and/or local laws, rules, regulations, security requirements and regulatory guidance applicable to the Processing of Personal Data used or obtained by Cendyn in the performance of the Services including, without limitation, the laws implementing the EU Data Protection Directive 95/46/EC; the EU General Data Protection Regulation, Regulation 2016/679 (effective May 25, 2018) (the “**EU GDPR**”); U.S. state data breach notification laws; the California Consumer Privacy Act; the Payment Card Industry Data Security Standards and other applicable standards issued by the Payment Card Industry Security Standards Council, LLC, VISA, MasterCard, Discovery, American Express, JCB, and all other relevant card brands; and the laws referenced in **Exhibit C**.
- (c) “**Customer Account Data**” means personal data that relates to Customer’s relationship with Cendyn, including the names or contact information of individuals authorized by

Customer to access Customer's account and billing information of individuals that Customer has associated with its account.

- (d) **"Customer Personal Data"** means all Personal Data processed by Cendyn or one of its sub-Processors on behalf of Customer.
- (e) **"Supervisory Authority"** includes any competent authority tasked with the enforcement of the Applicable Data Protection Laws.
- (f) **"Privacy Shield Framework"** means the EU-U.S. and/or Swiss-U.S. Privacy Shield self-certification program operated by the U.S. Department of Commerce.
- (g) **"Restricted Transfer"** means any Transfer of Customer Personal Data to a Third Country (as defined in **Exhibit C**) or an international organization that would be prohibited by Applicable Data Protection Laws (or by the terms of data transfer agreements put in place to address the data transfer restrictions of Applicable Data Protection Laws) in the absence of the execution of the Standard Contractual Clauses (as defined below) or another lawful data transfer mechanism, as set out in **Exhibit C**.
- (h) **"Standard Contractual Clauses"** means the all the applicable sets of contractual clauses included in **Exhibit E** and available at <https://www.cendyn.com/scc/>, as indicated in Section 9.1.
- (i) **"Transfer"** means both (a) the transmission of Customer Personal Data from one location or person to another, whether by physical or electronic means; and (b) the granting of access to Customer Personal Data by one location or person to another, whether by physical or electronic means.

1.2. The terms **"Controller"**, **"Data Subject"**, **"Processor"**, **"Member State"**, **"Personal Data"**, **"Personal Data Breach"**, and **"Processing"** shall have the same meaning as in the EU GDPR, and their cognate terms shall be construed accordingly. For the purposes of this DPA, Controller, Processor, Data Importer, and Data Exporter also refers specifically to a Party to this DPA.

## **2. Customer's Representations and Warranties.**

2.1. Customer represents and warrants that it has all necessary rights to provide the Customer Personal Data to Cendyn for the purpose of Processing such data within the scope of this DPA and the Agreement. Within the scope of the Agreement and in its use of the Services, Customer shall be responsible for complying with the statutory requirements relating to data protection and privacy that apply to Customer, in particular regarding the disclosure and Transfer of Customer Personal Data to Cendyn and the Processing of Customer Personal Data.

## **3. Data Protection Obligations.**

3.1. **Limitations on Cendyn's use of Customer Personal Data and Aggregate Data.** Cendyn shall maintain all Customer Personal Data in strict confidence and shall only Process and/or Transfer the Customer Personal Data to perform the Services on behalf of Customer and for no other purpose unless otherwise provided in the Agreement or authorized in advance in writing by Customer or with other documented reasonable instructions (e.g., via email) where such instructions are consistent with the terms of the Agreement. Where Cendyn believes that compliance with any instructions by the Customer would result in a violation of

Applicable Data Protection Laws, Cendyn shall notify the Customer thereof in writing without delay. Cendyn shall not attempt, nor is it able, to identify a Data Subject from Aggregate Data.

**3.2. Transfer of Customer Personal Data.** Cendyn shall be responsible for ensuring that any Transfer of Personal Data across national borders (whether performed by itself or a sub-Processor) complies with all Applicable Data Protection Laws including but not limited to any cross-border data Transfer requirements or prohibitions.

**3.3. Sub-Processors.**

- (a) Cendyn may continue to use those sub-Processors already engaged by Cendyn as of the DPA Effective Date, subject to Cendyn meeting the obligations set out in Section 3.3. (b).
- (b) Customer provides Cendyn general written authorization to engage additional sub-Processors to Process Customer Personal Data provided that:
  - i. Cendyn executes a written agreement (including in electronic form) with each sub-Processor that includes provisions that are no less protective of Customer Personal Data than the level of protection required by the obligations set forth in this DPA.
  - ii. Cendyn maintains an up-to-date list of its sub-Processors at [https://www.cendyn.com/subprocessors\\_list/](https://www.cendyn.com/subprocessors_list/), which contains a mechanism for Customer to subscribe to notifications of changes to the list of sub-Processors. If, within fourteen (14) days of Cendyn updating the list of sub-Processors, Customer notifies Cendyn in writing of any reasonable objections to the proposed new appointment, Cendyn shall not appoint, or disclose any Customer Personal Data to, that proposed sub-Processor until reasonable steps have been taken to address the objections raised by Customer and, in turn, Customer has been provided with a reasonable written explanation of the steps taken to account for any such objections. If Customer, nevertheless, objects to the proposed appointment, it shall be entitled to terminate the Agreement as a remedy.
- (c) Cendyn shall remain fully liable to Customer for the performance of the sub-Processor's obligations under this DPA with Customer.

**3.4. Return or Deletion of Customer Personal Data.**

- (a) Unless applicable laws, the Agreement, or this DPA require storage of Customer Personal Data, at any time upon Customer's request, including at termination of the Agreement, Cendyn shall immediately return or securely destroy all originals and production copies of Customer Personal Data (whether in electronic or hard copy form) in its, or its sub-Processors, possession, custody, or control or in accordance with the requirements of the Agreement, this DPA and applicable laws.
- (b) Upon request, Cendyn shall confirm compliance with the obligations described in this Section 3.3(c) in writing.
- (c) If Cendyn or its sub-Processor is legally obliged to store Customer Personal Data for a longer duration, Cendyn shall inform Customer about the Customer Personal Data that will be kept, the legal obligation and the retention period. At the end of such retention period Cendyn shall delete the respective Customer Personal Data.
- (d) Customer Personal Data may be stored in Cendyn's back-up systems up to one (1) month after the termination of the Services.

- (e) Until Customer Personal Data is deleted or returned, Cendyn shall continue to ensure compliance with the DPA, and in particular the obligations described in this Section 3.3(c).

### 3.5. Roles of the Parties.

- (a) **Cendyn as a Processor of Customer Personal Data.** In the context of this DPA and its exhibits, with regard to the Processing of Customer Personal Data, Customer acts as a Controller and Cendyn acts as a Processor.
- (b) **Cendyn as a Controller of Customer Account Data.** The parties acknowledge that, with regard to the processing of Customer Account Data, Customer is a controller and Cendyn is an independent controller, not a joint controller with Customer. Cendyn will process Customer Account Data as a Controller (a) in order to manage the relationship with Customer; (b) carry out Cendyn's core business operations, such as accounting and filing taxes; (c) in order to detect, prevent, or investigate security incidents, fraud, and other abuse or misuse of the Services; (d) identity verification; (e) to comply with Cendyn's legal or regulatory obligation to retain Subscriber Data; and (f) as otherwise permitted under Applicable Data Protection Laws and in accordance with this DPA, the Agreement, and the Cendyn Privacy Policy.

## 4. Security Standards.

- 4.1. Cendyn shall maintain and monitor a comprehensive, written information security program that contains technical and organizational measures to protect the security, confidentiality, and integrity of Customer Personal Data against any misuse and loss in accordance with the requirements of the applicable Data Protection Laws, as set forth in **Exhibit D**. The appropriate technical and organizational measures shall take into account any applicable industry standards, the costs of implementation, the nature, scope, context and purposes of the processing, and risks for the rights and freedoms of data subjects. Cendyn shall review and, as appropriate, revise its information security program at least annually or whenever there is a material change in Cendyn's business practices that may reasonably implicate the security, confidentiality, or integrity of Customer Personal Data.
- 4.2. Cendyn shall ensure that its information security program covers all networks, systems, servers, computers, notebooks, laptops, PDAs, mobile phones and other devices that process or handle Customer Personal Data. Moreover, Cendyn shall ensure that its information security program includes industry-standard password protections, firewalls and anti-virus and malware protections to protect Customer Personal Data handled or stored on Cendyn's computer systems.
- 4.3. Cendyn shall take reasonable steps to ensure the reliability of any of its employees, agents, or contractors who may have access to Customer Personal Data. Cendyn shall ensure that access to Customer Personal Data is strictly limited to those individuals who need to know or access it, as strictly necessary to fulfil the documented Processing instructions given to Cendyn by Customer or to comply with Applicable Data Protection Laws. Cendyn shall ensure that all such individuals are subject to formal confidentiality undertakings, professional obligations of confidentiality, or statutory obligations of confidentiality.

## 5. General Cooperation.

- 5.1. **Data Subject Rights Requests Received by Customer.** Taking into account the nature of the Processing, Cendyn shall assist Customer by implementing appropriate technical and organizational measures, insofar as this is possible, for the fulfilment of Customer's obligations in responding to requests to exercise rights of the Data Subjects under Applicable

Data Protection Laws (**"Data Subject Rights Request"**). Cendyn shall assist Customer to enable Customer to comply with any request from a Data Subject to exercise the Data Subject's right of access, right to rectification, restriction of Processing, erasure, data portability, objection to Processing, or the right not to be subject to automated individual decision making. To the extent legally permitted, Customer shall be responsible for any reasonable costs arising from Cendyn's provision of such assistance.

- 5.2. **Requests Concerning Customer Personal Data to Cendyn.** If Cendyn directly receives a request related to any Customer Personal Data, Cendyn shall, where not legally prohibited from doing so, notify Customer as soon as reasonably practicable and in no event later than two (2) business days, and shall not respond to any such requests unless this DPA, the Agreement, any applicable Statement of Work, a written instruction from the Customer to Cendyn provides otherwise or where Cendyn has a mandatory obligation under applicable law to respond directly. Cendyn shall reasonably cooperate with Customer to limit the scope of any disclosure to that which is legally necessary. If Cendyn cannot provide such compliance for whatever reasons, Cendyn shall promptly notify the Customer of its inability to comply, in which case Customer is entitled to suspend the transfer of Customer Personal Data and/or terminate this DPA and/or the Agreement, subject to the terms of the Standard Contractual Clauses.
- 5.3. **Data Protection Impact Assessments and Prior Consultations.** Upon Customer's request, Cendyn agrees to provide relevant information and documentation with regard to any data protection impact assessments and prior consultations with supervisory authorities when Customer reasonably considers that such data protection impact assessments or prior consultations are required pursuant to Applicable Data Protection Laws, but in each such case solely with regard to Processing of Customer Personal Data by, and taking into account the nature of the Processing and information available to Cendyn.
- 5.4. **Cendyn's Assistance with Customer Security Obligations with Applicable Data Protection Laws.** Cendyn will provide reasonable assistance to Customer regarding Customer's compliance with its security obligations under Applicable Data Protection Law relevant to Cendyn's role in Processing the Customer Personal Data. In a situation where requested level of assistance will be excessive or unreasonably burdensome for Cendyn, any such assistance will be exercised at Customer's cost.
- 5.5. **Lawful Instructions.** Cendyn will immediately inform Customer if, in Cendyn's opinion, an instruction from Customer infringes Applicable Data Protection Law. The Agreement, Customer's configuration of the Services, and this DPA and constitute Customer's instructions to Cendyn regarding the Processing of Customer Personal Data.
- 5.6. **Changes to Applicable Laws.** In the event of a change of any applicable law which is likely to have a substantial adverse effect on the warranties and obligations provided under this DPA, Cendyn shall promptly notify the change to Customer as soon as it is aware of such change, in which case the Customer is entitled to suspend the transfer of Customer Personal Data to Cendyn and/or terminate the Agreement.

## **6. Notification of Personal Data Breaches**

- 6.1. Cendyn shall notify Customer in writing of a Personal Data Breach affecting Customer Personal Data in the most expedient time possible under the circumstances, and in any event within 48 hours of discovering the Personal Data Breach of Personal Data Processed by Cendyn or its sub-Processors. A Personal Data Breach shall be deemed discovered by Cendyn or its sub-Processors as of the first day on which the Personal Data Breach is known to Cendyn or Sub-processor (including an individual employee or officer or other agent of Cendyn or

Sub-processor) or should reasonably have been known to have occurred with a reasonable certainty. Cendyn shall reasonably cooperate and assist Customer with any investigation into, and/or remediation of, a Personal Data Breach. Any such notification shall summarize to the extent possible in reasonable detail the timing and nature of the Personal Data Breach, the impact on Customer, and/or the Data Subjects affected by such Personal Data Breach, the categories and approximate number of Personal Data records concerned, the categories and approximate number of Data Subjects concerned, the corrective action taken or proposed to be taken by Cendyn and the name and contact details of Cendyn's data protection officer or a contact point where more information can be obtained. Cendyn's notification of or response to a Personal Data Breach under this Section 6 will not be construed as an acknowledgement by Cendyn's of any fault or liability with respect to the Personal Data Breach.

## **7. Audit Rights**

- 7.1. Where Customer is entitled to and desires to review Cendyn's compliance with the Applicable Data Protection Laws, Customer may request, and Cendyn will provide (subject to obligations of confidentiality), relevant documentation or any relevant audit report Cendyn might have been issued. If Customer, after having reviewed such documentation, still reasonably deems that it requires additional information, Cendyn shall further reasonably assist and make available to Customer, upon a written request and subject to obligations of confidentiality, all other information (excluding legal advice) and/or documentation necessary to demonstrate compliance with this DPA and the obligations pursuant to the Applicable Data Protection Laws (Articles 32 to 36 of the EU GDPR in particular). Cendyn shall allow for and contribute to audits, including remote inspections of its Services, by Customer or an auditor selected by Customer (and subject to obligations of confidentiality) with regard to the Processing of the Customer Personal Data by Cendyn provided that such auditor is not a competitor of Cendyn. Cendyn shall provide the assistance described in this Section 7, insofar as in Cendyn's reasonable opinion, such audits and the specific requests of Customer do not interfere with Cendyn's business operations or cause Cendyn's to breach any legal or contractual obligation to which it is subject.
- 7.2. Customer agrees to pay Cendyn, upon receipt of invoice, a reasonable fee based on the time spent, as well as to account for the materials expended, in relation to Customer exercising its rights under this Section 7 or the Standard Contractual Clauses.

## **8. No Sales of Customer Personal Data between Customer and Cendyn**

- 8.1. Cendyn acknowledges and confirms that it does not receive any Customer Personal Data as consideration for any services or other items that Cendyn provides to Customer. Customer retains all rights and interests in Customer Personal Data. Customer agrees to refrain from taking any action that would cause any transfers of Personal Data to or from Cendyn to qualify as selling Customer Personal Data under Applicable Data Protection Laws.

## **9. Exhibits to the DPA**

- 9.1. **List of exhibits.** The DPA includes the following exhibits:
  - (a) **Exhibit A** (Details of Processing of Customer Personal Data), available at [https://www.cendyn.com/processing\\_details/](https://www.cendyn.com/processing_details/);
  - (b) **Exhibit B** (List of sub-Processors), available at [https://www.cendyn.com/subprocessors\\_list/](https://www.cendyn.com/subprocessors_list/);

- (c) **Exhibit C** (Jurisdiction Specific Terms), available at [https://www.cendyn.com/jurisdiction\\_specific\\_terms/](https://www.cendyn.com/jurisdiction_specific_terms/).
- (d) **Exhibit D** (Security Measures), available at [https://www.cendyn.com/security\\_measures/](https://www.cendyn.com/security_measures/).
- (e) **Exhibit E** (Standard Contractual Clauses), available at <https://www.cendyn.com/scc/>.

9.2. **Updates to the exhibits.** Cendyn reserves the right to update the Exhibits mentioned in Section 9.1 from time to time. In particular, Cendyn may update:

- (a) **Exhibit A** to reflect changes to the details of Processing of Customer Personal Data that may arise from changes to the Services or to provide additional information required to conclude the Standard Contractual Clauses.
- (b) **Exhibit B** to reflect changes in the list of sub-Processors.
- (c) **Exhibit C** from time to time to reflect changes in or additions to Applicable Data Protection Laws to which the Parties are subject (or may be subject to) and to reflect changes to the supplementary measures required to conduct Restricted Transfers under the Standard Contractual Clauses (as defined by the applicable sections of Exhibit C).
- (d) **Exhibit D** to reflect changes in the technical and organizational measures implemented by Cendyn, provided that Cendyn does not materially decrease the overall security of the Services.
- (e) **Exhibit E** to replace the Standard Contractual Clauses with a new version adopted by the European Commission.

9.3. **Conflicts between the DPA and the Jurisdiction Specific Terms (Exhibit C).** In case of any conflict or ambiguity between the terms in Exhibit C and any other terms of this DPA, the applicable terms in Exhibit C will prevail.

## 10. Recordkeeping

10.1. Cendyn shall maintain all necessary documentation to evidence its compliance with this DPA for a period of two (2) years after the expiration or termination of this DPA, or for such longer period as otherwise may be required by Applicable Data Protection Laws, whichever occurs latest.

## 11. Cendyn's Representations and Warranties

11.1. Without limitation to the other provisions of this DPA, Cendyn represents and warrants that it shall, at all times, comply with all laws applicable to Cendyn in relation to its processing of Customer Personal Data, including but not limited to Applicable Data Protection Laws.

## 12. Governing Law

12.1. This DPA is governed by and shall be construed in accordance with the laws of the state of Florida. Each party submits to the non-exclusive jurisdiction of the state and federal courts of Palm Beach County in the state of Florida.

## 13. Notice

- 13.1. **Notice to Customer.** Cendyn shall provide any notice made by Cendyn under this DPA to the data protection contact designated by the Customer.
- 13.2. **Notice to Cendyn.** Any notice made by Customer under this DPA shall be provided in writing to the contact listed below.

Data Privacy Officer  
980 North Federal Highway, Suite 200 Boca  
Raton, FL 33432 [DPO@cendyn.com](mailto:DPO@cendyn.com)

**14. Survival.**

- 14.1. Termination or expiry of this DPA for any reason shall not affect any rights or liabilities that have accrued prior to such termination or expiry, or the coming into force, or continuance in force, of any term that is expressly or by implication intended to come into, or continue in force, on or after termination or expiry.

**15. No Waiver.**

- 15.1. Delay in exercising, or failure to exercise, any right or remedy in connection with this DPA shall not operate as a waiver of that right or remedy.

**16. Severability.**

- 16.1. If any provision of this DPA is determined to be unlawful, void, or for any reason unenforceable, then that provision shall be deemed severable from these terms and shall not affect the validity and enforceability of any remaining provisions of this DPA.

**17. Conflicts Between the Agreement and this DPA**

- 17.1. In the event of any conflict between the Agreement (including any annexes and appendices thereto) and this DPA, the provisions of this DPA shall prevail.