



# Data Protection Agreement

v201802

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## 1. Preamble

We "**Netnorth Limited**", and you our "**Customer**", already operate under our published Terms of Service "**Agreement**" for the provision of various Netnorth Services, in the context of which, Netnorth may process Personal Data.

The purpose of this Data Protection Agreement ("**DPA**") is to set out the data protection requirements that apply to the provision of Netnorth Services and ensure that Customer and Netnorth comply with prevailing Data Protection Laws.

This DPA is incorporated into and forms part of your Agreements with us. It replaces and supersedes any obligations in relation to data protection therein. In the event of a conflict between the Agreements and this DPA, the terms of this DPA shall prevail.

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## 2. Definitions

In this DPA, the following definitions apply:

**“Data Controller” “Data Processor” “Data Subjects” “Personal Data” and “Personal Data Breach”** shall have the meanings ascribed to them in the EU General Data Protection Regulation (Regulation 2016/679) (“GDPR”).

**“Data Protection Laws”** means the provisions of applicable laws regulating the use and processing of data relating to persons, as may be defined in such provisions, including a) prior to 25 May 2018, the EU Data Protection Directive 95/46/EC, b) after 25 May 2018 the GDPR, c) the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and d) all other applicable laws and regulations relating to processing of personal data.

**“Services”** means the Netnorth Services to be provided to Customer under the Agreement and any applicable service terms and schedules attached thereto.

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## 3. Compliance with Data Protection Laws

- 3.1 Netnorth and Customer agree that, Customer is an independent Data Controller with respect to the processing of Personal Data which is necessary for the operation of the Services, and Netnorth is an independent Data Controller with respect to the processing of billing, utilisation, usage/patterns/counts/statistics, traffic data and other Customer account related information (to the extent that it is Personal Data) which is necessary for Netnorth’s execution of its obligations under the Agreement, or with respect to any Personal Data held for general business purposes.
- 3.2 Netnorth and Customer shall each comply at all times with its obligations under Data Protection Laws in respect of any Personal Data processed by it under the Agreement and any service terms or schedules attached thereto.

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## 4. Data Processing

- 4.1 Netnorth acknowledges that it is a Data Processor on behalf of the Customer for the purposes of providing Services and performing its related obligations (including incident resolution, support or consultancy services). The subject matter, duration and nature of the processing, the types of Personal Data and applicable Data Subjects are described in the Agreement and any service terms or schedules attached thereto.
- 4.2 In so far as Netnorth processes Personal Data on behalf of Customer as a Data Processor, Netnorth will (and will require that Netnorth affiliates will):
  - 4.2.1 Only process Personal Data in accordance with the Customer’s documented instructions, including as set out in the Agreement and this DPA and ensure that Netnorth personnel process Personal Data only on such instructions of the Customer, unless processing is required by UK or EU or member state law to which Netnorth are subject, in which case Netnorth shall, to the extent permitted by such law, inform Customer of that legal requirement before processing that Personal Data;
  - 4.2.2 Restrict the disclosure and processing of Personal Data to the extent necessary to provide the Services, or as otherwise permitted under the Agreement and this DPA, or by Customer in writing, and only disclose Personal Data on a need to know basis in connection with the Services to those who have committed themselves to confidentiality, or as required by applicable law;
  - 4.2.3 Taking into account the state of the process, 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, implement and maintain appropriate technical and organisational measures designed to protect Personal Data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, and against all other unlawful forms of processing and ensure a level of security appropriate to the risk presented by the processing;

**4.2.4** Ensure that only those personnel who need to have access to Personal Data are granted access to it, and that such access is granted only for the proper provision of the Services;

**4.2.5** If and to the extent Netnorth retains a copy of any Personal Data, not retain that Personal Data for longer than is necessary to perform the Services and at Customer's option, securely destroy or return such Personal Data, except where required to retain the Personal Data by law or regulation. The parties agree that Netnorth shall not actively process such Personal Data and shall be bound by the provisions of this DPA in respect of any such retained Personal Data. Netnorth shall delete such data promptly after it ceases to be obliged to retain it and shall only process it to the extent required to comply with applicable laws.

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## **5. Sub-Processing**

- 5.1** The Customer generally authorises Netnorth to appoint sub-processors in accordance with any restrictions in this DPA and the Agreement.
- 5.2** Prior to disclosing any Personal Data to any sub-processor, Netnorth shall ensure that it has undertaken appropriate due diligence in respect of such sub-processor and shall ensure the sub-processor enters into a written agreement on terms which provide that the sub-processor has equivalent obligations to those set out in this DPA. Netnorth shall remain fully liable to Customer for any breach of such obligations by the sub-processor.
- 5.3** Netnorth shall maintain an up to date list of its sub-processors and shall inform Customer with details of any intended change in sub-processors at least 30 days prior to any such change. The Customer may object to Netnorth's appointment or replacement of a sub-processor prior to its appointment or replacement, provided such objection is based on reasonable grounds relating to data protection. In such event, Netnorth will either not appoint or replace the sub-processor or, if this is not possible, the Customer may terminate the applicable Service (without prejudice to any fees incurred by the Customer prior to termination). Netnorth shall not use such sub-processor until any such objections are resolved or the Customer has terminated the Agreement.

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## **6. Co-operation**

- 6.1** Netnorth shall, insofar as is possible, promptly notify Customer of any enquiry, complaint notice or other communication it receives from any supervisory authority, or from any Data Subject relating to the Services (including any requests to access, correct, delete, block or restrict access to their Personal Data or receive a machine-readable copy thereof) and, insofar as is possible and to the extent technically feasible, assist Customer with its obligation to respond to any notification or Data Subject rights request in accordance with the timescales set out in the Data Protection Laws.
- 6.2** If Customer reasonably believes that Netnorth's processing of Personal Data is likely to result in a high risk to the data protection rights and freedoms of Data Subjects, Netnorth shall, on request from Customer, assist Customer in connection with any data protection impact assessment and prior consultation, which may be subject to additional fees and terms, that may be required under Data Protection Laws, taking into account the nature of the processing and the information available to Netnorth.

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## 7. Breach Reporting

Netnorth shall notify Customer without undue delay of becoming aware of any Personal Data Breach involving Personal Data Processed on behalf of the Customer using the Services, and thereafter co-operate with Customer and provide assistance as may be reasonably required by Customer in the investigation, remediation and mitigation of such breach.

Netnorth shall provide reasonable assistance to Customer in respect of any and breach reporting obligations Customer may have, and provide such additional information relating to such breach as Customer may reasonably require.

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## 8. Audits

8.1 Netnorth will maintain all information necessary to demonstrate compliance with its obligations laid down in this DPA and a written record of all processing of Personal Data on behalf of Customer and, upon reasonable request grant Customer and its auditors and agents a right of access to and to take copies of records relating to compliance and all processing of such Personal Data on behalf of Customer in order to assess whether Netnorth has complied with its obligations in respect of the processing of Personal Data. Upon reasonable notice, Netnorth shall provide reasonable assistance in order to assist Customer in exercising its audit rights under this clause provided that:

8.1.1 such access shall occur at a mutually agreeable time and the scope of the visit will be mutually agreed upon;

8.1.2 such access shall not unreasonably interfere with Netnorth's operations;

8.1.3 access to Netnorth premises and systems shall be subject to Netnorth's reasonable access requirements and security policies, and shall not compromise any confidential information to which the Customer has no entitlement.

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## 9. Transfers

Netnorth shall not transfer any Personal Data outside the EEA except to the extent authorised by Customer as follows:

9.1 At the date of this DPA, Customer authorises Netnorth to transfer Personal Data to the United States for the specific purpose of providing Services and performing its obligations under the Agreement. Such authorisation is conditional upon Netnorth entering into Standard Contractual Clauses (in the form adopted by decision 2010/87/EU of 5 February 2010) with its Netnorth affiliate(s) on Customer's behalf and in Customer's name in order to provide adequate protection for such Personal Data.

9.2 If after the date this DPA, Netnorth (or any affiliate or any sub-contractor) proposes to transfer any Personal Data outside the EEA, other than as authorised above, Netnorth (or any affiliate or any sub-contractor) shall obtain Customer's consent prior to such transfer, which consent may be conditional upon the relevant parties having entered into an agreement that ensures that Personal Data is accurately protected as required by the Data Protection Laws.

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## 10. Future Amendments

The parties may amend this DPA at any time during the term of the Agreement by written agreement if necessary to comply with any legal requirement or guidance from a supervisory authority, or if required to take account of any changes to the processing of Personal Data pursuant to the Agreement.

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## 11. Agreement

This customer Data Protection Agreement is made between Netnorth Limited its Customer, pursuant to the requirements of GDPR and any other prevailing applicable laws in the UK, under the intended lawful basis of 'Contract'.

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**Please note: By contracting or using any of our services you agree to be bound by all Netnorth terms and conditions collectively, which can be viewed in our [Terms of Service](#).**