



For Contracts & Purchase Orders effective after November 10, 2022

### **Kodak Data Processing Agreement**

Supplier agrees that it shall comply with the following provisions with respect to all "Personal Information" collected, used, transmitted or maintained for Eastman Kodak Company and its affiliates (collectively, "Kodak"). This Data Processing Agreement (the "DPA") stipulates privacy, confidentiality, and security requirements and demonstrates compliance with applicable privacy, security and data protection laws.

#### **1. Definitions.**

- (a) "Kodak Information" means all Personal Information processed by Supplier in connection with the Services.
- (b) "CA Privacy Law" means (collectively) the California Consumer Privacy Act, the California Privacy Rights Act, and all issued implementing regulations, as and when effective, and any other applicable California state privacy laws.
- (c) "Data Subject Request" means any request by an individual (or by another person acting on behalf of an individual) to exercise a right under any Privacy Law, or any other complaint or inquiry or similar communication about the Processing of the individual's Personal Information.
- (d) "EEA Personal Data" means that subset of Personal Information consisting of personal data (as defined in GDPR) pertaining to residents of the European Economic Area (EEA), Switzerland and the United Kingdom.
- (e) "GDPR" means Regulation (EU) 2016/679, the General Data Protection Regulation and all issued implementing regulations, as and when effective.
- (f) "Personal Information" means all data (regardless of format) that (i) identifies or can be used to identify, contact or locate a natural person, (ii) pertains in any way to an identified natural person, or (iii) falls within any definition of "personal information" or "personal data" under any applicable Privacy Law. Personal Information includes obvious identifiers (such as names, addresses, email addresses, phone numbers and identification numbers) as well as biometric data, "personal data" (as defined in the GDPR) and any and all information about an individual's computer or mobile device or technology usage, including (for example) IP address, MAC address, unique device identifiers, unique identifiers set in cookies, and any information passively captured about a person's online activities or device location. Personal Information includes all EEA Personal Data and Sensitive Personal Information (as indicated on the Appendix).
- (g) "Privacy Laws" means all applicable laws that regulate the Processing of Personal Information. In particular, "Privacy Laws" may include (as applicable) the CA Privacy Law, the GDPR, and other applicable laws that specify privacy, security or security breach notification obligations that affect the Personal Information or the provision of the services by Supplier.
- (h) "Processing" means any operation or set of operations which is performed upon Personal Information, whether or not by automatic means, such as collection, compilation, use, disclosure, duplication, organization, storage, alteration, Transfer, transmission, combination, redaction, erasure, or destruction.
- (i) "Restricted Transfer" means any Transfer (defined below) where the applicable Privacy Law requires the parties to demonstrate adequate protection using a contractual instrument other means, including (for exam-

ple) a cross-border transfer or cross-border disclosure to a recipient in a country that does not provide adequate protection for the data. Restricted Transfers do not include Transfers to recipients in countries whose data protection regimes have been declared adequate by relevant data protection authorities or which are otherwise not restricted.

- (j) "Security Breach" means a "personal data breach" (as defined in the GDPR), a "breach of the security of a system" or similar term (as defined in any other applicable Privacy Law) or any other event that compromises the security, confidentiality or integrity of Personal Information.
- (k) "Services" means all services that Kodak requests the Supplier to perform under the Agreement or any other contract or agreement that involves Processing of Personal Information.
- (l) "Standard Contractual Clauses" means the contract terms set forth in the Annex to the European Commission's decision C(2021) 3972 of 4 June 2021 containing Standard Contractual Clauses for the transfer of personal data to third countries pursuant to Regulation (EU) 2016/679.
- (m) "Subprocessor" means any third party (including an affiliate of Supplier) that provides any services to Supplier and that may have access (including inadvertent access) to any unencrypted Personal Information.
- (n) "Transfer" means to disclose or otherwise make the Personal Information available to a third party (including to any affiliate or Subprocessor of Supplier), either by physical movement of the Personal Information to such third party or by enabling access to the Personal Information by other means.

## **2. General Obligations.**

- (a) Supplier shall only Process or Transfer Kodak Information as authorized by Kodak in writing and as necessary to perform the Services. The Appendix below contains a general description of the Processing activities and Services. Supplier may periodically update the Appendix and provide the updated version to Kodak as needed to inform Kodak of any changes, including any changes to the privacy and security contacts, Subprocessors and/or Transfers.

Notwithstanding the previous paragraph, Kodak authorizes Supplier to further process Kodak Information as needed for its internal operational activities such as responding to data subject requests, making back-ups as part of disaster recovery/business continuity programs, and processing required for legal or regulatory compliance or to security its networks, systems or applications. When engaged in further processing, Kodak is acting as data as a controller for the limited purposes of engaging in the processing activity (or as a "contractor" processing the data for a business purpose under the CA Privacy Law) and subject to all obligations of any applicable Privacy Laws with respect to this processing.

- (b) Supplier shall promptly inform Kodak in writing: (i) if it cannot comply with any material term of its agreement with Kodak regarding the Services (if this occurs, Supplier shall use reasonable efforts to remedy the non-compliance, and Kodak shall be entitled to terminate Supplier's further Processing of Kodak Information); (ii) of any request for access to any Kodak Information received from an individual who is (or claims to be) the subject of the data; (iii) of any request for access to any Kodak Information received by Supplier from any government official (including any data protection agency or law enforcement agency) unless it is explicitly prohibited by law from notifying Kodak of the request; (iv) of any other requests with respect to Kodak Information received from Kodak's employees or other third parties, other than those set forth in the agreement. Supplier understands that it is not authorized to respond to these requests, unless explicitly authorized by Kodak or the response is legally required under a subpoena or similar legal document issued by a government agency that compels disclosure by Supplier.
- (c) Each party must use reasonable efforts to stay informed of the legal and regulatory requirements for its Processing of Personal Information. Supplier's Processing shall comply with all Privacy Laws that are applicable to the Processing, as well as Supplier's own privacy notices. Supplier will promptly notify Kodak if, in its opinion, the instructions given by Kodak for Processing violate any law.

- (d) Supplier shall reasonably cooperate with Kodak and with its affiliates and representatives in responding to Data Subject Requests and/or regulatory inquiries as needed for Kodak to demonstrate compliance with the Privacy Laws applicable to it and to respect individuals' rights under such Privacy Laws. Supplier will reasonably assist Kodak with any data protection impact assessments and prior consultations with regulators as needed to comply with the Privacy Laws.

3. **Specific Compliance Requirements.** To the extent applicable:

- (a) Supplier certifies that it complies with the CA Privacy Law and similar US state laws. Supplier shall not (i) sell the Kodak Information, (ii) retain, use or disclose the Kodak Information other than as specified in the contract(s) with Kodak, as needed to perform the services and for appropriate Business Purposes (as defined in and permitted by the CA Privacy Law), (iii) retain, use or disclose the Kodak Information outside of its direct business relationship with Kodak. Additionally, for personal data subject to [CA Privacy Law](#).
- (b) If the Services involve the collection of Personal Information directly from individuals, Supplier will provide the individuals with a clear and conspicuous privacy notice, which notice shall either (i) be Kodak's privacy notice, or (ii) be Supplier's privacy notice, provided that such notice must address any legal requirements for such notices in the jurisdictions where it is given, be translated into the languages used in connection with Supplier's interaction with the individuals, and indicate that Supplier is processing the data as a processor on behalf of its clients. All such notices must be approved by Kodak in writing.
- (c) If the Kodak Information will include "protected health information" as defined in the Privacy, Security and Breach Notification Rules issued under the Health Insurance Portability and Accountability Act ("HIPAA"), Supplier and Kodak shall execute an appropriate Business Associate Agreement as required by HIPAA.
- (d) If the Kodak Information will include any payment card information, Supplier shall comply with all applicable requirements of the Payment Card Industry Data Security Standard as published by the PCI Security Standards Council ([https://www.pcisecuritystandards.org/pci\\_security/](https://www.pcisecuritystandards.org/pci_security/)).
- (e) If the Kodak Information will include EEA Personal Data, Supplier and Kodak shall ensure adequate protection for the EEA Personal Data. Each party shall comply with the provisions of GDPR and other Privacy Laws applicable to it, as a "controller" or a "processor" (as defined in GDPR). For any Restricted Transfers of EEA Personal Data, the parties shall document adequate protection for the EEA Personal Data using an approved data transfer mechanism in accordance with Section 5 below.

4. **Confidentiality and Data Access.**

- (a) Consistent with the confidentiality provisions of the Agreement, Kodak Information is considered Confidential Information of Kodak and Supplier must maintain all Kodak Information in strict confidence. Supplier may disclose Kodak Information to its employees and contingent workers, but only to the extent such individuals require access to the Kodak Information to perform the Services.
- (b) Prior to allowing any employee or contingent worker to Process any Kodak Information, Supplier shall (i) conduct an appropriate background investigation of the individual as permitted by law (and receive an acceptable response), (ii) require the individual to execute an enforceable confidentiality agreement (in a form acceptable to Kodak), and (iii) provide the individual with appropriate privacy and security training. Supplier will also monitor its employees and contingent workers for compliance with the privacy and security program requirements.

5. **Data Transfers and Subprocessors.**

- (a) Supplier shall only Transfer Kodak information as authorized by Kodak in the Agreement and as permitted by applicable Privacy Laws. Additionally, as needed to provide the Services (and for any further processing described on the Appendix) Kodak authorizes Supplier to make routine Transfers of Kodak Information in the normal course of business on its corporate systems to itself in other countries and to its affiliates, which are under common ownership using intercompany contracts containing Standard Contractual Clauses or approved binding corporate rules.

- (b) Supplier shall not Transfer the Kodak Information to any Subprocessors or other third parties unless it has been authorized by Kodak in the Agreement or otherwise in writing. Notwithstanding the preceding sentence, if permitted by the Agreement and applicable Privacy Law, Kodak provides a general authorization for Transfers to those Subprocessors listed in the Appendix (as may be amended by the Supplier from time to time, as necessary to perform the Services), provided that the Supplier: (i) has conducted adequate due diligence on the Subprocessor to ensure that it is capable of providing the level of protection for Kodak Data as is required by the Standard Contractual Clauses; (ii) has entered into a written contract with the Subprocessor that includes the Standard Contractual Clauses Module 3 provisions; and (iii) remains primarily liable to Kodak for the acts, errors and omissions of the Subprocessor, as if they were Supplier's own acts, errors and omissions. Supplier represents and warrants that all Restricted Transfers of Kodak Information to the Subprocessors are authorized using an approved mechanism. Kodak reserves the right to object to any Subprocessor for good cause, and Supplier shall not allow Subprocessor to access Kodak Information until such objection is resolved.
- (c) The parties agree that: (i) to the extent that there are Restricted Transfers subject to the GDPR, the Standard Contractual Clauses attached as Schedule 1 shall govern the Transfers; (ii) To the extent that there are Restricted Transfers subject to the UK General Data Protection Regulation, the Standard Contractual Clauses attached as Schedule 1 as modified by the International Data Transfer Addendum to the Standard Contractual Clauses attached as Schedule 2 below shall govern the Transfers; and (iii) To the extent that there are Restricted Transfers subject to the Swiss Federal Act on Data Protection (FADP), Standard Contractual Clauses attached as Schedule 1 below shall govern the Transfers. The parties adopt the GDPR standard for Swiss data and agree that references to "GDPR" in the Standard Contractual Clauses shall be understood to also be references to the FADP and interpreted to permit data subjects in Switzerland to seek redress for their rights in Switzerland.
- (d) Should any supervisory authority or court determine that the Transfer mechanism used herein is no longer an appropriate basis for Restricted Transfers, Supplier and Kodak shall promptly take all steps reasonably necessary to demonstrate adequate protection for the impacted information, using another approved mechanism. Supplier understands and agrees that Kodak may terminate the Transfers as needed to comply with the applicable Privacy Laws.
- (e) Should other jurisdictions require specific contractual terms to enable Restricted Transfers, the parties shall use good faith efforts to execute these instruments as needed to comply with the applicable Privacy Laws. If permitted by law, the parties agree that the terms of the new instruments will be automatically incorporated by reference into this Transfer Agreement upon Kodak's circulation of an amendment to this Transfer Agreement containing new schedules with the required transfer terms. Supplier will have thirty (30) days to object to the inclusion of the new schedules by giving Kodak written notice, in which case Kodak may terminate the Transfers as needed to comply with law.

## 6. **Information Security Requirements.**

- (a) If Supplier has provided Kodak with responses to Kodak's Independent Service Provider Questionnaire (IS PQ), Supplier represents and warrants that all such responses and information were accurate, current and complete, in all material respects.
- (b) Supplier represents and warrants that its information security program meets or exceeds the requirements of the **Information Security Requirements for Kodak Data** a copy of which is posted at <http://www.kodak.com/go/hsesupplier>.
- (c) Supplier shall have implemented and documented appropriate business continuity and disaster recovery plans to enable it to continue or resume providing Services (including restoring access to the Kodak Information) in a timely manner after a disruptive event. At appropriate intervals or as otherwise requested by Kodak, Supplier will provide a copy of its written business continuity and disaster recovery plans to Kodak.
- (d) Upon request, Supplier shall provide Kodak with information about the Supplier's information security program. All such information is Confidential Information of Supplier. Supplier shall also submit its data processing facilities for audit, during Supplier's reasonable business hours, which shall be carried out by Kodak (or by a qualified independent auditor) in a mutually-agreeable manner (designed to validate Supplier's controls against an established industry standard such as ISO 27001) no more

than ten (10) day after any such request. Supplier shall fully cooperate with any such audit. If any such audit reveals material gaps or weaknesses in Supplier's security program, Kodak shall be entitled to terminate Supplier's Processing of Kodak Information until such issues are resolved. Such audits may occur only once per year; provided however, that Kodak may audit at any time in the event of a security breach or suspected material violation by Supplier of its obligations under the Agreement. Supplier shall also cooperate with any audits conducted by any regulatory agency that has authority over Kodak as needed to comply with applicable law.

- (e) Supplier will promptly and thoroughly investigate all allegations of unauthorized access to, use or disclosure of the Kodak Information. Supplier will notify Kodak within 24 hours upon discovery of any Security Breach. This notification must be made via email to [WW-CISO-Mail@kodak.com](mailto:WW-CISO-Mail@kodak.com). Supplier shall provide Kodak with all information about the Security Breach reasonably needed by Kodak to assess its incident response obligations.

If the Security Breach results from either (i) the negligence or misconduct of Supplier (or any Supplier Subprocessor) or (ii) a failure of Supplier to comply with the terms of this Standard or its Agreement with Kodak, Supplier shall bear all costs associated with resolving a Security Breach, including (without limitation), conducting an investigation, engaging appropriate forensic analysis, notifying individuals, regulators and others as required to by law or needed to address a real risk of harm, providing individuals with credit monitoring (or other appropriate remediation service), and responding to individual, regulator and media inquiries. The costs associated by Supplier for investigating and mitigating any Incident (including providing notifications and credit monitoring as set forth above) shall not be limited by the caps on Supplier liability set forth in the Agreement. Supplier's other obligations with respect to liability and indemnification will be governed by the terms of the Agreement.

- (f) When the Supplier ceases to perform Services for Kodak (and at any other time, upon request), Supplier will either (i) return the Kodak Information (and all media containing copies of the Kodak Information) to Kodak, or (ii) purge, delete and destroy the Kodak Information. Upon request, Supplier will provide Kodak with an Officer's Certificate to certify its compliance with this provision. If Supplier is required by applicable law to retain any Kodak Information, Supplier warrants that it shall (i) ensure the continued confidentiality and security of the Kodak Information, (ii) securely delete or destroy the Kodak Information when the legal retention period has expired, and (iii) not actively Process the Kodak Information other than as needed for to comply with law.
- (g) Supplier shall maintain appropriate cyber liability insurance to address the risks from its Processing of Personal Information, which shall include coverage for, but not limited to, network security liability and liability under Privacy Laws including risks of cyber-attacks and security breaches.

\* \* \*

#### **Appendix – Annexes 1-3, General Description of the Processing Activities, Security Measures and Approved Subprocessors**

##### **Additional Attachments (only if needed)**

Schedule 1 – Standard Contractual Clauses

Schedule 2 – UK Addendum

[Schedules 3 *et seq.* – Other Transfers Clauses if needed]

HIPAA Business Associate Agreement

## Appendix to the Data Processing Agreement

This Appendix also serves as the Appendix to the Standard Contractual Clauses attached as Schedule 1, if those are used to authorize cross-border data transfers as indicated below.

### ANNEX I

#### A. LIST OF PARTIES

##### Eastman Kodak Company as Data Exporter or Transferor

Name: Eastman Kodak Company

DPO: Kodak Privacy Office

Address: Eastman Kodak Company, Privacy Office, 13<sup>th</sup> Floor, Building 7, 343 State Street, Rochester, NY 14650

Address 2: Kodak GmbH, Data Privacy, Kesselstrasse 19, 70327 Stuttgart, Germany

Contact person's name, position, and contact details: [privacy@kodak.com](mailto:privacy@kodak.com) or <https://www.kodak.com/go/eearesidents>

Kodak Information Security Contact: [WW-CISO-Mail@kodak.com](mailto:WW-CISO-Mail@kodak.com)

Kodak Contact for Data Breach Reporting: [WW-CISO-Mail@kodak.com](mailto:WW-CISO-Mail@kodak.com)

##### Supplier as Data Importer or Transferee

Name: \_\_\_\_\_

DPO: \_\_\_\_\_

Address \_\_\_\_\_

Contact person's name, position, and contact details: \_\_\_\_\_

Supplier Information Security Contact: \_\_\_\_\_

**B. DESCRIPTION OF THE PROCESSING AND TRANSFER** – (1) if the processing operations are complex, create multiple sections B (e.g., B1 for transfers related to service 1; B2 for transfers related to service 2, etc.) (2) For EEA data, if you use both Module 2 and 3, be sure to indicate which transfers are subject to each Module.

*Categories of data subjects whose personal data are processed and/or transferred*

- ☐ Consumer customers
- ☐ Prospective consumer customers, website visitors
- ☐ Professionals
- ☐ Commercial customers (e.g., company employees)
- ☐ Prospective commercial customers, B2B leads, trade show attendees
- ☐ Job Applicants
- ☐ Employees, contractors, dependents/family
- ☐ Suppliers
- ☐ Children [or] Students
- ☐ Patients
- ☐ Other \_\_\_\_\_

*Categories of personal data are processed and/or transferred*

- ☐ Individual contact information (names, addresses, email addresses, etc.)

- ☐ Unique identifiers (government identification numbers, customer numbers, etc.)
- ☐ Information pertaining to consumer transactions (purchase details, etc.)
- ☐ Information pertaining to commercial transactions
- ☐ Human resources data
- ☐ Customer relationship information (demographic data, preferences etc.)
- ☐ Online and technical information (device data, IP addresses, sensor data etc.)
- ☐ Inferred or derived information (analytics data, propensities etc.)
- ☐ Video and/or audio recordings
- ☐ Data in connection with \_\_\_\_\_[e.g., online advertising targeting, compliance hotline, health & safety, etc.)
- ☐ Sensitive data – see below
- ☐ Other \_\_\_\_\_

*Sensitive data processed and/or transferred (if applicable)*

- ☐ Government-issued identification numbers, national identification numbers
- ☐ Financial account numbers, including payment card data and insurance account numbers
- ☐ Health data, medical information or genetic information
- ☐ Biometric data
- ☐ Consumer reports, including employee background screening reports, investigation reports or credit reports
- ☐ Online account access information, including usernames, passwords, security questions/answers
- ☐ Precise geolocation data
- ☐ Contents of a person's communications (unless the Supplier is the intended recipient of the communications)
- ☐ Data related to criminal convictions or offenses or allegations of crimes
- ☐ Special categories of data that reveal race or ethnicity, political opinions, religious or philosophical beliefs, trade union membership, health, or sex life or sexual orientation

*Additional information about the processing – indicate if the personal information includes:*

- ☐ EEA Personal Data
- ☐ Personal Information subject to the CA Privacy Law
- ☐ Protected Health Information subject to HIPAA [Add Business Associate Agreement]
- ☐ Data pertaining to children under 16 years old
- ☐ Other: \_\_\_\_\_[e.g., specially regulated data]

*Nature of the processing*

Provide a brief overview of the Services and the purposes for which the Personal Information will be processed

*Physical Location of the Personal Information*

Indicate where the processing is carried out and where the Kodak Data are stored.

*The period for which the personal data will be retained, or, if that is not possible, the criteria used to determine that period*

Describe

- ☐ Kodak Information will be deleted automatically upon termination of the Agreement
  - ☐ Kodak Information will be deleted upon termination of the Agreement if requested by Kodak
  - ☐ Kodak Information will be retained after termination for \_\_\_\_\_ [period]
- Indicate data retention rules and controls that exist to prevent further Processing of the Kodak Data by the Supplier and the Subprocessors (if any). \_\_\_\_\_

Maximum Retention periods, if applicable:

Category of Personal Data	Purpose	Retention Period

*Restricted Data Transfers*

☐ Data are not transferred

*Purpose(s) of the data transfer*

Describe

*The frequency of the transfer (e.g. whether the data is transferred on a one-off or continuous basis).*

☐ One-off

☐ Continuous or Periodic \_\_\_\_\_

☐ Ad hoc, as needed for the processing activity

☐ Other: \_\_\_\_\_

*Basis for the transfer of EEA Personal Data:*

☐ Standard Contractual Clauses attached as Schedules 1 and 2.

☐ Supplier has approved set of Binding Corporate Rules for Data Processors.

☐ Other basis: \_\_\_\_\_

☐ [Basis for other Restricted Transfers, e.g., Argentina, New Zealand (for further processing), Brazil, China, et al.]

[List Key Countries and reference added schedules]

*For transfers to (sub-) processors, also specify subject matter, nature and duration of the processing*  
See Annex 3 below.

**C. COMPETENT SUPERVISORY AUTHORITY FOR RESTRICTED TRANSFERS**

<b>Restricted Transfer</b>	<b>Competent Supervisory Authority &amp; Governing Law</b>
EEA Transfers – per Schedule 1	Country where Controller is located.
Swiss Transfers	Federal Data Protection & Information Commissioner (FDPIC) – Switzerland
UK Data Transfers – per Schedule 2	Information Commissioner (ICO) – United Kingdom
<i>Add rows if needed for other jurisdictions</i>	



## **ANNEX II - TECHNICAL AND ORGANISATIONAL MEASURES INCLUDING TECHNICAL AND ORGANISATIONAL MEASURES TO ENSURE THE SECURITY OF THE DATA**

### **EXPLANATORY NOTE FROM THE COMMISSION:**

The technical and organisational measures must be described in specific (and not generic) terms. See also the general comment on the first page of the Appendix, in particular on the need to clearly indicate which measures apply to each transfer/set of transfers.

*Description of the technical and organisational measures implemented by the data importer(s) (including any relevant certifications) to ensure an appropriate level of security, taking into account the nature, scope, context and purpose of the processing, and the risks for the rights and freedoms of natural persons.*

*For transfers to (sub-) processors, also describe the specific technical and organisational measures to be taken by the (sub-) processor to be able to provide assistance to the controller and, for transfers from a processor to a sub-processor, to the data exporter*

*Supplier should either attach its standard security schedule or else provide a link to where security information is posted online.*

Supplier's information security program is described on Supplier's website at [\[INSERT URL\]](#).

## **ANNEX III – LIST OF SUBPROCESSORS**

*Supplier should either complete the chart or else provide a link to where subprocessor information is posted online.*

Kodak has authorised Supplier's use of the subprocessors listed at [\[INSERT URL\]](#), or

Kodak has authorised Supplier's use of the following subprocessors:

<b>Subprocessor Name</b>	<b>Subprocessor Address</b>	<b>Description of the Services</b>	<b>Categories of PI</b>	<b>Location of the Processing (list all)</b>	<b>Transfer Mechanism (if EEA Data)</b>

**SCHEDULE 1  
STANDARD CONTRACTUAL CLAUSES**

**This document contains the clauses that can be used to authorize controller to processor transfers (MODULE TWO) with a general authorization for subprocessors.**

<https://www.kodak.com/go/scc>

**SCHEDULE 2  
INTERNATIONAL DATA TRANSFER ADDENDUM TO THE EU COMMISSION  
STANDARD CONTRACTUAL CLAUSES**

<https://www.kodak.com/go/eu-scc>