

Data Processing Agreement

This Data Processing Agreement (this “DP Agreement”), is entered into by and between Customer and Ecolab upon execution by the parties of any agreement, contract, terms and conditions or other document (the “Agreement”) which incorporates this DP Agreement. This DP Agreement applies to and takes precedence over the Agreement to the extent of any conflict.

1. For purposes of this DP Agreement:
 - a. “**EU Standard Contractual Clauses**” means the standard contractual clauses for the transfer of personal data to processors established in third countries (Commission Decision 2010/87/EC) with optional clauses removed.
 - b. “**GDPR**” means the General Data Protection Regulation 2016/679 and all applicable Member State data protection laws and regulations as amended from time to time and will include any laws of the United Kingdom that implement the law.
 - c. “**Member State**” means a country that is a member of the European Union or the European Economic Area.
 - d. “**GDPR Personal Data**” means any information relating to an identified or identifiable individual which information is subject to the GDPR.
 - e. “**Personal Data Breach**” means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, GDPR Personal Data transmitted, stored or otherwise processed.
 - f. “**Process**” and “**Processing**” mean any operation or set of operations performed on GDPR Personal Data or on sets of GDPR Personal Data, whether or not by automated means, such as collection, recording, organization, creating, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.
 - g. “**Supervisory Authority**” means an independent public authority which is established by a Member State pursuant to the GDPR.
2. This DP Agreement applies to the GDPR Personal Data that Ecolab receives from Customer, or otherwise Processes for or on behalf of Customer, in connection with the Agreement.
3. By way of background, but without limiting the scope of this DP Agreement, the Agreement involves the following:
 - a. *Subject matter, nature and purpose of Processing:* See the Agreement for details.
 - b. *Duration of Processing:* For the Term of the Agreement, and any extensions thereof.
 - c. *Categories of GDPR Personal Data typically subject to Processing under the Agreement include:*
 - Customer employee’s name
 - Customer employee’s position/title
 - Customer employee’s email address
 - Customer’s business address
 - Customer’s phone number
 - d. *Typical categories of data subjects (i.e., the individuals to whom the GDPR Personal Data relate):* Staff of Ecolab’s customers (including, but not limited to, employees, associates, trainees, apprentices, directors, officers, temporary workers, agents, contingent workers and contractors).
4. For purposes of the GDPR, Ecolab acts as a Processor of GDPR Personal Data on behalf of Customer. Ecolab will Process the GDPR Personal Data only on documented instructions from Customer, unless Ecolab is required to Process the GDPR Personal Data by European Union or Member State law to which Ecolab is subject. In such case, Ecolab shall inform Customer of that legal requirement before Processing, unless that law prohibits providing such information on important grounds of public interest within the meaning of the GDPR.
5. Ecolab shall immediately inform Customer if, in Ecolab’s reasonable opinion, an instruction from Customer infringes upon the GDPR.
6. Ecolab may subcontract the collection or other Processing of GDPR Personal Data only in compliance with the conditions for sub processing set forth in the GDPR. Customer hereby authorizes Ecolab to use sub processors from time to time. Upon Customer’s request, Ecolab will provide Customer with a list of sub processors. Where Ecolab engages another processor for carrying out specific processing activities on behalf of the Customer, the same data protection obligations as set out in this DP Agreement shall be imposed on that other processor. Where that other processor fails to fulfil its data protection obligations, the Ecolab shall remain fully liable to the Customer for the performance of that other processor’s obligations.

7. Ecolab will ensure that the persons Ecolab authorizes to Process the GDPR Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.
8. 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 impact on the individuals to whom the GDPR Personal Data relates, Ecolab shall implement appropriate technical and organizational measures designed to ensure a level of security appropriate to the risk as identified in Article 32 of the GDPR.
9. In assessing the appropriate level of security, Ecolab shall in particular take account of the risks presented by the transfer and Processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to the GDPR Personal Data.
10. Taking into account the nature of the Processing, Ecolab will assist Customer by appropriate technical and organizational measures, insofar as this is possible, for the fulfilment of Customer's obligation to respond to requests by individuals for exercising their rights under the GDPR (such as rights to access their GDPR Personal Data).
11. Ecolab will assist Customer in ensuring Customer's compliance with the security obligations of the GDPR, as relevant to Ecolab's role in Processing the GDPR Personal Data, taking into account the nature of Processing and the information available to Ecolab.
12. Ecolab will comply with the Personal Data Breach-related obligations directly applicable to it under the GDPR and, taking into account the nature of Processing and the information available to Ecolab, will assist Customer in complying with Customer's obligations under Article 33 and 34 of the GDPR.
13. If requested by Customer, Ecolab will provide reasonable assistance to and cooperation with Customer for Customer's performance of a data protection impact assessment of the Processing or proposed Processing of the GDPR Personal Data involving Ecolab.
14. If requested by Customer, Ecolab will provide reasonable assistance to and cooperation with Customer for Customer's consultation with Supervisory Authorities in relation to the Processing or proposed Processing of the GDPR Personal Data involving Ecolab.
15. Customer shall reimburse Ecolab for the cost of any assistance offered to Customer as described in this DP Agreement (e.g. in Sections 10-14 and 17) beyond what is reasonable taking into account the nature of the Processing.
16. Ecolab will, at the choice of Customer, return to Customer and/or delete all GDPR Personal Data, including all copies of such GDPR Personal Data, upon the end of the provision of services relating to Processing except to the extent that European Union or Member State law requires storage of the GDPR Personal Data. If Customer fails to remove such Customer Data within a reasonable time, not to exceed sixty (60) days following such termination, then Ecolab may retain or destroy such Customer Data without liability with respect thereto.
17. Ecolab will make available to Customer all information necessary to demonstrate compliance with this DP Agreement and will allow for and contribute to audits conducted by Customer or another auditor mandated by Customer.
18. Customer acknowledges that from time to time during the term of the Agreement GDPR Personal Data will be transferred to third countries. To facilitate transfer of GDPR Personal Data to third countries, the parties agree to enter into the EU Standard Contractual Clauses.
 - a. The Customer (as "data exporter") and Ecolab (as "data importer") hereby enter into, as of the Effective Date, the Standard Contractual Clauses for the transfer of GDPR Personal Data to processors established in third countries, Decision 2010/87/EU (the "SCCs") (the text of which is available at https://ec.europa.eu/info/law/law-topic/data-protection/international-dimension-data-protection/standard-contractual-clauses-scc_en) which are incorporated by this reference and constitute an integral part of this DP Agreement. The Parties are deemed to have accepted and executed the SCCs in their entirety, including the appendices.
 - b. In cases where the SCCs apply, and there is a conflict between the terms of the DP Agreement and the terms of the SCCs, the terms of the SCCs shall control.
 - c. The information contained in Section 3 of this DP Agreement shall fulfill the requirements of the SCCs Appendix 1 (Description of Processing).
 - d. The terms of the Security DP Agreement, available from Ecolab upon request and/or attached hereto as an DP Agreement, shall fulfill the requirements of the SCCs Appendix 2 (Technical and Organizational Measures).
 - e. At such time as the EU Commission, a Supervisory Authority, or a similar EU regulator modifies the SCCs, such SCCs shall apply upon their effective date. Parties agree that the reference and hyperlink in Section 18(a) may be modified to include the new SCCs upon notice to Customer, without the need for subsequent agreement.