

CHEMONICS GROUP UK LIMITED – DATA SUB-PROCESSING AGREEMENT

BACKGROUND

- (A) Chemonics and the Authority have entered into an agreement for the supply of services (**Prime Contract**) that requires Chemonics to process personal data on behalf of the Authority in connection with the Prime Contract and Chemonics wishes to sub-contract some of this processing to the Provider to provide the services set out in the sub-contract entered into between Chemonics and the Provider (**Master Agreement**).
- (B) This Personal Data Sub-Processing Agreement (**DSPA**) sets out the terms, requirements and conditions on which the Provider will process personal data when providing services to Chemonics under the Master Agreement. This DSPA contains the mandatory clauses required by Article 28(3) of the UK GDPR for contracts between controllers and processors which Chemonics is required to flow-down to the Provider.

AGREED TERMS

1. Definitions and interpretation

The following definitions and rules of interpretation apply in this DSPA.

1.1 Definitions:

Authority: the authority referred to in the Master Agreement and such other persons including public authorities, entitled under the Prime Contract to use the services to be delivered by Chemonics under the Prime Contract.

Authority Personal Data: means any personal data which Chemonics processes in connection with this agreement in the capacity of a processor on behalf of the Authority as set out in Annex A.

Business Purposes: the services to be provided by the Provider to Chemonics as described in the Master Agreement and any other purpose specifically identified in Annex A.

Chemonics: means Chemonics Group UK Limited incorporated and registered in England and Wales with company number 14411359 whose registered office is at 1 Benjamin Street, Farringdon, London, United Kingdom, EC1M 5QL.

Commissioner: the Information Commissioner (see Article 4(A3), UK GDPR and section 114, DPA 2018).

controller, processor, data subject, personal data, personal data breach and processing: have the meanings given to them in the Data Protection Legislation.

Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including without limitation the UK GDPR; the Data Protection Act 2018 (and regulations made thereunder) (**DPA 2018**); the Privacy and Electronic Communications Regulations 2003 (*SI 2003/2426*) as amended; and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the Commissioner or other relevant regulatory authority and which are applicable to a party.

Provider: the provider of services to Chemonics and party to the Master Agreement.

Provider Personnel: means all directors, officers, employees, agents, consultants and contractors of the Provider engaged in the performance its obligations under the Master Agreement or this DSPA.

Records: has the meaning given to it in clause 12.

SCCs: the Commission's International Data Transfer Agreement for the transfer of personal data from the United Kingdom.

Term: this Agreement's term as defined in clause 10.

UK GDPR: has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the DPA 2018.

- 1.2 This DSPA is subject to the terms of the Master Agreement and is incorporated into the Master Agreement. Interpretations and defined terms set forth in the Master Agreement apply to the interpretation of this DSPA.
- 1.3 The Annexes form part of this DSPA and will have effect as if set out in full in the body of this DSPA. Any reference to this DSPA includes the Annexes.
- 1.4 A reference to writing or written includes email.
- 1.5 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.6 In the case of conflict or ambiguity between:
- (a) any provision contained in the body of this DSPA and any provision contained in the Annexes, the provision in the body of this DSPA will prevail;
 - (b) any of the provisions of this DSPA and the provisions of the Master Agreement, the provisions of this DSPA will prevail; and
 - (c) any of the provisions of this DSPA and any executed SCC, where required, the provisions of the executed SCC will prevail.

2. Personal data types and processing purposes

- 2.1 Chemonics and the Provider agree and acknowledge that for the purpose of the Data Protection Legislation:
- (a) the Authority is the controller of the Authority Personal Data;
 - (b) Chemonics is the primary processor in relation to the Authority (and the Authority Personal Data) and the Provider is the sub-processor;
 - (c) the Authority retains control of the Authority Personal Data and remains responsible for its compliance obligations under the applicable Data Protection Legislation, and Chemonics will ensure that the Authority has any required notices and consents in place to enable lawful processing of the Authority Personal Data by Chemonics and the Provider, and has provided written processing instructions to Chemonics; and
 - (d) Annex A describes the subject matter, duration, nature and purpose of the Processing and the personal data categories and data subject types in respect of which the Provider may process the Authority Personal Data to fulfil the Business Purposes.
- 2.2 Should the determination in clause 2.1(a) or clause 2.1(b) change, then each party shall work together in good faith to make any changes that are necessary to clause 1, clause 2, and/or the Annexes.

3. Provider's obligations

- 3.1 The Provider will only process the Authority Personal Data to the extent, and in such a manner, as is necessary for the Business Purposes in accordance with Chemonics' written instructions. The Provider will not process the Authority Personal Data for any other purpose or in a way that does not comply with this DSPA or the Data Protection Legislation. The Provider must immediately notify Chemonics if, in its opinion, Chemonics' instructions do not comply with the Data Protection Legislation.
- 3.2 The Provider must comply promptly with any Chemonics and/or Authority written instructions requiring the Provider to amend, transfer, delete or otherwise process the Authority Personal Data, or to stop, mitigate or remedy any unauthorised processing.
- 3.3 The Provider will maintain the confidentiality of the Authority Personal Data and will not disclose the Authority Personal Data to third parties unless Chemonics or this DSPA specifically authorises the disclosure, or as required by domestic law, court or regulator (including the Commissioner). If a domestic law, court or regulator (including the Commissioner) requires the Provider to process or disclose the Authority Personal Data to a third party, the Provider must first promptly inform Chemonics of such legal or regulatory requirement and give Chemonics an opportunity to object or challenge the requirement, unless the domestic law prohibits the giving of such notice.
- 3.4 The Provider will reasonably assist Chemonics, at no additional cost to Chemonics, with meeting Chemonics' and the Authority's compliance obligations under the Data Protection Legislation, taking into account the nature of the Provider's processing and the information available to the Provider, including in relation to data subject rights, data protection impact assessments and reporting to and consulting with the Commissioner or other relevant regulator under the Data Protection Legislation.
- 3.5 The Provider must notify Chemonics promptly of any changes to the Data Protection Legislation that may reasonably be interpreted as adversely affecting the Provider's performance of the Master Agreement or this DSPA.

4. Provider's employees

- 4.1 The Provider will ensure that all Provider Personnel:
- (a) are informed of the confidential nature of the Authority Personal Data and are bound by confidentiality obligations and use restrictions in respect of the Authority Personal Data;
 - (b) have undertaken training on the Data Protection Legislation relating to handling Authority Personal Data and how it applies to their particular duties; and
 - (c) are aware both of the Provider's duties and their personal duties and obligations under the Data Protection Legislation and this DSPA.

5. Security

The Provider must at all times implement appropriate technical and organisational measures against accidental, unauthorised or unlawful processing, access, copying, modification, reproduction, display or distribution of the Authority Personal Data, and against accidental or unlawful loss, destruction, alteration, disclosure or damage of Authority Personal Data including, but not limited to, the security measures set out in Annex B.

6. Personal data breach

- 6.1 The Provider will immediately and in any event without undue delay notify Chemonics if it becomes aware of:
- (a) the loss, unintended destruction or damage, corruption, or unusability of part or all of the Authority Personal Data. The Provider will restore such Authority Personal Data at its own expense as soon as possible;
 - (b) any accidental, unauthorised or unlawful processing of the Authority Personal Data; or
 - (c) any personal data breach.
- 6.2 Where the Provider becomes aware of (a), (b) and/or (c) above, it shall, without undue delay, also provide Chemonics with the following information:
- (a) description of the nature of (a), (b) and/or (c), including the categories of in-scope Authority Personal Data and approximate number of both data subjects and the Authority Personal Data records concerned;
 - (b) the likely consequences; and
 - (c) a description of the measures taken or proposed to be taken to address (a), (b) and/or (c), including measures to mitigate its possible adverse effects.
- 6.3 Immediately following any accidental, unauthorised or unlawful Authority Personal Data processing or personal data breach, the parties will co-ordinate with each other to investigate the matter. Further, the Provider will co-operate with Chemonics and/or the Authority at no additional cost to Chemonics, in Chemonics' handling of the matter, including but not limited to:
- (a) assisting with any investigation;
 - (b) providing Chemonics and/or the Authority with physical access to any facilities and operations affected;
 - (c) facilitating interviews with the Provider's employees, former employees and others involved in the matter including, but not limited to, its officers and directors;
 - (d) making available all relevant records, logs, files, data reporting and other materials required to comply with all Data Protection Legislation or as otherwise reasonably required by Chemonics and/or the Authority; and
 - (e) taking reasonable and prompt steps to mitigate the effects and to minimise any damage resulting from the personal data breach or accidental, unauthorised or unlawful Authority Personal Data processing.
- 6.4 The Provider will not inform any third party of any accidental, unauthorised or unlawful processing of all or part of the Authority Personal Data and/or a personal data breach without first obtaining Chemonics' written consent, except when required to do so by domestic law.
- 6.5 The Provider agrees that Chemonics and/or the Authority have the sole right to determine:
- (a) whether to provide notice of the accidental, unauthorised or unlawful processing and/or the personal data breach to any data subjects, the Commissioner, other in-scope regulators, law enforcement agencies or others, as required by law or regulation or in Chemonics' and/or the Authority's discretion, including the contents and delivery method of the notice; and

- (b) whether to offer any type of remedy to affected data subjects, including the nature and extent of such remedy.

6.6 The Provider will cover all expenses associated with the performance of the obligations under clause 6.1 to clause 6.3 unless the matter arose from Chemonics' and/or the Authority's specific written instructions, negligence, wilful default or breach of this DSPA, in which case Chemonics will cover all reasonable expenses.

6.7 The Provider will also reimburse Chemonics for all expenses that Chemonics and/or the Authority incurs when responding to an incident of accidental, unauthorised or unlawful processing and/or a personal data breach to the extent that the Provider caused such, including all costs of notice and any remedy as set out in clause 6.5.

7. Cross-border transfers of personal data

7.1 If the transfer of the Authority Personal Data from Chemonics to the Provider is a restricted transfer under the Data Protection Legislation, and the provisions of Article 45 UK GDPR do not apply, the parties shall agree to execute the SCCs and agree to be bound by the SCCs as modified by the information contained in Annex C and, in such circumstances, the parties agree that this DSPA incorporates by reference the SCCs to the extent required to enable the Authority Personal Data to be transferred lawfully between the parties in accordance with the Data Protection Legislation.

7.2 Where the Provider is authorised by Chemonics to appoint a subcontractor to process the Authority Personal Data in accordance with clause 8, then the Provider shall effect and shall ensure that any subcontractor effects any restricted transfers of the Authority Personal Data in accordance with the Data Protection Legislation or, if the provider is outside the United Kingdom, in accordance with the data protection laws and regulations applicable to the transfer of the Authority Personal Data in the jurisdictions in which they operate, as such laws and regulations may change from time to time. The Provider shall make any executed SCCs and/or other relevant documentation available to demonstrate the lawful transfer of the Authority Personal Data available to Chemonics upon request.

7.3 If applicable, the Provider shall notify Chemonics immediately in case of any conflict between the laws and regulations in the jurisdictions in which it and any of its subcontractors or third party processors operate and the Data Protection Legislation.

8. Subcontractors

8.1 The Provider may only authorise a third-party (**subcontractor**) to process the Authority Personal Data if:

- (a) Chemonics provides written consent prior to the appointment of each subcontractor;
- (b) the Provider enters into a written contract with the subcontractor that contains terms substantially the same as those set out in this DSPA, in particular, in relation to requiring appropriate technical and organisational data security measures, and, upon Chemonics' written request, provides Chemonics with copies of the relevant excerpts from such contracts;
- (c) the Provider maintains control over all of the Authority Personal Data it entrusts to the subcontractor; and
- (d) the subcontractor's contract terminates automatically on termination of this DSPA for any reason.

8.2 Where the subcontractor fails to fulfil its obligations under the written agreement with the Provider which contains terms substantially the same as those set out in this DSPA, the Provider remains fully liable to Chemonics for the subcontractor's performance of its DSPA obligations.

8.3 The parties agree that the Provider will be deemed by them to control legally any Authority Personal Data controlled practically by or in the possession of its subcontractors.

8.4 On Chemonics' written request, the Provider will audit a subcontractor's compliance with its obligations regarding the Authority Personal Data and provide Chemonics with the audit results at the Provider's expense. Where Chemonics concludes reasonably that the subcontractor is in material default of its obligations regarding the Authority Personal Data, Chemonics may in writing instruct the Provider to instruct the subcontractor to remedy such deficiencies within a reasonable period.

9. Complaints, data subject requests and third-party rights

9.1 The Provider must, at no additional cost to Chemonics, take such technical and organisational measures as may be appropriate, and promptly provide such information to Chemonics as Chemonics may reasonably require, to enable Chemonics and/or the Authority to comply with:

- (a) the rights of data subjects under the Data Protection Legislation, 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
- (b) information or assessment notices served on Chemonics and/or the Authority by the Commissioner or other relevant regulator under the Data Protection Legislation.

9.2 The Provider must notify Chemonics immediately in writing if it receives any complaint, notice or communication that relates directly or indirectly to the processing of the Authority Personal Data or to either party's or the Authority's compliance with the Data Protection Legislation.

9.3 The Provider must notify Chemonics promptly if it receives a request from a data subject for access to their Authority Personal Data or to exercise any of their other rights under the Data Protection Legislation.

9.4 The Provider will give Chemonics, and/or the Authority at no additional cost to Chemonics, its full co-operation and assistance in responding to any complaint, notice, communication or data subject request.

9.5 The Provider must not disclose the Authority Personal Data to any data subject or to a third party other than in accordance with Chemonics' and/or Authority's written instructions, or as required by domestic law.

10. Term and termination

10.1 This DSPA will remain in full force and effect so long as:

- (a) the Master Agreement remains in effect; or
- (b) the Provider retains any of the Authority Personal Data related to the Master Agreement in its possession or control (**Term**).

10.2 Any provision of this DSPA that expressly or by implication should come into or continue in force on or after termination of the Master Agreement to protect the Authority Personal Data will remain in full force and effect.

10.3 The Provider's failure to comply with the terms of this DSPA is a material breach of the Master Agreement. In such event, Chemonics may terminate the Master Agreement effective immediately on written notice to the Provider without further liability or obligation of Chemonics.

10.4 If a change in any Data Protection Legislation prevents either party from fulfilling all or part of its Master Agreement obligations, the parties may agree to suspend the processing of the Authority Personal Data until that processing complies with the new requirements. If the parties are unable to bring the Authority Personal Data processing into compliance with the Data Protection Legislation, either party may terminate the Master Agreement with immediate effect on written notice to the other party.

11. Data return and destruction

11.1 At Chemonics' request, the Provider will give, or a third party nominated in writing by Chemonics, a copy of or access to all or part of the Authority Personal Data in its possession or control in the format and on the media reasonably specified by Chemonics.

11.2 On termination of the Master Agreement for any reason or expiry of its term, the Provider will securely delete or destroy or, if directed in writing by Chemonics, return and not retain, all or any of the Authority Personal Data related to this DSPA in its possession or control.

11.3 If any law, regulation, or government or regulatory body requires the Provider to retain any documents or materials or Authority Personal Data that the Provider would otherwise be required to return or destroy, it will notify Chemonics in writing of that retention requirement, giving details of the documents, materials or Authority 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.

11.4 The Provider will certify in writing to Chemonics that it has destroyed the Authority Personal Data within 7 days after it completes the deletion or destruction.

12. Records

12.1 The Provider will keep detailed, accurate and up-to-date written records regarding any processing of the Authority Personal Data, including but not limited to, the access, control and security of the Authority Personal Data, approved subcontractors, the processing purposes, categories of processing, any transfers of personal data to a third country and related safeguards, and a general description of the technical and organisational security measures referred to in clause 5.

12.2 The Provider will ensure that the Records are sufficient to enable Chemonics to verify the Provider's compliance with its obligations under this DSPA and the Provider will provide Chemonics with copies of the Records on request.

13. Audit

13.1 The Provider will permit Chemonics and its third-party representatives to audit the Provider's compliance with its DSPA obligations, on at least 7 days' notice, during the Term. The Provider will give Chemonics and its third-party representatives all necessary assistance to conduct such audits. The assistance may include, but is not limited to:

- (a) physical access to, remote electronic access to, and copies of the Records and any other information held at the Provider's premises or on systems storing the Authority Personal Data;
- (b) access to and meetings with any of the Provider's personnel reasonably necessary to provide all explanations and perform the audit effectively; and

- (c) inspection of all Records and the infrastructure, electronic data or systems, facilities, equipment or application software used to store, process the Authority Personal Data.

13.2 The notice requirements in clause 13.1 will not apply if Chemonics reasonably believes that a Authority Personal Data Breach occurred or is occurring, or the Provider is in breach of any of its obligations under this DSPA or any Data Protection Legislation.

13.3 If a personal data breach occurs or is occurring, or the Provider becomes aware of a breach of any of its obligations under this DSPA or any Data Protection Legislation, the Provider will:

- (a) promptly conduct its own audit to determine the cause;
- (b) produce a written report that includes detailed plans to remedy any deficiencies identified by the audit;
- (c) provide Chemonics with a copy of the written audit report; and
- (d) remedy any deficiencies identified by the audit as soon as possible.

13.4 At Chemonics' written request, the Provider will at its own cost:

- (a) conduct an information security audit;
- (b) provide a written report that includes detailed plans to remedy any security deficiencies identified by the audit;
- (c) provide Chemonics with a copy of the written audit report; and
- (d) remedy any deficiencies identified by the audit as soon as possible and in any event within 5 working days.

14. Warranties

14.1 The Provider warrants and represents that:

- (a) its employees, subcontractors, agents and any other person or persons accessing the Authority Personal Data on its behalf are reliable and trustworthy and have received the required training on the Data Protection Legislation;
- (b) it and anyone operating on its behalf will process the Authority Personal Data in compliance with the Data Protection Legislation and other laws, enactments, regulations, orders, standards and other similar instruments;
- (c) it has no reason to believe that the Data Protection Legislation prevents it from providing any of the Master Agreement's contracted services; and
- (d) considering the current technology environment and implementation costs, it will take appropriate technical and organisational measures to prevent the unauthorised or unlawful processing of Authority Personal Data and the accidental loss or destruction of, or damage to, Authority Personal Data, and ensure a level of security appropriate to:
 - (i) the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage;
 - (ii) the nature of the Authority Personal Data protected; and
 - (iii) comply with all applicable Data Protection Legislation and its information and security policies, including the security measures required in clause 5.

14.2 Chemonics warrants and represents that to the best of its knowledge and belief the Provider's expected use of the Authority Personal Data for the Business Purposes and as specifically instructed by Chemonics will comply with the Data Protection Legislation.

15. Indemnification

15.1 The Provider agrees to indemnify, keep indemnified and defend at its own expense the Customer against all costs, claims, damages or expenses incurred by Chemonics or for which Chemonics may become liable due to any failure by the Provider or its employees, subcontractors or agents to comply with any of its obligations under this DSPA or the Data Protection Legislation.

15.2 Any limitation of liability set forth in the Master Agreement will not apply to this DSPA's indemnity or reimbursement obligations.

16. Notice

16.1 Any notice given to a party under or in connection with this DSPA must be in writing and delivered to:

For Chemonics: Chemonics' point of contact at the details provided by Chemonics to the Provider.

For the Provider: the Provider's point of contact at the details provided by the Provider to Chemonics

16.2 Clause 16.1 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

This DSPA has been entered into on the date the Master Agreement is executed.

Annex A Personal data processing purposes and details

Controller: the Authority, at its principal place of business.

Controller's contact information: the Authority's contact information as provided by the Authority to Chemonics.

Processor: Chemonics, incorporated and registered in England and Wales with the company number 14411359 whose registered office is at 1 Benjamin Street, Farringdon, London, United Kingdom.

Processor's contact information: Chemonics' contact information as provided by Chemonics to the Provider.

Sub-processor: the Provider, at its principal place of business.

Sub-processor's contact information: the Provider's contact information as provided by the Subcontractor to Chemonics.

Subject matter of processing: the performance of the Provider's duties under the Master Agreement.

Duration of processing: for the term of the agreement and for such time afterwards as required for the parties to exercise their rights and obligations under clause 11 of this DSPA.

Nature of processing: the processing of the Authority Personal Data to enable the Subcontractor to comply with its duties under this DSPA.

Business Purposes: to enable the Subcontractor to perform its duties under the Master Agreement.

Personal data categories: identity data, contact details and such other personal data categories as relevant.

Data subject types: the Authority's staff, and such other data subjects whose personal data is processed by the Subcontractor in connection with the performance of its duties under this agreement.

Annex B Security measures

The Provider must implement such measures to ensure a level of security appropriate to the risk involved, including as appropriate:

1. the pseudonymisation and encryption (including encryption of transmission) of personal data;
2. the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
3. the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident; and
4. a process for regularly testing, assessing and evaluating the effectiveness of the security measures.

The Provider warrants that, prior to entering into the Master Agreement, that it has informed Chemonics of the security measures that it is required to implement.

Annex C SCCs

The Approved International Data Transfer Agreement (**IDTA**), being the template IDTA A.1.0 issued by the Commissioner and laid before Parliament in accordance with s. 119A of the Data Protection Act 2018 on 2 February 2022, as it is revised under section 5.4 of its Mandatory Clauses (available [here](#)), shall apply as follows:

1. Table 1: Parties and signatures

- 1.1 The start date is the date of this DSPA.
- 1.2 The parties are set out in Annex A of this DSPA.

2. Table 2: Transfer Details

- 2.1 The law of England and Wales is the law that governs the IDTA.
- 2.2 England and Wales is the primary place for legal claims to be made by the parties.
- 2.3 The exporter is a processor.
- 2.4 The importer is the exporter's sub-processor.
- 2.5 The UK GDPR does not apply to the importer's processing of the Authority Personal Data.
- 2.6 The linked agreement is this DSPA. The other agreement is the Master Agreement. The further agreement relevant to the exporter is the Prime Contract.
- 2.7 The term of this DSPA is the relevant time period.
- 2.8 The parties cannot end the IDTA before the termination of this DSPA unless there is a breach of the IDTA or the parties agree in writing.
- 2.9 Neither party can end the IDTA pursuant to s. 29.2 IDTA.
- 2.10 The importer may not transfer on the Authority Personal Data unless otherwise in accordance with clause 7 and clause 8 of this DSPA.
- 2.11 The importer may only transfer on the Authority Personal Data if the exporter tells them in writing that they may do so.
- 2.12 The parties will review the IDTA each time there is a change to the Authority Personal Data, the purposes, the importer's information, TRA or risk assessment.

3. Table 3: Transferred Data

- 3.1 The Authority Personal Data processed is set out in Annex A of this DSPA. These categories of personal data will update automatically if the information in the linked agreement is updated.
- 3.2 The special categories of personal data processed is set out in Annex A of this DSPA. These categories of personal data will update automatically if the information in the linked agreement is updated.
- 3.3 The categories of data subject are set out in Annex A of this DSPA. These categories of data subjects will update automatically if the information in the linked agreement is updated.
- 3.4 The purpose of the processing is set out in Annex A of this DSPA. The purpose will update automatically if the information in the linked agreement is updated.

4. Table 4: Security Requirements

- 4.1 Refer to Annex B of this DSPA.

Part 2: No extra protection clauses are adopted.

Part 3: The commercial clauses are set out in the Master Agreement.

Part 4: The mandatory clauses are expressly incorporated by reference pursuant to clause 7.1 of this DSPA.