



# Data Processing Agreement for Agilysys Subscription Services

October 2021

## 1. General

1.1 This data processing agreement (the "Data Processing Agreement") governs Agilysys's Processing of Personal Data as part of Agilysys's provision of Agilysys Subscription Services ("Subscription Services") to a customer ("You"). The Subscription Services are described in (i) the contract by which the Customer ordered Subscription Services from Agilysys (the "Supplement"), (ii) the applicable master agreement between You and Agilysys (together, with applicable Supplements, the "Agreement"), and (iii) in our Privacy Policy, which is posted at <https://www.agilysys.com/en/privacy>.

1.2 Unless otherwise stated in the Agreement, this Data Processing Agreement is incorporated into and subject to the terms of the Agreement and shall be effective and remain in force for the term of the Subscription Services.

1.3 Except as stated otherwise in this Data Processing Agreement or the Supplement, in the event of any conflict between the terms of the Agreement, including any attachments or exhibits referenced therein, or the Supplement, and the terms of this Data Processing Agreement, the relevant terms of this Data Processing Agreement shall take precedence.

## 2. Definitions

2.1 "Agilysys" means Agilysys NV LLC;

2.2 "Agilysys Affiliate(s)" means any entity which Agilysys directly or indirectly controls or is controlled by or is under joint control with Agilysys, that may assist in the performance of the Subscription Services as set forth in Section 3.3;

2.3 "Applicable Data Protection Law" means all applicable federal, state, and foreign laws and regulations governing the Processing of the Personal Data under this Data Processing Agreement;

2.4 "Binding Corporate Rules" has the meaning set forth under Applicable Data Protection Law;

2.5 "Controller" means any person or entity which determines the purposes and means of the processing, including, as applicable, any "business", as that terms are defined by Applicable Data Protection Laws.

2.6 "Data Subject" means the identified or identifiable person to whom Personal Data relates.

2.7 "EU Model Clauses" means the standard contractual clauses annexed to the EU Commission Decision (EU) 2021/914 of 4 June 2021 for the Transfer of Personal Data to Processors established in Third Countries under the Directive 95/46/EC, or any successor standard contractual clauses that may be



adopted pursuant to an EU Commission decision; Personal Data Protection on 2 November 2016;

2.8 “Personal Data” means (a) information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular natural person or household; or (b) any information defined as “personal data”, “personal information,” or other similar terms under Applicable Data Protection Laws that Agilysys Processes on Your behalf as part of the Subscription Services;

2.9 “Process/Processing” means any operation or set of operations that is performed upon Personal Data, whether or not by automatic means, such as access, collection, recording, organization, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available.

2.10 “Processor” means any person or entity which Processes Personal Data, including, as applicable, any “service provider” or “contractor”, as those terms are defined by Applicable Data Protection Laws.

2.11 “Regulator” means any independent public authority, government agency, and any similar regulatory authority responsible for the enforcement of Data Protection Laws.

2.12 “Third Party Subprocessor” means a third party subcontractor, other than an Agilysys Affiliate, engaged by Agilysys and which may Process Personal Data.

Other capitalized terms have the definitions provided for them in the Agreement, Supplement, Applicable Data Protection Law, or as otherwise specified below.

### **3. Processing**

3.1 You are the Controller of the Personal Data provided by You to Agilysys for Processing. You must comply with Your obligations under Applicable Data Protection Law, including but not limited to: (a) validly transmitting Personal Data to Agilysys; (b) providing any notices to, or obtaining consent from, any Data Subjects; (c) securing a permissible legal purpose for Processing; and (d) Your other decisions and actions concerning the Processing of Personal Data.

3.2 Agilysys is a Processor of the Personal Data provided by You to Agilysys for Processing. Agilysys is responsible for compliance with its obligations under this Data Processing Agreement and with its obligations as a Processor under Applicable Data Protections Law.

3.3 Agilysys and any persons acting under the authority of Agilysys, including any Agilysys Affiliates and Third Party Subprocessors identified at <https://www.agilysys.com/en/third-party-processing> will Process Personal Data solely for the purpose of (i) providing the Subscription Services in accordance with the Agreement and this Data Processing Agreement (ii) complying with Your written instructions, or (iii) complying with Agilysys’s legal and regulatory obligations.

3.4 You are providing Personal Data to Agilysys for the limited purpose of facilitating Agilysys’s provision of the Subscription Services to You. Agilysys will not (i) retain, use, or disclose Your Personal Data, (ii) share or sell (as those terms are defined by Applicable Data Protection Law) Your Personal Data (iii) share or sell (as those terms are defined by Applicable Data Protection Law) Your Personal Data for the purpose of cross-context behavioral advertising, or (iv) combine Your Personal Data with personal data Agilysys receives from or on behalf of another customer, except for the purpose of performing (a) Agilysys’s obligations to You under this Data Processing Agreement, the Agreement, and any additional



written instructions provided by You or (b) Agilysys's obligations under applicable law. You may, at any time, provide written instructions, or, upon advanced notice to Agilysys, take reasonable steps, to stop and/or remediate the unauthorized use of Your Personal Data.

3.5 Agilysys (i) shall comply with all obligations and restrictions imposed on it by Applicable Data Protection Laws in its role as a Processor, including providing the same level of privacy protection as required by Applicable Data Protection Laws; and (ii) shall notify Company if Service Provider determines that it can no longer meet its obligations under Applicable Data Protection Laws.

#### **4. Categories of Personal Data and Data Subjects**

4.1 The subject-matter of the Processing, the duration of the Processing, the nature and purpose of the Processing, the types of Personal Data and categories of Data Subjects Processed under this Data Processing Agreement are further specified in Exhibit 1 attached hereto.

4.2 Unless otherwise specified in the Agreement, Personal Data Processed may not include any sensitive or special personal data that imposes specific data security or data protection obligations on Agilysys in addition to or different from those specified herein.

#### **5. Your Instructions**

5.1 Agilysys will Process Personal Data on Your written instructions as specified in the Agreement and this Data Processing Agreement, including instructions regarding data transfers as set forth in Section 7.

5.2 You may provide additional instructions in writing to Agilysys with regard to Processing of Personal Data in accordance with Applicable Data Protection Law. Agilysys will comply with all such reasonable instructions to the extent necessary for Agilysys to (i) comply with its Processor obligations under Applicable Data Protection Law; or (ii) assist You to comply with Your Controller obligations under Applicable Data Protection Law relevant to Your use of the Subscription Services, including assistance with notifying individuals of Personal Data breaches as set forth in Section 11, Data Subject requests as set forth in Section 6, and data protection impact assessments (DPIAs).

5.3 To the extent required by Applicable Data Protection Law, Agilysys will inform You if, in its opinion, Your instruction infringes Applicable Data Protection Law. You acknowledge and agree that Agilysys is not responsible for performing legal research and/or for providing legal advice to You concerning the Processing of Your Personal Data or any other matter.

5.4 Without prejudice to Agilysys's obligations under this Section 5, You agree to pay reasonable charges that may be incurred by Agilysys to comply with instructions with regard to the Processing of Personal Data that require the use of resources different from or in addition to those required for the provision of the Subscription Services.

#### **6. Rights of Data Subjects**

6.1 If possible, Agilysys will grant You electronic access to Your Subscription Services environment that holds Personal Data to enable You to respond to requests from Data Subjects to exercise their rights under Applicable Data Protection Law, including requests to access, delete or erase, restrict, rectify, receive and transmit, block access to or object to Processing of specific Personal Data or sets of Personal Data.



6.2 To the extent such electronic access is not available to You, You can submit a service request via MyAgilysys Support Portal, or other applicable primary support tool provided for the Subscription Services Agilysys Support, and provide detailed written instructions to Agilysys (including the Personal Data necessary to identify the Data Subject) on how to assist with such Data Subject requests in relation to Personal Data held in Your Subscription Services environment. Agilysys will promptly follow such instructions. If applicable, the parties will negotiate in good faith with respect to any charges or fees that may be incurred by Agilysys to comply with instructions that require the use of resources different from or in addition to those required for the provision of the Subscription Services.

6.3 If Agilysys directly receives any Data Subject requests regarding Personal Data, it will pass on such requests to You without responding to the Data Subject, if the Data Subject identifies You as the Data Controller. If the Data Subject does not identify You, Agilysys will instruct the Data Subject to contact the entity responsible for collecting their Personal Data.

## **7. Personal Data Transfers**

7.1 Personal Data held in Your Subscription Services environment will be hosted in the designated data center for your region and product. Agilysys will not migrate Your Subscription Services environment to a different data center region without Your prior written authorization.

7.2 Without prejudice to Section 7.1, Agilysys may access and Process Personal Data on a global basis as necessary to perform the Subscription Services, including for IT security purposes, maintenance and related infrastructure, technical support and change management.

7.3 To the extent such global access involves a transfer of Personal Data originating from the European Economic Area (“EEA”), Switzerland or the United Kingdom (“UK”) to Agilysys Affiliates or Third Party Subprocessors located in countries outside the EEA, Switzerland or the UK that have not received a binding adequacy decision by the European Commission or by a competent national EEA, Swiss or UK data protection authority, such transfers are subject to (i) the terms of the EU Model Clauses incorporated into this Data Processing Agreement by reference, specifically, (a) Module 2 where You are the Controller and Agilysys is a Processor and (b) Module 3 where You are the Processor and Agilysys is also a Processor; or (ii) other binding and appropriate transfer mechanisms that provide an adequate level of protection in compliance with Applicable Data Protection Law, such as approved Binding Corporate Rules for Processors. For the purposes of the EU Model Clauses, You and Agilysys agree that (i) You will act as the data exporter on Your own behalf and on behalf of any of Your entities, (ii) Agilysys will act on its own behalf and/or on behalf of the relevant Agilysys Affiliates as the data importers, (iii) any Third Party Subprocessors will act as ‘subcontractors’ pursuant to Clause 11 of the EU Model Clauses.

7.4 Transfers of Personal Data originating from other locations globally to Agilysys Affiliates or Third Party Subprocessors are subject to (i) for Agilysys Affiliates, the terms of the Agilysys Intra-Company Data Processing and Transfer Agreement entered into between Agilysys Corporation and the Agilysys Affiliates, which requires all transfers of Personal Data to be made in compliance with all applicable Agilysys security and data privacy policies and standards; and (ii) for Third Party Subprocessors, the terms of the relevant Agilysys Third Party Subprocessor agreement incorporating security and data privacy requirements consistent with the relevant requirements of this Data Processing Agreement.

7.5 For the purposes of the EU Model Clauses

- Clause 9(a), Module 2 and Module 3: the parties selection Option 2. The time period is 14 calendar days.
- Clause 11(a): the parties do not select the independent dispute resolution option.
- Clause 17, Module 2 and Module 3: the parties selection Option 2. The Member State of the data exporter is: EU Member State where You or Your EU data representative are



located.

- Clause 18(b), Module 2 and Module 3: the Parties agree that those shall be the courts of the EU Member State where You or Your EU data representative are located.
- Annex I(A): You are the data exporter. Agilysys is the data importer. Your contact details are set forth on the Supplement. Contact details for Agilysys are: [privacy@agilysys.com](mailto:privacy@agilysys.com).
- Annex I(B): the parties agree that the information regarding transfer is set forth at <https://www.agilysys.com/en/privacy-policy/> and within this Data Processing Agreement
- Annex I(C): the competent supervisory authority is the supervisory authority in the EU Member State where You or Your EU data representative are located.
- Annex II: the parties agree that Section 9 describes the technical and organizational measures applicable to the transfer

7.6 The terms of this Data Processing Agreement shall be read in conjunction with the EU Model Clauses and other applicable transfer mechanisms pursuant to this Section 7. To the extent there is any conflict between this Data Processing Agreement and the EU Model Clauses, the EU Model Clauses shall prevail.

## **8. Agilysys Affiliates and Third Party Subprocessors**

8.1 Subject to the terms and restrictions specified in Sections 3.3, 7 and 8, You agree that Agilysys may engage Agilysys Affiliates and Third Party Subprocessors to assist in the performance of the Subscription Services.

8.2 Agilysys maintains lists of Agilysys Affiliates and Third Party Subprocessors that may Process Personal Data. These lists are available at <https://www.agilysys.com/en/third-party-processing/>.

8.3 Agilysys will post changes in its Agilysys Affiliates and Third Party Subprocessors by updating the information posted at <https://www.agilysys.com/en/third-party-processing>. You should monitor the list of Agilysys Affiliates and Third Party Subprocessors frequently for changes, as Agilysys's updating of the list constitutes notice to You. Within fourteen (14) calendar days of Agilysys posting any such changes, You may object to the intended involvement of a Third Party Subprocessor or Agilysys Affiliate in the performance of the Subscription Services, providing objective justifiable grounds related to the ability of such Third Party Subprocessor or Agilysys Affiliate to adequately protect Personal Data in accordance with this Data Processing Agreement or Applicable Data Protection Law in writing by submitting a "service request" via MyAgilysys Support Portal, or other applicable primary support tool provided for the Subscription Services. In the event Your objection is justified, You and Agilysys will work together in good faith to find a mutually acceptable resolution to address such objection, including but not limited to reviewing additional documentation supporting the Third Party Subprocessors' or Agilysys Affiliate's compliance with this Data Processing Agreement or Applicable Data Protection Law, or delivering the Subscription Services without the involvement of such Third Party Subprocessor. To the extent You and Agilysys do not reach a mutually acceptable resolution within a reasonable timeframe, You shall have the right to terminate the relevant Subscription Services (i) upon serving prior notice in accordance with the terms of the Agreement; (ii) without liability to You and Agilysys and (iii) without relieving You from Your payment obligations under the Agreement.

8.4 The Agilysys Affiliates and Third Party Subprocessors are required to abide by the level of data protection and security under Applicable Data Protection Law.

8.5 Agilysys remains responsible at all times for the performance of the Agilysys Affiliates' and Third Party Subprocessors' obligations in compliance with the terms of this Data Processing Agreement and Applicable Data Protection Law.



## **9. Technical and Organizational Measures, and Confidentiality of Processing**

9.1 Agilysys has implemented and will maintain appropriate technical and organizational security measures for the Processing of Personal Data. These measures take into account the nature, scope and purposes of Processing as specified in this Data Processing Agreement and are intended to protect Personal Data against the risks inherent to the Processing of Personal Data in the performance of the Subscription Services, in particular risks from accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to Personal Data transmitted, stored or otherwise Processed.

9.2 In particular, Agilysys has implemented physical access, system access, data access, transmission and encryption, input, data backup, data segregation and security oversight, enforcement and other security controls and measures. You are advised to ensure that these measures and practices are appropriate for the Processing of Personal Data pursuant to this Data Processing Agreement.

9.3 All Agilysys and Agilysys Affiliate staff, as well as any Third Party Subprocessors that may have access to Personal Data are subject to appropriate confidentiality arrangements.

## **10. Audit Rights and Cooperation with You and Your Regulators**

10.1 You may audit Agilysys's compliance with its obligations under this Data Processing Agreement up to once per year. In addition, to the extent required by Applicable Data Protection Law, including where mandated by Your Regulator, You or Your Regulator may perform more frequent audits. Agilysys will contribute to such audits by providing You or Your Regulator with the information and assistance reasonably necessary to conduct the audit, including any relevant records of Processing activities applicable to the Subscription Services ordered by You.

10.2 If a third party is to conduct the audit, the third party must be mutually agreed to by You and Agilysys (except if such Third Party is a competent Regulator). The third party must execute a written confidentiality agreement acceptable to Agilysys or otherwise be bound by a statutory confidentiality obligation before conducting the audit.

10.3 To request an audit, You must submit a detailed proposed audit plan to Agilysys at least thirty days in advance of the proposed audit date. The proposed audit plan must describe the proposed scope, duration, and start date of the audit. Agilysys will review the proposed audit plan and provide You with any concerns or questions (for example, any request for information that could compromise Agilysys security, privacy, employment or other relevant policies). Agilysys will work cooperatively with You to agree on a final audit plan.

10.4 If the requested audit scope is addressed in a SSAE 16/ISAE 3402 Type 2, ISO, NIST, PCI DSS, HIPAA or similar audit report issued by a qualified third party auditor within the prior twelve months and Agilysys provides such report to You confirming there are no known material changes in the controls audited, You agree to accept the findings presented in the third party audit report in lieu of requesting an audit of the same controls covered by the report.

10.5 You will provide Agilysys any audit reports generated in connection with any audit under this Section 10, unless prohibited by Applicable Data Protection Law or otherwise instructed by a Regulator. You may use the audit reports only for the purposes of meeting Your regulatory audit requirements and/or confirming compliance with the requirements of this Data Processing Agreement. The audit



reports are Confidential Information of the parties under the terms of the Agreement.

10.6 Any audits are at Your expense. You will pay any reasonable charges or fees that may be incurred by Agilysys to provide assistance with an audit that requires the use of resources different from or in addition to those required for the provision of the Subscription Services.

## **11. Incident Management and Personal Data Breach Notification**

11.1 Agilysys promptly evaluates and responds to incidents that create suspicion of or indicate unauthorized access to or Processing of Personal Data ("Incident"). All Agilysys and Agilysys Affiliates staff that have access to or Process Personal Data are instructed on responding to Incidents, including prompt internal reporting, escalation procedures, and chain of custody practices to secure relevant evidence. Third Party Subprocessors are expected to meet their Incident reporting obligations under Applicable Data Protection Law.

11.2 In order to address an Incident, Agilysys defines escalation paths and response teams involving internal functions such as Information Security and Legal. The goal of Agilysys's Incident response will be to restore the confidentiality, integrity, and availability of the Subscription Services environment and the Personal Data that may be contained therein, and to establish root causes and remediation steps. Depending on the nature and scope of the Incident, Agilysys may also involve and work with You and outside law enforcement to respond to the Incident.

11.3 To the extent Agilysys becomes aware and determines that an Incident qualifies as a breach of security leading to the misappropriation or accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Personal Data transmitted, stored or otherwise Processed in the Subscription Services environment that compromises the security, confidentiality or integrity of such Personal Data ("Personal Data Breach"), Agilysys will inform You of such Personal Data Breach without undue delay but at the latest within 72 hours.

11.4 Agilysys will take reasonable measures designed to identify the root cause(s) of the Personal Data Breach, mitigate any possible adverse effects and prevent a recurrence. As information regarding the Personal Data Breach is collected or otherwise reasonably becomes available to Agilysys and to the extent permitted by law, Agilysys will provide You with (i) a description of the nature and reasonably anticipated consequences of the Personal Data Breach; (ii) the measures taken to mitigate any possible adverse effects and prevent a recurrence; (iii) where possible, the categories of Personal Data and Data Subjects including an approximate number of Personal Data records and Data Subjects that were the subject of the Personal Data Breach; and (iv) other information concerning the Personal Data Breach reasonably known or available to Agilysys that You may be required to disclose to a Regulator or affected Data Subject(s).

11.5 Unless otherwise required under Applicable Data Protection Law, the parties agree to coordinate in good faith on developing the content of any related public statements or any required notices for the affected Data Subjects and/or notices to the relevant Regulators.

## **12. Return and Deletion of Personal Data upon Termination of Subscription Services**

12.1 You are advised to take appropriate action to back up or otherwise store separately any Personal Data prior to the termination of the Subscription Services. You may make a written request to Agilysys for the retrieval of, or access to, your Personal Data up to ten (10) days prior to the termination of Subscription Services.



12.2 Upon termination of the Subscription Services, Agilysys will promptly delete all copies of Personal Data from the Subscription Services environment by rendering such Personal Data unrecoverable, except as may be required by law.

### **13. Legally Required Disclosure Requests**

13.1 If Agilysys receives any subpoena, judicial, administrative or arbitral order of an executive or administrative agency, regulatory agency, or other governmental authority which relates to the Processing of Personal Data ("Disclosure Request"), it will promptly pass on such Disclosure Request to You without responding to it, unless otherwise required by applicable law (including to provide an acknowledgement of receipt to the authority that made the Disclosure Request).

13.2 At Your request, Agilysys will provide You with reasonable information in its possession that may be responsive to the Disclosure Request and any assistance reasonably required for You to respond to the Disclosure Request in a timely manner.





## **Exhibit 1: Details of Processing of Your Personal Data**

This Exhibit 1 includes certain details of the Processing of Your Personal Data as required by Applicable Data Protection Laws.

### **1. Subject Matter, Nature and Purpose of Processing**

The subject matter, nature and purpose of Processing shall be the provision of the Subscription Services to You in accordance with the Agreement and as set forth in any applicable Supplement.

### **2. Duration of Processing**

The duration of Processing shall be the term of the Subscription Services provided by Agilysys to You.

### **3. Categories of Data Subjects**

The types of Data Subject shall be as is contemplated or related to the Processing described in the Agreement or any applicable Supplement. This may include among others, Your employees, contractors, partners, suppliers, and customers.

### **4. Types of Personal Data**

The types of Personal Data shall be as is contemplated or related to the Processing described in the Agreement or any applicable Supplement. This may include some or all of the Personal Data identified by product at <https://www.agilysys.com/en/privacy>.