

## SCHEDULE D

# Data Processing Agreement

### 1. INTRODUCTION

- 1.1. This Data Processing Agreement (“**Agreement**”) addresses the processing of personal information of European Union residents in connection with the Hosted Services offered by nModal Solutions Inc under a trial license, subscription, or professional services agreement and is attached as Schedule D of the Subscription License Agreement (the “**EULA**”).
- 1.2. This Agreement is between the end-user customer (“**You**”, “**Your**”) and nModal Solutions Inc. (“**nModal**”, “**Us**”, “**We**”) and is incorporated by reference into the Subscription License Agreement.
- 1.3. The parties agree that the EULA together with this Data Processing Agreement governs Your use of the Application or Hosted Service and sets forth Your obligations with respect to the processing and security of Customer Data and Personal Data by the Application or Hosted Services.
- 1.4. The parties also agree that, unless a separate Hosted Services Agreement exists, the EULA together with this Data Processing Agreement governs the provision of Hosted Services and the processing and security of any data, including Personal Data, in connection with that provision.

### 2. Definitions

- 2.1. “**You**” means the end-user customer specified under this Agreement and the Subscriber specified under the EULA.
- 2.2. “**Personal Data**” means any information relating to an identified or identifiable natural person. An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.
- 2.3. “**General Data Protection Regulation**” or “**GDPR**” means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC.
- 2.4. Terms used by not defined in this Agreement (eg. “**processor**”, “**controller**”, “**data subject**”, “**personal data**”) shall have the same meaning as set forth in Article 4 of the GDPR

- 2.5. For the purposes of the GDPR You are the Controller, and nModal is the Processor, except when you act as the Processor of Personal Data, in which case nModal is a Sub-processor.
- 2.6. **“Canvas”** means any document created with nModal software, either:
- 2.6.1. through Analytics Canvas, DataMartist, or other desktop application
  - 2.6.2. through a browser using a user interface,
  - 2.6.3. programmatically, using an Application Programming Interface (“API”),
  - 2.6.4. by any other means made available through nModal that makes an operation using the software,
- that explicitly defines a data processing activity as designed by You.
- 2.7. **“Data Protection Laws”** means in relation to any Personal Data which is Processed in the performance of the Principle Agreement the General Data Protection Regulation (EU) 2016/679 (“GDPR”), together with all laws implementing or supplementing the same and any other applicable data protection or privacy laws;
- 2.8. **“Sub-processor”** means any person (including any third party and any Vendor Affiliate, but excluding an employee of Vendor or any of its sub-contractors) appointed by or on behalf of Vendor or any Vendor Affiliate to Process Personal Data on behalf of any Company Group Member in connection with the Principal Agreement;
- 2.9. **“Cessation Date”** means the last date the Hosted Service is provided to You under the Subscription License Agreement.

### 3. LEGISLATION

- 3.1. This Agreement shall ensure that the Data Processor (nModal) and the Data Controller (You) comply with the applicable Data Protection Laws, including in particular the GDPR.

### 4. DATA PROCESSING

- 4.1. In connection with the nModal’s delivery of the Hosted Services, You may submit Personal Data for data processing.
- 4.2. nModal only performs processing activities that are directed by You, as specified by a Canvas or by Canvases created by You. You agree that your Canvases serve as your complete and final documented instructions to nModal.
- 4.3. You agree not to submit for processing any data which is considered “Special Data” or “Criminal Offence Data” as specified by the GDPR.

4.4. nModal agrees to:

- 4.4.1. process Personal Data only on documented instruction from you, through submission of Your Canvases, unless processing is required by EU or Member State law to which nModal is subject, in which case nModal shall, to the extent permitted by such law, inform You of that legal requirement before processing that Personal Data
- 4.4.2. ensure that persons authorized to process the Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality
- 4.4.3. take all measures required by a Data Processor pursuant to Article 32 of the GDPR
- 4.4.4. treat all data, including Personal Data, as strictly confidential and that it shall inform all its employees, agents, contractors, and / or Authorized Sub-processors engaged in processing Personal Data, of the confidential nature of such Personal Data.
- 4.4.5. take reasonable steps to ensure the reliability of any employee, agent, contractor and /or Authorized Sub-processor who may have access to the Personal Data, ensuring in each case that access is strictly limited to those persons or parties who need to access the relevant Personal Data, as strictly necessary for the purposes and in the context of that person's duties to the Processor
- 4.4.6. ensure that all such persons or parties involved in the processing of Personal Data:
  - 4.4.6.1. have undertaken appropriate training in relation to the Data Protection Laws;
  - 4.4.6.2. are subject to confidentiality undertakings (of which a copy shall be provided upon the Controller's request);
  - 4.4.6.3. and are subject to user authentication and log on processes when accessing the Personal Data.

**5. SUB-PROCESSING**

- 5.1. You consent to nModal engaging Sub-processors for the processing of Personal Data.
- 5.2. Sub-processors are set forth in the list of Authorised Sub-processors made available to You in Annex 2 "Authorized Sub-processors".

- 5.3. nModal will carry out adequate due diligence on each Sub-processor to ensure that it is capable of providing the level of protection for the Personal Data as is required by this Agreement and the Data Protection Laws.
- 5.4. nModal will ensure that the Sub-processors are bound by written agreements that require them to provide at least the level of data protection required under the Data Privacy Laws
- 5.5. At least ten (10) business days prior to authorizing any new Sub-processor to access Personal Data, nModal will update the list of Authorized Sub-processors and provide You with a mechanism to obtain notice of that update. If You do not approve of a new Sub-processor, You may terminate any subscription for the affected service without penalty. After termination You shall remain obligated to make all payments required under any purchase order or other contractual obligation with nModal and shall not be entitled to any refund or return of payment.

## **6. DATA SUBJECT RIGHTS**

- 6.1. nModal will comply with reasonable requests to assist with Your response by a data subject to exercise one or more of their rights under GDPR and will do so in a manner that is consistent with nModal's role as the processor and in accordance with applicable law.
- 6.2. If nModal receives a request from Your data subject to exercise one of their rights under the GDPR, nModal will redirect the data subject to make its request directly to You.

## **7. DATA BREACH**

- 7.1. nModal will notify You without undue delay after becoming aware of a data breach relating to Personal Data. Such notification shall at least:
  - 7.1.1. describe the nature of the Personal Data breach, including where possible, the categories and approximate number of Your data subjects concerned and the categories and approximate number of Personal Data records concerned;
  - 7.1.2. provide the name and contact details of the Data Protection Officer or other contact where more information can be obtained; and
  - 7.1.3. describe the measures taken or proposed to be taken to address the breach including, where appropriate, measures to mitigate its possible adverse effects

## **8. SPECIFIC SECURITY TERMS**

- 8.1. nModal shall implement the appropriate technical and organizational measures as set out in this Agreement and in the Data Privacy Laws, including in accordance with GDPR, Article 32(1).
- 8.2. nModal shall ensure that access to the Personal Data is restricted to only the employees to whom it is necessary and relevant to process the Personal Data in order for the Data Processor

to perform its obligations under the Subscription License Agreement and this Data Processing Agreement, as described in Section 4 of this Agreement.

- 8.3. If nModal's assistance is necessary and relevant, nModal shall assist You in preparing data protection impact assessments in accordance with GDPR, Article 35, along with any prior consultation in accordance with GDPR, Article 36.

## **9. ONWARD AND INTERNATIONAL DATA TRANSFER**

- 9.1. Data that nModal processes on Your behalf may be transferred to, and stored and processed in, the United States or any other country in which nModal or its Sub-processors operate.
- 9.2. You appoint nModal to perform any such transfer of data to any such country and to store and process that data to provide the Hosted Services.
- 9.3. You understand and agree that the transfer of data to nModal or its Sub-processors is necessary and required for Your use of the Hosted Services.
- 9.4. nModal will follow the requirements of the GDPR regardless of where such Personal Data is stored or processed.

## **10. RECORDS OF PROCESSING ACTIVITIES**

- 10.1. nModal shall maintain all records of processing activities required by Article 30(2) of the GDPR.

## **11. DELETION OR RETURN OF PERSONAL DATA**

- 11.1. You may in Your absolute discretion by written notice to nModal within 30 days of the Cessation Date require nModal to (a) return a complete copy of all Company Personal Data to You by secure file transfer in such format as is reasonably notified by You to nModal; and (b) delete and procure the deletion of all other copies of Company Personal Data Processed by any Sub-processor. nModal and its Sub-processors shall comply with any such written request within 30 days of Your written notice.

## **12. AUDIT RIGHTS**

- 12.1. If in Your reasonable judgment, there is insufficient information to confirm nModal's compliance with the terms of this Agreement, You or an accredited third-party audit firm agreed to by both You and nModal may audit nModal's compliance with the terms of this Agreement during regular business hours, with reasonable advance notice to nModal and subject to reasonable confidentiality procedures.
- 12.2. You are responsible for all costs and fees related to such audit, including all reasonable costs and fees for any and all time nModal expends for any such audit, in addition to the rates for services performed by nModal.

- 12.3. Before the commencement of any such audit, You and nModal shall mutually agree upon the scope, timing, and duration of the audit.
- 12.4. You shall promptly notify nModal with information regarding any non-compliance discovered during the course of an audit.
- 12.5. You may not audit nModal more than once annually.

**SIGNATURES**

IN WITNESS WHEREOF, this Agreement is entered into and becomes a binding part of the Subscription License Agreement with effect on the same date and for the same duration as described in the Subscription License Agreement.

**[Subscriber]**

Signature \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Company/Organization \_\_\_\_\_

Date Signed \_\_\_\_\_

**[nModal Solutions Inc.]**

Signature \_\_\_\_\_

Name **James Standen** \_\_\_\_\_

Title **CEO and Data Protection Officer** \_\_\_\_\_

Date Signed **May 25, 2018** \_\_\_\_\_

## ANNEX 1 - DETAILS OF PROCESSING OF COMPANY PERSONAL DATA

This Annex 1 includes certain details of the Processing of Company Personal Data as required by Article 28(3) GDPR. nModal will only process personal data on documented instructions from the controller in the form of a Canvas or Canvases

- 1. Subject matter and duration of the Processing of Company Personal Data**
  - 1.1. The subject-matter of the processing is limited to Personal Data within the scope of the GDPR
  - 1.2. The duration of processing of any data, including Personal Data, by the Processor under this Agreement is the Subscription Term as defined in the Subscription License Agreement.
- 2. The nature and purpose of the Processing of Company Personal Data**
  - 2.1. The nature and purpose of the processing shall be to provide the Hosted Service pursuant to Subscriber's Subscription License Agreement
- 3. Types and Categories of Personal Data to be Processed**
  - 3.1. The types of Personal Data processed by the Online Service include those expressly identified in Article 4 of the GDPR
  - 3.2. The categories of data subjects are Customer's representatives and end users, such as employees, contractors, collaborators, and customers.

## ANNEX 2 - AUTHORIZED SUB-PROCESSORS

1. The following Sub-Processors shall be considered approved by the Data Controller at the time of entering into this Data Processor Agreement:
  - a. Microsoft
  - b. Google