

Ministry of Justice

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(Subject to Change)

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DATA PROTECTION (DATA PROCESSORS ENGAGEMENT) REGULATIONS, 2025

DATA PROTECTION ACT
(No. 3 of 2024)

**DATA PROTECTION (DATA PROCESSORS ENGAGEMENT)
REGULATIONS, 2025**

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DATA PROTECTION ACT
(No. 3 of 2024)

DATA PROTECTION (DATA PROCESSORS ENGAGEMENT)
REGULATIONS, 2025

In EXERCISE of the powers conferred by section 52 of the Data Protection Act, I,....., Minister of Information and Digitilization, on the recommendation of the Authority, make the following Regulations —

1. Citation

These Regulations may be cited as the Data Protection (Data Processors Engagement) Regulations, 2025.

2. Scope of Regulations

These Regulations provide for reasonable measures that a data controller shall take when engaging a data processor in order to satisfy the requirements under section 32 of the Act.

Obligations of a data controller or data processor

3. Pursuant to section 32 of the Act, where a data controller engages the services of a data processor, the data controller shall take reasonable measures to ensure that the data processor —

(a) complies with the principles and obligations under Part III of the Act applicable to the data controller in relation to the collection, further processing and retention of personal data.

(b) assists the data controller with appropriate technical and organizational measures, where practical, in the fulfilment of the obligations

of the data controller to honour the individual rights of data subjects under Part IV of the Act;

(c) implements appropriate technical and organizational measures to ensure the security, integrity and confidentiality of personal data in its possession or under its control as required under Part VI of the Act;

(d) provides the data controller with any information the data controller reasonably requires to comply and demonstrate compliance with the Act; and

(e) obtains the written authorization of the data controller before engaging any new data processor.

4. Written agreement between a data controller and a data processor

(1) A written agreement between a data controller and a data processor shall –

- (a) set out the nature, purpose and duration of the processing to be performed by the data processor;
- (b) set out the likely categories of data subjects and types of personal data to be processed by the data processor, separately noting any types of sensitive personal data likely to be processed;
- (c) require that personal data only be processed by the data processor upon written instructions of the data controller, unless otherwise required under any written law;
- (d) require that personal data only be transferred from Malawi to another country by the data processor upon written instructions of the data controller and in compliance with Part VII of the Act;
- (e) require the data processor to assist the data controller, with the appropriate technical and organizational measures, where

practical, in fulfilling the statutory or contractual obligations of the data controller relating to section 32 of the Act with respect to the collection, further processing and retention of personal data;

- (f) require the data processor to assist the data controller, with the appropriate technical and organizational measures, where practical, in connection with a data protection impact assessment under section 30 of the Act;
- (g) require the data processor to assist the data controller, with the appropriate technical and organizational measures, where practical, in fulfilling the statutory or contractual obligations of the data controller relating to the rights of data subjects under Part IV of the Act;
- (h) require the data processor to implement, prior to commencing any processing, the technical and organizational measures necessary to -
 - (i) ensure the security, integrity and confidentiality of personal data in its possession or under its control in accordance with section 35 of the Act; and
 - (ii) notify the Authority and a data subject of the data breach in accordance with sections 36 and 37 of the Act;
- (i) require the data processor to provide the data controller with any information it reasonably requires to comply and demonstrate compliance with the Act or, where the data controller is also a data processor, with the terms and conditions on which such data processor was engaged;

- (j) require the data processor to provide access to the data controller or his or her representative, to conduct reasonable audits and inspections to confirm compliance with the agreement and the Act;
- (k) set out any data processors it has engaged that would process the personal data on its behalf;
- (l) require the data processor to obtain a written authorization from the data controller before engaging a new data processor;
- (m) require the data processor to delete or return to the data controller all personal data in its possession or control when the engagement is terminated or the stated duration of the processing has otherwise come to an end;
- (n) require the data processor to undertake that any other data processor it has engaged or engages will be bound by the same data protection obligations as those applicable to the data processor; and
- (o) make the data processor fully responsible to the data controller for the performance by any other data processor the data processor has engaged and requiring the data processor to notify the data controller of any failure by the other data processor to fulfil its contractual obligations or its obligations under the Act.

(2) The standard contractual clauses set out in Schedule 1 may be used by a data controller and a data processor to enter into a written agreement in accordance with subregulation (1).

(3) Notwithstanding subregulation (2) -

- (a) the standard contractual clauses may be modified to align with the specific circumstances of the engagement or the anticipated processing of personal data; and

(b) any modification to the standard contractual clauses that results in the agreement offering less protection than those outlined in Schedule 1 shall be deemed invalid.

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SCHEDULE 1 – Standard contractual clauses

1. Description of the processing

- (1) The details of the processing to be performed by [*data processor to be engaged*] on behalf of the [*data controller/data processor engaging*], are specified in [*Annex I*] to this Agreement.

2. Written instructions for processing and international transfers

- (1) The [*data processor to be engaged*] shall process personal data only on, and only to the extent set out in, written instructions from the [*data controller/data processor engaging*], except to the extent such processing is required by applicable law.
- (2) Without limiting the preceding paragraph, the [*data processor to be engaged*] shall only transfer from Malawi to another country upon written documented instructions from the [*data controller/data processor engaging*] and in compliance with Part VII of the Act.

3. Assistance to the [*data controller/data processor engaging data processor*]

- (1) The [*data processor to be engaged*] shall provide assistance to the [*data controller/data processor engaging*] by appropriate technical and organizational measures, where practical, in:
 - (a) [fulfilling its obligations under Part III of the Act / fulfilling its contractual obligations to assist the data processor or data controller that has engaged it, relating to Part III of the Act];
 - (b) [conducting a data protection impact assessment under Section 30 of the Act / fulfilling its contractual obligations to assist the data processor or data controller that has engaged it, relating to a data protection impact assessment under Section 30 of the Act];
 - (c) [fulfilling its obligations to data subjects under Part IV of the Act / fulfilling its contractual obligations to assist the data processor or data controller that has engaged it relating to Part IV of the Act];
- (2) The [*data processor to be engaged*] shall promptly notify the [*data controller/data processor engaging*] of any request it has received from the data subject and shall not respond to the request itself, unless authorized or instructed in writing to do so by the [*data controller/data processor engaging it*].

4. Data security measures

The [*data processor to be engaged*] shall have implemented, prior to commencing any processing, the technical and organizational measures necessary to:

- (a) ensure the security, integrity and confidentiality of personal data in its possession or under its control as required by Section 35 of the Act; and
- (p) make the data breach notifications to the [*data controller/data processor engaging*] required by Section 36 (5) of the Act.

5. Documentation and compliance

- (1) The *[data processor to be engaged]* shall maintain adequate records to demonstrate compliance with this Agreement and its obligations under the Act.
- (2) The *[data processor to be engaged]* shall retain copies of any written instructions it receives from the *[data controller/data processor engaging]* relating to the processing to be undertaken under this Agreement.
- (3) The *[data processor to be engaged]* shall immediately notify the *[data controller/data processor engaging]* in writing if it reasonably believes any such instructions would violate the Act or this Agreement and the *[data processor to be engaged]* shall retain copies of any such notification.
- (4) The *[data processor to be engaged]* shall provide access to the *[data controller/data processor engaging]*, or a representative thereof, to conduct reasonable audits and inspections to confirm compliance with the agreement and the Act.

6. Engagement of a data processor

- (1) The *[data processor to be engaged]* shall notify the *[data controller/data processor engaging]* in writing if it:
 - (a) shall engage the services of another data processor not listed in Annex I to process the personal data that is the subject of this agreement; or
 - (b) receives a similar notification from any data processor engaged by it.
- (2) The notification to the *[data controller/data processor engaging]*:
 - (a) shall be made prior to any such engagement to allow sufficient time for the *[data controller/data processor engaging it]* to review and object to such engagement; or
 - (b) if such prior notification is not feasible, provide a detailed account of the reasons therefor with the notification.
- (3) The *[data processor to be engaged]* undertakes that any data processor it has engaged or engages with respect to processing personal data that is the subject of this Agreement shall be bound by substantially the same data protection obligations as those applicable to *[data processor to be engaged]* hereunder.
- (4) The *[data processor to be engaged]* shall remain fully responsible to the *[data controller/data processor engaging]* for the performance of the obligations of any data processor that the *[data processor to be engaged]* may engage, and *[data processor to be engaged]* shall notify the *[data controller/data processor engaging]* of any failure by such data processor to fulfil such obligations.

7. Termination or completion of processing

Unless otherwise instructed in writing by the *[data controller/data processor engaging]*, the *[data processor to be engaged]* shall [delete / return to the *[data controller/data processor engaging it]*] the personal data processed under this Agreement:

- (a) upon the termination of the engagement under this Agreement; or

(b) when the stated duration of the processing of such personal data has otherwise come to an end.

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ANNEX I to standard contractual clauses

1. Nature, purpose and duration of the processing

[Provide a description of the nature and purpose of the processing by the data processor and the anticipated duration of the processing.]

2. Categories of data subjects

[Provide a description of the categories of data subjects whose personal data is likely to be processed by the data controller.]

3. Types of personal data to be processed

[Provide a description of the types of personal data that are likely to be processed, separately noting any types of personal sensitive personal data that are likely to be processed.]

4. Data processors engaged

[Provide a list of all engaged data processors that will process data that are the subject of this Agreement on behalf of the data processor to be engaged by this Agreement. For each listed data processor, list any data processors that it has, in turn, engaged, and so forth down the chain of data processors. For each data processor listed, include name, address, contact person and contact details.]

Made this day of , 2025.

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Minister of Information and Digitalization