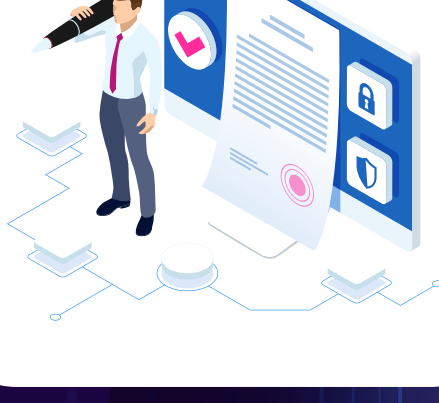




Decoding Data Processing Agreements (DPAs)

The 10 Most Negotiated Provisions in a DPA



Think a DPA is just a legal formality? Think again.

Behind every clause is a negotiation about risk, compliance, and accountability. Here's a visual walkthrough of the most hotly debated Data Processing Agreement provisions and why they matter.

1. Scoping Considerations



What data is being processed, how, and by whom?

- Is it customer PII, HR data, or health records? Different categories demand different controls.
- Is data just being stored or enriched, profiled, or analyzed?
- The controller–processor relationship defines responsibility.
- Scoping is the foundation of the DPA and often revisited multiple times.

Tip: Nail this down early. Vague scoping = downstream negotiation drama.

2. Limitations on Use



How narrowly (or broadly) should the processor use the data?

- Controllers want strict limits to avoid misuse.
- Processors want flexibility for analytics, ML training, or operational improvements.
- Too narrow? You stifle innovation.
- Too broad? You risk violations and misalignment with GDPR.

Tip: Strike a balance with clear language on purpose, retention, and deletion.

3. Subprocessor Authorization



Who's allowed in the data supply chain?

- Article 28(2) requires controller approval for subprocessors.
- Choose between:
 - **Specific Authorization:** Case-by-case approval
 - **General Authorization:** Pre-approval with opt-out rights
- Define how objections are handled and whether they trigger termination rights.

Tip: Modern vendor ecosystems are complex. Controllers want visibility, and processors want agility.

4. Security Incident Notification

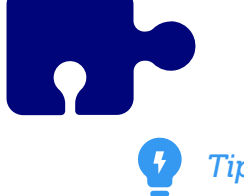


How fast is "without undue delay"?

- Controllers often push for specific timelines (e.g., "within 24 hours").
- Processors may hesitate due to dependencies on third parties.
- Define what qualifies as a notifiable incident — only confirmed breaches, or also attempted intrusions?

Tip: In a crisis, vagueness = chaos. Build in precision and paths to escalation.

5. Security Incident Remediation



After the breach... then what?

- Who takes the lead? Who approves remediation measures?
- Are controllers involved in the response plan?
- Who's the point of contact on each side?

Tip: Your DPA should guarantee transparency, not bottlenecks.

6. Audit Rights



How can controllers verify compliance?

- Controllers want the right to audit.
- Processors prefer offering **SOC 2 Type 2** or **ISO 27001** reports in lieu of on-site visits.
- Negotiations often focus on:
 - Timing and frequency
 - Who pays
 - Scope and confidentiality protections

Tip: Trust but verify, and agree on terms that won't crush operations.

7. Indemnity & Limitation of Liability



Who pays when things go wrong?

- Controllers want indemnity for:
 - Security incidents
 - Non-compliance
 - Third-party claims
- Processors push to **limit liability** often to the value of the contract or 2x its amount.

Tip: This is usually the final and fiercest negotiation. Get legal involved early.

8. Standard Contractual Clauses (SCCs)



Cross-border data transfers need more than a checkbox.

- SCCs are a must-have unless there's an adequacy decision.
- Debate centers on:
 - Which optional clauses to include
 - How detailed Annexes I–III should be (especially TOMs and data flows)

Tip: Post-Schrems II, "fill in later" is not a strategy. Precision matters.

9. Data Subject Access Requests (DSARs)

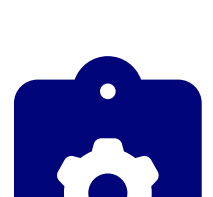


Support vs. overload: where's the line?

- Processors must assist controllers per GDPR Article 28(3)(e).
- But what does "assist" mean?
 - Identity verification?
 - Redactions?
 - Secure handoffs?

Tip: Controllers want speed. Processors fear back-office overload. Spell it out.

10. Technical & Organizational Measures



The security backbone of the DPA.

- Whose TOMs apply: the controller's, the processor's, or both?
- Controllers want detail. Processors want flexibility (especially at scale).
- Be clear about:
 - Encryption, access controls, monitoring, and incident response
 - Customization for high-risk activities

Tip: Controllers want speed. Processors fear back-office overload. Spell it out.

A DPA isn't just paperwork. It's a living agreement where data risk is allocated, regulated obligations are operationalized, and trust is built or broken.

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