

Terms and conditions: Processing personal data

— January 2020

nextway®

We make companies more efficient and people's lives at work easier. We replace processes that involve paper documents, Post-its, spreadsheets, and emails with easy-to-use software. Our Next smart process applications boost corporate efficiency, scalability, and the personal joy of work. Since 1986, we have served our customers from all over the world, through a network of certified partners and own offices in Denmark, Finland, Germany, Norway, Sweden, Switzerland, and the UK.

making good business run better.

These terms and conditions

When Nextway processes personal data for you

These terms and conditions govern how we process personal data on your behalf.

They apply to all current and future deliveries from Nextway to any company within your group of companies for whom we process personal data.

Any delivery from us is governed by Terms and conditions – Deliveries from Nextway. These specific terms and conditions always take priority over the more generic Terms and conditions – Deliveries from Nextway.

Authorization of the data processor

You are the data controller, we are the data processor

Any personal data we process under this agreement is your property. You alone decide for what purpose we may process your personal data. You instruct us on how we shall process your personal data.

Under this agreement, we are authorized to process personal data on your behalf as part of the execution of the agreed deliveries.

We may also process your personal data based on a prior specific or general instruction from you.

Finally, we may also process your personal data if we are required to do so under EU or national law. If so, we will inform you of this legal requirement before processing your personal data, unless prevented from doing so by law.

You may at any time change or withdraw your instructions by emailing privacy@nextway.software. We will confirm your change by email and meet the changes without undue delay.

If we consider that any instructions from you conflict with EU or national legislation, we will notify you immediately.

We are not entitled to make use of your personal data for any other purpose than fulfilling the agreed delivery or your specific or general instruction. We will comply with the GDPR and derived national legislation.

Geographical limitations

Personal data in the EU, EEA, and Switzerland

As a rule, we are not allowed to process your personal data in countries outside the EU, EEA, and Switzerland.

If we deem it necessary to process your personal data in other countries in order to fulfil our delivery, we are required to ensure that such transfer is at all times lawful, including that there is an adequate level of protection of the transferred personal data. This can be done by using data processors certified to the EU–US and Swiss–US Privacy Shield Frameworks, or by adopting the EU Commission’s standard contractual clauses for the transfer of personal data to data processors established in countries outside the EEA.

Sub-processors outside the EU, EEA, and Switzerland must be listed on www.nextway.software by the country or countries in which the data is being processed.

The data controller is responsible for being compliance

Your obligations

As data controller, you are responsible for complying with the GDPR and national law regarding data privacy deriving from this.

You must have the authority to let us process your personal data on your behalf.

You guarantee that any instruction you provide to us is legal.

Confidentiality

Under the Terms and conditions – Deliveries from Nextway, we have accepted confidentiality obligations. Such confidentiality obligations also apply to the personal data we process on your behalf. We will ensure that employees and consultants who process confidential information, are obliged to accept similar obligations.

Additionally, we will ensure that anyone with access to your personal data is familiar and complies with these terms and conditions.

Information security policy

We have the necessary precautions in place

We will comply with the Nextway information security policy. The most recent version of the policy is available on www.nextway.software. We will notify you of any changes by email.

Technical and organizational security measures

Both you and we must verify that the technical and organizational security measures provided by us, including the Nextway ICT Security Policy, are sufficient to ensure a level of security that matches the risks to the personal data we process for you.

Out of consideration for the latest developments, implementation costs, and the nature, scope, context, and purpose of the processing, we will continuously implement appropriate technical and organizational measures to maintain a level of security that is appropriate to the risk.

When we assess an appropriate security level, we will consider the risks that our processing introduces – the risks of unintentional or unlawful destruction, loss, or alteration, and the risk of unauthorized disclosure of or unauthorized access to your personal data.

If so requested in writing, we will provide you with sufficient information to document that these technical and organizational security measures have been implemented.

Data processing activities

This is all we do, unless you instruct us differently

As part of our deliveries – consultancy services, installation of software, helpdesk support, and software maintenance – we will have access to read personal data and may transfer personal data between your production, QA, and other environments. As part of this, we may be required to modify the personal data, including changing the format of the personal data.

If we provide you with cloud-based hosting, we and our sub-processors will store the relevant personal data in a cloud-based hosting environment on your behalf.

We process data – including personal data – to compile anonymized usage statistics. We are responsible for ensuring that this processing does not violate the privacy of any data subject.

Records of processing activities

We will keep records of the categories of processing operations we carry out on your behalf.

If you instruct us differently, we keep the documentation

These records are in writing, and in electronic form. Upon request, we will make these records available to the supervisory authority or you.

Transparent information and communication

We take action if we fail to comply

We will inform you immediately if we fail to process your personal information in compliance with these terms and conditions.

We will also immediately inform you of any development that could significantly impair our future ability to comply with these terms and conditions.

Data security breach

Especially in case of a data breach

In case of a data security breach for which we are responsible, we will inform you of this without undue delay.

This notification must at least contain:

- a) Nature of the data security breach including, if possible, the categories and the estimated number of affected data subjects, as well as the categories and estimated number of affected records of personal data,
- b) Contact information for additional information,
- c) Probable consequences of the data security breach,
- d) Measures taken (or planned to be taken) by us to handle the data security breach, including measures to limit consequential damage.

We will document all data security breaches, including the actual circumstances surrounding the data security breach, its consequences, and the corrective measures that have been taken.

This documentation enables the supervisory authority to check that we comply with our duty to inform you of any data security breach.

Requested information and assistance

We support you fulfilling your obligations

We will provide you with all reasonable requested information and assistance to help you fulfil your obligations pursuant to Articles 32–36 of the GDPR, in summary:

- Security of processing (Article 32),
- Notification of a personal data breach to the supervisory authority (Article 33),
- Communication of a personal data breach to the data subject (Article 34),
- Data protection impact assessment (Article 35), and
- Prior consultation (Article 36).

We will provide you with any reasonable requested information and assistance to help you fulfil your obligations towards the data subject, in summary:

- Your duty to inform the data subject when you are collecting personal data from the data subject
- Your duty to inform the data subject when you collect personal data from a third party
- The data subject's right to access personal data
- The data subject's right to have personal data corrected
- The data subject's right to have personal data deleted ('the right to be forgotten'),
- The data subject's right to limitation of processing,
- Your duty to notify the data subject in connection with corrections or deletions of personal data or limitations in your processing activity,
- The data subject's right to have personal data transferred to the data subject or a third party (the right to data portability),
- The data subject's right to object to the processing of personal data.

Use of subcontractors and the processing of data

We need partners, but we retain responsibility

You agree that we can use subcontractors to fulfil the agreed delivery. The list of approved subcontractors is available on www.nextway.software. We inform you by email whenever we add or replace subcontractors.

If we use a subcontractor to carry out processing activities on your behalf, the data protection obligations described in these terms and conditions shall be imposed on the subcontractor in a written agreement.

If we use a cloud-based subcontractor whose terms and conditions cannot be influenced, we will make these terms and conditions available on our website.

If, in order to fulfil our delivery, we deem it necessary to have your personal data processed in countries outside the EU, EEA and Switzerland, we are required to ensure that such transfer is always lawful, including that there is an adequate level of protection of the transferred personal data. This can be done by using data processors certified to the EU-US and Swiss-US Privacy Shield Frameworks or by adopting the EU Commission's standard contractual clauses for the transfer of personal data to data processors established in countries outside the EEA.

If the subcontractor does not comply with the provisions of these terms and conditions, we will be liable for the subcontractor's actions or failures on the same terms that apply to our own services.

All communication between you and the subcontractor must go through us.

Delivery of personal data

It's your data to decide over

You have full access to any personal data we process for you and the right to receive a copy of your personal data in our possession.

We may only disclose your personal data to you or to a third party designated by you.

After receiving written instructions from you, we will delete all personal data which has come into our possession under this agreement.

Cooperation with the supervisory authority

We will cooperate with the supervisory authority in the performance of its tasks.

We will provide supervisory authorities and you with the necessary access and insight into the systems used to process your personal data.

Cost

We help you, all the way. But for a price, of course.

All costs – including for revision, inspection, documentation, assistance, and information requests related to personal data protection – are beyond the scope of the delivery, unless explicitly specified in the agreement. Time spent on these matters will be invoiced separately according to our current price list.

Audit

You are entitled to audit our compliance with these terms and conditions once a year or in the event of any reasonable suspicion of our non-compliance. This includes carrying out inspections on our business premises as well as any subcontractor's premises.

The audit may be conducted by a reputable third party appointed by you. You will cover the full cost of the audit, including the time we spend.

Amendments of data protection legislation

If things change dramatically, we'll negotiate.

If amendments of data protection legislation require us to

- I. sign on to additional documentation, or
- II. implement additional technical and organizational measures, or
- III. accept additional obligations

and such requirements introduce additional costs or risks on us, then we must in good faith negotiate a fair adjustment of our fees.

The same applies if you impose additional obligations on us through your instructions.

Liability

We accept the responsibilities of being a professional supplier. However, we cannot be held liable for incidental, indirect, consequential, or unforeseeable loss including damage or expense, loss of profits, loss of business, loss of opportunity, fines, or loss of or corruption of data.

If you are entitled to seek compensation from us regarding any claim (including fines), the compensation may never exceed the fee you have paid us for the software product. If you seek financial compensation beyond this, you must take out appropriate insurance coverage.

Changes to these terms

Terms may change

Additions or modifications to these terms and conditions are only valid if they are in writing and are signed and confirmed by Nextway Software A/S.

Our customer relations typically last for decades. As technology and business environments change more rapidly, we need to be able to adjust our terms and conditions accordingly. We reserve the right to change these terms and conditions by giving 12 months' notice. Notification will be done by email and on our website.

Disputes

Local law and in due time

The agreement is governed by the laws of Denmark. If you have engaged the services of a local Nextway office outside of Denmark, the laws of this country apply. The venue is the court of law of where the Nextway office is located.

Neither of us may take legal action arising from this agreement more than twelve (12) months from the time when we initially had the opportunity to do so.

What did we change?

This is a completely new set of terms and conditions for the processing of personal data.

Definitions

Most terms are defined in the GDPR. You will find the rest here

The terms and expressions used in this document are defined in the General Data Protection Regulation (EU Regulation 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 (GDPR)). Otherwise, the meanings are defined below.

agreement: the order confirmation, any documents mentioned in the order confirmation, and these terms and conditions constitute our agreement.

consultancy services: any task performed by Nextway Professional Services staff in the areas of advising, analysis, configuration, design, development, documentation, implementation, testing, and training.

delivery: an agreed delivery from Nextway of hardware, software, services, or consultancy services, with an agreed delivery date and price.

Nextway: an international software vendor with legal entities in several countries. For all practical purposes, you deal with Nextway as if it was one legal entity.

terms and conditions: a written document outlining the obligations and rights imposed on the parties entering into an agreement regarding a delivery. Specific terms and conditions always take priority over more generic terms and conditions.

third party: a natural or legal person, public authority, or agency other than the Data Subject, you, us, and persons who, under the direct authority of you or a Data Processor, are authorized to process Personal Data.

your personal data: any personal data you have authorized us to process on your behalf.