



# Data Processing Addendum

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This Data Processing Addendum (DPA) and its applicable DPA Exhibits apply to the Processing of Personal Data by IBM on behalf of Client (Client Personal Data) in order to provide Cloud Services and other services agreed in the Agreement (Services). DPA Exhibits for each Service will be provided in the applicable TD. This DPA is subject to the terms of the Agreement (capitalized terms used and not defined herein have the meanings given them in the General Data Protection Regulation 2016/679 (GDPR)). In the event of conflict the DPA Exhibit prevails over the DPA which prevails over the Agreement except where explicitly set out in the Agreement identifying the relevant Section of the DPA over which it prevails.

## 1. Processing

1.1 Client (a) is the sole Controller of Client Personal Data or (b) has been instructed by and obtained the authorization of the relevant Controller(s) to agree to the Processing of Client Personal Data by IBM as set out in this DPA. Client appoints IBM as Processor to Process Client Personal Data. If there are other Controllers, Client will identify and inform IBM of any such other Controllers prior to providing their Personal Data, as set out in the DPA Exhibit.

1.2 A list of categories of Data Subjects, types of Client Personal Data, Special Categories of Personal Data and the processing activities is set out in the applicable DPA Exhibit for a Service. The duration of the Processing corresponds to the duration of the Service, unless otherwise stated in the respective DPA Exhibit. The nature, purpose and subject matter of the Processing is the provision of the Service as described in the applicable TD.

1.3 IBM will Process Client Personal Data according to Client's written instructions. The scope of Client's instructions for the Processing of Client Personal Data is defined by the Agreement, this DPA including the applicable DPA Exhibit, and, if applicable, Client's and its authorized users' use and configuration of the features of the Service. Client may provide further instructions that are legally required (Additional Instructions). If IBM believes an Additional Instruction violates the GDPR or other applicable data protection regulations, IBM will inform Client without undue delay and may suspend the performance until Client has modified or confirmed the lawfulness of the Additional Instruction in writing. If IBM notifies Client that an Additional Instruction is not feasible or Client notifies IBM that it does not accept the quote for the Additional Instruction prepared in accordance with Section 10.2, Client may terminate the affected Service by providing IBM with a written notice within one month after notification. IBM will refund a prorated portion of any prepaid charges for the period after such termination date.

1.4 Client shall serve as a single point of contact for IBM. As other Controllers may have certain direct rights against IBM, Client undertakes to exercise all such rights on their behalf and to obtain all necessary permissions from the other Controllers. IBM shall be discharged of its obligation to inform or notify another Controller when IBM has provided such information or notice to Client. Similarly, IBM will serve as a single point of contact for Client with respect to its obligations as a Processor under this DPA.

1.5 IBM will comply with all EEA data protection laws and regulations (Data Protection Laws) in respect of the Services applicable to Processors. IBM is not responsible for determining the requirements of laws applicable to Client's business or that IBM's provision of the Services meet the requirements of such laws. As between the parties, Client is responsible for the lawfulness of the Processing of the Client Personal Data. Client will not use the Services in conjunction with Personal Data to the extent that doing so would violate applicable Data Protection Laws.

## 2. Technical and organizational measures

2.1 IBM will implement and maintain technical and organizational measures set forth in the applicable DPA Exhibit (TOMs) to ensure a level of security appropriate to the risk for IBM's scope of responsibility. TOMs are subject to technical progress and further development. Accordingly, IBM reserves the right to modify the TOMs provided that the functionality and security of the Services are not degraded.

2.2 Client confirms that the TOMs provide an appropriate level of protection for the Client Personal Data taking into account the risks associated with the Processing of Client Personal Data.

## 3. Data Subject Rights and Requests

3.1 To the extent permitted by law, IBM will inform Client of requests from Data Subjects exercising their Data Subject rights (e.g. rectification, deletion and blocking of data) addressed directly to IBM regarding Client Personal Data. Client shall be responsible to respond to such requests of Data Subjects. IBM will reasonably assist Client in responding such Data Subject requests in accordance with Section 10.2.

3.2 If a Data Subject brings a claim directly against IBM for a violation of their Data Subject rights, Client will indemnify IBM for any cost, charge, damages, expenses or loss arising from such a claim, to the extent that IBM has notified Client about the claim and given Client the opportunity to cooperate with IBM in the defense and settlement of the claim. Subject to the terms of the Agreement, Client may claim from IBM amounts paid to a Data Subject for a violation of their Data Subject rights caused by IBM's breach of its obligations under GDPR.

## **4. Third Party Requests and Confidentiality**

4.1 IBM will not disclose Client Personal Data to any third party, unless authorized by the Client or required by law. If a government or Supervisory Authority demands access to Client Personal Data, IBM will notify Client prior to disclosure, unless prohibited by law.

4.2 IBM requires all of its personnel authorized to Process Client Personal Data to commit themselves to confidentiality and not Process such Client Personal Data for any other purposes, except on instructions from Client or unless required by applicable law.

## **5. Audit**

5.1 IBM shall allow for and contribute to audits, including inspections, conducted by the Client or another auditor mandated by the Client of IBM companies Processing of Client Personal Data in accordance with the following procedures:

- a. Upon Client's written request, IBM will provide Client or its mandated auditor with the most recent certifications and/or summary audit report(s), which IBM has procured to regularly test, assess and evaluate the effectiveness of the TOMs.
- b. IBM will reasonably cooperate with Client by providing available additional information concerning the TOMs, to help Client better understand such TOMs.
- c. If further information is needed by Client to comply with its own or other Controllers audit obligations or a competent Supervisory Authority's request, Client will inform IBM in writing to enable IBM to provide such information or to grant Client access to it.
- d. To the extent it is not possible to otherwise satisfy an audit obligation mandated by applicable law, only legally mandated entities (such as a governmental regulatory agency having oversight of Client's operations), the Client or its mandated auditor may conduct an onsite visit of the facilities used to provide the Service, during normal business hours and only in a manner that causes minimal disruption to IBM's business, subject to coordinating the timing of such visit and in accordance with any audit procedures described in the DPA Exhibit in order to reduce any risk to IBM's other customers.

5.2 Each party will bear its own costs in respect of paragraphs a. and b. of Section 5.1. Any further assistance will be provided in accordance with Section 10.2.

## **6. Return or Deletion of Client Personal Data**

6.1 Upon termination or expiration of the Agreement IBM will either delete or return Client Personal Data in its possession as set out in the respective DPA Exhibit, unless otherwise required by applicable law.

## **7. Subprocessors**

7.1 Client authorizes IBM to engage subcontractors to Process Client Personal Data (Subprocessors). A list of the current Subprocessors is set out in the respective DPA Exhibit. IBM will notify Client in advance of any changes to Subprocessors as set out in the respective DPA Exhibit. Within 30 days after IBM's notification of the intended change, Client can object to the addition of a Subprocessor on the basis that such addition would cause Client to violate applicable legal requirements. Client's objection shall be in writing and include Client's specific reasons for its objection and options to mitigate, if any. If Client does not object within such period the respective Subprocessor may be commissioned to Process Client Personal Data. IBM shall impose substantially similar data protection obligations as set out in this DPA on any approved Subprocessor prior to the Subprocessor Processing any Client Personal Data.

7.2 If Client legitimately objects to the addition of a Subprocessor and IBM cannot reasonably accommodate Client's objection IBM will notify Client. Client may terminate the affected Services by providing IBM with a written notice within one month of IBM's notice. IBM will refund a prorated portion of any pre-paid charges for the period after such termination date.

## **8. Transborder Data Processing**

8.1 By agreeing to this DPA, Client is entering into the EU Standard Contractual Clauses as referred to in the respective DPA Exhibit, with the Subprocessors established outside either the European Economic Area or countries considered by the European Commission to have adequate protection (Data Importers). Data Importers that are IBM companies are "IBM Data Importers".

8.2 If Client notifies IBM about another Controller and IBM does not object within 30 days after Client's notification, Client agrees on behalf of such other Controller(s), or if unable to agree, will procure agreement of such Controller(s), to be additional data exporter(s) of the EU Standard Contractual Clauses concluded between IBM Data Importers and Client. IBM has procured that the IBM Data Importers accept the agreement of such other Controllers. Client agrees and, if applicable, procures the agreement of other Controllers that the EU Standard Contractual Clauses, including

any claims arising from them, are subject to the terms set forth in the Agreement, including the exclusions and limitations of liability. In case of conflict, the EU Standard Contractual Clauses shall prevail.

8.3 If IBM engages a new Subprocessor in accordance with Section 7 that is an IBM Data Importer, IBM will procure such new IBM Data Importer's agreement with the EU Standard Contractual Clauses and Client on its behalf and/or on behalf of other Controllers, if applicable, agrees in advance to such IBM Data Importer being an additional data importer under the EU Standard Contractual Clauses. If Client is unable to agree for a Controller, Client will procure the agreement of such Controller. If the new Data Importer is not an IBM company (Third Party Data Importer), at IBM's discretion, (i) Client shall either enter into separate EU Standard Contractual Clauses as provided by IBM or (ii) an IBM Data Importer shall enter into a written agreement with such Third Party Data Importer which imposes the same obligations on the Third Party Data Importer as are imposed on the IBM Data Importer under the EU Standard Contractual Clauses.

## **9. Personal Data Breach**

9.1 IBM will notify Client without undue delay after becoming aware of a Personal Data Breach with respect to the Services. IBM will promptly investigate the Personal Data Breach if it occurred on IBM infrastructure or in another area IBM is responsible for and will assist Client as set out in Section 10.

## **10. Assistance**

10.1 IBM will assist Client by technical and organizational measures, insofar as possible, for the fulfillment of Client's obligation to comply with the rights of Data Subjects and in ensuring compliance with Client's obligations relating to the security of Processing, the notification of a Personal Data Breach and the Data Protection Impact Assessment, taking into account the information available to IBM.

10.2 Client will make a written request for any assistance referred to in this DPA. IBM will charge Client no more than a reasonable charge to perform such assistance or Additional Instructions, such charges to be set forth in a quote and agreed in writing by the parties, or as set forth in an applicable change control provision of the Agreement.