



Data Processing Addendum

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 services (Services) pursuant to the Agreement between Client and IBM. This DPA is incorporated into the Agreement and the DPA Exhibits for each Service will be provided in the applicable Transaction Document (TD). In the event of conflict, the DPA Exhibit prevails over the DPA which prevails over the rest of the Agreement.

Capitalized terms used have the meanings given below.

Controller means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of Processing Personal Data.

Data Subject means a natural person who can be identified, directly or indirectly.

Data Protection Laws means all legislation and regulations applicable to the Processing of Personal Data under the Agreement.

Non-Adequate Countries means countries not providing an adequate level of data protection pursuant to a Data Protection Laws or a decision of a Supervisory Authority.

Personal Data means any information relating to a Data Subject.

Personal Data Breach means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Client Personal Data.

Process or **Processing** means any operation or set of operations performed on Client Personal Data, including storage, use, access and reading.

Processor means a natural or legal person which Processes Client Personal Data on behalf of Client.

Subprocessor means any other Processor IBM engages to Process Client Personal Data.

Supervisory Authority means an independent public authority responsible for monitoring the application of the applicable Data Protection Laws.

1. Processing

1.1 Client is: (a) a Controller of Client Personal Data; or (b) acting as Processor on behalf of other Controllers and has been instructed by and obtained the authorization of the relevant Controller(s) for the Processing of Client Personal Data by IBM as Client's Subprocessor 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 if required by the applicable Data Protection Laws.

1.2 A list of categories of Data Subjects, types of Client Personal Data and Processing activities is set out in the applicable DPA Exhibit for each Service. The duration of the Processing corresponds to the duration of the Service. The purpose and subject matter of the Processing is the provision of the Service as described in the Agreement.

1.3 IBM will Process Client Personal Data to provide, secure and improve the Service and other IBM services that utilize the same underlying technology and tools, according to Client's documented instructions or as otherwise set out in the Agreement. The scope of Client's instructions for the Processing of Client Personal Data is defined by the Agreement, and, if applicable, by Client's use of the features of the Service.

When providing Services, IBM will not further combine, use, retain or disclose Client Personal Data outside of the direct business relationship between IBM and Client or for any purpose other than to perform the Services and business purposes specified in the Agreement. IBM will not sell or share Client Personal Data as required by the applicable Data Protection Laws.

1.4 Client may provide further instructions regarding the Processing of Client Personal Data (Additional Instructions) as described in Section 10.2 and IBM will use commercially reasonable efforts to follow any Additional Instructions.

If IBM notifies Client that an Additional Instruction is not feasible or that IBM can no longer meet its obligations as Processor, the parties shall work together to find an alternative. If IBM notifies Client that no alternative is feasible, Client may terminate the affected Service, in accordance with any applicable terms of the Agreement. If IBM believes an instruction violates the applicable Data Protection Laws, IBM will immediately inform Client, and may suspend the performance of such instruction until Client has modified or confirmed its lawfulness in documented form.

- 1.5 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.
- 1.6 Each party will comply with its respective obligations under the applicable Data Protection Laws for the processing of Client Personal Data and is responsible for determining the requirements of laws or regulations applicable to its own business. Client will not use the Services in a manner that would violate applicable Data Protection Laws.

2. Technical and Organizational Measures

Client and IBM agree that IBM will implement and maintain the technical and organizational measures set forth in the applicable DPA Exhibit (TOMs) which 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.

3. Data Subject Rights and Requests

IBM will inform Client of requests from Data Subjects exercising their Data Subject rights addressed directly to IBM, where the Data Subject has provided information to identify Client. If not, IBM will ask the Data Subject to redirect its request to Client. Client shall be responsible to handle such requests of Data Subjects. IBM will reasonably assist Client in handling such Data Subject requests in accordance with Section 10.2.

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:
- a. IBM will notify Client of such request to enable Client to take all necessary actions to communicate directly with the relevant authority and respond to such request.
 - b. If IBM is prohibited by law to notify Client of such request, it will make best reasonable efforts to challenge such prohibition and it commits to providing the minimum amount of information permissible when responding, based on a reasonable interpretation of the order.
 - c. IBM will provide to Client general information relative to any such request received from a government or regulatory authority during the preceding 12-month period.
- 4.2 IBM requires all of its personnel authorized to Process Client Personal Data to commit themselves to the requirements of this section.

5. Audit

Subject to the appropriate confidentiality and Section 10.2, IBM shall allow for, and contribute to, audits conducted by Client or another auditor mandated by Client, who shall be not a direct competitor of IBM, including inspections to the extent required by the applicable Data Protection Laws, in accordance with the following procedures:

- a. 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 access to it.
- d. To the extent it is not possible to otherwise satisfy an audit right mandated by applicable law or expressly agreed by the Parties, only legally mandated entities (such as a governmental regulatory agency having oversight of Client's operations), Client or its mandated auditor may conduct an onsite visit of the IBM 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 in order to reduce any risk to IBM's other customers.

6. Return or Deletion of Client Personal Data

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 the engagement of the Subprocessors listed in the respective DPA Exhibit. IBM will notify Client in advance of any addition or replacement of the Subprocessors, as reported in the applicable DPA Exhibit or in the Agreement. Within 30 days after IBM's notification, Client may object on the basis that such Subprocessor does not provide sufficient guarantees to meet the requirements under the applicable Data Protection Laws. 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 additional or replacement Subprocessor may be commissioned to Process Client Personal Data. IBM shall impose substantially similar but no less protective data protection obligations as set out in this DPA on any approved Subprocessor prior to the Subprocessor initiating any Processing of Client Personal Data.
- 7.2 If Client reasonably 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, otherwise the parties shall cooperate to find a feasible solution in accordance with the dispute resolution process, as set out in the Agreement, if applicable.

8. Transborder Data Processing and Country Required Terms

- 8.1 In the case of a transfer of Client Personal Data to Non-Adequate Countries, the parties shall cooperate to ensure compliance with the applicable Data Protection Laws by relying on the Transborder Data Processing document available at <https://www.ibm.com/support/customer/csol/terms/?id=Z126-8005> or this DPA, as applicable. If Client believes the measures are not sufficient to satisfy the legal requirements, Client shall notify IBM and the parties shall work together to find an alternative.
- 8.2 Depending on the applicable Data Protection Laws, the parties can be subject to additional country required terms available at <https://www.ibm.com/support/customer/csol/terms/?id=Z126-8005> (Country Required Terms).

9. Personal Data Breach

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 for the fulfillment of Client's obligation to comply with the rights of Data Subjects and in compliance with Client's obligations relating to the security of Processing, the notification and communication of a Personal Data Breach and the data protection impact assessment, including prior consultation with the responsible Supervisory Authority, if required, taking into account the nature of the processing and the information available to IBM.
- 10.2 Client will make a written request for any assistance, or any Additional Instructions, referred to in this DPA. IBM may charge Client no more than a reasonable charge to perform such assistance or an Additional Instruction, 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. If Client does not agree to the quote, the parties agree to reasonably cooperate to find a feasible solution in accordance with the dispute resolution process.