

DATA PROCESSING AGREEMENT FOR SAP SUPPORT AND PROFESSIONAL SERVICES

1. DEFINITIONS

- 1.1. **“Authorized Users”** means any individual to whom Customer grants access authorization in compliance with a SAP software license to use the SAP Service that is an employee, agent, contractor or representative of
- a) the Customer;
 - b) Customer's Affiliates; or
 - c) Customer's and Customer's Affiliates' Business Partners (as defined under the Software License and Support Agreement).
- 1.2. **“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 the processing of Personal Data; for the purposes of this DPA, where Customer acts as Processor for another Controller, it shall in relation to SAP be deemed as additional and independent Controller with the respective controller rights and obligations under this DPA.
- 1.3. **“Data Protection Law”** means the applicable legislation protecting the fundamental rights and freedoms of persons and their right to privacy with regard to the processing of Personal Data under the Agreement.
- 1.4. **“Data Subject”** means an identified or identifiable natural person as defined by Data Protection Law.
- 1.5. **“My Trust Center”** means information available on the SAP support portal (see: <https://support.sap.com/en/my-support/trust-center.html>) or the SAP agreements website (see: <https://www.sap.com/about/trust-center/agreements.html>) or any subsequent website(s) made available by SAP to Customer.
- 1.6. **“SCC Relevant Transfer”** means a transfer (or an onward transfer) to a Third Country of Personal Data that is either subject to GDPR or to applicable Data Protection Law and where any required adequacy means under GDPR or applicable Data Protection Law can be met by entering into the EU Standard Contractual Clauses.
- 1.7. **“EU Standard Contractual Clauses”** means the unchanged standard contractual clauses, published by the European Commission, reference 2021/914 or any subsequent final version thereof which shall automatically apply. To avoid doubt Modules 2 and 3 shall apply as set out in Section 8.
- 1.8. **“Personal Data”** means any information relating to a Data Subject which is protected under Data Protection Law. For the purposes of the DPA, it includes only personal data which is supplied to or accessed by SAP or its Subprocessors in order to provide the SAP Support or Professional Services under the Agreement.
- 1.9. **“Personal Data Breach”** means a confirmed:
- a) accidental or unlawful destruction, loss, alteration, unauthorized disclosure of or unauthorized third-party access to Personal Data; or
 - b) similar incident involving Personal Data, in each case for which a Controller is required under Data Protection Law to provide notice to competent data protection authorities or Data Subjects.
- 1.10. **“Professional Services”** means implementation services, consulting services or services such as SAP Premium Engagement Support Services, Innovative Business Solutions Development Services, Innovative Business Solutions Development Support Services.
- 1.11. **“Processor”** means a natural or legal person, public authority, agency or other body which processes Personal Data on behalf of the Controller, be it directly as Processor of a Controller or indirectly as Subprocessor of a Processor which processes Personal Data on behalf of the Controller.
- 1.12. **“Schedule”** means the numbered Annex with respect to the EU Standard Contractual Clauses.
- 1.13. **“Subprocessor”** or **“sub-processor”** means SAP Affiliates, SAP SE, SAP SE Affiliates and third parties engaged by SAP, SAP SE or SAP SE's Affiliates in connection with the SAP Service and which processes Personal Data in accordance with this DPA.

1.14. **“Technical and Organizational Measures”** means the technical and organizational measures for the relevant SAP Support or Professional Service published on the My Trust Center.

1.15. **“Third Country”** means any country, organization or territory not acknowledged by the European Union under Article 45 of GDPR as a safe country with an adequate level of data protection.

2. BACKGROUND

2.1. Purpose and Application

This document (**“DPA”**) is incorporated into the Agreement and forms part of a written (including in electronic form) contract between SAP and Customer. This DPA applies to Personal Data provided by Customer and each Controller in connection with the performance of the SAP services as set out in the relevant Agreement (**“SAP Service(s)”**) to which is attached the present DPA which may include:

- a) SAP Support as defined in the Software License & Support Agreement; or
- b) Professional Services as described in the services agreement concluded between SAP and the Customer (**“Services Agreement”**).

2.2. Structure

Schedules 1 and 2 are incorporated into and form part of this DPA. They set out the agreed subject-matter, the nature and purpose of the processing, the type of Personal Data, the categories of data, the data subjects and the applicable technical and organizational measures.

2.3. Governance

2.3.1. SAP acts as a Processor and Customer and those entities that it permits to use SAP Support or Professional Services act as Controllers under the DPA.

2.3.2. Customer acts as a single point of contact and shall obtain any relevant authorizations, consents and permissions for the processing of Personal Data in accordance with this DPA, including, where applicable approval by Controllers to use SAP as a Processor. Where authorizations, consent, instructions or permissions are provided by Customer these are provided not only on behalf of the Customer but also on behalf of any other Controller. Where SAP informs or gives notice to Customer, such information or notice is deemed received by those Controllers permitted by Customer to include Personal Data. Customer shall forward such information and notices to the relevant Controllers.

3. SECURITY OF PROCESSING

3.1. Applicability of the Technical and Organizational Measures

3.1.1. SAP has implemented and will apply the Technical and Organizational Measures. Customer has reviewed such measures and agrees that the measures are appropriate taking into account the state of the art, the costs of implementation, nature, scope, context and purposes of the processing of Personal Data.

3.1.2. Schedule 2 applies only to the extent that such SAP Services are performed on or from SAP premises. In the case where SAP is performing SAP Services on the Customer's premises and SAP is given access to Customer's systems and data, SAP shall comply with Customer's reasonable administrative, technical, and physical conditions to protect such data and guard against unauthorized access. In connection with any access to Customer's system and data, Customer shall be responsible for providing SAP personnel with user authorizations and passwords to access its systems and revoking such authorizations and terminating such access, as Customer deems appropriate from time to time. Customer shall not grant SAP access to Licensee systems or personal information (of Customer or any third party) unless such access is essential for the performance of SAP Services. Customer shall not store any Personal Data in non-production environments.

3.2. Changes

3.2.1. SAP applies the Technical and Organizational Measures to SAP's entire customer base receiving the same SAP Service. SAP may change the Technical and Organizational Measures at any time without notice so long as it maintains a comparable or better level of security. Individual measures may be replaced by new measures that serve the same purpose without diminishing the security level protecting Personal Data.

- 3.2.2. SAP will publish updated versions of the Technical and Organizational Measures on My Trust Center and where available Customer may subscribe to receive e-mail notification of such updated versions.

4. SAP OBLIGATIONS

4.1. Instructions from Customer

- 4.1.1. SAP will process Personal Data only in accordance with documented instructions from Customer. The Agreement (including this DPA) constitutes such documented initial instructions and Customer may provide further instructions during the performance of the SAP Service.

- 4.1.2. SAP will use reasonable efforts to follow any other Customer instructions, as long as they are required by Data Protection Law, technically feasible and do not require changes to the performance of the SAP Service. If any of the before-mentioned exceptions apply, or SAP otherwise cannot comply with an instruction or is of the opinion that an instruction infringes Data Protection Law, SAP will immediately notify Customer (e-mail permitted).

4.2. Processing on Legal Requirement

SAP may also process Personal Data where required to do so by applicable law. In such a case, SAP shall inform Customer of that legal requirement before processing unless that law prohibits such information on important grounds of public interest.

4.3. Personnel

To process Personal Data, SAP and its Subprocessors shall only grant access to authorized personnel who have committed themselves to confidentiality. SAP and its Subprocessors will regularly train personnel having access to Personal Data in applicable data security and data privacy measures.

4.4. Cooperation

- 4.4.1. At Customer's request, SAP will reasonably cooperate with Customer and Controllers in dealing with requests from Data Subjects or regulatory authorities regarding SAP's processing of Personal Data or any Personal Data Breach. If SAP receives a request from a Data Subject in relation to the Personal Data processing hereunder, SAP will promptly notify Customer (where the Data Subject has provided information to identify the Customer) via e-mail and shall not respond to such request itself but instead ask the Data Subject to redirect its request to Customer.

- 4.4.2. In the event of a dispute with a Data Subject as it relates to SAP's processing of Personal Data under this DPA, the Parties shall keep each other informed and, where appropriate, reasonably co-operate with the aim of resolving the dispute amicably with the Data Subject. SAP will correct, delete or anonymize any Personal Data in SAP's possession (if any), or restrict its processing, in accordance with the Customer's instruction and Data Protection Law.

4.5. Personal Data Breach Notification

SAP will notify Customer without undue delay after becoming aware of any Personal Data Breach and provide reasonable information in its possession to assist Customer to meet Customer's obligations to report a Personal Data Breach as required under Data Protection Law. SAP may provide such information in phases as it becomes available. Such notification shall not be interpreted or construed as an admission of fault or liability by SAP.

4.6. Data Protection Impact Assessment

If, pursuant to Data Protection Law, Customer (or its Controllers) are required to perform a data protection impact assessment or prior consultation with a regulator, at Customer's request, SAP will provide such documents as are generally available for the SAP Service (for example, this DPA, the Agreement, Audit Reports and Certifications). Any additional assistance shall be mutually agreed between the Parties.

5. DATA DELETION

Customer hereby instructs SAP to delete the Personal Data remaining with SAP (if any) within a reasonable time period in line with Data Protection Law (not to exceed six months) once Personal Data is no longer required for execution of the Agreement, unless applicable law requires retention.

6. CERTIFICATIONS AND AUDITS

6.1. Customer Audit

Customer or its independent third party auditor reasonably acceptable to SAP (which shall not include any third party auditors who are either a competitor of SAP or not suitably qualified or independent) may audit SAP's service and support delivery centers and IT security practices relevant to Personal Data processed by SAP only if:

- a) SAP has not provided sufficient evidence of its compliance with the Technical and Organizational Measures through providing a certification as to compliance with ISO 27001 or other standards (scope as defined in the certificate). Certifications are available on the My Trust Center or upon request if the certification is not available online; or
- b) a Personal Data Breach has occurred; or
- c) an audit is formally requested by Customer's data protection authority; or
- d) mandatory Data Protection Law conferring Customer a direct audit right and provided that Customer shall only audit once in any 12 month period unless mandatory Data Protection Law requires more frequent audits.

6.2. Other Controller Audit

Any other Controller may audit SAP's control environment and security practices relevant to Personal Data processed by SAP in accordance with and to the extent permitted under Section 6.1 if it directly applies to such other Controller. Such audit must be undertaken through and by Customer unless the audit must be undertaken by the other Controller itself under Data Protection Law. If several Controllers whose Personal Data is processed by SAP on the basis of the Agreement require an audit, Customer shall use all reasonable means to combine the audits and to avoid multiple audits.

6.3. Scope of Audit

Customer shall provide at least 60 days advance notice of any audit unless mandatory Data Protection Law or a competent data protection authority requires shorter notice. The frequency, time frame and scope of any audits shall be mutually agreed between the parties acting reasonably and in good faith. Customer audits shall be limited to remote audits where possible. If an on-site audit is mandatory, it shall not exceed 1 business day. Beyond such restrictions, the parties will use current certifications or other audit reports to avoid or minimize repetitive audits. Customer shall provide the results of any audit to SAP.

6.4. Cost of Audits

Customer shall bear the costs of any audit unless such audit reveals a material breach by SAP of this DPA, then SAP shall bear its own expenses of an audit. If an audit determines that SAP has breached its obligations under the DPA, SAP will promptly remedy the breach at its own cost.

7. SUBPROCESSORS

7.1. Permitted Use

SAP is granted a general authorization to subcontract the processing of Personal Data to Subprocessors, provided that:

- a) SAP or SAP SE on its behalf shall engage Subprocessors under a written (including in electronic form) contract consistent with the terms of this DPA in relation to the Subprocessor's processing of Personal Data. SAP shall be liable for any breaches by the Subprocessor in accordance with the terms of this Agreement;

- b) SAP will evaluate the security, privacy and confidentiality practices of a Subprocessor prior to selection to establish that it is capable of providing the level of protection of Personal Data required by this DPA;
- c) For SAP Support, SAP's list of Subprocessors in place on the effective date of the Agreement is published by SAP on My Trust Center or SAP will make it available to Customer upon request, including the name, address and role of each Subprocessor SAP uses to provide the SAP Service; and
- d) For Professional Services, SAP will, upon request of the Customer, make the list available or identify such subprocessors prior to the start of the applicable SAP Services.

7.2. New Subprocessors

7.2.1. SAP's use of Subprocessors is at its discretion, provided that:

- a) SAP will inform Customer in advance of any intended additions or replacements to the list of Subprocessors including name, address and role of the new Subprocessor (i) for SAP Support by posting on My Trust Center, or by email, upon Customer's registration on My Trust Center and (ii) for Professional Services by similar posting on My Trust Center, or by e-mail, or in other written form;
- b) Customer may object to such changes as set out in Section 7.2.2.

7.2.2. Objections to New Subprocessors

7.2.2.1. SAP Support

If Customer has a legitimate reason under Data Protection Law to object to the new Subprocessors' processing of Personal Data, Customer may terminate the SAP Support upon written notice to SAP, such notice to be provided to SAP no later than 30 days from the date SAP informs the Customer of the new Subprocessor. If Customer does not provide SAP with a notice of termination within this 30 days period, Customer is deemed to have accepted the new Subprocessor. Within the 30 days period from the date of SAP informing the Customer of the new Subprocessor, Customer may request that the parties discuss in good faith a resolution to the objection. Such discussions shall not extend the period for providing SAP a notice of termination and does not affect SAP's right to use the new Subprocessor(s) after the 30 days period.

7.2.2.2. Professional Services

If Customer has a legitimate reason under Data Protection Law that relates to the Subprocessors' processing of Personal Data, Customer may object to SAP's use of a Subprocessor, by notifying SAP in writing within 5 business days of SAP's information. If Customer objects to the use of the Subprocessor, the parties shall discuss in good faith a resolution. SAP may choose to: (i) not use the Subprocessor or (ii) take the corrective steps requested by Customer in its objection and use the Subprocessor or (iii) if this is not possible, use the Subprocessor. If none of these options are reasonably possible and Customer continues to object for a legitimate reason, either party may terminate the relevant services on 5 days' written notice. If Customer does not object within 5 days of receipt of the notice, Customer is deemed to have accepted the Subprocessor. If Customer's objection remains unresolved 30 days after it was raised, and SAP has not received any notice of termination, Customer is deemed to have accepted the Subprocessor.

7.2.3. Any termination under this Section shall be deemed to be without fault by either party and shall be subject to the terms of the Agreement.

7.3. Emergency Replacement

SAP may replace a Subprocessor without advance notice where the reason for the change is outside of SAP's reasonable control and prompt replacement is required for security or other urgent reasons. In this case, SAP will inform Customer of the replacement Subprocessor as soon as possible following its appointment. Section 7.2 applies accordingly.

8. INTERNATIONAL PROCESSING

8.1. Conditions for International Processing

SAP shall be entitled to process Personal Data, including by using Subprocessors, in accordance with this DPA outside the country in which the Customer is located as permitted under Data Protection Law.

8.2. Applicability of EU Standard Contractual Clauses

8.2.1. The following shall solely apply in respect of SCC Relevant Transfers:

8.2.1.1. Where SAP is not located in a Third Country and acts as a data exporter, SAP (or SAP SE on its behalf) has entered in to the EU Standard Contractual Clauses with each Subprocessor as the data importer. Module 3 (Processor to Processor) of the EU Standard Contractual Clauses shall apply to such SCC Relevant Transfers.

8.2.1.2. Where SAP is located in a Third Country:

SAP and Customer hereby enter into the EU Standard Contractual Clauses with Customer as the data exporter and SAP as the data importer which shall apply as follows:

- a) Module 2 (Controller to Processor) shall apply where Customer is a Controller; and
- b) Module 3 (Processor to Processor) shall apply where Customer is a Processor. Where Customer acts as Processor under Module 3 (Processor to Processor) of the EU Standard Contractual Clauses, SAP acknowledges that Customer acts as Processor under the instructions of its Controller(s).

8.2.2. Other Controllers or Processors whose use of the Cloud Services has been authorized by Customer under the Agreement may also enter into the EU Standard Contractual Clauses with SAP in the same manner as Customer in accordance with Section 8.2.1.1 or 8.2.1.2 above. In such case, Customer enters into the EU Standard Contractual Clauses on behalf of the other Controllers or Processors.

8.2.3. With respect to a SCC Relevant Transfer, on request from a Data Subject to the Customer, Customer may make a copy of Module 2 or 3 of the EU Standard Contractual Clauses entered into between Customer and SAP (including the relevant Schedules), available to Data Subjects.

8.2.4. Third Party Beneficiary Right under the EU Standard Contractual Clauses

Where Customer is located in a Third Country and acting as a data importer under Module 2 or Module 3 of the EU Standard Contractual Clauses and SAP is acting as Customer's sub-processor under the applicable Module, the respective data exporter shall have the following third party beneficiary right:

In the event that Customer has factually disappeared, ceased to exist in law or has become insolvent (in all cases without a successor entity that has assumed the legal obligations of the Customer by contract or by operation of law), the respective data exporter shall have the right to terminate the affected Cloud Service solely to the extent that the data exporter's Personal Data is processed. In such event, the respective data exporter also instructs SAP to erase or return the Personal Data.

8.3. Applicability of EU Standard Contractual Clauses where applicable Data Protection Law requires a variation to the EU Standard Contractual Clauses

8.3.1. Subject to sections 8.2.1.1. to 8.2.1.2, in relation to Personal Data that is protected by the GDPR as saved into United Kingdom law by virtue of section 3 of the United Kingdom's European Union (Withdrawal) Act 2018 (the "**UK GDPR**") the EU Standard Contractual Clauses are interpreted as follows:

8.3.1.1. "Third Country" shall be interpreted as any country, organization or territory which is not acknowledged as providing an adequate level of protection of personal data pursuant to Section 17A of the United Kingdom Data Protection Act 2018; and

8.3.1.2. The "EU Standard Contractual Clauses" shall be interpreted as the "International Data Transfer Addendum to the EU Standard Contractual Clauses" issued by the Information Commissioner under s.119A(1) of the Data Protection Act 2018 ("**UK Addendum**") and shall apply completed as follows:

- i. the EU Standard Contractual Clauses, completed as set out above in Sections 8.2.1.1 and 8.2.1.2 (as applicable), shall also apply to transfers of such Personal Data, subject to (ii) below;
- ii. Tables 1 to 3 of the UK Addendum shall be deemed completed with the relevant information from the EU Standard Contractual Clauses, completed as set out above at Sections 8.2.1.1 and 8.2.1.2 (as applicable), and the options "neither party" shall be deemed checked in Table 4. The start date of the UK Addendum (as set out in Table 1) shall be the date of this DPA.

8.4. Relation of the EU Standard Contractual Clauses to the Agreement

Nothing in the Agreement shall be construed to prevail over any conflicting clause of the EU Standard Contractual Clauses. For the avoidance of doubt, where this DPA further specifies audit and Subprocessor rules, such specifications also apply in relation to the EU Standard Contractual Clauses.

9. DOCUMENTATION; RECORDS OF PROCESSING

Each party is responsible for its compliance with its documentation requirements, in particular maintaining records of processing where required under Data Protection Law. Each party shall reasonably assist the other party in its documentation requirements, including providing the information the other party needs from it in a manner reasonably requested by the other party (such as using an electronic system), in order to enable the other party to comply with any obligations relating to maintaining records of processing.

Schedule 1 Description of the Processing

This Schedule 1 applies to describe the Processing of Personal Data for the purposes of the EU Standard Contractual Clauses and applicable Data Protection Law.

1. A. LIST OF PARTIES

1.1. Under the EU Standard Contractual Clauses

1.1.1. Module 2: Transfer Controller to Processor

Where SAP is located in a Third Country, Customer is the Controller and SAP is the Processor, then Customer is the data exporter and SAP is the data importer.

1.1.2. Module 3: Transfer Processor to Processor

Where SAP is located in a Third Country, Customer is a Processor and SAP is a Processor, then Customer is the data exporter and SAP is the data importer.

2. B. DESCRIPTION OF TRANSFER

2.1. Data Subjects

Unless provided otherwise by the data exporter, transferred Personal Data relates to the following categories of Data Subjects: employees, contractors, Business Partners or other individuals having Personal Data stored, transmitted to, made available to, accessed or otherwise processed by the data importer.

2.2. Data Categories

The transferred Personal Data concerns the following categories of data:

Customer determines the categories of data and/or data fields which could be transferred per SAP Service as stated in the relevant Agreement. The transferred Personal Data typically relates to the following categories of data: name, phone numbers, e-mail address, address data, system access / usage / authorization data, company name, contract data, invoice data, plus any application-specific data transferred by Authorized Users and may include financial data such as bank account data, credit or debit card data.

2.3. Special Data Categories (if agreed)

2.3.1. The transferred Personal Data may comprise special categories of personal data set out in the Agreement (“**Sensitive Data**”). SAP has taken Technical and Organizational Measures as set out in Schedule 2 to ensure a level of security appropriate to protect also Sensitive Data.

2.3.2. The transfer of Sensitive Data may trigger the application of the following additional restrictions or safeguards if necessary to take into consideration the nature of the data and the risk of varying likelihood and severity for the rights and freedoms of natural persons (if applicable):

- a) training of personnel;
- b) encryption of data in transit and at rest;
- c) system access logging and general data access logging.

2.4. Purposes of the data transfer and further processing; Nature of the processing

2.4.1. The transferred Personal Data is subject to the basic processing activities as set out in the Agreement which may include:

- a) use of Personal Data to provide the SAP Service;
- b) storage of Personal Data;
- c) computer processing of Personal Data for data transmission;
- d) continuous improvement of service features and functionalities provided as part of the SAP Support or Professional Service including automation, transaction processing and machine learning; and
- e) execution of instructions of Customer in accordance with the Agreement.

- 2.4.2. Under the Software License and Support Agreement: SAP or its Subprocessors provide support when a Customer submits a support ticket because the Software is not available or not working as expected. They answer phone calls and perform basic troubleshooting, and handle support tickets in a tracking system.
- 2.4.3. Under the applicable Services Agreement for Professional Services: SAP or its Subprocessors provide Services subject to the Order Form Services and the applicable Scope Document.
- 2.5. Additional description in respect of the EU Standard Contractual Clauses
Applicable Modules of the EU Standard Contractual Clauses
 - a) Module 2: Transfer Controller to Processor
 - b) Module 3: Transfer Processor to Processor
- 2.6. The frequency of the transfer (e.g. whether the data is transferred on a one-off or continuous basis):
Transfers shall be made on a continuous basis.
- 2.7. The period for which the personal data will be retained, or, if that is not possible, the criteria used to determine that period:
Personal Data shall be retained for the duration of the Agreement and subject to Section 5 of the DPA.
- 2.8. For transfers to (sub-) processors, also specify subject matter, nature and duration of the processing:
In respect of the EU Standard Contractual Clauses, transfers to Subprocessors shall be on the same basis as set out in the DPA.

3. C. COMPETENT SUPERVISORY AUTHORITY

- 3.1. In respect of the EU Standard Contractual Clauses:
 - 3.1.1. Module 2: Transfer Controller to Processor
 - 3.1.2. Module 3: Transfer Processor to Processor
- 3.2. Where Customer is the data exporter, the supervisory authority shall be the competent supervisory authority that has supervision over the Customer in accordance with Clause 13 of the EU Standard Contractual Clauses.

Schedule 2 Technical and Organizational Measures

This Schedule 2 applies to describe the applicable technical and organizational measures for the purposes of the EU Standard Contractual Clauses and applicable Data Protection Law.

SAP will apply and maintain the Technical and Organizational Measures.