



Open Text Data Processing Addendum

Parties

This Data Processing Addendum (“DPA”) is between:

- a) The Open Text entity (“OT”) having entered into the Principal Agreement (as defined below) acting on its own behalf; and
- b) the other party to the Principal Agreement (“Customer”).

OT and Customer hereinafter separately referred to as “Party” and jointly as “Parties”.

1 Background; Definitions.

1.1 Background.

- 1.1.1 This DPA (including its Appendices and incorporations by reference) supplements and forms part of the agreement between OT and Customer under which OT shall carry out certain Services ("Principal Agreement") provided that the Services include the Processing of Personal Data and Data Protection Legislation applies to Customer's use of the Services.
- 1.1.2 This DPA is in addition to, and does not relieve, remove, or replace either party's obligations under the Data Protection Legislation.
- 1.1.3 None of the terms and conditions of the Principal Agreement shall be waived or modified by this DPA but if there is any conflict between any of the provisions of this DPA and the provisions of the Principal Agreement in relation to the Processing of Personal Data, the Parties agree the provisions of this DPA shall prevail to the extent of any such conflict.
- 1.1.4 If there is any conflict between the provisions of this DPA and the provisions of the Standard Contractual Clauses, the provisions of the Standard Contractual Clauses shall prevail to the extent of any such conflict. For the avoidance of doubt, where this DPA further specifies Sub-processor and audit rules in Sections 2.3 and 2.11, such specifications also apply in relation to, and satisfy Customer rights under the respective provisions of the Standard Contractual Clauses.
- 1.1.5 The terms used in this DPA shall have the meanings set forth in this DPA. Capitalized terms not otherwise defined herein shall have the meaning given to them in the Principal Agreement.

1.2 Definitions.

- 1.2.1 In this DPA, the following terms shall have the meanings set out below and cognate terms shall be construed accordingly.
 - a) "Affiliate" means an entity that owns or controls, is owned or controlled by or is or under common control or ownership with a company, where control is defined as the possession, directly or indirectly, of the power to direct or cause the direction of management and the policies of an entity, whether through ownership of voting securities, by contract or otherwise.
 - b) "Data Protection Legislation" means, (i) the GDPR (and any laws of Member States of the European Economic Area ("EEA") implementing or supplementing the GDPR), (ii) UK Data Protection Law and (iii) data protection or privacy laws of Switzerland, in each case, to extent applicable to the Processing of Personal Data under this DPA and the Principal Agreement.

- c) “EEA Standard Contractual Clauses” means the EEA Controller to Processor SCCs and EEA Processor to Processor SCCs.
- d) “EEA Controller to Processor SCCs” means the clauses set out at <https://www.opentext.com/assets/documents/en-US/pdf/opentext-eea-controller-to-processor-clauses-module-2-en.pdf> (and also sometimes referred to as Appendix 4) which are incorporated into this DPA by reference, as may be amended, updated or replaced from time to time.
- e) “EEA Processor to Processor SCCs” means the clauses set out at <https://www.opentext.com/assets/documents/en-US/pdf/opentext-eea-processor-to-processor-clauses-module-3-en.pdf> (and also sometimes referred to as Appendix 5) which are incorporated into this DPA by reference, as may be amended, updated or replaced from time to time.
- f) “GDPR” means EU General Data Protection Regulation 2016/679.
- g) “Restricted Transfer” means a transfer of Personal Data which, subject to the paragraph below, is:
 - 1) from an exporter subject to GDPR which is only permitted in accordance with GDPR if a Transfer Mechanism is applicable to that transfer (“EEA Restricted Transfer”);
 - 2) from an exporter subject to UK Data Protection Law which is only permitted in accordance with UK Data Protection Law if a Transfer Mechanism is applicable to that transfer (“UK Restricted Transfer”); and/or
 - 3) from an exporter subject to Data Protection Legislation applicable in Switzerland which is only permitted under that law if a Transfer Mechanism is applicable to that transfer (“Swiss Restricted Transfer”).

Transfers of Personal Data will not be considered a Restricted Transfer where:

- a) the jurisdiction to which the personal data is transferred has been approved by the European Commission under Article 45 of the GDPR or, as applicable, an equivalent provision under UK or Swiss Data Protection Law, as ensuring an adequate level of protection for the processing of Personal Data (an “Adequate Country”); or
 - b) the transfer falls within the terms of a derogation as set out in Article 49 of the GDPR, equivalent under Swiss Data Protection Law or the UK GDPR (as applicable).
- h) “Services” means the services or products and other activities to be supplied to or carried out by or on behalf of OT for the Customer pursuant to the Principal Agreement.

- i) “Standard Contractual Clauses” means each of the EEA Standard Contractual Clauses and the UK Standard Contractual Clauses.
 - j) “Sub-processor” means any third party (including any OT Affiliate) appointed by or on behalf of OT as a sub-contractor to Process Personal Data on behalf of any Customer or Customer Affiliate in connection with the Principal Agreement.
 - k) “Technical and Organisational Measures” means the technical and organisational measures set out at <https://www.opentext.com/assets/documents/en-US/pdf/opentext-technical-and-organizational-measures-en.pdf> (and also referred to as Appendix 3) which are incorporated into this DPA by reference, as may be amended, updated or replaced from time to time.
 - l) “Transfer Mechanism” means the Standard Contractual Clauses or any other appropriate safeguards under article 46 of the GDPR or equivalent under Swiss or UK Data Protection Law applicable to a relevant transfer of Personal Data that has the effect of permitting that transfer.
 - m) “UK Data Protection Law” means UK GDPR (as defined in the UK Data Protection Act 2018) and the UK Data Protection Act 2018.
 - n) “UK Controller to Processor SCCs” means the UK International Data Transfer Addendum which is made up of the provisions set out at <https://www.opentext.com/assets/documents/en-US/pdf/opentext-uk-international-data-transfer-addendum-en.pdf> (and also referred to sometimes as Appendix 6) which are incorporated into this DPA by reference, as may be amended, updated or replaced from time to time, incorporating the EEA Controller to Processor SCCs.
 - o) “UK Processor to Processor SCCs” means the UK International Data Transfer Addendum which is made up of the provisions set out at <https://www.opentext.com/assets/documents/en-US/pdf/opentext-uk-international-data-transfer-addendum-en.pdf> (and also referred to sometimes as Appendix 6) which are incorporated into this DPA by reference, as may be amended, updated or replaced from time to time, incorporating the EEA Processor to Processor SCCs.
 - p) “UK Standard Contractual Clauses” means the UK Controller to Processor SCCs and UK Processor to Processor SCCs.
- 1.2.2 The terms “Controller”, “Data Subject”, “Personal Data”, “Personal Data Breach”, “Processing”, and “Processor”; shall have the same meaning as in the applicable Data Protection Legislation. The terms “Member State”, “Supervisory Authority” and “Union” shall have the same meaning as in the GDPR. The terms “data exporter” and “data importer” have the meaning set out in the applicable Standard Contractual Clauses. “including” shall mean including without limitation.

2 Data Processing Obligations.

2.1 **Controller and Processor of Personal Data, Appointment of Processor and Purpose of Processing.**

- 2.1.1 OT will comply with all applicable requirements of the Data Protection Legislation to the extent it imposes obligations upon OT as a Data Processor and expects Customer to also comply with Data Protection Legislation.
- 2.1.2 This DPA applies to the extent Customer is the Controller and OT is the Processor. It also applies to the extent that Customer is a Processor and OT is acting as a (sub) Processor. Where the Customer is a Processor, the Customer confirms that its instructions, including appointment of OT as a Processor or (sub) Processor, have been authorized by the relevant Controller.
- 2.1.3 Appendix 1 of this DPA sets out the scope, nature and purpose of Processing by OT, the duration of the Processing and the types of Personal Data and categories of Data Subjects.

2.2 **OT's obligations with respect to the Customer.**

- 2.2.1 OT will, in relation to any Personal Data it will be Processing under the Principal Agreement and this DPA:
 - a) process such Personal Data solely for the purpose of providing the Services;
 - b) process such Personal Data in accordance with documented and commercially reasonable instructions from the Customer, subject to and in accordance with the terms of the Principal Agreement;
 - c) ensure that the persons authorized by it to process such Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality and have received appropriate training on their responsibilities; and
 - d) limit access of OT personnel to the Personal Data undergoing processing to what is necessary for provision of the Services.
- 2.2.2 Customer agrees that the Principal Agreement (including this DPA) are its complete documented instructions to OT for the Processing of Personal Data. Additional instructions, if any, require prior written agreement between the Parties. Where in the opinion of OT an instruction from the Customer infringes Data Protection Legislation, it shall inform the Customer thereof (but such communication shall not constitute legal advice by OT). However, such obligation shall not relieve the Customer from its own responsibility for compliance with Data Protection Legislation.

2.2.3 Where OT is required under applicable law to process Personal Data other than on documented instructions from the Customer, including with regard to transfers of Personal Data to a third country or an international organisation, OT shall use its reasonable endeavours to inform the Customer of that legal requirement before Processing, unless such information is prohibited by law on important grounds of public interest.

2.3 **Sub-processing.**

2.3.1 Customer provides OT a general authorization to engage Sub-processors. Sub-processors may include: (i) OT's global Affiliate companies as exist from time to time (and their vendors); and/or (ii) any of the sub-contractors that OT engages in connection with the provision of certain Processing activities as at the date of this Agreement. The Parties agree that the sub-processors listed at (i) and (ii) is the 'agreed list' for sub-processors in relation to Clause 9(a) of the EEA Standard Contractual Clauses and for the UK Standard Contractual Clauses.

2.3.2 OT shall Inform the Customer at least 14 days before OT appoints a new or replacement Sub-processor to give the Customer opportunity to reasonably object to the changes. OT must receive the notice of objection in writing from the Customer within 14 days of OT informing it of the proposed changes. The Parties agree that the name of the new or replacement Sub-processor together with details of the processing activities it will carry out and the location of such activities is the information the Customer requires to exercise such right. "Inform" shall include by posting the update on a website (and providing Customer with a mechanism to obtain notice of that update), by email or in other written form. The parties confirm that this mechanism is not required where the new or replacement Sub-processor is an OT global Affiliate company.

2.3.3 The Parties agree that the Customer's right to be object shall be as set out in this Section 2.3.3 and Section 2.3.4. Any objection raised by the Customer pursuant to Section 2.3.2 must be where the Sub-processor demonstrably fails to offer the same or a reasonably comparable level of protection as that previously applicable to the relevant Processing of Personal Data.

2.3.4 If Customer has a reasonable and legitimate reason to object to the new Sub-processor pursuant to Section 2.3.3, and OT is not able to provide an alternative Sub-processor, or the Parties are not otherwise able in good faith to achieve an alternative resolution, Customer may terminate the respective part of the Services where the new Sub-processor is to be used by giving written notice to OT no later than 30 days from the date that OT receives the Customer's notice of objection and such termination shall take effect no later than 90 days following OT's receipt of Customer's notice of termination. If Customer does not terminate within this 30-day period, Customer is deemed to have accepted the new Sub-processor. Any termination under this Section 2.3.4 shall be deemed to be without fault by either Party and shall be subject to the terms of the Principal Agreement (including any documents agreed pursuant to it).

- 2.3.5 OT confirms that it has entered or (as the case may be) will enter into a written agreement with its third-party company Sub-processors incorporating terms which are substantially similar to those set out in this DPA.
- 2.3.6 As between the Customer and OT, OT shall remain fully liable for all acts or omissions of any Sub-processor appointed by it pursuant to this Section 2.3 (unless the Sub-processor acted in accordance with instructions directly or indirectly received from Customer).
- 2.4 **Data Subjects' Right to Information.** It is the Customer's (or the party acting as Controller) responsibility to inform the Data Subject(s) concerned of the purposes and the legal basis for which their Personal Data will be processed at the time the Personal Data is collected.
- 2.5 **Exercise of Data Subjects' Rights.**
- 2.5.1 Taking into account the nature of the Processing, OT shall assist the Customer insofar as this is possible and reasonable for the fulfilment of the Customer's obligation under Data Protection Legislation to respond to requests for exercising the Data Subject's rights of: access, rectification, erasure and objection, restriction of processing, data portability, not to be subject to a decision based solely on automated processing.
- 2.5.2 Where the Data Subjects submit requests to OT to exercise their rights, OT shall forward these requests by email to a Customer email address on file with OT. If Customer wishes for OT to forward Data Subject requests to a specific email address, it shall notify OT of such address. OT shall not respond to a Data Subject request unless and to the extent instructed by Customer to do so.
- 2.6 **Notification of Personal Data Breach.**
- 2.6.1 OT shall notify the Customer of a Personal Data Breach without undue delay after OT becoming aware of it by email to a Customer email address on file with OT, along with any necessary documentation to enable the Customer, where necessary, to notify this breach to the Data Subject and / or the competent Supervisory Authority.
- 2.6.2 If available and taking into account the nature of the Processing, the notification in accordance with Section 2.6.2 shall at least:
- a) describe the nature of the Personal Data Breach including where possible, the categories and approximate number of Data Subjects concerned, and the categories and approximate number of Personal Data records concerned;
 - b) communicate the name and contact details of the data protection officer or other contact point where more information can be obtained;
 - c) describe the likely consequences of the Personal Data Breach; and
 - d) describe the measures taken or proposed to be taken by OT to address the Personal Data Breach, including, where appropriate, measures to mitigate its possible adverse effects.

- 2.6.3 Where, and in so far as, it is not possible to provide the information at the same time, the information may be provided in phases without undue further delay.
- 2.6.4 The Customer (or the party acting as Controller) is responsible to notify the Personal Data Breach to the Supervisory Authority, and to the Data Subjects, when this is required by the applicable Data Protection Legislation.
- 2.7 **Assistance lent by OT to the Customer regarding Compliance with Customer's Obligations under the Data Protection Legislation.**
- 2.7.1 Where requested by the Customer and to the extent required by Data Protection Legislation, OT shall, taking into account the nature of processing and the information available to OT, provide reasonable assistance to the Customer:
- a) in carrying out data protection impact assessments; or
 - b) should the Customer need prior consultation with a Supervisory Authority.
- 2.8 **Security Measures.**
- 2.8.1 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, the Customer and OT shall both be responsible to implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk.
- 2.8.2 OT agrees to implement the Technical and Organizational Measures in respect of the Services.
- 2.8.3 Customer is responsible for implementing and maintaining privacy protections and security measures for components that Customer or any Customer Affiliate provides or controls. Customer shall apply the principle of data minimisation and limit OT access to systems or Personal Data to only where essential for the performance of Services. Where OT is performing Services on premises of the Customer (or of any Customer Affiliate or sub-contractor, agent or similar) or in connection with access to any of their systems and data, Customer shall be responsible for providing OT personnel with user authorizations and passwords to access those systems, overseeing their use of those passwords and terminating these as required. Customer shall not store any Personal Data in a non-production environment unless it has production environment equivalent controls in place.
- 2.9 **Data Return or Destruction.** Where OT has stored Personal Data as part of the Services: at the end of the Service(s) upon Customer's written instruction, OT may (i) offer a data return service or (ii) following a reasonable data retention period delete the Personal Data unless applicable law requires further storage of the Personal Data. OT may charge a fee for any data return services.
- 2.10 **The Data Protection Officer.** OT has designated a data protection officer in accordance with Data Protection Legislation. They can be contacted by email via DPO@opentext.com.

2.11 Inspections and Audits.

- 2.11.1 The right of audit, including inspections, which the Customer may have under Data Protection Legislation and under the Standard Contractual Clauses, are as set out in this Section 2.11.
- 2.11.2 Upon written request from Customer OT shall, where available, provide a copy of the latest Service Organization Control (SOC) audit report and/or other third-party audit reports or information to demonstrate the processing activities of OT relating to the Personal Data is in compliance with its obligations under this DPA.
- 2.11.3 Customer may request evidence of OT's relevant policies and other related documents to verify that OT is complying with its obligations under this DPA.
- 2.11.4 Customer may conduct an on-site inspection at OT's premise either by itself or by an independent third-party auditor (not to include a competitor of OT) where the information under Sections 2.11.2 and 2.11.3 has failed to verify compliance by OT of its obligations under this DPA or such an inspection is formally required by the Supervisory Authority.
- 2.11.5 General Procedure: The following Sections 2.11.6, 2.11.7 and 2.11.8 shall apply to each of Sections 2.11.2, 2.11.3 and 2.11.4.
- 2.11.6 Unless otherwise mandated by a Supervisory Authority, Customer shall: (a) give OT at least 30 days' prior written notice of its intention to conduct an audit, including inspection, under this Section 2.11; and (b) agree with OT the frequency and duration of these, which shall not extend beyond two consecutive business days nor be more than once per contract year.
- 2.11.7 Any audit, including inspections, must be conducted during local business hours, not unreasonably disrupt OT business operations and not burden the provision of services by OT to its customers. Customer shall limit these to remote audits or meetings with senior representatives of OT as far as possible and will avoid or minimise the need for an audit (including inspection), without limitation by using current certifications, other audit reports or combining them with others under the Principal Agreement. Additionally, these rights are subject to limitations set out in the Principal Agreement. Any audit, including inspections, shall be subject to OT's relevant policies and procedures.
- 2.11.8 Conditions of confidentiality and the scope of an audit, including inspection, shall be agreed in advance between OT and Customer. Customer shall provide OT the results of any audit, including inspection. Customer bears all expenses related to inspections and audits.

2.12 Customer Information and related Restrictions.

- 2.12.1 Instructions by Customer related to the Processing of Personal Data must be provided in writing duly signed by an authorised representative of Customer.
- 2.12.2 Customer is responsible to have all necessary consents and notices in place and confirms it is entitled to lawfully transfer the Personal Data to OT.

3 International Transfers.

- 3.1 Personal Data may be processed in the EEA, the United Kingdom and Switzerland (each a “Designated Country”) and in countries outside of a Designated Country (“Other Countries”) by OT or its Sub-processors. The transfer to Other Countries shall be in accordance with Data Protection Legislation (to the extent it applies).
- 3.2 The Parties shall have in place a Transfer Mechanism in respect of any Restricted Transfer:
- 3.2.1 In the event of an EEA Restricted Transfer where Personal Data is transferred from Customer as data exporter acting as a Controller or Processor (as applicable), to OT as data importer acting as a Processor, the Parties shall, as part of this DPA, comply with the EEA Controller to Processor SCCs where the Customer acts as a Controller and the EEA Processor to Processor SCCs where the Customer acts as a Processor.
- 3.2.2 In the event of a UK Restricted Transfer, where Personal Data is transferred from Customer as data exporter acting as a Controller or Processor (as applicable) to OT as data importer acting as a Processor, the Parties shall, as part of this DPA, comply with the UK Controller to Processor SCCs where the Customer acts as a Controller and the UK Processor to Processor SCCs where the Customer acts as a Processor.
- 3.2.3 In the event of a Swiss Restricted Transfer, whereby Personal Data is transferred from Customer as data exporter, acting as a Controller or Processor (as applicable), to OpenText as data importer acting as a Processor, the Parties shall, as part of this DPA, comply with the corresponding module of the EEA Standard Contractual Clauses.
- 3.2.4 The Standard Contractual Clauses will not apply to a Restricted Transfer to the extent that OT has adopted Binding Corporate Rules for Processors or an alternative recognised compliance standard for lawful Restricted Transfers.
- 3.3 Where pursuant to the Standard Contractual Clauses OT attempts to redirect a request from a public authority, including judicial authorities (“Government Request”) to the Customer, and/or determines that a requirement to challenge or appeal a Government Request regarding Customer’s Personal Data exists, Customer agrees to participate in and support such challenge as reasonably requested. Where possible, the Customer itself will seek a protective order or other appropriate remedy in response to the Government Request.

4 General Provisions.

- 4.1 **Execution of this DPA.** Where requested by Customer, OT and Customer shall execute this DPA in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. For the purposes hereof, a facsimile or scanned copy of this DPA, including all pages hereof, shall be deemed an original.

- 4.2 The Parties agree that with respect to the period on and after the date that this DPA comes into effect between the Parties (or if earlier, the mandatory date when the relevant Standard Contractual Clauses must apply), this DPA shall replace and supersede any existing data processing addendum, attachment, exhibit or standard contractual clauses that Customer and OT may have previously entered into in connection with the Services.

5 For Partner Agreements.

- 5.1 If the Principal Agreement relates to the resale or supply of Services with a partner under an OT partner programme or a partner agreement (a “Partner”), with OT acting as the Partner’s sub-processor under that arrangement with no direct contractual relationship to the direct and indirect customers of the Partner which are entitled to use the Services such as the End User or, in the case of a Partner who is an MSP, the Beneficiary (as in each case as defined in the Principal Agreement) (hereinafter “Using Parties”), then the following provisions shall apply:

5.1.1 All references to “Customer” in this DPA shall mean the Partner;

5.1.2 Section 2.8.3 of this DPA shall be amended to read as follows: “Partner shall procure implementation and maintenance of privacy protections and security measures for components that Partner or any Using Parties (including Affiliates of any of these) provides or controls. Partner shall apply the principle of data minimisation and limit OT access to systems or Personal Data to only where essential for the performance of Services (and procure the same from Using Parties). Where OT is performing Services on premises of the Partner or Using Parties (or of an Affiliate, sub-contractor, agent or similar of any of these) or in connection with access to any of their systems and data, Partner shall be responsible for procuring provision to OT personnel of user authorizations and passwords to access those systems, oversight of their use of those passwords and termination of these as required. Partner shall not store any Personal Data in a non-production environment unless it has production environment equivalent controls in place (and procure the same from Using Parties).”

APPENDIX 1

DETAILS OF PROCESSING OF CUSTOMER PERSONAL DATA

See Appendix 2 of this DPA for each of following: *Subject matter and duration of the Processing of Personal Data, the nature and purpose of the Processing of Personal Data, the types of Personal Data to be processed, special categories of data (if appropriate) and the categories of Data Subject to whom the Customer Personal Data relates.*

APPENDIX 2

DESCRIPTION OF TRANSFER

Categories of data subjects whose personal data is transferred

Data Subjects may include employees, contractors, business partners or other individuals having Personal Data stored, transmitted to, made available to, accessed or otherwise processed by OT.

Categories of personal data transferred

Customer determines the categories of Personal Data which are processed by OT in connection with the Services in accordance with the terms of the Principal Agreement (and documentation governed by it). Customer submits Personal Data for processing after careful evaluation of compliance with applicable laws. The Personal Data may include the following categories of data: name, phone numbers, e-mail address, time zone, address data, company name, plus any application-specific data.

Sensitive data transferred (if applicable) and applied restrictions or safeguards that fully take into consideration the nature of the data and the risks involved, such as for instance strict purpose limitation, access restrictions (including access only for staff having followed specialised training), keeping a record of access to the data, restrictions for onward transfers or additional security measures.

None.

The choice and type of Personal Data that will be processed using the OT Services remains solely within the discretion and choice of the Customer. In selecting the Personal Data of any categories, the Customer shall ensure that such Personal Data is suitable for processing with and through the Services in compliance with applicable data protection laws. OT disclaims all liabilities in relation to the selection of data for use with the Services.

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.

Nature of the processing

OT offers its Services, and in doing so, OT requires to process Personal Data.

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

- a) use of Personal Data to provide the Services;
- b) storage of Personal Data;
- c) computer processing of Personal Data for data transmission; and
- d) other processing activities to deliver the Services.

Purpose(s) of the data transfer and further processing

See “nature of processing” above.

The period for which the personal data will be retained, or, if that is not possible, the criteria used to determine that period

The duration of the Processing of the Personal Data is set out in the Principal Agreement (and documentation governed by it) and this DPA.

Subject matter, nature and duration of the processing for transfer to (sub-) processors

As above.

OT partner programs and partner agreements: Where section 5 of the DPA applies: for the purposes of these Appendices 1, 2 and 3, categories of Personal Data shall also include that of Using Parties (as defined in section 5 of the DPA). In Appendix 3, “Customer systems” refers to those of the Partner and Using Parties. Notwithstanding the foregoing, this shall not release the Partner of its obligations, either in these Appendices, the Annexes, the DPA or otherwise, and the Partner shall remain responsible for the decisions, acts and omissions of Using Parties, and shall procure that Using Parties comply with the provisions of these Appendices.