

## Open Text Data Processing Addendum

This Data Processing Addendum ("**DPA**") is between:

- (i) The Open Text entity having entered into the Principal Agreement (as defined below) acting on its own behalf ("**Open Text**"); and
- (ii) the other party to the Principal Agreement ("**Customer**").

Open Text and Customer hereinafter separately referred to as "Party" and jointly as "Parties".

This DPA amends or supplements the online terms or other agreement between Open Text and Customer under which Open Text shall carry out certain Services ("**Principal Agreement**") provided that the Services include the Processing of Personal Data by Open Text and Data Protection Legislation applies to Customer's use of the Services.

None of the terms and conditions of the Principal Agreement shall be waived or modified by this DPA, provided that if there is an inconsistency between any of the provisions of this DPA and the provisions of the Principal Agreement in relation to the Processing of Personal Data, the provisions of this DPA shall prevail.

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.

This DPA shall not apply where the Customer is contracting or processing as a natural person in the course of a purely personal or household activity.

### 1 Definitions and General

1.1 In this DPA, the following terms shall have the meanings set out below and cognate terms shall be construed accordingly:

1.1.1. "**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.

1.1.2. "**Data Protection Legislation**" means the GDPR and laws implementing or supplementing the GDPR and, to the extent applicable, the data protection or privacy laws (i) of the European Economic Area ("EEA"), (ii) of the United Kingdom (UK) and (iii) of Switzerland, to the extent applicable to the Processing of Personal Data under the Principal Agreement;

1.1.3. "**EU Model Clauses**" means the EU standard contractual clauses for the transfer of Personal Data to Processors 2010/87/EU as may be amended or replaced from time to time, or its successor;

1.1.4. "**GDPR**" means EU General Data Protection Regulation 2016/679;

1.1.5. "**Services**" means the services and other activities to be supplied to or carried out by or on behalf of Open Text for the Customer pursuant to the Principal Agreement; and

1.1.6. "**Sub-processor**" means any third party (including any Open Text Affiliate) appointed by or on behalf of Open Text as a sub-contractor to Process Personal Data on behalf of any Customer or Customer Affiliate in connection with the Principal Agreement.

- 1.2 The terms "**Controller**", "**Data Subject**", "**Member State**", "**Personal Data**", "**Personal Data Breach**", "**Processing**", "**Processor**"; "**Supervisory Authority**" and "**Union**" shall have the same meaning as in the applicable Data Protection Legislation. "including" shall mean including without limitation. Nothing in the DPA shall be construed to prevail over any conflicting clause of the EU Model Clauses. For the avoidance of doubt, where this DPA further specifies sub-processor and audit rules in clauses 4 and 13, such specifications also apply in relation to the EU Model Clauses.

## **2 Controller and Processor of Personal Data, Appointment of Processor and Purpose of Processing**

- 2.1 Open Text will comply with all applicable requirements of the Data Protection Legislation and expects Customer to also comply with Data Protection Legislation. This DPA is in addition to, and does not relieve, remove, or replace either party's obligations under the Data Protection Legislation.
- 2.2 This DPA applies to the extent Customer is the Controller and Open Text is the Processor. It also applies to the extent that Customer is a Processor and Open Text is acting as a (sub) Processor. Where the Customer is a Processor the Customer confirms that its instructions, including appointment of Open Text as a Processor or (sub) Processor, have been authorized by the relevant Controller.
- 2.3 Annex 2 hereof sets out the scope, nature and purpose of Processing by Open Text, the duration of the Processing and the types of Personal Data and categories of Data Subjects.
- 2.4 For certain services such as access to online Open Text resources or support services, where Open Text determines the purpose and means of Processing Personal Data, Open Text is the Controller of such Processing and is, consequently responsible for the lawfulness of such Processing as Controller under applicable Data Protection Legislation. For the avoidance of doubt this DPA does not apply to Open Text acting as a Controller.

## **3 Open Text's obligations with respect to the Customer**

- 3.1 Open Text will, in relation to any Personal Data it will be Processing under the Principal Agreement and this DPA:
- 3.1.1 process such Personal Data solely for the purpose of providing the Services;
- 3.1.2 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;
- 3.1.3 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.
- 3.2 Customer agrees that the Principal Agreement (including this DPA) are its complete and final documented instructions to Open Text for the Processing of Personal Data. Additional instructions, if any, require prior written agreement between the Parties, including agreement on any additional fees payable by Customer to Open Text for carrying out such instructions. Where Open Text considers that an instruction from the Customer infringes Data Protection Legislation, it shall inform the Customer thereof (but such communication shall not constitute legal advice by Open Text). However, such obligation shall not relieve the Customer from its own responsibility for compliance with Data Protection Legislation.
- 3.3 Where Open Text is required under applicable law or a valid and binding order of a government body 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, Open Text shall inform the Customer of that legal requirement before

Processing, unless such information is prohibited by law on important grounds of public interest.

#### **4 Sub-contracting**

- 4.1 Customer provides Open Text a general authorization to engage Sub-processors. Sub-processors may include: (i) Open Text's global Affiliate companies (and their vendors); and/or (ii) a sub-contractor to conduct certain Processing activities. Open Text shall Inform the Customer before Open Text appoints a new or replacement Sub-processor to give the Customer opportunity to reasonably object to the changes. The objection 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. Open Text must receive the notice of objection in writing from the Customer within 14 days of it informing the Customer of the proposed changes. "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.

If Customer has a reasonable and legitimate reason to object to the new Sub-processor, applying the criteria established in the third sentence of the first paragraph of this clause 4.1, and Open Text 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 Open Text no later than 30 days from the date that Open Text receives the Customer's notice of objection and such termination shall take effect no later than 90 days following Open Text'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 clause 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).

- 4.2 Open Text 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.
- 4.3 As between the Customer and Open Text, Open Text shall remain fully liable for all acts or omissions of any Sub-processor appointed by it pursuant to this clause unless the Sub-processor acted in accordance with instructions directly or indirectly received from Customer.

#### **5 International Transfers**

- 5.1 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 Open Text or its Sub-processors. The transfer to Other Countries shall be in accordance with Data Protection Legislation (to the extent it applies): which may include an adequacy decision (including Privacy Shield certification) or appropriate safeguards. Appropriate safeguards may include: (i) Open Text entering into the EU Model Clauses on behalf of the Customer or (ii) where Open Text is outside of a Designated Country and the appropriate safeguard is EU Model Clauses, these shall be deemed to apply between Open Text as data importer and Customer as data exporter.

#### **6 Data Subjects' right to information**

- 6.1 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.

#### **7 Exercise of Data Subjects' rights**

- 7.1 Taking into account the nature of the Processing, Open Text shall assist the Customer, (i) insofar as this is possible and reasonable and (ii) at the Customer's expense, 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 object, restriction of processing, data portability, not to be subject to an automated individual decision (including profiling).

- 7.2 Where the Data Subjects submit requests to Open Text to exercise their rights, Open Text shall forward these requests by email to a Customer email address on file with Open Text. If Customer wishes for Open Text to forward Data Subject requests to a specific email address, it shall notify Open Text of such address. Open Text shall not respond to a Data Subject request unless and to the extent instructed by Customer to do so.

## **8 Notification of Personal Data Breach**

- 8.1 Open Text shall notify the Customer of a Personal Data Breach without undue delay, usually not later than 48 hours after becoming aware of it, by email to a Customer email address on file with Open Text or such email address that Customer advises Open Text to use for such notifications, 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.
- 8.2 If available and taking into the nature of the Processing, the notification in accordance with clause 8.1 shall at least:
- 8.2.1 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;
- 8.2.2 communicate the name and contact details of the data protection officer or other contact point where more information can be obtained;
- 8.2.3 describe the likely consequences of the Personal Data Breach;
- 8.2.4 describe the measures taken or proposed to be taken by Open Text to address the Personal Data Breach, including, where appropriate, measures to mitigate its possible adverse effects.
- 8.3 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.
- 8.4 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.

## **9 Assistance lent by Open Text to the Customer regarding compliance with Customer's obligations under the Data Protection Legislation**

- 9.1 Where requested by the Customer and to the extent required by Data Protection Legislation, at Customer's expense, Open Text shall provide reasonable assistance to the Customer:
- 9.1.1 in carrying out data protection impact assessments; or
- 9.1.2 should the Customer need prior consultation with a Supervisory Authority.

## **10 Security measures**

- 10.1 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 Open Text shall both be responsible to implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk.

- 10.2 Open Text undertakes to implement the technical and organizational measures set out in Annex 1 in respect of the Services.
- 10.3 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 Open Text access to systems or Personal Data to only where essential for the performance of Services. Where Open Text 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 Open Text personnel with user authorizations and passwords to access those systems and terminating these as required.

## **11 Data Return or Destruction**

- 11.1 Where Open Text has stored Personal Data as part of the Services: at the end of the Service(s) upon the Customer's written instruction and at Customer's expense, Open Text may offer a data return service and / or confirm, in writing, that no further Processing of Personal Data shall take place in relation to such Service(s) through means of erasure or anonymization or similar measures unless applicable law requires further storage of the Personal Data.

## **12 The Data Protection Officer**

- 12.1 Open Text has designated a data protection officer in accordance with Data Protection Legislation. Open Text's data protection officer can be contacted by email via DPO@opentext.com.

## **13 Inspections and Audits**

- 13.1 The right of audit, including inspections, which the Customer may have under Data Protection Legislation, are as set out in this Clause 13.
- 13.1.1 Upon written request from Customer Open Text 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 Open Text's compliance with its obligations under this DPA.
- 13.1.2 Customer may request evidence of Open Text's relevant policies and other related documents to verify that Open Text is complying with its obligations under this DPA.
- 13.2 Unless otherwise mandated by a Supervisory Authority or the Parties otherwise agree in writing, Customer agrees that its exercise of any right it may have to conduct an audit or inspection shall be satisfied by Open Text performing the audits referred to in Clause 13.1.1 and providing the information under Clause 13.1.1 and 13.1.2.
- 13.3 Procedure:
- 13.3.1 Unless otherwise mandated by a Supervisory Authority, the Customer shall (a) give Open Text at least 30 days' prior written notice of its intention to exercise its rights under Clause 13.1.2; and (b) agree with Open Text the frequency and duration of any requests under Clause 13.1 or other audits or inspections mandated by a Supervisory Authority or otherwise agreed in writing by the Parties, which shall not extend beyond two consecutive business days and not be more than once per contract year.
- 13.3.2 Any inspection or audit mandated by a Supervisory Authority or agreed to in writing by the Parties, or the exercise of rights under Clause 13.1, ("inspection or audit") must be conducted during local business hours, not unreasonably disrupt Open Text business operations and not burden the provision of services by Open Text to its customers. Customer shall limit its inspections or audits to being conducted remotely or meetings with senior representatives of Open Text as far as possible and will avoid or minimise the need for an inspection or audit, including by using current certifications, other audit reports or combining these audits with others under the Principal Agreement. Additionally, any inspection or audit

shall be subject to limitations set out in the Principal Agreement. Any inspection or audit shall be subject to Open Text's relevant policies and procedures.

- 13.3.3 Conditions of confidentiality and the scope of an inspection or audit shall be agreed in advance between Open Text and Customer. Customer shall provide Open Text the results of any inspection or audit. Customer shall bear all expenses for the inspections or audits including the time of an Open Text employees allocated to support the inspection or audit.

#### **14 Customer information and related restrictions**

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

## **ANNEX 1**

### **TECHNICAL AND ORGANIZATIONAL MEASURES**

This Annex 1 describes the technical and organisational security measures used by Open Text to the extent that it is a Processor, and where in such capacity it hosts or stores Customer Personal Data on its servers or systems.

Open Text determines the scope of such measures and may implement changes to these measures at any time without notice provided such changes do not result in a material degradation of the overall level of security for Personal Data.

#### **PHYSICAL ACCESS CONTROL**

*Physical access controls are the measures to regulate access to Open Text data centers.*

#### **SYSTEM ACCESS CONTROL**

*System Access controls are the measures to prevent unauthorized logical access to Open Text data processing systems.*

#### **DATA ACCESS CONTROL**

*Data Access controls are the measures to prevent data being read, copied, modified or deleted without authorization.*

#### **DISCLOSURE CONTROL**

*Disclosure controls ensure that Personal Data is not accessible (for reading, copying, modification or deletion) when being electronically sent over public networks to other parties or stored on other data media, except as necessary for the provision of Services in accordance with the relevant Agreement.*

#### **INPUT CONTROL**

*Input controls enable verification of when, where and by whom Personal Data in the Open Text systems has been entered, edited or deleted.*

#### **Change Control**

System changes must be recorded, verified, tested and approved following a change management process.

#### **Availability Control.**

*Through this control, the accidental destruction or loss of Personal Data is protected.*

#### **DATA SEPARATION**

*Data Separation controls ensure that data collected for different purposes can be processed separately.*

## **ANNEX 2: DETAILS OF PROCESSING OF CUSTOMER PERSONAL DATA**

### ***Subject matter and duration of the Processing of Personal Data***

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

### ***The nature and purpose of the Processing of Personal Data***

Open Text offers Services to the Customer. Open Text requires to process Personal Data to deliver the Services to the Customer.

### ***The types of Personal Data to be processed***

Customer determines the categories of Personal Data which are processed by Open Text in connection with the Services in accordance with the terms of the Principal Agreement (and documentation governed by it). 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.

### ***Special categories of data (if appropriate)***

None.

### ***The categories of Data Subject to whom the Customer Personal Data relates***

Data Subjects may include Customer employees as well as other natural persons.