

This Data Processing Addendum (DPA) and its applicable DPA Exhibits apply to the Processing of Personal Data by Kyndryl on behalf of Client (Client Personal Data) subject to the General Data Protection Regulation 2016/679 (GDPR) or any other data protection laws identified at <http://www.kyndryl.com/terms/dpl> (together 'Data Protection Laws') in order to provide services (Services) pursuant to the Agreement between Client and Kyndryl. DPA Exhibits for each Service will be provided in the applicable Transaction Document (TD). This DPA is incorporated into the Agreement. Capitalized terms used and not defined herein have the meanings given them in the applicable Data Protection Laws. In the event of conflict, the DPA Exhibit prevails over the DPA which prevails over the rest of the Agreement.

## 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) to agree to the Processing of Client Personal Data by Kyndryl as Client's subprocessor as set out in this DPA. Client appoints Kyndryl as Processor to Process Client Personal Data. If there are other Controllers, Client will identify and inform Kyndryl of any such other Controllers prior to providing their Personal Data, in accordance with the DPA Exhibit.
- 1.2 A list of categories of Data Subjects, types of Client Personal Data, Special Categories of Personal Data and the processing activities is set out in the applicable DPA Exhibit for a Service. The duration of the Processing corresponds to the duration of the Service, unless otherwise stated in the DPA Exhibit. The purpose and subject matter of the Processing is the provision of the Service as described in the Agreement.
- 1.3 Kyndryl will Process Client Personal Data according to Client's documented instructions. The scope of Client's instructions for the Processing of Client Personal Data is defined by the Agreement, and, if applicable, Client's and its authorized users' use and configuration of the features of the Service. Client may provide further legally required instructions regarding the Processing of Client Personal Data (Additional Instructions) as described in Section 10.2. If Kyndryl notifies Client that an Additional Instruction is not feasible, the parties shall work together to find an alternative. If Kyndryl notifies the Client that neither the Additional Instruction nor an alternative is feasible, Client may terminate the affected Service, in accordance with any applicable terms of the Agreement. If Kyndryl believes an instruction violates the Data Protection Laws, Kyndryl will immediately inform Client, and may suspend the performance of such instruction until Client has modified or confirmed its lawfulness in documented form.
- 1.4 Client shall serve as a single point of contact for Kyndryl. As other Controllers may have certain direct rights against Kyndryl, Client undertakes to exercise all such rights on their behalf and to obtain all necessary permissions from the other Controllers. Kyndryl shall be discharged of its obligation to inform or notify another Controller when Kyndryl has provided such information or notice to Client. Similarly, Kyndryl will serve as a single point of contact for Client with respect to its obligations as a Processor under this DPA.
- 1.5 Kyndryl will comply with all Data Protection Laws in respect of the Services applicable to Kyndryl as Processor. Kyndryl is not responsible for determining the requirements of laws or regulations applicable to Client's business, or that a Service meets the requirements of any such applicable laws or regulations. As between the parties, Client is responsible for the lawfulness of the Processing of the Client Personal Data. Client will not use the Services in a manner that would violate applicable Data Protection Laws.

## 2. Technical and organizational measures

- 2.1 Client and Kyndryl agree that Kyndryl 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 Kyndryl's scope of responsibility. TOMs are subject to technical progress and further development. Accordingly, Kyndryl 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

- 3.1 Kyndryl will inform Client of requests from Data Subjects exercising their Data Subject rights (e.g., including but not limited to rectification, deletion and blocking of data) addressed directly to Kyndryl regarding Client Personal Data. Client shall be responsible to handle such requests of Data Subjects. Kyndryl will reasonably assist Client in handling such Data Subject requests in accordance with Section 10.2.
- 3.2 If a Data Subject brings a claim directly against Kyndryl for a violation of their Data Subject rights, Client will reimburse Kyndryl for any cost, charge, damages, expenses or loss arising from such a claim, to the extent that Kyndryl has notified Client about the claim and given Client the opportunity to cooperate with Kyndryl in the defense and settlement of the claim. Subject to the terms of the Agreement, Client may claim from Kyndryl damages resulting from Data Subject claims for a violation of their Data Subject rights caused by Kyndryl's breach of its obligations under this DPA and the respective DPA Exhibit.

## 4. Third Party Requests and Confidentiality

- 4.1 Kyndryl 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, Kyndryl will notify Client prior to disclosure, unless such notification is prohibited by law.

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

## **5. Audit**

- 5.1 Kyndryl shall allow for, and contribute to, audits, including inspections, conducted by the Client or another auditor mandated by the Client in accordance with the following procedures:
- a. Upon Client's written request, Kyndryl will provide Client or its mandated auditor with the most recent certifications and/or summary audit report(s), which Kyndryl has procured to regularly test, assess and evaluate the effectiveness of the TOMs, to the extent set out in the DPA Exhibit.
  - b. Kyndryl 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 Controller's audit obligations or a competent Supervisory Authority's request, Client will inform Kyndryl in writing to enable Kyndryl 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), the Client or its mandated auditor may conduct an onsite visit of the Kyndryl facilities used to provide the Service, during normal business hours and only in a manner that causes minimal disruption to Kyndryl's business, subject to coordinating the timing of such visit and in accordance with any audit procedures in order to reduce any risk to Kyndryl's other customers.

Any other auditor mandated by the Client shall not be a direct competitor of Kyndryl with regard to the Services and shall be bound to an obligation of confidentiality.

- 5.2 Each party will bear its own costs in respect of paragraphs a. and b. of Section 5.1, otherwise Section 10.2 applies accordingly.

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

- 6.1 Upon termination or expiration of the Agreement Kyndryl 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 other Processors to Process Client Personal Data (Subprocessors). A list of the current Subprocessors is set out in the respective DPA Exhibit. Kyndryl will notify Client in advance of any addition or replacement of the Subprocessors as set out in the respective DPA Exhibit. Within 30 days after Kyndryl's notification of the intended change, Client can object to the addition of a Subprocessor on the basis that such addition would cause Client to violate applicable legal requirements. Client's objection shall be in writing and include Client's specific reasons for its objection and options to mitigate, if any. If Client does not object within such period, the respective Subprocessor may be commissioned to Process Client Personal Data. Kyndryl 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 legitimately objects to the addition of a Subprocessor and Kyndryl cannot reasonably accommodate Client's objection, Kyndryl will notify Client. Client may terminate the affected Services as set out in the Agreement, otherwise the parties shall cooperate to find a feasible solution in accordance with the dispute resolution process.

## **8. Transborder Data Processing**

- 8.1 In the case of a transfer of Client Personal Data to a country not providing an adequate level of protection pursuant to the Data Protection Laws (Non-Adequate Country), the parties shall cooperate to ensure compliance with the applicable Data Protection Laws as set out in the following Sections. If Client believes the measures set out below are not sufficient to satisfy the legal requirements, Client shall notify Kyndryl, and the parties shall work together to find an alternative.

- 8.2 By entering into the Agreement:

- a. If Kyndryl is located in a country considered adequate, Kyndryl will enter into the EU Standard Contractual Clauses (EU SCC), MODULE 3: Transfers processor to processor, with each Subprocessor located in a Non-Adequate Country as listed in the respective DPA Exhibit.
- b. If Client, Kyndryl, or both are located in a Non-Adequate Country, Client and Kyndryl are entering into EU SCC as set out in the applicable DPA Exhibit.
- c. If the EU SCC are not required between the parties because both are located in a country considered adequate by the Data Protection Laws, but during the Service the country where Kyndryl or Client is located becomes a Non-Adequate Country, the EU SCC will apply.

The parties acknowledge that the applicable module of the EU SCC under b. or c. above will be determined by their role as Controller and/or Processor under the circumstances of each case and are responsible for determining the correct role undertaken in order to fulfil the appropriate obligations under the applicable module.

- 8.3 Client agrees that the EU SCC under b. or c. above, including any claims arising from them, are subject to the terms set forth in the Agreement, including the limitations of liability. In case of conflict, the EU SCC under b. or c. above shall prevail.
- 8.4 The parties agree that any data importer signing EU SCC, MODULE 2: Transfers controller to processor or MODULE 3: Transfers processor to processor, under this Article 8, that engages with further subprocessors will need to adhere to Clause 9 (b) of the EU SCC.

## **9. Personal Data Breach**

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

## **10. Assistance**

- 10.1 Kyndryl 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 ensuring 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 Kyndryl.
- 10.2 Client will make a written request for any assistance referred to in this DPA. Kyndryl 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.