

## Data Processing Addendum

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This Data Processing Addendum (DPA) and its applicable DPA Exhibit(s) apply to the Processing of Client Personal Data by Kyndryl on behalf of Client to provide, secure and improve Services pursuant to the Agreement. The DPA consists of this document, Appendix A and Appendix B. Appendix A sets out any additional terms required by local data protection laws (Country-Required Terms). Capitalized terms have the meaning given in Appendix B or otherwise in this DPA. This DPA is incorporated into the Agreement. 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 appoints Kyndryl as a Processor of Client Personal Data. Client is (i) a Controller of Client Personal Data, or (ii) a Processor acting on behalf of other Controller(s) and has been authorized by the other Controller(s) to engage Kyndryl to Process their Personal Data. Upon request, Client will provide Kyndryl with the contact details of any other Controllers, updates, or other information required under applicable data protection law.
- 1.2 Kyndryl will Process Client Personal Data to provide, secure and improve the Services according to Client's documented instructions and for no other purpose. The scope of Client's instructions for the Processing of Client Personal Data is defined by the Agreement. Client may provide further instructions regarding the Processing of Client Personal Data (Additional Instructions) as described in Section 10. Client is responsible for the lawfulness of Processing performed according to its instructions. If Kyndryl believes an Additional Instruction violates applicable data protection laws, Kyndryl will immediately inform Client, and may suspend the performance of such instruction until Client has modified or confirmed the lawfulness of such instruction.
- 1.3 Client shall serve as a single point of contact for Kyndryl. To the extent other Controllers 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. Client agrees that Kyndryl is discharged of its obligation to inform or notify other Controllers 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.
- 1.4 The applicable DPA Exhibit for a Service includes a list of categories of Data Subjects, types of Client Personal Data, special categories of Client Personal Data, and the Processing activities. The duration of the Processing corresponds to the duration of the Service. The purpose and subject matter of the Processing is the provision of the Services as described in the Agreement.
- 1.5 Each party is responsible for determining and complying with its obligations under applicable data protection laws related to the Processing of Client Personal Data. Client will not use the Services in a manner that would violate applicable data protection laws.

### 2. Technical and Organizational Measures

Kyndryl will implement and maintain the Technical and Organizational Measures (TOMs) set forth in the DPA Exhibit. The parties agree that these measures ensure a level of security appropriate to the risk for Kyndryl's scope of responsibility. If Client believes the measures set out are not sufficient to satisfy the legal requirements, Client shall notify Kyndryl, and the parties shall work together to find a feasible alternative. TOMs are subject to technical progress and further development. Accordingly, Kyndryl reserves the right to modify the TOMs provided that the functionality, data protection, and security of the Services are not degraded.

### 3. Data Subject Rights and Requests

Kyndryl will inform Client of requests addressed directly to Kyndryl from Data Subjects exercising their Data Subject rights regarding Client Personal Data, where the Data Subject has provided sufficient information to identify Client. Client is responsible for handling such requests and Kyndryl will provide reasonable assistance in accordance with Section 10.

### 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 disclosure is required by law or a government or Supervisory Authority demands access to Client Personal Data,
  - a. Kyndryl will notify Client prior to disclosure, unless such notification is prohibited by law.
  - b. Kyndryl will comply with such requirement or demand in accordance with the Kyndryl's Statement on Governmental Requests for Customer Data, provided that the applicable laws and practices respect the essence of fundamental rights and freedom and do not exceed what is necessary and proportionate in a democratic society in accordance with applicable data protection laws.
  - c. Kyndryl provides information regarding law enforcement requests it has received from government or Supervisory Authorities in Kyndryl's Law Enforcement Requests Transparency Report that is published every six months.

- 4.2 Kyndryl requires all its personnel authorized to Process Client Personal Data to commit themselves to confidentiality and not Process such Client Personal Data for any purpose other than providing, securing, and improving the Services, except on instructions from Client or as required by applicable law.

## **5. Audit**

Subject to Section 10, Kyndryl shall allow for, and contribute to, audits, including inspections, conducted by Client or another auditor mandated by Client, who shall be bound to an obligation of confidentiality and not be a direct competitor of Kyndryl, in accordance with the following procedures:

- a. 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.
- 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 to comply with 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 data protection laws or expressly agreed by the parties, only legally mandated entities (such as a governmental regulatory agency having oversight of Client's operations), Client or its mandated auditor may conduct an onsite visit of the Kyndryl facilities used to provide the Services, during normal business hours and only in a manner that causes minimal disruption to Kyndryl's business and risk to Kyndryl's other customers.

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

Upon termination or expiration of the Agreement, Kyndryl will either delete or return Client Personal Data in its possession in accordance with the Agreement unless otherwise stated in the respective DPA Exhibit or required by applicable law.

## **7. Subprocessors**

- 7.1 Client authorizes Kyndryl to engage the Subprocessors listed in the respective DPA Exhibit and, subject to the following, additional or replacement Subprocessors:

- a. Kyndryl will provide Client with advance notice in accordance with the process in the DPA Exhibit of any new or replacement Subprocessors.
- b. Client may reasonably object to the additional or replacement Subprocessor within 30 days after Kyndryl's notification. 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, Kyndryl may engage the respective Subprocessor to Process Client Personal Data.
- c. If Kyndryl cannot reasonably accommodate Client's objection, Kyndryl will notify Client and the parties will work together without undue delay to resolve Client's objection through the dispute resolution process set out in the Agreement. Kyndryl may propose alternatives to address Client's concerns, such as additional measures or alternative Subprocessors. The Client is aware that the use of subcontractors is unavoidable for the provision of the Services and undertakes to agree to appropriate alternatives that take into account its data protection concerns.

- 7.2 Kyndryl shall impose substantially similar but no less protective data protection obligations as set out in this DPA on any Subprocessor prior to the Subprocessor Processing Client Personal Data.

## **8. Transborder Data Processing**

Kyndryl may use personnel and resources in locations worldwide to support the delivery of Services pursuant to the Agreement between Kyndryl and Client. To the extent such Processing involves a transfer of Client Personal Data to a Non-Adequate Country, the parties shall cooperate to comply with the transfer mechanisms set out in Appendix A. If Client believes such transfer mechanisms are not sufficient to satisfy the legal requirements, Client shall notify Kyndryl, and the parties shall work together to find an alternative.

## **9. Personal Data Breach**

Kyndryl will notify Client without undue delay, but in no event later than 48 hours, after becoming aware of a Personal Data Breach related to the Services. Kyndryl will promptly investigate the Personal Data Breach if it occurred on Kyndryl infrastructure or in other areas of Kyndryl's responsibility and will assist Client in accordance with Section 10. The notification shall include, to the extent known to Kyndryl, relevant information regarding the Personal Data Breach according to the respective requirements under applicable data protection laws and, where appropriate, the measures taken or proposed to be taken to mitigate its possible adverse effects. If relevant information is not available at the time of the initial notification, it will be provided without undue delay as it becomes available.

## **10. Assistance**

- 10.1 Subject to Section 10.2, Kyndryl will assist Client with Client's obligations related to Data Subject rights, security of Processing, notification and communication of a Personal Data Breach and Data Protection Impact Assessment(s), if required, taking into account the nature of the Processing and the information available to Kyndryl.
- 10.2 Kyndryl will use reasonable efforts to perform Additional Instructions and provide any assistance requested by Client in writing. Where such efforts require additional resources, Kyndryl may charge Client a reasonable charge to perform such assistance or Additional Instruction. Such charges will be set forth in a quote or through the applicable change control provision of the Agreement and agreed in writing by the parties. If Kyndryl notifies Client that such assistance or Additional Instruction is not feasible, or if Client does not agree to the quote, the parties agree to reasonably cooperate to find a feasible alternative in accordance with the dispute resolution process set out in the Agreement.

## Appendix A – Country-Required Terms

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This Appendix A sets out Country-Required Terms. Appendix A is divided into two sections, the first addressing the Transborder Data Processing requirements and the second setting out further Country-Required Terms.

### TRANSBORDER DATA PROCESSING

In case of a transfer of Client Personal Data to a Non-Adequate Country related to the Services, the transfer mechanisms as set out below apply to the extent required by applicable data protection laws. Client will ensure that any other requirements under applicable data protection laws are met including, if required, obtaining consent from Data Subjects for such transfer.

#### 1. The EU-U.S. Data Privacy Framework

Unless otherwise stated in the applicable DPA Exhibit, the Kyndryl Data Privacy Framework Policy will apply to transfers of Client Personal Data to the U.S. from countries that recognize the Data Privacy Framework.

#### 2. The EU Standard Contractual Clauses

2.1 In case of a transfer of Client Personal Data subject to the General Data Protection Regulation (EU) 2016/679 (GDPR) to a Non-Adequate Country, the EU Standard Contractual Clauses (EU SCCs) apply as follows:

- a. Unless otherwise stated in the applicable DPA Exhibit, if Kyndryl is located in an Adequate Country, Kyndryl will (i) enter into the EU SCCs (Module 3: Processor to Processor) with each Kyndryl Subprocessor located in a Non-Adequate Country; and (ii) procure that each third-party Subprocessor located in an Adequate Country enters into EU SCCs with any further Subprocessor located in a Non-Adequate Country or provides alternative appropriate safeguards in accordance with Article 46 GDPR.
- b. If Client, Kyndryl, or both are located in a Non-Adequate Country, Client hereby enters into the EU SCCs set out in the applicable DPA Exhibit. The parties acknowledge that the applicable module of the EU SCCs 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.
- c. If an Adequate Country that Client and/or Kyndryl is located in becomes a Non-Adequate Country during the duration of the Services, the EU SCCs will become applicable.

2.2 Kyndryl and Client agree that, as between the parties, the EU SCCs under Section 2.1 above, including any claims arising from them, are subject to the terms of the Agreement, including the limitations of liability. In case of conflict, the EU SCCs shall prevail.

#### 3. United Kingdom

Subject to the terms of the Agreement including limitation of liability, if a transfer of Client Personal Data is subject to the UK General Data Protection Regulation (UK GDPR) and:

- a. Kyndryl is located in an Adequate Country, Kyndryl will enter into the International Data Transfer Addendum (IDTA) with each Kyndryl Subprocessor located in a Non-Adequate Country.
- b. Client, Kyndryl, or both are located in a Non-Adequate Country, Client hereby enters into the International Data Transfer Addendum (IDTA) set out in the applicable DPA Exhibit.

#### 4. Switzerland, Argentina, Peru and South Africa

If a transfer of Client Personal Data to a Non-Adequate Country is subject to Swiss Data Protection Law (FADP), Argentinian Data Protection Law (PDPA), Peruvian Data Protection Law (PDPL), South African Data Protection Law (POPIA) or other data protection laws where either the local standard contractual clauses have not been published or the Supervisory Authority has approved the use of EU SCCs as a sufficient safeguard for transborder transfer, the EU SCCs shall govern such transfer in accordance with applicable data protection law and the applicable option under Section 2.1, subject to Section 2.2 above, with the following amendments:

- a. To permit Data Subjects in the respective country to seek redress of their rights in accordance with Clause 18 of the EU SCCs,
- b. To designate the Swiss Data Protection and Information Commissioner (FDPIC), Argentinian Data Protection Authority (AAIP), Peruvian Data Protection Authority (NDPA), South African Data Protection Authority, or other local Supervisory Authority as the competent Supervisory Authority in accordance with Clause 13 and Annex I.C of the EU SCCs,

- c. To choose the local data protection law as the governing law in accordance with Clause 17 of the EU SCCs in case the transfer is exclusively subject to such local law, and
- d. References to “GDPR” shall be understood as references to the equivalent provisions of applicable data protection law.

## **5. Brazil**

- 5.1. If a transfer of Client Personal Data to a Non-Adequate Country is subject to Brazilian Data Protection Law (LGPD), the Standard Contractual Clauses contained in Annex II to Resolution CD/ANPD No. 19 of August 23, 2024 (subsequently “Brazil SCC”) apply as follows:
  - a. Unless otherwise stated in the applicable DPA Exhibit, if Kyndryl is located in Brazil or an Adequate Country, Kyndryl will (i) enter into the Brazil SCC set out in the applicable DPA Exhibit with each Kyndryl Subprocessor located in a Non-Adequate Country; and (ii) procure that each third-party Subprocessor located in an Adequate Country enters into Brazil SCC with any further Subprocessor located in a Non-Adequate Country.
  - b. If Client, Kyndryl, or both are located in a Non-Adequate Country, Client hereby enters into the Brazil SCC set out in the applicable DPA Exhibit. The parties acknowledge that their respective role under the Brazil SCC 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 Brazil SCC.
  - c. If an Adequate Country that Client and/or Kyndryl is located in becomes a Non-Adequate Country during the duration of the Services, the Brazil SCC will become applicable.
- 5.2 Kyndryl and Client agree that, as between the parties, the Brazil SCC under Section 5.1 above, including any claims arising from them, are subject to the terms of the Agreement, including the limitations of liability. In case of conflict, the Brazil SCC shall prevail.

## **FURTHER COUNTRY-REQUIRED TERMS**

### **1. Canada**

Unless otherwise agreed between the parties in the Agreement, Client acknowledges that Kyndryl Services are not designed to handle the creation of a database of biometric characteristics and measurements for personal identification purposes. In such case Client will be responsible for any disclosure required by Quebec Law 25 (An Act respecting the protection of personal information in the private sector, as amended by Bill 64, SQ 2021, c 25) (the “Act”) and the legislation applicable to the protection of personal information as expressly referenced and amended by the Act.

### **2. Mexico**

Client and Kyndryl acknowledge and agree that the Processing of Client Personal Data by Kyndryl on behalf of Client shall be in accordance with the terms and conditions set forth in the DPA. Client declares that the DPA and the Agreement do not exceed or contravene treatment purposes of the Client’s data privacy notice. For everything not provided in the DPA, Kyndryl and Client shall consider and comply with the legal regulations regarding the protection of Personal Data in Mexico, including, but not limited to, the Federal Law on the Protection of Personal Data Held by Private Parties (Mexican Data Law) and its regulation. For the purposes of this Section, “Privacy Notice” has the meaning given it in the Mexican Data Law. Client and Kyndryl clarify that the DPA is executed in compliance with the provisions of Article 51 of the Regulation of the Federal Law on the Protection of Personal Data Held by Private Parties (Mexican Data Regulation).

### **3. United States of America**

- 3.1 In accordance with Section 1.2 of the DPA, Kyndryl will not combine, use, retain or disclose Client Personal Data outside of the direct business relationship between Kyndryl and Client or any other purpose than specified in this DPA and/or the Agreement. Kyndryl will not sell or share Client Personal Data. For the purpose of this Section, “sell” or “share” shall have the meaning given to them in the California Consumer Privacy Act of 2018 (CCPA) as amended by the California Privacy Rights Act of 2020 (CPRA) or any other applicable data protection law.

#### **3.2 State of California**

In accordance with CCPA, Kyndryl will act as a Service Provider under the DPA. Kyndryl will notify Client if Kyndryl determines that it can no longer meet its obligations under CCPA. Upon notice, Client has the right to take reasonable and appropriate steps to stop and remediate unauthorized use of the relevant Client Personal Data.

## Appendix B – Definitions

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This Appendix B sets out the definitions used in the Data Processing Addendum (DPA). Capitalized terms used and not defined in the DPA have the meanings given to them in this Appendix B. Unless stated otherwise in Appendix A, the following terms shall be interpreted as to correspond to similar terms found under applicable data protection laws.

**Agreement** means the agreement between Kyndryl and Client under which Client may order Services from Kyndryl.

**Client Personal Data** means Personal Data that Kyndryl Processes on behalf of Client to provide, secure and improve Services.

**Controller** means (i) the entity which, alone or jointly with others, determines the purpose(s) and means of the Processing of Personal Data, or (ii) where the purpose(s) and means are prescribed by applicable data protection laws, the entity nominated by such laws.

**Data Processing Addendum (DPA)** means the document that contains the terms applicable to the Processing of Client Personal Data by Kyndryl.

**Data Protection Impact Assessment** means a process that helps organizations identify and minimize the data protection risks associated with the Processing of Personal Data.

**Data Subject** means an identified or identifiable natural person whose Personal Data is Processed by a Controller or Processor.

**DPA Exhibit(s)** means the exhibits of the DPA containing Service-specific information including the list of Subprocessors and types of Client Personal Data.

**Kyndryl Data Privacy Framework Policy** means the document available at

<https://www.kyndryl.com/us/en/privacy/data-privacy-framework>.

**Kyndryl's Law Enforcement Requests Transparency Report** means the document available at

<https://www.kyndryl.com/us/en/privacy/governmental-data-requests>.

**Kyndryl's Statement on Governmental Requests for Customer Data** means the document available at

<https://www.kyndryl.com/us/en/privacy/governmental-data-requests>.

**Non-Adequate Country** means a country that is not providing an adequate level of protection pursuant to applicable data protection laws or a decision of a Supervisory Authority, and 'Adequate Country' shall be construed accordingly.

**Personal Data** means any information relating to a Data Subject.

**Personal Data Breach** means a confirmed breach of security within Kyndryl's scope of responsibility leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Client Personal Data transmitted, stored or otherwise Processed.

**Process** or **Processing** means any operation or set of operations performed on Personal Data or on sets of Personal Data, whether or not by automated means, including storage, use, access, reading, or erasure.

**Processor** means an entity that Processes Personal Data on behalf of a Controller.

**Services** mean the services provided by Kyndryl to Client pursuant to the Agreement.

**Subprocessor** means other Processors that Kyndryl may engage to Process Client Personal Data in accordance with Section 7 of the DPA.

**Supervisory Authority** means an independent public authority responsible for overseeing the application of data protection laws within a specific country or region.