

Amendment for Switzerland regarding Microsoft Products and Services Data Protection Addendum

This Amendment is effective upon acceptance of its terms and expires on either (i) the last day of the 36th calendar month after acceptance; or (ii) the termination date of the Agreement, whichever occurs first.

This Amendment clarifies and amends specific terms of the Microsoft Products and Services Data Protection Addendum (“DPA”) as follows:

Definitions

The definition of “Data Protection Requirements” shall be replaced with the following:

“Data Protection Requirements” means the GDPR, Local EU/EEA Data Protection Laws, the Swiss Federal Act on Data Protection (FADP) where applicable, and any applicable laws, regulations, and other legal requirements relating to (a) privacy and data security; and (b) the use, collection, retention, storage, security, disclosure, transfer, disposal, and other processing of any Personal Data.”

The definition of “Personal Data” shall be specified as follows:

The definition of “Personal Data” as well as the lower case term “personal data” used in this DPA shall encompass all data subjects according to the FADP.

The definition of “2021 Standard Contractual Clauses” shall be replaced with the following:

“2021 Standard Contractual Clauses” means the standard data protection clauses (processor-to-processor module) between Microsoft Ireland Operations Limited and Microsoft Corporation for the transfer of personal data from processors in the EEA to processors established in third countries which do not ensure an adequate level of data protection, as described in Article 46 of the GDPR and approved by the European Commission in decision 2021/914/EC, dated 4 June 2021, as amended by Microsoft Ireland Operations Limited and Microsoft Corporation in line with the guidance dated 27 August 2021 published by the Swiss Federal Data Protection and Information Commissioner for data transfers subject to the Swiss Federal Act on Data Protection (FDPIC Guidance).

Data Protection Terms

Clause: Data Transfers and Location

In alignment with the FDPIC Guidance, the 2010 Standard Contractual Clauses will not apply to transfers from Switzerland.

Appendix C to the DPA – Additional Safeguards Addendum

The preamble of Appendix C shall be replaced with the following:

“By this Additional Safeguards Addendum to the DPA (this “Addendum”), Microsoft provides additional safeguards to Customer for the processing of personal data, within the scope of the GDPR and FADP, by Microsoft on behalf of Customer and additional redress to the data subjects to whom that personal data relates.”

Clause 1: Challenge to Orders

Section 1.c: If the Customer is established in Switzerland, the section shall be replaced with the following:

“use all lawful efforts to challenge the order for disclosure on the basis of any legal deficiencies under the laws of the requesting party or any relevant conflicts with the law of Switzerland, the law of the European Union or applicable Member State law.”

Clause 2: Indemnification to Data Subjects

If the Customer is established in Switzerland, the clause shall be replaced with the following:

“Subject to Sections 3 and 4, Microsoft shall indemnify a data subject for any material or non-material damage to the data subject caused by Microsoft’s disclosure of personal data of the data subject that has been transferred in response to an order from a non-Swiss government body or law enforcement agency in violation of Microsoft's obligations under Chapter V of the GDPR or equivalent provisions under the FADP (a “Relevant Disclosure”). Notwithstanding the foregoing, Microsoft shall have no obligation to indemnify the data subject under this Section 2 to the extent the data subject has already received compensation for the same damage, whether from Microsoft or otherwise.”