

# 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.

With regard to the data governed by Swiss data protection laws, this Amendment clarifies and amends specific terms of the Microsoft Products and Services Data Protection Addendum ("DPA") as follows:

## **Definitions**

For clarification purposes "Microsoft" in the DPA means the respective Microsoft Affiliate that has entered into (a) the Agreement under which Customer orders the Products and Professional Services in each case, or as the case may be (b) the relevant Enterprise Services Work Order.

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

"Data Protection Requirements" means the GDPR, Local EU/EEA Data Protection Laws, *Swiss data protection laws 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 Swiss Federal Act on Data Protection (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**

### **Documented Instructions**

For the avoidance of doubt, the "documented instructions" of Customer as referred to in the DPS do not include any instruction by Customer to Microsoft to process Customer Data of Professional Services Data for Microsoft's business operations.

### **References to the GDPR**

References in the DPA to the GDPR shall be deemed to be references also to Swiss data protection law and its corresponding provisions, and the GDPR Terms and the DPA sub-section "Processing of Personal Data; GDPR" shall also apply where a processing of data is subject to Swiss data protection law.

## **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 *or 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 *corresponding 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."