

Additional Safeguards Addendum to Standard Contractual Clauses

By this Additional Safeguards Addendum to Standard Contractual Clauses (this “**Addendum**”), Microsoft Corp. (“**Microsoft**”) provides additional safeguards to Customer and additional redress to the data subjects to whom Customer’s personal data relates.

This Addendum supplements and is made part of, but is not in variation or modification of, the Standard Contractual Clauses in Attachment 2 of the Microsoft Online Services Data Protection Addendum (the “**Standard Contractual Clauses**”).

1. Challenges to Orders. In addition to Clause 5(d)(i) of the Standard Contractual Clauses, in the event Microsoft receives an order from any third party for compelled disclosure of any personal data that has been transferred under the Standard Contractual Clauses, Microsoft shall:

- (a) use every reasonable effort to redirect the third party to request data directly from Customer;
- (b) promptly notify Customer, unless prohibited under the law applicable to the requesting third party, and, if prohibited from notifying Customer, use all lawful efforts to obtain the right to waive the prohibition in order to communicate as much information to Customer as soon as possible; and
- (c) 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 the European Union or applicable Member State law.

For purpose of this section, lawful efforts do not include actions that would result in civil or criminal penalty such as contempt of court under the laws of the relevant jurisdiction.

2. Indemnification of Data Subjects. 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 under the Standard Contractual Clauses in response to an order from a non-EU/EEA government body or law enforcement agency (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.

3. Conditions of Indemnification. Indemnification under Section 2 is conditional upon the data subject establishing, to Microsoft’s reasonable satisfaction, that:

- (a) Microsoft engaged in a Relevant Disclosure;
- (b) the Relevant Disclosure was the basis of an official proceeding by the non-EU/EEA government body or law enforcement agency against the data subject; and
- (c) the Relevant Disclosure directly caused the data subject to suffer material or non-material damage.

The data subject bears the burden of proof with respect to conditions (a) through (c).

Notwithstanding the foregoing, Microsoft shall have no obligation to indemnify the data subject under Section 2 if Microsoft establishes that the Relevant Disclosure did not violate its obligations under Chapter V of the GDPR.

4. Scope of Damages. Indemnification under Section 2 is limited to material and non-material damages as provided in the GDPR and excludes consequential damages and all other damages not resulting from Microsoft’s infringement of the GDPR.

5. Exercise of Rights. Rights granted to data subjects under this Addendum may be enforced by the data subject against Microsoft irrespective of any restriction in Clauses 3 or 6 of the Standard Contractual Clauses. The data subject may only bring a claim under this Addendum on an individual basis, and not part of a class, collective,

group or representative action. Rights granted to data subjects under this Addendum are personal to the data subject and may not be assigned.

6. Notice of Change. In addition to Clause 5(b) of the Standard Contractual Clauses, Microsoft agrees and warrants that it has no reason to believe that the legislation applicable to it or its sub-processors, including in any country to which personal data is transferred either by itself or through a sub-processor, prevents it from fulfilling the instructions received from the data exporter and its obligations under this Addendum or the Standard Contractual Clauses and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by this Addendum or the Standard Contractual Clauses, it will promptly notify the change to Customer as soon as it is aware, in which case Customer is entitled to suspend the transfer of data and/or terminate the contract.

7. Termination. This Addendum shall automatically terminate if the European Commission, a competent Member State supervisory authority, or an EU or competent Member State court approves a different lawful transfer mechanism that would be applicable to the data transfers covered by the Standard Contractual Clauses (and if such mechanism applies only to some of the data transfers, this Addendum will terminate only with respect to those transfers) and that does not require the additional safeguards set forth in this Addendum.