



DPA Amendment – EU Standard Contractual Clauses and UK IDT

Effective Date: <i>The SCC Amendment is effective as of the Effective Date upon Date of publication on https://www.vmware.com/products/trust-center/privacy.html</i>	
VMware LLC , as a successor in interest to VMware, Inc. , if customer billing address is in the USA VMware International Unlimited Company if customer Billing address is outside the USA. <i>For UK, Australia, New Zealand or the Pacific Islands the VMware applicable entity found in: www.vmware.com/agreements</i>	Customer Entity <i>Customer who has previously entered into a DPA with VMware</i>
Processor/Data Importer	Controller and/or Processor (if applicable)/Data Exporter
Notice Address/Contact Person: As defined in the DPA	Notice Address/Contact Person: As defined in the DPA

Customer has entered into a Data Processing Addendum (“DPA”), which applies if VMware processes Personal Data on behalf of Customer while providing Services. This DPA Amendment – EU Standard Contractual Clauses and UK IDT (“**DPA Amendment**”) does not apply where VMware is the Controller. All capitalized terms used but not defined in this Amendment will have the meanings set forth in the Agreement.

1. PERSONAL DATA TRANSFERS

Replacement of Section 6 of the DPA. Section 6 of the DPA or an equivalent provision set forth in the Agreement and dealing with Personal Data transfers, including any references to the Binding Corporate Rules as a transfer mechanism, is herewith replaced in its entirety to read as follows:

- 6.1 Personal Data Transfers.** VMware may transfer and process Personal Data to and in locations around the world where VMware or its Sub-processors maintain data processing operations to provide the Services, or as otherwise agreed in the Agreement.
- 6.2 Personal Data Transfers from the European Economic Area, the United Kingdom, and Switzerland.** All transfers of Personal Data out of the European Economic Area, United Kingdom, and Switzerland shall be governed by the Standard Contractual Clauses and the International Data Transfer Addendum, as applicable. Specifically, the transfer mechanisms listed below shall apply to such transfers:
 - 6.2.1** The Standard Contractual Clauses Module Two where Customer is a Controller and Data Exporter of Personal Data and VMware is a Processor and Data Importer in respect of that Personal Data; and/or
 - 6.2.2** The Standard Contractual Clauses Module Three where Customer is a Processor acting on behalf of a controller and Data Exporter of Personal Data and VMware is a Processor and Data Importer in respect of that Personal Data.
- 6.3** The parties hereby agree to incorporate the IDT and the SCC 2021 by reference. The Parties are deemed to have accepted and signed the IDT and SCC 2021 where necessary in their entirety (including the annexures thereto) with VMware as Data Importer and Customer as Data Exporter.
- 6.3.1 SCC 2021.** SCC Module Two and Module Three, as applicable, applies to the transfers from the European Economic Area and Switzerland, with the following selections:

Section Reference	Concept	Selection by the Parties
Section I, Clause 7	Docking Clause	The option under Clause 7 shall not apply
Section II, Clause 9	Use of Sub-processors	Option 2 will apply, and the time period for prior notice of Sub-processor changes shall be as set out in the DPA
Section II, Clause 11	Redress	The option under clause 11 shall not apply

Section IV, Clause 17	Governing law	The laws of Ireland. The FADP insofar as the transfers are governed by the FADP
Section IV, Clause 18 (b)	Choice of forum and jurisdiction	The courts of Ireland.
Annex I.A	List of Parties	See above and the DPA
Annex I.B	Description of Transfer	See DPA
Annex I.C	Competent Supervisory Authority	Irish Data Protection Commissioner (DPC) https://www.dataprotection.ie/ Federal Data Protection and Information Commissioner insofar as the transfers are governed by the FADP
Annex II	Technical and Organizational Measures	See the DPA and where applicable technical and organizational measures set forth in the Agreement.
Additional adaptations insofar as the FADP governs the transfers (Switzerland)	The term ‘member state’ must not be interpreted in such a way as to exclude data subjects in Switzerland from the possibility of suing for their rights in their place of residence (Switzerland) in accordance with Clause 18 (c) of the Standard Contractual Clauses. References in the Standard Contractual Clauses to GDPR or EU or Member State Law shall have the same meaning as the equivalent reference in Swiss data protection laws, as applicable. For example, references to “GDPR” are to be understood as references to FADP.	

Further, if the Standard Contractual Clauses are implemented, adopted, or recognized as a legitimate data transfer mechanism in countries other than the EEA countries, then the Data Importer shall apply the relevant SCC Modules to the transfer of Personal Data originating from such country(-ies).

It is not the intention of either party to contradict or restrict any of the provisions set forth in the Standard Contractual Clauses and, accordingly, if and to the extent the Standard Contractual Clauses conflict with any provision of the Agreement (including this Addendum) the Standard Contractual Clauses shall prevail to the extent of such conflict.

6.3.2 IDT. The following selections apply:

Reference	Concept	Selection by the Parties
Table 1	Parties	The Parties identified in Annex I, Section A of this DPA Amendment
Table 2	Selected SCC, Modules and Selected Clauses	The information under Section 1 of this DPA Amendment above shall apply
Table 3	Appendix Information	The information under Section 1 of this DPA Amendment shall apply
Table 4	Ending this Addendum when the Approved Addendum Changes	Neither party may end the IDT, except as set forth in the Agreement.

In the event of any changes being implemented to the IDT after signature of this DPA Amendment, the Parties agree to co-operate and repopulate any replacement IDT.

2. Additional Terms for Module Three of the Standard Contractual Clauses. Where applicable, for the purposes of the Module Three (only), the parties agree the following:

8.1 Instructions and notifications. For the purposes of Clause 8.1(a), (b) and (c), Customer hereby informs VMware that it acts as Processor under the instructions of the relevant Controller in respect of Personal Data. Customer warrants that its Processing instructions as set out in the Agreement and the DPA, including its authorizations to VMware for the appointment of Sub-processors in accordance with the DPA, have been authorized by the relevant Controller. Customer shall be solely responsible for forwarding any notifications received from VMware to the relevant Controller where appropriate.

- 8.2 **Security of Processing.** For the purposes of Clause 8.6(c) and (d), VMware shall provide notification of a personal data breach concerning Personal Data Processed by VMware to Customer in accordance with the DPA.
- 8.3 **Documentation and Compliance.** For the purposes of Clause 8.9, all enquiries from the relevant Controller shall be provided to VMware by Customer. If VMware receives an enquiry directly from a Controller, it shall forward the enquiry to Customer and Customer shall be solely responsible for responding to any such enquiry from the relevant Controller where appropriate.
- 8.4 **Data Subject Rights.** For the purposes of Clause 10 and subject to the DPA, VMware shall notify Customer about any request it has received directly from a Data Subject without obligation to handle it (unless otherwise agreed) but shall not notify the relevant Controller. Customer shall be solely responsible for cooperating with the relevant Controller in fulfilling the relevant obligations to respond to any such request.

3. DEFINITIONS

The parties hereby agree to amend the DPA by adding the following new terms to the DPA:

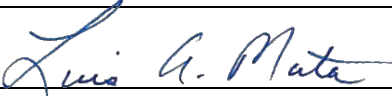
“Data Processing Addendum” or “DPA” means terms included in, incorporated by reference into the Agreement, or otherwise subsequently agreed between the parties to the Agreement that set out certain terms in relation to the processing of Personal Data to which data processing terms apply.

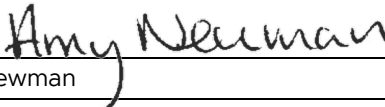
“International Data Transfer Addendum” or “IDT” means the international data transfer addendum to the EU Commission Standard Contractual Clauses, version B1.0, in force 21 March 2022, which has been issued by the Information Commissioner in the United Kingdom for Parties making Restricted Transfers, [as updated or replaced from time to time.](#)

“Standard Contractual Clauses” or “SCC 2021” mean the agreement pursuant to the European Commission’s decision (EU) 2021/914/EC of 4 June 2021 (Commission Implementing Decision (EU) 2021/914 on Standard Contractual Clauses for the transfer of personal data to third countries pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council as officially published at <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32021D0914&from=EN>, [as updated or replaced from time to time.](#)

4. ENTIRE AGREEMENT

The terms and conditions herein constitute the entire agreement between the parties with respect to the subject matter of herein and supersede any previous and contemporaneous agreements and understandings, whether oral or written, between the parties hereto with respect to the subject matter hereof.

Agreed for and on behalf of VMware LLC	
Signature:	
Name:	Luis Mata
Title:	Senior Contracts Administrator

Agreed for and on behalf of all other VMware entities	
Signature:	
Name:	Amy Newman
Title:	Manager, Global Contract Administration