



## HEAnet Data Protection Addendum: Web Hosting and Data Centre Hosting Services

Version: 15 October 2018

## Data Processing Addendum

This Data Processing Addendum is between HEAnet and the HEAnet client. The purpose of the addendum is to support the client's compliance obligations under applicable data protection law.

The scope of application of the addendum extends only to the extent that applicable data protection law applies to the processing of personal data by HEAnet for the Client in relation to the services.

The services to which this data protection addendum applies are Webhosting and Data Centre services as outlined at [www.heanet.ie/services/hosting](http://www.heanet.ie/services/hosting).

The parties agree as follows:

### 1. Definitions

Unless otherwise defined in the Agreement, all capitalised terms used in this Addendum will have the meanings given to them below. If any definitions set forth herein or in the Agreement conflict with statutory definitions provided in any applicable Data Protection Law, the definition in the Data Protection Law shall control.

**"Affiliate"** means any entity that, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with a party or any direct or indirect parent company of a party.

**"Agreement"** means the Agreement for the provision of webhosting and/or data centre hosting services between: (i) HEAnet CLG having its registered office at 5 George's Dock, IFSC, Dublin 1 ("HEAnet") and (ii) the client (the "Controller").

**"Applicable EU Legislation"** means the (i) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (ii) as of 25 May 2018, the then applicable General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC ("GDPR") and, (iii) any applicable EU Member State Legislation.

**"Client configuration"** means the specific hardware and/or software solutions determined and maintained by the Client in the use of webhosting and data centre hosting services.

**"Controller"** means the party which, alone or jointly with others, determines the purposes and means of the Processing of Personal Data.

**"Data Protection Law(s)"** means the Applicable EU Legislation and any other data protection laws which may be applicable to the Personal Data Processed under the Agreement.

**"EEA"** means the European Economic Area.

**"Personal Data"** means any information related to any identified or identifiable natural person (the **"Data Subject"**), which is an identifiable natural person as defined in the Data Protection Laws. The Data Subjects herein may be HEAnet or Client employees, contractors, end users, clients, clients' end users or employees, and/or other third parties.

**“Personal Data Breach”** means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise processed.

**“Process”** means any operation or set of operations which is performed on Personal Data or on sets of Personal Data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

**“Processor”** means the party that Processes Personal Data on behalf of the Controller for purposes of this Addendum.

**“Services”** means the services as described in the Agreement and as amended or updated by HEAnet from time to time.

**“Standard Contractual Clauses”** refers to the European Commission Decision of 5 February 2010 on standard contractual clauses for the transfer of personal data to processors established in third countries under the Directive.

**“Transfer Protections”** means, in relation to a transfer of Client Personal Data outside the EEA (including any such transfers to subprocessors of HEAnet), measures to enable the transfer to be made in compliance with Applicable Data Protection Law, including without limitation where the recipient of such data: (i) receives such data in a country that the European Commission has decided provides adequate protection for Personal Data (including where the recipient has subscribed to the Privacy Shield under the European Commission's Implementing Decision (EU) 2016/1250), (ii) has achieved binding corporate rules authorisation in accordance with Applicable Data Protection Law, (iii) has executed standard contractual clauses adopted or approved by the European Commission, or (iv) has in place an alternative mechanism that complies with Applicable Data Protection Law for the transfer of Personal Data outside the European Union.

## **2. Compliance with Laws**

Each party will comply with the Data Protection Laws as applicable to it. To the extent required by any Data Protection Law(s), the parties agree to negotiate in good faith and execute any such additional, supplemental or revised documents pertaining to the Processing of Personal Data as reasonably necessary for the provision of Services under the Agreement.

## **3. Data Processing**

HEAnet shall Process Personal Data only on the relevant documented instructions of the Controller unless Processing is required by applicable Data Protection Laws to which HEAnet is subject. The Controller hereby instructs HEAnet (and authorises HEAnet to instruct any Subprocessor where necessary) to process personal data where necessary for the purpose of providing the services.

The parties agree that, in respect to any Processing of Client Personal Data through the provision or use of the Services that the Client may be either a Controller of Client personal data or a Processor of Personal Data where it processes personal data on behalf of its end users.

The subject matter of the Processing is HEAnet's provision and the Client's use of the Services. The duration of the Processing shall be from the date of this Addendum (or, if later, from the date that Client Personal Data is first Processed through the provision or use of the Services) until the Agreement expires or terminates in accordance with its terms.

The purpose of the Processing is to provide the Services to the Client as provided for in the applicable Agreement and any purposes compatible therewith.

The type of Personal Data Processed is any Personal Data provided or made available to HEAnet by or on behalf of Customer or any End-user through the use or provision of the Services; and

The categories of Data Subjects are those whose Personal Data are provided or made available to HEAnet by or on behalf of Client or any End-user through the use or provision of the Services, including staff, contractors, partners of Customer or End-users and any End-users.

This addendum will terminate contemporaneously and automatically with the termination of the Agreement for Services. HEAnet may amend or supplement this addendum, including where necessary to reflect any amendment to law or requirement of any supervisory authority to an underlying agreement with the client. Any amended version of this addendum will be published on the HEAnet website and will apply from the date of publication.

#### **4. HEAnet Responsibilities**

HEAnet shall Process Personal Data only on the relevant documented instructions of the Controller unless Processing is required by applicable Data Protection Laws to which HEAnet is subject and ensure that:

- HEAnet will ensure that personnel that HEAnet authorise to process personal data are subject to a duty of confidentiality and restrict access to Personal Data to those employees and agents who require such access to perform the services;
- HEAnet shall maintain and implement technical and organisational measures appropriate (having regard to the state of technological development and cost of implementation) to the risk of, and to seek to protect Client Personal Data against, a Personal Data Breach. Where these measures are outlined in the relevant Agreement, the Client hereby confirms that those measures are appropriate relative to the processing activities undertaken;
- HEAnet will not transfer client personal data outside the EEA unless it has taken steps to ensure adequate Transfer Protections, but subject to such Transfer Protections, the Client agrees that Client Personal Data may be processed in countries where HEAnet subprocessors maintain facilities or personnel as necessary so that HEAnet may fulfil its obligations under the Agreement;
- HEAnet will respond to any Data Subject request to exercise their rights, or any other Data Subject query, regarding Client Personal Data, by either asking the Data Subject to make their request to the Client or by notifying the Client of the same;
- HEAnet will provide reasonable assistance to the Client in respect of a request from a Data Subject to exercise rights under data protection law by providing reasonable technical support, consistent with the functionality of the services and the role of HEAnet as a processor, such that the Client can itself access, correct, erase or export client personal data;
- If HEAnet become aware of a confirmed Personal Data Breach, HEAnet will inform the client without undue delay and provide reasonable available information to support the client to fulfil data breach reporting obligations. HEAnet may also take actions that it considers reasonably necessary to remedy or mitigate the effects of the Personal Data Breach;
- HEAnet shall provide reasonable assistance to the Client with regard to data protection impact assessments, and prior consultations with regulators or supervising authorities or other competent data privacy authorities;

- The parties agree that HEAnet will not be under an obligation to notify the client of routine security matters that do not involve unauthorised access to personal information beyond IP addresses or headers or similar incidents;
- The Client acknowledges that HEAnet will in general not have knowledge of the Client Personal Data actually received, stored on or otherwise applicable to the use of the Client Configuration. As such, the Client confirms that it has had the opportunity to consider the measures referred to in this section as appropriate for the personal data concerned, having regard to the state of technological development and cost of implementation;
- HEAnet agree to return or destroy at the option of the Client, personal data that it holds pursuant to the provision of the Services. Deletion or return will be commenced within a reasonable period to be agreed between the parties following a written instruction.

## **5. Client Responsibilities**

The Client undertakes that its instructions to HEAnet as its Processor and its use of the Services for processing Client Personal Data will comply with the privacy laws and regulations that apply to its Processing of Client Personal Data, including Applicable Data Protection Law.

- The Client will ensure that it has all necessary consents, notices and other requirements in place to enable lawful Processing of the Client Personal Data and/or End-user personal data by HEAnet for the duration and purposes of this services.
- In respect of data which the Client receives, stores, or transmits on or using the Client Configuration, the Client acknowledges that the Client is responsible for the integrity, security, maintenance and appropriate protection of Client Personal Data, and ensuring its compliance with data protection laws with regards to its own Processing of the Personal Data and its use of the Services
- The Client acknowledges that it is the Client that controls how Client Personal Data is stored, classified, exchanged, or otherwise Processed when using the Services. As such, the Client agrees to indemnify and hold harmless HEAnet and its agents against any third-party claims or penalties arising from or relating to Personal Data Breach caused by the Clients.
- In relation to the security of the Client Configuration, the Client agrees that the security practices and security Services otherwise detailed in the Agreement are appropriate for Client Personal Data (and satisfies HEAnet's obligation under this sub-section), in conjunction with the Clients obligations regarding security measures set out in the Agreement.