

FME Cloud Data Processing Addendum

INSTRUCTIONS:

If you have determined that you qualify as a data controller under the GDPR and need a data processing addendum (DPA) in place with vendors that process personal data on your behalf, then you should sign this DPA in accordance with the instructions below.

1. To complete this DPA, you must complete the information in the signature box and sign on the last page.
2. This DPA has been pre-signed on behalf of Safe Software Inc.
3. Send the completed and signed DPA to legal@safe.com.
4. If the DPA has been accurately completed, then we will notify you and it will become legally binding. We will reach out to you if there are any issues.

FME Cloud Data Processing Addendum

Safe Software Inc. (“Safe Software”) and the counterparty agreeing to these terms (“Customer”) have entered into an agreement available at <https://www.safe.com/terms-and-conditions/fme-cloud-terms-of-use/> (the “Terms”), for the provision of FME Cloud online services (the “Online Services”) and related technical support. This FME Cloud Data Processing Addendum (“DPA”) is entered into by Safe Software and Customer and supplements the Terms. In the event of a conflict between any parts of the Terms, then this DPA shall prevail.

1. Definitions

1.1. In this DPA:

“*Controller*” means the entity, by itself or jointly with another Controller, which determines the purposes and means of the Processing of Personal Data.

“*Customer Data*” means the data, including Personal Data, that is processed by Safe Software on behalf of the Customer.

“*Data Incident*” means a breach of Safe Software’s security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to Customer Data, including Personal Data, on systems managed or controlled by Safe Software.

“*Data Protection Laws*” means the GDPR and, and to the extent applicable, the data protection or privacy laws of any other country.

“*Data Subject*” means a natural person residing in the European Union, or any other country that has substantially adopted the GDPR provisions as part of their Data Protection Laws, whose Personal Data is subject to Processing by a Controller or Processor.

“*GDPR*” means the Regulation (EU) 2016/679 of the European Parliament and of the Council of the 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.

“*Personal Data*” means any information related to a Data Subject that can be used to directly or indirectly identify such Data Subject.

“*Processing*” means any operation or set of operations which is performed on Personal Data whether or not by automated means, such as collection, recording, organization, 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 entity which processes Personal Data on behalf of the Controller.

“*Subprocessor*” means any Processor engaged by Safe Software to process Customer Data on its behalf.

2. Details of the Processing

2.1. Subject Matter. Safe Software provides the Online Services and related technical support to the Customer.

2.2. Duration of the Processing. This DPA shall be effective as of the date Safe Software notifies Customer of receipt of this signed DPA and continues until this DPA or the Terms have been terminated by any one of the parties or until the Customer elects to cancel their account for Online Services, whichever is earlier.

2.3. Nature & Purpose of the Processing. Safe Software shall process Personal Data on behalf of and in accordance with Customer’s documented instructions for the following purposes: (i) to provide the Online Services and any related technical support; (ii) as further specified via Customer’s use of the Online Services (including any settings and other functionality of the Online Services); (iii) as documented in the Terms; and (iv) to comply with other documented reasonable instructions provided by Customer and acknowledged by Safe Software.

2.4. Type of Data and Categories of Data Subjects. The type of data and categories of Data Subjects are solely determined and controlled by the Customer.

3. Obligations of the Parties

3.1. Role of the Parties. Unless section 3.4 applies, the parties acknowledge and agree that with regard to the Processing of Customer Data via the Online Services, Customer is the Controller and Safe Software is the Processor. This DPA does not apply where Safe Software processes Personal Data as a Controller, for example where Safe Software processes Customer’s authentication credentials and payment information used to provision Customer’s access to the Online Services.

3.2. Customer’s Processing of Personal Data. Customer shall, in its use of the Online Services, conduct all Processing of Personal Data in accordance with the requirements of Data Protection Laws. Customer shall have sole responsibility for the accuracy, quality, and legality of Personal Data and the means by which Customer acquired Personal Data and obtained consent for the Processing of Personal Data as contemplated in the Terms.

3.3. Safe Software's Processing of Personal Data. Safe Software shall conduct all Processing of Personal Data in accordance with the requirements of Data Protection Laws and in accordance with Customer's documented reasonable instructions.

3.4. Authorization by Third Party Controller. If Customer is a Processor for a third party Controller, Customer warrants to Safe Software that Customer's instructions and actions with respect to Customer Data, including its appointment of Safe Software as another Processor, have been authorized by the third party Controller.

3.5. MSP Partner as Controller. If Customer has directly contracted with one of Safe Software's MSP Partners to provide services or support related to the Online Services, then Customer expressly agrees that such MSP Partner is considered to be a Controller and not a Subprocessor under this DPA.

4. Rights of Data Subjects

4.1. Corrections & Deletions. The Customer is responsible for safeguarding the rights of Data Subjects. To the extent Customer, in its use of the Online Services, does not have the ability to correct, amend, block or delete Personal Data, as required by Data Protection Laws, Safe Software shall comply with any commercially reasonable written request by Customer to facilitate such actions to the extent Safe Software is legally permitted to do so.

4.2. Data Subject Requests. Safe Software shall promptly notify Customer if it receives a request from a Data Subject to exercise its rights under any Data Protection Laws and will refer such request to the Customer. Safe Software shall not respond to any such Data Subject's request except to confirm that such request relates to Customer. Safe Software shall provide Customer with commercially reasonable cooperation and assistance in relation to handling of a Data Subject's request for that person's Personal Data, to the extent legally permitted and to the extent Customer does not have access to such Personal Data through its use or receipt of the Online Services.

5. Security

5.1. Controls for the Protection of Personal Data. Taking into account the state of the art, the costs of implementation, and the nature, scope, context and purposes of Processing, as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, Safe Software shall implement and maintain appropriate technical and organizational measures to protect Personal Data against accidental or unlawful destruction, loss, damage, theft, alteration, unauthorized disclosure or access.

5.2. Safe Software Personnel. Safe Software shall ensure that its personnel engaged in the Processing of Personal Data are informed of the confidential nature of the Personal Data, have received appropriate training on their responsibilities, and are under appropriate statutory or contractual obligations of confidentiality. Safe Software shall ensure that Safe Software's access to Personal Data is limited to those personnel who require such access to perform the Online Services and related technical support.

5.3. Third-Party Certifications and Audits. Safe Software has obtained third party security audits. Upon Customer's written request at reasonable intervals, and subject to reasonable confidentiality obligations, Safe Software shall make available to Customer a copy of Safe Software's then most recent third party audits, as applicable.

5.4. Customer's Security Responsibilities. Customer agrees that it is solely responsible for its use of the Online Services including making appropriate use of the Online Services to ensure a level of security appropriate to the risk in respect of Customer Data, applying security patches provided by Safe Software, and securing the authentication credentials, ports, systems and devices Customer uses to access the Online Services. For more information on Customer's responsibilities please see the FME Cloud Shared Responsibility Model which is located here: <https://www.safe.com/terms-and-conditions/fme-cloud-support-policy/#shared-responsibility>.

6. Data Incidents

6.1. Incident Notification. Safe Software maintains data incident management policies and procedures and shall, to the extent required by law, notify Customer without undue delay of any Data Incident and provide details of such Data Incident to the Customer. To the extent such Data Incident is caused by a violation of the requirements of this DPA by Safe Software, Safe Software shall promptly take reasonable steps to minimize harm and identify and remediate the cause of such Data Incident.

6.2. Delivery of Notification. Safe Software will deliver notification of any Data Incident that requires reporting to the emergency contact supplied by Customer at the time of provisioning the Online Services, or as updated by the Customer from time to time. Customer is solely responsible for providing the emergency contact information and ensuring it is updated. Safe Software, in its sole discretion (including if Customer has not provided an emergency contact), may elect to provide notification by any other reasonable means of communication.

6.3. Third Party Notifications. Customer is solely responsible for complying with incident notification laws or requirements applicable to Customer and fulfilling any third party notification obligations related to any Data Incident.

6.4. No acknowledgment of Fault. Safe Software's notification or response to any Data Incident will not be construed as an acknowledgment by Safe Software of any fault or liability with respect to the Data Incident.

7. Deletion of Customer Data

To the extent permitted by law, upon termination of Customer's use of the Online Services, Safe Software will promptly delete Customer Data in accordance with Safe Software's procedures.

8. Transfer of Data

As part of procuring the Online Services, Customer will elect a region where the primary Processing of Customer Data will occur. However, Customer agrees that Safe Software may process Customer Data in Canada and the USA as required from time to time to provide the Online Services and related technical support.

9. Subprocessors

9.1. Appointment of Subprocessors. Customer acknowledges and agrees that Safe Software may engage third party Subprocessors in connection with the provision of the Online Services and hereby consents to the use of all current Subprocessors. A list of current Subprocessors is available on our GDPR page located here: <https://www.safe.com/legal/gdpr/>.

9.2. *Objection to Intended Subprocessors.* The list of Subprocessors at <https://www.safe.com/legal/gdpr/> will be updated as changes occur. To subscribe to advance notification of any such updates please contact legal@safe.com. Customer may object to such updates within 10 working days from receiving an email notification or from the date that any updates were made to <https://www.safe.com/legal/gdpr/>, whichever is later. If the Customer objects to the proposed Subprocessor and Safe Software cannot reasonably accommodate Customer’s objection, then Safe Software will notify Customer and provide the Customer with the option to terminate the Online Services and receive a prorated refund of all prepaid amounts for the period after such termination date.

9.3. *Agreement with Subprocessors.* Safe Software has entered into a written agreement with each Subprocessor containing data protection obligations not less protective than those in this DPA, to the extent applicable to the nature of the services provided by such Subprocessor.

9.4. *Liability.* Safe Software shall be liable for the acts and omissions of its Subprocessors to the same extent Safe Software would be liable if performing the services of each Subprocessor directly under the terms of this DPA, except as otherwise set forth in the Terms.

10. Assistance

10.1. *Cooperation and Assistance.* Safe Software shall provide reasonable assistance, information, and cooperation to the Customer to ensure compliance with the Customer’s obligations under Data Protection Laws. All reasonable expenses incurred by Safe Software resulting from this subsection will be reimbursed by Customer, provided that Safe Software notifies Customer in advance of such expenses.

10.2. *Demonstrating Compliance.* Safe Software shall make available to the Customer all information reasonably necessary to demonstrate compliance with Safe Software’s obligations under this DPA. Further, Safe Software will allow for and contribute to audits or inspections conducted by the Customer, or a third party auditor appointed by Customer, to verify Safe Software’s compliance with its obligations under this DPA. Audits shall be conducted at a mutually agreeable dates and times and in such a manner as not to unreasonably interfere with Safe Software’s normal business activities. Safe Software may require that the persons conducting the audit sign confidentiality agreements, comply with Safe Software’s applicable policies with respect to privacy and security, and comply with Data Protection Laws. Customer shall bear the cost for such audits unless Safe Software is shown to be in material noncompliance.

The parties’ authorized signatories have duly executed this DPA:

SAFE SOFTWARE INC.

CUSTOMER

DocuSigned by:
Signature: Angela McGeachan
Name: Angela McGeachan
Title: General Counsel
Date: May 5, 2021

Entity Legal Name: _____
Signature: _____
Name: _____
Title: _____
Date: _____