



DATA PROCESSING ADDENDUM

Last Updated: May 17, 2022

This Data Processing Addendum (“**DPA**”) forms part of the applicable subscription and services agreement (the “**Agreement**”), entered into by and between the Customer named below (“**Customer**”) and Xactly Corporation (“**Xactly**”), pursuant to which Customer has purchased subscriptions to Xactly’s application services (“**Services**”). The purpose of this DPA is to reflect the parties’ agreement with regard to the Processing of Personal Data, in accordance with the requirements of Data Protection Laws and Regulations.

HOW TO EXECUTE THIS DPA:

To complete this DPA, Customer must:

1. Complete the information in the signature box and sign on Page 6.
2. Submit the completed and signed DPA, without changes to any printed terms, to Xactly at the following email address: legalcontracts@xactlycorp.com. Upon receipt of the validly completed DPA at the above email address, this DPA will become legally binding.

HOW THIS DPA APPLIES

If the Customer entity signing this DPA is a party to the Agreement, this DPA is an addendum to and forms part of the Agreement.

If the Customer entity signing this DPA has entered into an Order Form with Xactly pursuant to the Agreement (an “**Ordering Document**”), but is not itself a party to the Agreement, this DPA is an addendum to that Ordering Document and applicable renewal Ordering Documents. Each Customer Affiliate that enters into its own Ordering Document under the terms of the Customer’s Agreement shall likewise be entitled to the rights and obligations of this DPA, provided, however, each Customer Affiliate shall exercise its rights under this DPA through Customer, unless otherwise required by applicable law and all Customer Affiliate claims shall be considered claims made by Customer and shall be subject to any liability restrictions set forth in the Agreement.

If the Customer entity signing this DPA is neither a party to an Ordering Document nor the Agreement, this DPA is not valid and is not legally binding.

DATA PROCESSING TERMS

For the duration of the Agreement and in the course of providing the Services to Customer pursuant to the Agreement, Xactly may Process Personal Data on behalf of Customer. Xactly and Customer each agree to comply with the following provisions with respect to any Personal Data submitted by or on behalf of Customer to the Services.

1. DEFINITIONS

In this DPA (including Schedules), the following terms have the meanings set out below:

“**Controller**” means the entity which alone or jointly with others determines the purposes and means of the Processing of Personal Data.

“**Data Protection Laws and Regulations**” means all laws and/or regulations applicable to Xactly’s Processing of Personal Data under the Agreement.

“**Data Subject**” means the individual to whom Personal Data relates.

“**EU Standard Contractual Clauses**” means the Standard Contractual Clauses for the transfer of Personal Data to third countries pursuant to Regulation (EU) 2016/679 of the European Parliament and the Council (Module 2 (Transfer Controller to Processor) approved by the European Commission Implementing Decision (EU) 2021/914 of 4 June 2021, as currently set out at https://eur-lex.europa.eu/eli/dec_impl/2021/914/oj.

“**Personal Data**” means any information that has been provided by or on behalf of Customer to the Services that relates to an identified or identifiable natural person. An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier, such as a name, an identification number, location data, an online



identifier, or one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

“Processing” (and related verb forms) means any operation or set of operations which is performed upon Personal Data, whether or not by automatic 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, blocking, erasure or destruction.

“Processor” means the entity that Processes Personal Data on behalf of the Controller.

“Public Authority” means a government agency or law enforcement authority, including judicial authority.

“Regulator” means any Supervisory Authority or regulatory body with responsibility for ensuring compliance with Data Protection Laws and Regulations.

“Security Incident” means a confirmed or reasonably suspected accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, access to Personal Data.

“Sub-processor” means any third-party processor engaged by Xactly to Process Personal Data in order to provide the Services to Customer under the Agreement and/or this DPA. For the avoidance of doubt, telecommunication providers are not Sub-processors.

“Supervisory Authority” means an independent public authority which is established by a member state pursuant to Article 51 of the GDPR or, for the United Kingdom, the Information Commissioner’s Office (**“ICO”**).

“UK International Data Transfer Agreement” means the International Data Transfer Addendum to the EU Standard Contractual Clauses issued by the UK Information Commissioner, Version B1.0, in force 21 March 2022.

All other capitalized definitions in this DPA not explicitly defined in this DPA, shall have the same meanings as defined in the Agreement, the GDPR or other Data Protection Laws and Regulations, in that order of precedence.

2. PROCESSING OF PERSONAL DATA

2.1 **Roles of the Parties.** The parties acknowledge and agree that with regard to the Processing of Personal Data, Customer is the Controller and determines the purposes for which and the manner in which the Personal Data is Processed, Xactly is the Processor of any Personal Data, acting on behalf of the Customer. Xactly may engage Sub-processors pursuant to the requirements set forth in Section 5 “Sub-processors” below. Each party, in respect of the Processing of the Personal Data acknowledges and agrees that each party has respective rights and obligations under applicable Data Protection Laws and Regulations.

2.2 **Customer’s Processing of Personal Data.** Customer shall, in its use of the Services, Process Personal Data in accordance with the requirements of Data Protection Laws and Regulations, including any applicable requirement to provide notice to Data Subjects of the use of Xactly as Processor. For the avoidance of doubt, Customer will ensure that its instructions for the Processing of Personal Data comply with Data Protection Laws and Regulations. Customer acknowledges that Xactly is neither responsible for determining which laws or regulations are applicable to Customer’s business nor whether Xactly’s provision of the Services meets or will meet the requirements of such laws or regulations. Customer will ensure that Xactly’s Processing of Personal Data, when done in accordance with the Customer’s instructions, will not cause Xactly to violate any applicable law or regulation, including applicable Data Protection Laws and Regulations. Customer shall have sole responsibility for the accuracy, quality, and legality of Personal Data and the means by which Customer acquired Personal Data. Customer shall ensure that the Customer is entitled to transfer the relevant Personal Data to Xactly so that Xactly and its Sub-processors may lawfully use, process and transfer the Personal Data in accordance with this DPA and the Agreement on Customer’s and its Affiliates’ behalf. Customer specifically acknowledges that its use of the Services will not violate the rights of any Data Subject that has opted-out from sales or other disclosures of Personal Data, to the extent applicable under the CCPA. Xactly will inform Customer if it becomes aware, or reasonably believes, that Customer’s instructions violate any applicable law or regulation, including applicable Data Protection Laws and Regulations.

2.3 **Xactly’s Processing of Personal Data.** Xactly shall Process Personal Data on behalf of and in accordance with Customer’s written instructions and shall treat Personal Data as Confidential Information. Customer instructs Xactly to



Process Personal Data for the following purposes: (i) Processing in accordance with the Agreement and applicable Ordering Document, which includes updating the Services and preventing or addressing service or technical issues; (ii) Processing initiated by Customer's Subscribers in their use of the Services; (iii) Processing to comply with other reasonable instructions provided by Customer (e.g., via email) where such instructions are consistent with the terms of the Agreement and Data Protection Laws and Regulations; and (iv) as otherwise required by applicable law. The Agreement and this DPA, along with Customer's configuration and use of the Services, are Customer's complete and final instructions to Xactly in relation to the Processing of Personal Data, including for purposes of the Standard Contractual Clauses, and any Processing required outside of the scope of these instructions (inclusive of the rights and obligations set forth under the Agreement) will require prior written agreement of the parties.

2.4 Details of the Processing. The subject-matter of Processing Personal Data by Xactly is the performance of the Services pursuant to the Agreement. The duration of the Processing, the nature and purpose of the Processing, the types of Personal Data and categories of Data Subject Processed under this DPA are further specified in Schedule 1 (Description of the Processing) to this DPA.

2.5 Data Residency. With respect to the Services, Xactly may store data in the European Union or the United States, provided that Customer may select, by indicating in the initial Order Form for the Services which region (European Union or United States) in which Personal Data shall be stored. Personal Data received through the Services may be disclosed to, transferred to, and/or allowed to be accessed by or otherwise Processed by Xactly's personnel or Sub-processors. Personal Data may be transferred to personnel of Xactly and/or its Affiliates located in the European Union, the United Kingdom, Australia, Canada, the United States and India in the course of the Services. Any intragroup transfer is subject to an intragroup data processing agreement. Xactly will notify Customer if the foregoing list of countries changes (which notice may be provided through support channels, Xactly's Trust site available at: <https://trust.xactlycorp.com/>, Xactly's website, or such other reasonable means). In the event that a new country is added to the foregoing list of countries to which Personal Data may be transferred, the parties agree to cooperate in good faith in meeting any additional regulatory or legal requirements necessary to allow such transfers. Notwithstanding the foregoing, with the exception of Personal Data processed through the Services, certain Personal Data may be stored by Xactly or its Sub-processors in the U.S. for operational purposes.

3. RIGHTS OF DATA SUBJECTS

Xactly shall, to the extent legally permitted, promptly notify Customer if it receives a complaint, dispute or request from a Data Subject such as a Data Subject's right of access, correction, amendment or deletion ("right to be forgotten"), data portability, objection to the Processing or its right not to be subject to an automated individual decision making (each such complaint, dispute or request being a "**Data Subject Request**"). Xactly shall not respond to any such Data Subject Request without Customer's prior written consent except that Customer authorizes Xactly to redirect the Data Subject Request as necessary to allow Customer to respond directly.

Taking into account the nature of the Processing and the information available to Xactly, Xactly assists Customer by appropriate technical and organizational measures, insofar as this is possible, for the fulfilment of the Controller's obligation to respond to a Data Subject Request under Data Protection Laws and Regulations. As part of the Services, Xactly provides Customer with a number of self-service features, including the ability to delete Personal Data. Customer may use these self-service features to assist in complying with its obligations under Data Protection Laws and Regulations with respect to responding to Data Subject Request via the Services at no additional cost.

In addition, to the extent Customer, in its use of the Services, does not have the ability to address a Data Subject Request, Xactly shall, upon Customer's written request, provide Customer with commercially reasonable cooperation and assistance in responding to such Data Subject Request, to the extent Xactly is legally permitted to do so and the response to such Data Subject Request is required under Data Protection Laws and Regulations. If legally permitted, Customer shall be responsible for any reasonable costs arising from Xactly's provision of such assistance, requested by Customer.

4. XACTLY PERSONNEL

4.1 Confidentiality. Xactly shall ensure that its personnel and those of its Affiliates 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 have executed written confidentiality agreements.

4.2 Limitation of Access. Xactly shall ensure that Xactly's access to Personal Data is limited to those personnel who require such access to perform the Agreement.



5. SUB-PROCESSORS

5.1 Appointment of Sub-processors. Customer acknowledges and agrees that Xactly's Affiliates may be retained as Sub-processors, and Xactly and Xactly's Affiliates respectively may engage third-party Sub-processors in connection with the provision of the Services, in each case (a) anywhere in the world where Xactly, its Affiliates or its or their Sub-processors maintain data processing operations, and (b) subject to a written agreement requiring the Sub-processor to comply with the requirements of applicable Data Protection Laws and Regulations and to abide by terms no less protective of the Customer Personal Data than those provided in this DPA to the extent applicable to the nature of the services provided by such Sub-processor.

5.2 Performance by Sub-processor. Xactly shall be liable for any such Sub-processor's performance of any obligation under this DPA.

5.3 Current Sub-processors, Notification of New Sub-processors and Objection Right. Xactly's current list of Sub-processors engaged in Processing Personal Data for the performance of each applicable Service, is available at <https://trust.xactlycorp.com/privacy-policy/> ("**Sub-processor List**"). Customer hereby consents to those Sub-processors listed in the Sub-processor List, their locations and processing activities as it pertains to the Personal Data. Customer may subscribe to updates to the relevant Sub-processor List. If Customer subscribes, Xactly shall provide such updates at least thirty (30) days prior to authorizing any new Sub-processor(s) to Process Personal Data in connection with the provision of the Services. If Customer has a reasonable basis to object to Xactly's use of a new Sub-processor relating to data protection, Customer shall notify Xactly in writing within ten (10) business days after receipt of Xactly's notice. In such event, the parties will discuss Customer's concerns in good faith with a view to achieve resolution. If Customer can reasonably demonstrate the new Sub-processors is unable to Process Personal Data in compliance with the terms of this DPA and Xactly cannot provide an alternative Sub-processor, or the parties are not otherwise able to achieve resolution as provided in the preceding sentence within sixty (60) days, Customer, as its sole and exclusive remedy, may provide written notice to terminate only those specific affected elements of the Services in the applicable Ordering Document(s) which cannot be provided by Xactly and/or a mutually agreed upon Sub-Processor without the use of the objected-to new Sub-processor. Within thirty (30) days of receipt of such notice from Customer, Customer shall receive a refund of any prepaid fees for the period following the effective date of termination in respect of such terminated Services.

6. SECURITY

6.1 Controls for the Protection of Personal Data. Xactly shall maintain appropriate administrative, physical and technical safeguards for protection of the security, confidentiality and integrity of Personal Data that are appropriate to (a) the size, scope and type of Xactly's business; (b) the amount of resources available to Xactly; (c) the type of information that Xactly will store; and (d) the need for security and confidentiality of such information. Xactly shall regularly monitor compliance with these safeguards. At a minimum, Xactly will implement and maintain the technical and organizational measures set forth at: <https://www.xactlycorp.com/current-security-policy>. Xactly reserves the right to update such measures provided that any updates shall not materially diminish the level of security applicable to the Services during a Subscription Term. Customer is responsible for reviewing the information Xactly makes available regarding its data security, including its Audit Reports, and making an independent determination as to whether the Services meet the Customer's requirements and legal obligations, including its legal obligations under Data Protection Laws and Regulations.

6.2 Audits. The parties acknowledge that Customer must be able to assess Xactly's compliance with its obligations under Applicable Data Protection Laws and Regulations and this DPA, insofar as Xactly is acting as a processor on behalf of Customer.

6.2.1 Third Party Certifications and Audits. Xactly uses external auditors to verify the adequacy of its security measures with respect to its Processing of Personal Data. Such audits are performed at least once per year during the term of the Agreement at Xactly's expense, by an independent third-party security professionals at Xactly's sole selection and result in the generation of a confidential audit report ("**Audit Report**"). Upon prior written request at reasonable intervals, and subject to the confidentiality provisions of the Agreement, Xactly shall make available to Customer (or Customer's Third-Party's Auditor – as defined below in Section 6.2.4) information regarding Xactly's compliance with the obligations set forth in this DPA in the form of a copy of the summary of the then-current Audit Report. Such third-party audits or certifications may also be shared with Customer's competent supervisory authority on its request. Customer agrees that any audit rights granted by the Data Protection Laws and Regulations will be satisfied by these Audits Reports.



6.2.2 *On-Site Audit.* Customer may contact Xactly to request an on-site audit of Xactly's Processing activities covered by this DPA ("**On-Site Audit**"). An On-site Audit may be conducted by Customer either itself or through a Third-Party Auditors (as defined below in Section 6.2.4.) selected by Customer when:

1. Xactly's provision of an Audit Report is not sufficient to demonstrate compliance with the obligations set out in this DPA; or
2. such an audit is required by Data Protection Laws and Regulations or by Customer's competent Supervisory Authority.

Any On-Site Audits will be limited to Personal Data Processing and storage facilities operated by Xactly or any of Xactly's Affiliates. Customer acknowledges that Xactly operates a multi-tenant cloud environment. Accordingly, Xactly shall have the right to reasonably adapt the scope of any On-Site Audit to avoid or mitigate risks with respect to, and including, service levels, availability, and confidentiality of other Xactly customers' information.

6.2.3. *Reasonable Exercise of Rights.* An On-Site Audit shall be conducted by Customer or its Third-Party Auditor: (i) acting reasonably, in good faith, and in a proportional manner, taking into account the nature and complexity of the Services used by Customer; (ii) up to one time per year with at least four (4) weeks' advance written notice. If an emergency justifies a shorter notice period, Xactly will use good faith efforts to accommodate the On-Site Audit request; and (iii) during Xactly's normal business hours, under reasonable duration and shall not unreasonably interfere with Xactly's day-to-day operations. Before any On-Site Audit commences, Customer and Xactly shall mutually agree upon the scope, timing, and duration of the audit and the reimbursement rate for which Customer shall be responsible. All reimbursement rates shall be reasonable, taking into account the resources expended by or on behalf of Xactly.

6.2.4. *Third-Party Auditor.* A Third-Party Auditor means a third-party independent contractor that is not a competitor of Xactly. An On-Site Audit can be conducted through a Third-Party Auditor if: (i) prior to the On-Site Audit, the Third-Party Auditor enters into a non-disclosure agreement containing confidentiality provisions no less protective than those set forth in the Agreement to protect Xactly's proprietary information; and (ii) the costs of the Third-Party Auditor are at Customer's expense.

6.2.5. *Findings.* All information gathered during the On-Site Audit as the audit report created from the On-Site Audit is confidential and cannot be divulged to third parties (unless mandated by applicable law) without Xactly's prior written consent. Customer must promptly provide Xactly with information regarding any non-compliance discovered during the course of an On-Site Audit.

6.3 Data Protection Impact Assessment and Prior Consultation. So long as Customer does not otherwise have access to the relevant information, and to the extent such information is available to Xactly, Xactly shall provide reasonable assistance to Customer needed to fulfil Customer's obligation under Data Protection Laws and Regulations to carry out a data protection impact assessment related to Customer's use of the Service (at Customer's expense only if such reasonable cooperation will require Xactly to assign significant resources to that effort).

7. SECURITY INCIDENT NOTIFICATION

Xactly has implemented and will maintain security incident management policies and procedures as set forth in the Agreement. Xactly shall, to the extent permitted by law, notify Customer's designated contact as set forth by Customer in the signature block below, without undue delay (and in any event within 72 hours of confirmation), after Xactly's discovery of a Security Incident") impacting Personal Data of which Xactly is a Processor. Any such notification is not an acknowledgement of fault or responsibility. Xactly shall make reasonable efforts to identify a Security Incident and, to the extent a Security Incident is caused by a violation of the requirements of this DPA by Xactly, remediate the cause of such Security Incident. Xactly will reasonably assist the Customer to comply with its reporting obligations under applicable Data Protection Laws and Regulations in connection with the Security Incident.

In case of a Security Incident and prior to making any required public statement or required notice, Customer agrees to timely provide Xactly with a draft for discussion on the content of its intended required public statements or required notices for the affected Data Subjects and/or required notices to the relevant Regulators regarding the Security Incident to the extent such public statements or notices identify Xactly by name or relate to Xactly's multi-tenant cloud software and/or Services. This draft shall be discussed in a timely fashion and in good faith between the parties. Notwithstanding the preceding sentence, Customer shall not be required to prejudice its obligations under Data Protection Laws and Regulations.



8. GOVERNMENT ACCESS REQUESTS

In its role as a Processor, Xactly shall maintain appropriate measures to protect Personal Data in accordance with the requirements of Data Protection Laws and Regulations, including by implementing appropriate technical and organizational safeguards to protect Personal Data against any interference that goes beyond what is necessary in a democratic society to safeguard national security, defense and public security. If Xactly receives a legally binding request to access Personal Data from a Public Authority, Xactly shall, unless otherwise legally prohibited, promptly notify Customer including a summary of the nature of the request. To the extent Xactly is prohibited by law from providing such notification, Xactly shall use commercially reasonable efforts to obtain a waiver of the prohibition to enable Xactly to communicate as much information as possible, as soon as possible. Further, Xactly shall challenge the request if, after careful assessment, it concludes that there are reasonable grounds to consider that the request is unlawful. Xactly shall pursue possibilities of appeal. When challenging a request, Xactly shall seek interim measures with a view to suspending the effects of the request until the competent judicial authority has decided on its merits. It shall not disclose the Personal Data requested until required to do so under the applicable procedural rules. Xactly agrees it will provide the minimum amount of information permissible when responding to a request for disclosure, based on a reasonable interpretation of the request. Xactly shall promptly notify Customer if Xactly becomes aware of any direct access by a Public Authority to Personal Data and provide information available to Xactly in this respect, to the extent permitted by law. For the avoidance of doubt, this DPA shall not require Xactly to pursue action or inaction that could result in civil or criminal penalty for Xactly such as contempt of court.

9. RETURN AND DELETION OF PERSONAL DATA

Xactly shall make Personal Data available for export by Customer upon written request made within thirty (30) days of the date of termination/expiration of the Agreement. Unless prohibited by applicable law, within one hundred twenty (120) days after the termination/expiration of the Agreement, Xactly shall securely destroy all Personal Data in its possession or control.

Notwithstanding anything to the contrary in this Section 8, Xactly may retain Personal Data, or any portion of it, if required by applicable law or regulation or in furtherance of the Agreement, including Data Protection Laws and Regulations or for electronic backups, provided such Personal Data remains protected in accordance with the terms of the Agreement, this DPA and the Data Protection Laws and Regulations.

10. INTERNATIONAL PROVISIONS

10.1 Conditions for International Processing. Xactly shall be entitled to Process Personal Data, including by using Sub-processors, in accordance with this DPA outside the country in which the Customer is located as permitted under Data Protection Laws and Regulations.

10.2 Jurisdiction Specific Terms. To the extent Xactly Processes Personal Data originating from and protected by Data Protection Laws and Regulations in one of the jurisdictions listed in Schedule 4 “Jurisdiction Specific Terms” of this DPA, the terms specified in Schedule 4 with respect to the applicable jurisdiction(s) apply in addition to the terms of this DPA.

10.3 International Data Transfer Mechanisms for Data Transfers. To the extent Customer’s use of the Services requires an onward transfer mechanism to lawfully transfer Personal Data from a jurisdiction (i.e., the EEA, the United Kingdom, Switzerland, or any other jurisdiction listed in Schedule 4 to Xactly located outside of that jurisdiction (“**Transfer Mechanism**”)), the terms set forth in Schedule 3 “International Transfer Mechanisms” will apply.

10.4 Conflict. In the event of any conflict or inconsistency among the following documents, the conflict or inconsistency shall be resolved by giving precedence in the following order: (i) the applicable terms of Schedule 4 “Jurisdiction Specific Terms” of this DPA; (ii) the EU Standard Contractual Clauses or the UK International Data Transfer Agreement as applicable; and (iii) this DPA.

11. LEGAL EFFECT

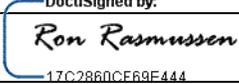
This DPA shall only become legally binding between the eligible Customer and Xactly when each of the steps set out in the Section “HOW TO EXECUTE THIS DPA” above have been fully completed. The terms of this DPA will end simultaneously and automatically with the termination of the Agreement, provided however any obligation imposed on Xactly under this DPA in relation to the Processing of Personal Data shall survive any termination or expiration of the Agreement for as long as Xactly maintains such Personal Data in its possession. This DPA is part of and subject to the



terms of the Agreement. Customer's remedies (including those of its Affiliates) with respect to any breach by Xactly of the terms of this Agreement will be subject to any aggregate limitation of liability that applies to the Customer under the Agreement. With regard to the subject matter of this DPA, in the event of inconsistencies between the provisions of this DPA and the Agreement, the provisions of this DPA shall prevail with regard to the parties' data protection obligations.



IN WITNESS WHEREOF, the parties' authorized signatories have duly executed this Agreement:

CUSTOMER:	XACTLY CORPORATION
By:	By:  17C2860CE68E444
Name:	Name: Ron Rasmussen
Title:	Title: Chief Technology Officer
Date:	Date: 5/17/2022
Customer's Email Contact (for breach notifications):	



Schedule 1 - Description of the Processing

1. CATEGORIES OF DATA SUBJECTS WHOSE PERSONAL DATA IS TRANSFERRED

Customer may submit Personal Data to the Services, the extent of which is determined and controlled by the Customer in its sole discretion, and which may include, but is not limited to Personal Data relating to the following categories of data subjects: Customer’s employees, agents, advisors, and contractors who are natural persons, and Customer’s users authorized by Customer to use the Services.

2. CATEGORIES OF PERSONAL DATA TRANSFERRED

Customer may submit Personal Data to the Services, the extent of which is determined and controlled by the Customer in its sole discretion, and which may include, but is not limited to the following categories of Personal Data:

Names and contact details, e-mail and telephone details, job title, unit/department, location, supervisor(s) and subordinate(s), employee identification number, employment status and type, compensation information, including bonus and sales commission eligibility, quotas, commission rates and on target earnings, objectives, coaching and job performance information.

3. SPECIAL CATEGORIES OF DATA / SENSITIVE DATA TRANSFERRED (IF APPLICABLE)

None.

4. NATURE OF THE PROCESSING AND PURPOSE OF THE PROCESSING, THE DATA TRANSFER AND FURTHER PROCESSING

The nature of the Processing is the performance of the Services pursuant to the Agreement.

Xactly will Process Personal Data as necessary for the performance of the Services pursuant to the Agreement. Xactly shall only Process Personal Data in accordance with the instructions as set out by Section 2.3 of the DPA.



Schedule 2 - Technical and Organizational Security Measures

Where applicable, this Schedule 2 applies to describe the applicable technical and organizational measures for the purposes of Annex II to the EU Standard Contractual Clauses, Table 3 of the UK International Data Transfer Agreement and Data Protection Laws and Regulations.

Xactly will implement and maintain the technical and organizational measures as set forth at: <https://www.xactlycorp.com/current-security-policy>. Xactly reserves the right to update such measures at its sole discretion provided that any updates shall not materially diminish the level of security applicable to the Services during an existing Subscription Term. Data Subject Requests shall be handled in accordance with Section 3 of the DPA.



Schedule 3 – International Data Transfer Mechanisms

1. DEFINITIONS

In this Schedule 3, the following terms have the meanings set out below:

“**EC**” means the European Commission.

“**European Economic Area**” or “**EEA**” means the European Economic Area, namely the European Union Member State along with Iceland, Liechtenstein and Norway.

“**EU Standard Contractual Clauses**” or “**EU SCCs**” means the Standard Contractual Clauses (Module 2 (Transfer Controller to Processor) approved by the European Commission in decision 2021/914.

“**UK International Data Transfer Agreement**” means the International Data Transfer Addendum to the EU Standard Contractual Clauses issued by the UK Information Commissioner, Version B1.0, in force 21 March 2022.

2. INTERNATIONAL DATA TRANSFER MECHANISMS

2.1 Order of precedence. In the event the Services are covered by more than one Transfer Mechanism, the transfer of Personal Data will be subject to a single Transfer Mechanism in accordance with the following order of precedence: (a) the EU Standard Contractual Clauses as set forth in Section 2.2 “EU Standard Contractual Clauses” of this Schedule 3 (b) the UK International Data Transfer Agreement as set forth in Section 2.3 “UK International Data Transfer Agreement” of this Schedule 3; and if neither (a) nor (b) is applicable, then (c) other applicable data Transfer Mechanisms permitted under Data Protection Laws and Regulations.

2.2 EU Standard Contractual Clauses. The parties agree that the EU Standard Contractual Clauses will apply only to the Processing of Personal Data by Xactly in the course of providing the Services that is transferred via the Services from the European Economic Area or Switzerland, either directly or via onward transfer, to (i) any country that does not ensure an adequate level of data protection within the meaning of Data Protection Laws and Regulations, to the extent such transfers are subject to such applicable Data Protection Laws and Regulations (ii) to any recipient which is not subject to other binding obligations, code of conduct or certification as determined to be sufficient by the Supervisory Authority or (iii) any recipient not covered by a suitable framework recognized by the relevant authorities or courts as providing an adequate level of protection for personal data, including but not limited to Binding Corporate Rules for Processors. For data transfers from the European Economic Area or Switzerland that are subject to the EU Standard Contractual Clauses, the EU Standard Contractual Clauses will be deemed entered into (and incorporated into this DPA by this reference) as amended or completed (as the context requires) as follows:

- (1) Applicable Module: Module 2: Transfer Controller to Processor
- (2) in Clause 7 of the EU Standard Contractual Clauses, the optional docking clause will not apply;
- (3) for the purposes of Clause 8.1.(a) of the EU Standard Contractual Clauses, the instructions by Customer to Process Personal Data are set out in Section 2.3 of this DPA and include onward transfers to a third party located outside Europe for the purpose of the performance of the Services.
- (4) The parties agree that the certification of deletion of Personal Data that is described in Clause 8.5. and 16(d) of the EU Standard Contractual Clauses shall be provided by Xactly to Customer only upon Customer’s written request.
- (5) For the purposes of Clause 8.6(a) of the EU Standard Contractual Clauses, Customer is solely responsible for making an independent determination as to whether the technical and organizational measures set forth in Schedule 2 “Technical and Organizational Security Measures” meet Customer’s requirements and agrees that (taking into account the state of the art, the costs of implementation, and the nature, scope, context and purposes of the Processing of its Personal Data as well as the risks to individuals) the security measures and policies implemented and maintained by Xactly provide a level of security appropriate to the risk with respect to its Personal Data. For the purposes of Clause 8.6(c), personal data breaches will be handled in accordance with Section 7 “Security Incident Notification” of this DPA.



(6) The parties agree that the audits described in Clause 8.9 of the EU Standard Contractual Clauses shall be carried out in accordance with Section 6.2. of this DPA.

(7) in Clause 9 of the EU Standard Contractual Clauses, Option 2 will apply. For the purposes of Clause 9(a) of the EU Standard Contractual Clauses, (1) Xactly has Customer's general authorisation to engage Sub-processors in accordance with Section 5.2. "Current Sub-processors, Notification of New Sub-processors and Objection Right" of this DPA and (2) Customer acknowledges and expressly agrees that Xactly may engage new Sub-processors as described in Section 5.2. "Current Sub-processors, Notification of New Sub-processors and Objection Right" of this DPA. Xactly will inform Customer of any changes to Sub-processors following the procedure provided for in Section 5.3 "Current Sub-processors, Notification of New Sub-processors and Objection Right" of this DPA;

(8) For the purpose of Clause 11 of the EU Standard Contractual Clauses, and subject to Section 3 "Rights of Data Subjects", Xactly shall inform Data Subjects on its website of a contact point authorized to handle complaints. Xactly shall inform Customer if it receives a complaint by, or a dispute from, a Data Subject with respect to Personal Data and shall without undue delay communicate the complaint or dispute to Customer. Xactly shall not otherwise have any obligation to handle the request (unless otherwise agreed with Customer). The optional language of Clause 11 of the EU Standard Contractual Clauses will not apply;

(9) Xactly's liability under Clause 12(b) of the EU Standard Contractual Clauses will be limited to any damage caused by its Processing where Xactly has not complied with its obligations under the GDPR, specifically directed to Processors, or where it has acted outside of or contrary to lawful instructions of Customer, as specified in Article 82 GDPR;

(10) For the purpose of Clause 15(1)(a) of the EU Standard Contractual Clauses, Xactly shall notify Customer (only) and not the Data Subject(s) in case of government access requests. Customer shall be solely responsible for promptly notifying the Data Subject as necessary.

(11) in Clause 17 of the EU Standard Contractual Clauses, Option 1 is selected and the EU Standard Contractual Clauses will be governed by the law of the Netherlands;

(12) in Clause 18(b) of the EU Standard Contractual Clauses, disputes will be resolved before the courts in Amsterdam, Netherlands;

(13) in Annex I, Part A "List of the Parties" of the EU Standard Contractual Clauses:

Data exporter(s):

The data exporter is the Customer (as defined in this DPA) and its Affiliates (as defined in the Agreement) established in the EEA or Switzerland that have purchased Services pursuant to one or more Ordering Documents.

Contact details: as mentioned in the signature block of this DPA.

Data Exporter Role: controller.

Signature and Date: By entering into the DPA, Data Exporter is deemed to have signed these EU Standard Contractual Clauses incorporated herein, including their Annexes, as of the Effective Date of the DPA.

Data importer(s):

The data importer is Xactly Corporation, a provider of hosted incentive compensation, performance management and territory optimization software applications, which processes personal data upon the instruction of the data exporter in accordance with the terms of the Agreement.

Contact details: Xactly Privacy Team – privacy@xactlycorp.com

Data Importer Role: processor.

Signature and Date: By entering into the DPA, Data Importer is deemed to have signed these EU Standard Contractual Clauses, incorporated herein, including their Annexes, as of the Effective Date of the DPA.



(14) in Annex I, Part B of the EU Standard Contractual Clauses:

The categories of data subjects whose Personal Data is transferred are described in Section 1 of Schedule 1 “Description of Processing” of this DPA.

The categories of Personal Data transferred are described in Section 2 of Schedule 1 “Description of Processing” of this DPA

The Sensitive Data transferred is described in Section 3 of Schedule 1 “Description of Processing” of this DPA.

The frequency of the transfer is a continuous basis for the duration of the Agreement depending on the use of the Services by the Customer.

The nature of the Processing is described in Section 4 of Schedule 1 “Description of Processing” of this DPA.

The purpose of the Processing is described in Section 4 of Schedule 1 “Description of Processing” of this DPA.

The period for which the personal data will be retained is described in Section 9 of this DPA.

For transfers to sub-processors, transfers to Subprocessors shall be on the same basis as set out in the DPA. The Sub-processor will Process Personal Data as necessary to perform the Services pursuant to this Agreement. The Sub-processor will Process Personal Data for the duration of the Agreement.

Identities of the Sub-processors used for the provision of the Services and their country of location are listed at the following link: <https://trust.xactlycorp.com/privacy-policy/>.

(15) in Annex I, Part C of the EU Standard Contractual Clauses: The Dutch Data Protection Authority (Dutch: *Autoriteit Persoonsgegevens*, AP) will be the competent supervisory authority.

(16) Schedule 2 (Technical and Organizational Security Measures) of this DPA serves as Annex II of the EU Standard Contractual Clauses.

2.3 UK International Data Transfer Agreement. The parties agree that the UK International Data Transfer Agreement will apply only to the Processing of Personal Data by Xactly in the course of providing the Services that is transferred via the Services from the United Kingdom, either directly or via onward transfer, to (i) any country that does not ensure an adequate level of data protection within the meaning of Data Protection Laws and Regulations of the United Kingdom (“**UK Data Protection Laws**”), to the extent such transfers are subject to such applicable UK Data Protection Laws (ii) to any recipient which is not subject to other binding obligations, code of conduct or certification as determined to be sufficient by the ICO or (iii) any recipient not covered by a suitable framework recognized by the relevant authorities or courts as providing an adequate level of protection for personal data, including but not limited to Binding Corporate Rules for Processors. For data transfers from the United Kingdom that are subject to the UK International Data Transfer Agreement, the UK International Data Transfer Agreement will be deemed entered into (and incorporated into this DPA by this reference) as amended or completed (as the context requires) as follows:

(1) In Table 1 of the UK International Data Transfer Agreement, the parties’ details and key contact information is located in Section 2.2 (7) of this Schedule 3;

(2) In Table 2 of the UK International Data Transfer Agreement, information about the version of the Approved EU SCCs, modules and selected clauses which this UK International Data Transfer Agreement is appended to is located in Section 2.2 (EU Standard Contractual Clauses) of this Schedule 3;

(3) In Table 3 of the UK International Data Transfer Agreement:

- a. The list of Parties is located in Section 2.2(7) of this Schedule 3 with the following amendment:

The data exporter is the Customer (as defined in this DPA) and its Affiliates (as defined in the Agreement) established in the United Kingdom that have purchased Services pursuant to one or



more Ordering Documents.

- b. The description of the transfer is set forth in Section 1 of Schedule 1 “Description of the Processing” of this DPA.
- c. Xactly’s current list of Sub-processors for the applicable Services is available at <https://trust.xactlycorp.com/privacy-policy/>.

(4) In Table 4 of the UK International Data Transfer Agreement, both the Importer and the Exporter may end the UK International Data Transfer Agreement in accordance with the terms of the UK International Data Transfer Agreement.



Schedule 4 – Jurisdiction Specific Terms

1. AUSTRALIA

1.1 The definition of “Data Protection Laws and Regulations” includes the Australian Privacy Principles and the Australian Privacy Act (1988).

1.2 The definition of “personal data” includes “Personal Information” as defined under Applicable Data Protection Law.

2. CALIFORNIA

2.1 The definition of “Data Protection Laws and Regulations” includes the California Consumer Privacy Act (Cal. Civ. Code § 1798.100 *et seq.*) as may be amended from time to time (CCPA).

2.2 The definition of “Personal Data” includes “Personal Information” as defined under CCPA.

2.3 The definition of “Data Subject” includes “Consumer” as defined under CCPA. Any data subject rights, as described in Section 3 “Rights of Data Subject” of this DPA, apply to Consumer rights. In regard to data subject requests, Xactly can only verify a request from Customer and not from any Customer’s Subscriber (as this term is defined in the Agreement) or any third party.

2.4 The definition of “Controller” includes “Business” as defined under CCPA.

2.5 The definition of “Processor” includes “Service Provider” as defined under CCPA.

2.6 To the extent the Personal Data Processing activities are caught by the requirement of the CCPA, Xactly will comply with the obligations set forth in this Section 2.6 and Xactly will process, retain, use, and disclose Personal Data only as necessary to provide the Services under the Agreement, which constitutes a business purpose. Xactly will not retain, use, sell or otherwise disclose Personal Data: (a) for any purposes other than as set forth in the Agreement and this DPA, unless otherwise required by law, or (b) outside of the direct business relationship between Customer and Xactly, except as permitted under applicable Data Protection Laws and Regulations. Xactly certifies that it understands these restrictions and obligations and will comply with them. For purposes of this Section 2.6, the term “sell” has the meaning given in the CCPA.

2.7 Xactly certifies that its sub-processors, as described in Section 5 “Sub-processors” of this DPA, are Service Providers under Applicable Data Protection Law, with whom Xactly has entered into a written contract that includes terms substantially similar to this DPA. Xactly conducts appropriate due diligence on its sub-processors.

2.8 Xactly will implement and maintain reasonable security procedures and practices appropriate to the nature of the personal data it processes as set forth in Section 6 “Security” of this DPA.

3. CANADA

3.1. The definition of “Data Protection Laws and Regulations” includes the Federal Personal Information Protection and Electronic Documents Act (PIPEDA).

3.2. Xactly’s sub-processors, as described in Section 5 “Sub-processors” of this DPA, are third parties under PIPEDA, with whom Xactly has entered into a written contract that includes terms substantially similar to this DPA. Xactly has conducted appropriate due diligence on its sub-processors.

3.3. Xactly will implement technical and organizational measures as set forth in Section 6 “Security” of this DPA.



4. EUROPEAN ECONOMIC AREA (EEA)

4.1 The definition of “Applicable Data Protection Law” includes the General Data Protection Regulation (EU 2016/679) on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (“GDPR”).

4.2 When Xactly engages a sub-processor under Section 5 “Sub-processors” of this DPA, it will: (a) require any appointed sub-processor to protect the Personal Data to the standard required by GDPR, such as including the same data protection obligations referred to in Article 28(3) of the GDPR, in particular providing sufficient guarantees to implement appropriate technical and organizational measures in such a manner that the processing will meet the requirements of the GDPR, and (b) require any appointed sub-processor to (i) agree in writing to only process personal data in a country that the European Union has declared to have an “adequate” level of protection or (ii) only process personal data on terms equivalent to the EU Standard Contractual Clauses or pursuant to a Binding Corporate Rules approval granted by competent European Union data protection authorities.

4.3 Notwithstanding anything to the contrary in this DPA or in the Agreement (including, without limitation, either party’s indemnification obligations), neither party will be responsible for any GDPR fines issued or levied under Article 83 of the GDPR against the other party by a regulatory authority or governmental body in connection with such other party’s violation of the GDPR.

5. ISRAEL

5.1 The definition of “Data Protection Laws and Regulations” includes the Protection of Privacy Law (PPL).

5.2 The definition of “controller” includes “Database Owner” as defined under PPL.

5.3 The definition of “processor” includes “Holder” as defined under PPL.

5.4 Xactly will require that any personnel authorized to process Personal Data comply with the principle of data secrecy and have been duly instructed about Data Protection Laws and Regulations. Such personnel sign confidentiality agreements with Xactly in accordance with Section 4.1 “Confidentiality” of this DPA.

5.5 Xactly must take sufficient steps to ensure the privacy of data subjects by implementing and maintaining the security measures as specified in Section 6 “Security” of this DPA and complying with the terms of the Agreement.

5.6 Xactly must ensure that the personal data will not be transferred to a sub-processor unless such sub-processor has executed an agreement with Xactly pursuant to Section 5 “Sub-processors” of this DPA.

6. JAPAN

6.1. The definition of “Data Protection Laws and Regulations” includes the Act on the Protection of Personal Information (APPI).

6.2. The definition of “personal data” includes “Personal Information” as defined under APPI.

6.3. The definition of “controller” includes “Business Operator” as defined under APPI. As a Business Operator, Xactly is responsible for the handling of personal data in its possession.

6.4. The definition of “processor” includes a business operator entrusted by the Business Operator with the handling of personal data in whole or in part (also a “trustee”), as described under APPI. As a trustee, Xactly will ensure that the use of the entrusted Personal Data is securely controlled.



7. SWITZERLAND

7.1. The definition of “Data Protection Laws and Regulations” includes the Swiss Federal Act on Data Protection.

7.2. When Xactly engages a sub-processor under Section 5 “Sub-processors” of this DPA, it will: (a) require any appointed sub-processor to protect the Personal Data to the standard required by Data Protection Laws and Regulations, such as including the same data protection obligations referred to in Article 28(3) of the GDPR, in particular providing sufficient guarantees to implement appropriate technical and organizational measures in such a manner that the processing will meet the requirements of the GDPR, and (b) require any appointed sub-processor to (i) agree in writing to only process personal data in a country that the European Union has declared to have an “adequate” level of protection or (ii) only process personal data on terms equivalent to the Standard Contractual Clauses or pursuant to a Binding Corporate Rules approval granted by competent European Union data protection authorities.

8. UNITED KINGDOM (UK)

8.1. References in this DPA to GDPR will to that extent be deemed to be references to the corresponding laws of the United Kingdom (including the UK GDPR and Data Protection Act 2018).

8.2. When Xactly engages a sub-processor under Section 5 “Sub-processors” of this DPA, it will: (a) require any appointed sub-processor to protect the Personal Data to the standard required by Data Protection Laws and Regulations, such as including the same data protection obligations referred to in Article 28(3) of the GDPR, in particular providing sufficient guarantees to implement appropriate technical and organizational measures in such a manner that the processing will meet the requirements of the GDPR; and (b) require any appointed sub-processor to (i) agree in writing to only process personal data in a country that the United Kingdom has declared to have an “adequate” level of protection or (ii) only process personal data on terms equivalent to the UK International Data Transfer Agreement or pursuant to a Binding Corporate Rules approval granted by competent United Kingdom data protection authorities.

8.3. Notwithstanding anything to the contrary in this DPA or in the Agreement (including, without limitation, either party’s indemnification obligations), neither party will be responsible for any UK GDPR fines issued or levied under Article 83 of the UK GDPR against the other party by a regulatory authority or governmental body in connection with such other party’s violation of the UK GDPR.