

Data Processing Agreement

This Data Processing Agreement (“**DPA**”) is between

- a. The company and its Affiliates (collectively the “**Customer**”) identified in the signature block, and
- b. ToolsPlus Sdn. Bhd. (1275352-W) a company incorporated under the laws of Malaysia and its Affiliates (collectively “**ToolsPlus**”).

Together the “**Parties**” and each a “**Party**”.

This DPA supplements the terms of the End User License Agreement (“**EULA**”) (the “**Service Agreement**”), under which ToolsPlus provides certain services (“**Services**”).

This DPA will be effective as of the date ToolsPlus receives a complete and executed DPA from the Customer indicated in the signature block below in accordance with the instructions under Sections I and II below (the “**Effective Date**”). This DPA shall apply to personal data processed by ToolsPlus on behalf of the Customer in the course of providing the Services.

I. Instructions

This DPA has been pre-signed on behalf of ToolsPlus. To enter into this DPA, you must:

- a. be a customer of the Service(s);
- b. complete the signature block below by signing and providing all items; and
- c. submit the completed and signed DPA to ToolsPlus as instructed.

II. Effectiveness

- a. This DPA will only be effective (as of the Effective Date) if executed and submitted to ToolsPlus accurately and in full accordance with paragraph I above and this paragraph II. If you make any deletions or other revisions to this DPA, then this DPA will be null and void.
- b. Customer signatory represents to ToolsPlus that he or she has the legal authority to bind the Customer and is lawfully able to enter into contracts (e.g. is not a minor).
- c. This DPA will terminate automatically upon termination of the Service or as earlier terminated pursuant to the terms of this DPA.

III. Data Processing Terms

The Parties agree as follows:

1. Definitions

Unless otherwise defined in this DPA or in the Service Agreement, all capitalised terms used in this DPA shall have the following meanings:

- 1.1. **“Affiliate”** means, with respect to a party, any person which directly or indirectly Controls, is Controlled by or is under common Control with such party.
- 1.2. **“Applicable Law”** means any laws, statutes, regulations, regulatory constraints, obligations or rules (including binding codes of conduct and binding statements of principle incorporated and contained in such rules) in any jurisdiction applicable to the existence or operation of the Service Agreement and the Parties to the Service Agreement, including any amending, consolidating or successor legislation or case law which takes effect from time to time in the relevant jurisdiction.
- 1.3. **“Applicable Privacy Law”** means an Applicable Law on data protection or data privacy, including the GDPR.
- 1.4. **“Control”** shall mean the power to direct the management or policies of a person, whether through the ownership of more than 50% (fifty percent) of the voting power of such person or, through the power to appoint more than half of the members of the board of directors or similar governing body of such person, through contractual arrangements or otherwise.
- 1.5. **“EEA”** means the European Economic Area.
- 1.6. **“GDPR”** means General Data Protection Regulation (EU) 2016/679.
- 1.7. **“Services”** means the services to be provided by ToolsPlus (directly or indirectly) to the Customer, in accordance with the Service Agreement.
- 1.8. **“Standard Contractual Clauses”** means the contractual clauses set out by the European Commission available at <https://ec.europa.eu/info/law/law-topic/data-protection/data-transfers-outside-eu/model-contracts-transfer-personal-data-third-countries> as updated or replaced from time to time; and the terms **“controller”**, **“data subject”**, **“personal data”**, **“personal data breach”**, **“processing”** and **“processor”** have the meanings given to them in article 4 of the GDPR (and their cognates are to be interpreted accordingly), except that references to **“personal data”** include references to data relating to legal as well as natural persons to the extent that the processing of the relevant data is regulated by an Applicable Privacy Law which applies to the processing of such data.

2. Roles of the Parties

Where ToolsPlus, its Affiliates or a Sub-Processor (“**Processor**”) processes personal data (“**Processed Personal Data**”) in the course of providing the Services to, or otherwise performing its obligations under the Service Agreement for, the Customer, the parties acknowledge that, to the extent relevant under the Applicable Privacy Laws, the Customer will act as the controller, and the Processor will act as a processor on behalf of the Customer, in relation to the Processed Personal Data.

3. Processing Instructions

- 3.1. Subject to the other provisions of this DPA, the Customer
 - a. instructs ToolsPlus to take such steps in the processing of Processed Personal Data on its behalf as are reasonably necessary to the provision of the Services or otherwise to the performance of ToolsPlus’ obligations under the Service Agreement; and
 - b. irrevocably authorises ToolsPlus to provide equivalent instructions to Sub-Processors on its behalf.
- 3.2. The description of the processing as required by Article 28(3) of the GDPR is set out in Exhibit 2.

4. Compliance with Applicable Privacy Law

- 4.1. ToolsPlus shall comply and ensure that each of its Affiliates and Sub-Processors complies, with Applicable Privacy Law in relation to its processing of personal data in connection with the Service Agreement.
- 4.2. The Customer shall ensure that, before any Processed Personal Data is disclosed by the Customer to the Processor, the Customer has taken any steps necessary to ensure that the disclosure does not breach any Applicable Privacy Law. Without limiting the foregoing, the Customer shall be responsible:
 - a. at all times for the integrity, quality and legality of the Processed Personal Data provided by the Customer to ToolsPlus. ToolsPlus is under no duty to investigate the completeness, accuracy or sufficiency of the Processed Personal Data provided to it by the Customer;
 - b. for informing the data subject that their Processed Personal Data will be transferred to and processed by ToolsPlus, and to direct them to ToolsPlus’ Privacy Policy available on the ToolsPlus website; and
 - c. to the extent required by Applicable Privacy Law, to obtain the consent of the data subjects for their Processed Personal Data to be transferred to and processed by the Processor, and where the data subject is below the applicable age of consent under Applicable Privacy Law, to obtain the consent of the data subject’s parents and/or guardians.

5. Confidentiality

Without prejudice to any existing contractual arrangements between the Parties, ToolsPlus shall treat all Processed Personal Data with confidentiality and shall inform all its employees, agents and/or approved sub-processors engaged in processing the Processed Personal Data of its confidential nature. ToolsPlus shall ensure that all such persons or parties are under an appropriate obligation of confidentiality.

6. Security

- 6.1. 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, without prejudice to any other security standards agreed upon by the Parties, ToolsPlus shall implement appropriate technical and organisational measures (“**Appropriate**”) to ensure a level of security of the processing of Processed Personal Data appropriate to the risk.
- 6.2. ToolsPlus shall take Appropriate measures for:
 - a. the pseudonymisation and encryption of Processed Personal Data;
 - b. the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
 - c. the ability to restore the availability of and access to Processed Personal Data in a timely manner in the event of a physical or technical incident;
 - d. and a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.
- 6.3. In assessing the appropriate level of security, ToolsPlus shall take into account the particular risks that are presented by processing, for example, from accidental or unlawful destruction, loss, alteration, unauthorized or unlawful storage, processing, or access or disclosure of Processed Personal Data (i.e. Data Security Incident).

7. Sub-Processing

- 7.1. Customer authorises the engagement of ToolsPlus’ Affiliates as sub-processors.
- 7.2. Customer agrees that ToolsPlus may continue to use those sub-processors already engaged by ToolsPlus as of the date of this DPA. Information about sub-processors, including their functions and locations, is available at <https://toolspl.us/subprocessors>.
- 7.3. Requirements for subprocessor engagement with respect to each subprocessor, ToolsPlus shall:
 - a. Before the sub-processor first processes any Processed Personal Data, carry out adequate due diligence to ensure that the sub-processor is capable of

providing the level of protection for Processed Personal Data required by the Service Agreement;

- b. Ensure that the arrangement is governed by a written contract including terms that offer at least the same level of protection for Processed Personal Data as those set out in this DPA;
- c. Remain fully liable for all obligations subcontracted to, and all acts and omissions of the sub-processor.

8. International Data Transfers

- 8.1. The Standard Contractual Clauses apply to transfers of personal data from the EEA, to any country or recipient: (i) not recognised by the European Commission as providing an adequate level of protection for personal data (as described in the GDPR and any successor legislation thereto), and (ii) not covered by a suitable framework recognised by relevant authorities or courts as providing an adequate level of protection for personal data, including but not limited to the EU-U.S. Privacy Shield Framework.
- 8.2. The Standard Contractual Clauses shall apply to the transfer of Processed Personal Data to ToolsPlus from the EEA.
- 8.3. Where the Standard Contractual Clauses apply in accordance with Clause 7(b):
 - a. ToolsPlus agrees to comply with the terms of the Standard Contractual Clauses, for the purposes of which the Customer and those of its affiliates established in the EEA will be regarded as the Data Exporter(s) and ToolsPlus will be regarded as the Data Importer;
 - b. the governing law in Clause 9 of the Standard Contractual Clauses shall be the law of the Data Exporter;
 - c. in the event of inconsistencies between the provisions of the Standard Contractual Clauses and this DPA, the Service Agreement or other agreements between the parties as regards the Services, the Standard Contractual Clauses shall take precedence;
 - d. in the event that the Standard Contractual Clauses are amended, replaced or repealed by the European Commission or under Applicable Laws, the parties shall work together in good faith to enter into any updated version of the Standard Contractual Clauses or negotiate in good faith a solution to enable a transfer of Processed Personal Data to be conducted in compliance with Applicable Laws;
 - e. the parties agree that the certification of deletion of Processed Personal Data that is described in Clause 12(1) of the Standard Contractual Clauses shall be provided by the Data Importer to the Data Exporter only upon the Data Exporter's request; and
 - f. for the purposes of Appendix 1 of the Standard Contractual Clauses:

- i. Categories of data: the personal data transferred concerns the categories of Processed Personal Data set out in Exhibit 2 of this DPA;
- ii. Data subjects: the personal data transferred concerns the categories of data subjects set out in Exhibit 2 of this DPA.
- iii. Special categories of data: not applicable.

9. Data Subject Rights

- 9.1. ToolsPlus shall use reasonable endeavours to assist the Customer in responding to their Data Subject requests. ToolsPlus shall have at least 20 days, from the time the Customer asks for assistance, to respond to the Customer's request. The performance and cost of such requests shall be in accordance with the EULA and ToolsPlus' standard applicable rate at any given time.
- 9.2. ToolsPlus must not disclose the Personal Data to any Data Subject or to a third party and responsibility for responding to requests from Data Subjects shall remain with the Customer.

10. Cooperation

- 10.1. If requested, ToolsPlus will provide reasonable assistance to the Customer to comply with its obligations under Applicable Privacy Laws, taking into account the nature of processing and the information available to ToolsPlus.
- 10.2. ToolsPlus shall make available to Customer upon request any reasonable information to demonstrate compliance with ToolsPlus' obligations under this DPA.
- 10.3. ToolsPlus shall reply to any requests for information under this Section within 60 days of receiving the request.
- 10.4. ToolsPlus permits and contributes to all reasonable audits, including inspections, conducted by the Customer (or auditors appointed by either of them), as reasonably necessary to demonstrate ToolsPlus' compliance with this DPA, provided that the Customer shall:
 - a. ensure that such audits take place during ToolsPlus' business hours and on reasonable notice;
 - b. ensure that appropriate confidentiality provisions, or other contractual, professional or statutory obligations of confidentiality, are agreed with any third party involved in audit or inspection; and
 - c. take (and ensure that auditors take) reasonable endeavours to avoid causing any damage, injury or disruption to ToolsPlus;
- 10.5. ToolsPlus may charge the Customer on a time and materials basis, at ToolsPlus' standard applicable rates at any given time, for time spent in providing assistance under this Section.

11. Incident Management

- 11.1. ToolsPlus shall notify Customer without undue delay upon ToolsPlus (or any subprocessor) becoming aware of a personal data breach affecting Processed Personal Data, and provide the Customer with sufficient information to allow each to meet any obligations to report or inform data subjects of the personal data breach (a “**Data Security Incident**”).
- 11.2. ToolsPlus takes all reasonable steps to identify and correct the underlying cause of the Data Security Incident so as to eliminate or minimise the risk of its repetition and the occurrence of similar Data Security Incidents.
- 11.3. ToolsPlus shall cooperate with the Customer to assist in the investigation, mitigation and remediation of each such Data Security Incident.
- 11.4. Any notifications made to the Customer pursuant to this Section shall be addressed to the employee of the Customer whose contact details are provided in Exhibit 1 of this Data Processing Agreement, and shall contain:
 - a. a description of the nature of the incident, including where possible the categories and approximate number of data subjects concerned and the categories and approximate number of Processed Personal Data records concerned;
 - b. the name and contact details of ToolsPlus’ data protection officer or another contact point where more information can be obtained;
 - c. a description of the likely consequences of the incident; and
 - d. a description of the measures taken or proposed to be taken by ToolsPlus to address the incident including, where appropriate, measures to mitigate its possible adverse effects.

12. Return or Destruction of Processed Personal Data

- 12.1. Upon termination of this DPA, upon the Customer’s written request, or upon fulfillment of all purposes agreed in the context of the Services whereby no further processing is required, ToolsPlus shall, at the discretion of Customer and within reasonable business efforts, either delete, or destroy the Customer’s data.
- 12.2. ToolsPlus and its sub-processors may retain Processed Personal Data to the extent required by a legal obligation and only to the extent and for such period as required by the legal obligation.

13. Termination

This DPA will remain in effect until the later of: (a) the termination or expiry of the Service Agreement, and (b) ToolsPlus ceasing to process the Processed Personal Data.

Signatures

Signed for and on behalf of the Customer

Signature

Name

Title

Date

Data Processor

Signature

Name

Title

Date



Chia Huei Tan

Director

October 24, 2020

Exhibit 1

Contact information for the Data Protection Officer/compliance officer of ToolsPlus.

Data Protection Officer
ToolsPlus Sdn. Bhd.
43A, Casaman, Jalan Intisari
Desa Parkcity
52200 Kuala Lumpur, Malaysia

legal@toolsplus.io

Contact information for the Data Protection Officer/compliance officer of Customer.

Exhibit 2

Information according to Article 28(3) of the GDPR.

Subject matter of processing	The performance of the Services in accordance with the Service Agreement.
Duration of processing	The period of the Customer's subscription under the Service Agreement, or such other period set out in the Service Agreement.
Nature and purpose of the processing	ToolsPlus will process Processed Personal Data submitted to, stored on, or sent via the Services for the purpose of providing the Services and related technical support.
Categories of data subjects	Customer's authorised representatives Contacts, agents and users of Customer
Type of personal data (including special categories of personal data per category of data subjects)	<p>Direct identifying information, e.g.:</p> <ul style="list-style-type: none"> • first and last names • email address, phone number <p>Indirect identifying information, , e.g.:</p> <ul style="list-style-type: none"> • website usage, device and location • high level information in relation to the Customer's business may be also be collected and may include details of the Customer's industry <p>Device identification data, , e.g.:</p> <ul style="list-style-type: none"> • details of the computer and user installing and using the Services, which may include internet protocol addresses and hardware identification <p>Any personal data supplied by users of the Service.</p>
Data transfers	Data transfers to ToolsPlus' employees and affiliates and Sub-Processors who may be based outside the EEA.