

Kernshell E.U. Data Processing Addendum

This Data Processing Addendum (this “Addendum”), including the attached annex 1 supplements and forms part of the Kernshell Master Subscription Agreement, or other agreement between Kernshell and Customer (the “Agreement”) governing Kernshell’s services to Customer (the “Services”). Capitalized terms will have the meaning specified in the Agreement. We reserve the right to change the terms of this Addendum at any time by posting a revised version at <https://www.kernshell.com/terms-of-service/>. If there is a conflict between the Agreement and this Addendum, the terms of this Addendum will control.

This Addendum was last updated on 02-April-2021 and is made effective between Customer and Kernshell as of the date Customer enters into the Agreement. This Addendum will remain in effect until, and automatically expire upon, Kernshell’s deletion of all Personal Data as described in this Addendum.

1. Definitions. Unless otherwise defined in the Agreement, all capitalized terms used in this Addendum will have the meanings given to them below,

- a. **“EEA”** means the European Economic Area; and, for purposes of this Addendum, the United Kingdom and Switzerland.
- b. **“EU”** means the European Union.
- c. **“Kernshell Network”** means the Kernshell data center facilities, servers, networking equipment, and host software systems that are within Kernshell’s control and are used to provide the Services pursuant to the Agreement.
- d. **“Kernshell Security Standards”** means the security standards set forth at <https://www.kernshell.com/terms-of-service/> and incorporated herein by reference.
- e. **“European Data Protection Legislation”** means the GDPR and other data protection laws of the EU, its Member States, Switzerland, Iceland, Liechtenstein and Norway and the United Kingdom, applicable to the processing of Personal Data under the Agreement.
- f. **“GDPR”** means 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.
- g. **“Personal Data”** means the “personal data” (as defined in the GDPR) that is subject to European Data Protection Legislation and processed by Kernshell for purposes of providing the Services under the Agreement.
- h. **“Processing”** has the meaning given to it in the GDPR and “process”, “processes” and “processed” will be interpreted accordingly.

2. Data Processing

- a. **Scope and Roles.** This Addendum applies only when Personal Data is processed by Kernshell and the European Data Protection Legislation applies to such processing. In this context, Customer is the “data controller” and Kernshell is the “data processor” with respect to Personal Data (as each term is defined in the GDPR). The parties acknowledge that the subject matter and details of the processing subject to this Addendum are described in Annex 1.
- b. **Compliance with Laws.** Each party will comply with its respective obligations under all laws, rules, and regulations applicable to it and binding on it in the performance of this Addendum, including all statutory requirements relating to data protection.
- c. **Instructions for Data Processing.** Kernshell will process Personal Data to provide the Services, in accordance with Customer’s instructions as specified in the Agreement, including this Addendum, and

as further documented in any other written instructions given by Customer and acknowledged in writing by Kernshell as constituting instructions for purposes of this Addendum. Kernshell will only process Personal Data in accordance with such instruction unless European Data Protection Legislation to which Kernshell is subject requires other processing of Personal Data by Kernshell, in which case Kernshell will notify Customer (unless that law prohibits Kernshell from doing so on important grounds of public interest). The parties agree that the Agreement, including this Addendum, is Customer's complete and final instructions to Kernshell in relation to processing of Personal Data. Processing of Personal Data outside the scope of the Agreement (if any) will require prior written agreement between Kernshell and Customer on additional instructions for processing, including agreement on any additional fees Customer will pay to Kernshell for carrying out such instructions. Customer may terminate this Addendum if Kernshell declines to follow instructions requested by Customer that are outside the scope of this Addendum.

- d. **Authorization by Third Party Controller.** If the European Data Protection Legislation applies to the processing of Personal Data and Customer is a processor, Customer warrants to Kernshell that Customer's instructions and actions with respect to that Personal Data, including its appointment of Kernshell as another processor, have been authorized by the relevant controller.
 - e. **Access or Use.** Kernshell will not access or use Personal Data except as necessary to provide the Services pursuant to the Agreement.
 - f. **Disclosure.** Kernshell will not disclose Personal Data to any government, except as necessary to comply with the law or a valid and binding order of a law enforcement agency (such as a subpoena or court order). If a law enforcement agency sends Kernshell a demand for Personal Data, Kernshell will attempt to redirect the law enforcement agency to request that data directly from Customer. As part of this effort, Kernshell may provide Customer's contact information to the law enforcement agency. If compelled to disclose Personal Data to a law enforcement agency, then Kernshell will give Customer reasonable notice of the demand to allow Customer to seek a protective order or other appropriate remedy unless Kernshell is legally prohibited from doing so.
 - g. **Deletion.** Upon expiration or termination of the Agreement, Kernshell shall delete all Personal Data from Kernshell's systems in accordance with applicable law as soon as reasonably practicable, unless otherwise required by applicable law; provided, however, that Kernshell shall delete backup data and operational log data in the ordinary course of business. In the event applicable law does not permit Kernshell to delete the Personal Data, Kernshell warrants that it shall ensure the confidentiality of the Personal Data and that it shall not use or disclose any Personal Data after termination or expiration of the Agreement, except as required by law.
 - h. **Kernshell Personnel.** Kernshell restricts its personnel from processing Personal Data without authorization by Kernshell as described in the Kernshell Security Standards. Kernshell will impose appropriate contractual obligations upon its personnel, including relevant obligations regarding confidentiality, data protection and data security.
- 3. Security Responsibilities of Kernshell.** Kernshell is responsible for implementing and maintaining the technical and organizational measures for the Kernshell Network as described in the Kernshell Security Standards, designed to help secure Personal Data against unauthorized processing and accidental or unlawful loss, destruction, alteration, access, or disclosure. Kernshell will (taking into account the nature of the processing of Personal Data and the information available to Kernshell) provide Customer with reasonable assistance necessary for Customer to comply with its obligations in respect of Personal Data under European Data Protection Legislation, including Articles 32 to 34 (inclusive) of the GDPR, by:

- a. implementing and maintaining the Kernshell Security Standards in accordance with this Section 3;
- b. complying with the terms of Section 6 (Security Breach Notification); and
- c. providing Customer with the Security Documentation in accordance with Section 5(c).

4. Customer's Security Responsibilities. Customer agrees that, without prejudice to Kernshell's obligations under Section 3 (Security Responsibilities of Kernshell) and Section 6 (Security Breach Notification):

- a. Customer is solely responsible for its use of the Services, including
 - i. making appropriate use of the Services to ensure a level of security appropriate to the risk in respect of the Personal Data;
 - ii. securing the account authorization credentials, systems and devices Customer uses to access the Services; and
 - iii. securing Customer's systems and devices Kernshell uses to provide the Services.
- b. Kernshell has no obligation to protect Personal Data that Customer elects to store or transfer outside of Kernshell's and its subcontractors' systems (for example, offline or on-premises storage).

5. Audit of Technical and Organizational Measures.

- a. At least annually, Kernshell will undergo an audit to verify the adequacy of its security measures according to ISO 27001 standards or such other alternative standards that are substantially equivalent to ISO 27001. (the "Audit"). The Audit will be performed by a recognized independent third-party audit firm at Kernshell's selection and expense. Such examinations will result in the generation of an audit report ("Report"), which will be Kernshell's Confidential Information.
- b. At Customer's written request, Kernshell will provide Customer with a confidential Report so that Customer can reasonably verify Kernshell's compliance with the security obligations under this Addendum. The Report will constitute Kernshell's Confidential Information under the confidentiality provisions of the Agreement.
- c. In addition, to the extent required by European Data Protection Legislation, including where mandated by Customer's supervisory authority, Customer or Customer's supervisory authority may perform more frequent audits (including inspections). Kernshell will contribute to such audits by providing Customer or Customer's supervisory authority with the information and assistance reasonably necessary to conduct the audit, including any relevant records of processing activities applicable to the Services (the "Security Documentation"). Customer agrees to accept the Report in lieu of requesting an audit of the controls covered by the report. The following terms apply to any audit under this Section 4(c):
 - i. If a third party is to conduct the audit, Kernshell may object to the auditor if the auditor is, in Kernshell's reasonable opinion, not suitably qualified or independent, a competitor of Kernshell, or otherwise manifestly unsuitable. Such objection by Kernshell will require Customer to appoint another auditor or conduct the audit itself.
 - ii. To request an audit, Customer must submit a detailed proposed audit plan to contact@Kernshell.com at least thirty (30) days in advance of the proposed audit date. The proposed audit plan must describe the proposed scope, duration, and start date of the audit. Kernshell will review the proposed audit plan and provide Customer with any concerns or questions (for example, any request for information that could compromise Kernshell's security, privacy, employment, or other relevant policies). Kernshell will work cooperatively with Customer to agree on a final audit plan. Nothing in this Section 4(c)(ii) shall require Kernshell to breach any duties of confidentiality.

- iii. The audit must be conducted during regular business hours at the applicable facility, subject to the agreed final audit plan and Kernshell's health and safety or other relevant policies and may not unreasonably interfere with Kernshell business activities.
- iv. Customer will promptly notify Kernshell of any non-compliance discovered during the course of an audit and provide Kernshell any audit reports generated in connection with any audit under this Section 4(c), unless prohibited by European Data Protection Legislation or otherwise instructed by a supervisory authority. Customer may use the audit reports only for the purposes of meeting Customer's regulatory audit requirements and/or confirming compliance with the requirements of this Addendum. The audit reports are Confidential Information of the parties under the terms of the Agreement.
- v. Any audits, other than the Audit, are at Customer's expense. Customer shall reimburse Kernshell for any time expended by Kernshell or its subprocessors in connection with any audits or inspections under this Section 5(c) at Kernshell's then-current professional services rates, which shall be made available to Customer upon request. Customer will be responsible for any fees charged by any auditor appointed by Customer to execute any such audit.
- d. Customer is solely responsible for reviewing the information made available by Kernshell relating to data security and making an independent determination as to whether the Services meet Customer's requirements, and for ensuring that Customer's personnel and consultants follow the guidelines they are provided regarding data security.

6. Security Breach Notification.

- a. If Kernshell becomes aware of any breach of Kernshell's security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Personal Data in Kernshell's possession, custody, or control (each a "Security Incident"), Kernshell will (a) notify Customer of the Security Incident without undue delay and (b) take reasonable steps to mitigate the effects and to minimize any damage resulting from the Security Incident.
- b. Customer agrees that:
 - i. An unsuccessful attempt is not a Security Incident and will not be subject to this Section. An unsuccessful attempt is one that results in no unauthorized access to Personal Data or to any of Kernshell's equipment or facilities storing Personal Data, and may include, without limitation, pings and other broadcast attacks on firewalls or edge servers, port scans, unsuccessful log-on attempts, denial of service attacks, packet sniffing (or other unauthorized access to traffic data that does not result in access beyond IP addresses or headers) or similar incidents;
 - ii. Customer is solely responsible for complying with incident notification laws applicable to Customer and fulfilling any third-party notification obligations related to any Security Incident(s); and
 - iii. Kernshell's obligation to report or respond to a Security Incident under this Section 6 is not and will not be construed as an acknowledgement by Kernshell of any fault or liability of Kernshell with respect to the Security Incident.
- c. Notification(s) of Security Incidents, if any, will be delivered to Customer in accordance with the requirements for notices set forth in the Agreement.

7. Subcontracting

- a. **Authorized Subcontractors.** Customer agrees that Kernshell may use subcontractors to fulfill its contractual obligations under this Addendum or to provide certain Services on its behalf, provided such use complies with the subcontracting provisions of the Agreement. Customer specifically authorizes the engagement of Kernshell's Affiliates as subcontractors, and Customer generally authorizes the engagement of any other third-party subcontractors. Except as set forth in this Section 7, or as Customer may otherwise authorize, Kernshell will not permit any subcontractor to access Personal Data.
 - b. **Subcontractor Obligations.** Where Kernshell authorizes any subcontractor as described in this Section 7:
 - i. Kernshell will restrict the subcontractor's access to Personal Data only to what is necessary to maintain the Service or to provide the Service to Customer in accordance with the Agreement and this Addendum, and Kernshell will prohibit the subcontractor from accessing Personal Data for any other purpose;
 - ii. Kernshell will impose appropriate contractual obligations in writing upon the subcontractor that are no less protective than this Addendum, including relevant contractual obligations regarding confidentiality, data protection, data security and audit rights; and
 - iii. Kernshell will remain responsible for its compliance with the obligations of this Addendum and for any acts or omissions of the subcontractor.
 - c. **Opportunity to Object to Subprocessor Changes.** When any new subcontractor (which shall not include Affiliates) is engaged during the term of this Addendum, Kernshell will, at least 30 days before the new subcontractor processes any Personal Data, notify Customer of the engagement (including the name and general location of the relevant subcontractor and the activities it will perform). Customer may object to any new subcontractor by providing written notice to Kernshell within ten (10) business days of being informed of the engagement of the subcontractor. In the event Customer objects to a new subcontractor, Customer and Kernshell will work together in good faith to find a mutually acceptable resolution to address such objection. If the parties are unable to reach a mutually acceptable resolution within a reasonable timeframe, Customer may, as its sole and exclusive remedy, terminate the Agreement by providing written notice to Kernshell.
- 8. Impact Assessments and Consultations.** Kernshell will (taking into account the nature of the processing and the information available to Kernshell) reasonably assist Customer in complying with its obligations under European Data Protection Legislation in respect of data protection impact assessments and prior consultation, including, if applicable, Customer's obligations pursuant to Articles 35 and 36 of the GDPR, by:
- a. making available for review copies of the Reports or other documentation describing relevant aspects of Kernshell's information security program and the security measures applied in connection therewith; and
 - b. providing the information contained in the Agreement including this Addendum.
- 9. Data Subject Rights.**
- a. **Customer's Responsibility for Requests.** During the term of this Addendum, if Kernshell receives any request from a data subject in relation to Personal Data, Kernshell will advise the data subject to submit their request to Customer and Customer will be responsible for responding to any such request.

- b. Kernshell's Data Subject Request Assistance.** Kernshell will (taking into account the nature of the processing of Personal Data) provide Customer with self-service functionality through the Services or other reasonable assistance as necessary for Customer to fulfil its obligation under European Data Protection Legislation to respond to requests by data subjects, including if applicable, Customer's obligation to respond to requests for exercising the data subject's rights set out in Chapter III of the GDPR. Customer shall reimburse Kernshell for any such assistance beyond providing self-service features included as part of the Services at Kernshell's then-current professional services rates, which shall be made available to Customer upon request.
- 10. Processing Records.** Customer acknowledges that Kernshell is required under the GDPR to: (a) collect and maintain records of certain information, including the name and contact details of each processor and/or controller on behalf of which Kernshell is acting and, where applicable, of such processor's or controller's local representative and data protection officer; and (b) make such information available to the supervisory authorities. Accordingly, if the GDPR applies to the processing of Personal Data, Customer will, where requested, provide such information to Kernshell, and will ensure that all information provided is kept accurate and up-to-date.
- 11. Data Transfers.** Kernshell may store and process Personal Data anywhere Kernshell or its subcontractors maintain facilities.
- a. **Kernshell's Transfer Obligations.** If the processing of Personal Data, as set out in Section 2 (Data Processing), involves transfers of Personal Data out of the EEA, and the European Data Protection Legislation applies to the transfers of such data ("Transferred Personal Data"), Kernshell will make such transfers in accordance with appropriate safeguards that enable the transfer of personal data to a third country in accordance with Article 45 or 46 of the GDPR. For transfers from the EEA or Switzerland to the United States, Kernshell has certified to the EU-U.S. Privacy Shield Framework and the Swiss-U.S. Privacy Shield Framework.
- b. **Customer's Transfer Obligations.** In respect of Transferred Personal Data, Customer agrees that if under European Data Protection Legislation Kernshell reasonably requires Customer to enter into EU standard contractual clauses or use another appropriate safeguard offered by Kernshell, and reasonably requests that Customer take any action (which may include execution of documents) required to give full effect to such solution, Customer will do so.
- 12. Duties to Inform.** Where Personal Data becomes subject to confiscation during bankruptcy or insolvency proceedings, or similar measures by third parties while being processed by Kernshell, Kernshell will inform Customer without undue delay. Kernshell will, without undue delay, notify all relevant parties in such action (e.g., creditors, bankruptcy trustee) that any Personal Data subjected to those proceedings is Customer's property and area of responsibility and that Personal Data is at Customer's sole disposition.
- 13. Notices.** Notwithstanding anything to the contrary in the Agreement, any notices required or permitted to be given by Kernshell to Customer may be given (a) in accordance with the notice clause of the Agreement; (b) to Kernshell's primary points of contact with Customer; and/or (c) to any email provided by Customer for the purpose of providing it with Service-related communications or alerts. Customer is solely responsible for ensuring that such email addresses are valid.
- 14. General.** Except as amended by this Addendum, the Agreement will remain in full force and effect.

Annex 1**Subject Matter and Details of the Data Processing**

Subject Matter	Kernshell's provision of the Services to Customer.
Duration of the Processing	Until deletion of all Customer Personal Data by Kernshell in accordance with the Addendum.
Nature and Purpose of the Processing	Kernshell will process Customer Personal Data for the purposes of providing the Services to Customer in accordance with the Addendum.
Categories of Data	Data relating to individuals provided to Kernshell in connection with the Services, by (or at the direction of) Customer.
Data Subjects	Data subjects include the individuals about whom Kernshell Processes data in connection with the Services.