
GDPR DATA PROCESSING ADDENDUM

DATA PROCESSING ADDENDUM (“DPA”)

This Data Processing Addendum (“DPA”) forms a part of the Customer Terms of Service, unless Customer has entered into a superseding written master subscription agreement with Annotate, in which case, it forms a part of such written agreement (in either case, the “Agreement”).

By signing the DPA, Customer enters into this DPA on behalf of itself and, to the extent required under applicable Data Protection Laws, in the name and on behalf of its Controller Affiliates (defined below).

For the purposes of this DPA only, and except where indicated otherwise, the term “Customer” shall include Customer and Controller Affiliates. All capitalized terms not defined herein shall have the meaning set forth in the Agreement. In the course of providing the Services under the Agreement,

Annotate may Process certain Personal Data (such terms defined below) on behalf of Customer and where Annotate Processes such Personal Data on behalf of Customer the Parties agree to comply with the terms and conditions in this DPA in connection with such Personal Data.

HOW TO EXECUTE THIS DPA:

1. This DPA has been pre-signed on behalf of Annotate.
2. To complete this DPA:
 - (a) Customer must complete the information in the signature box and sign on Page 5; and
 - (b) Send the completed and signed DPA to Annotate by email, indicating Customer’s Name or Workplace URL(s) (as set out on the applicable Order Form), to privacy@annotate.com; and
 - (c) Upon receipt of the validly completed DPA by Annotate at this email address, this DPA will become legally binding.

HOW THIS DPA APPLIES TO CUSTOMER AND ITS AFFILIATES

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. In such case, Annotate is party to this DPA.

If the Customer entity signing this DPA has executed an Order Form with Annotate or its Affiliate pursuant to the Agreement, but is not itself a party to the Agreement, this DPA is an addendum to that Order Form and applicable renewal Order Forms.

If the Customer entity signing this DPA is neither a party to an Order Form nor the Agreement, this DPA is not valid and is not legally binding. Such entity should request that the Customer entity who is a party to the Agreement executes this DPA.

This GDPR Addendum is only binding on Customers who meet the definition of Controller as set out in the GDPR and it is not binding, even if signed, in respect of Customers who are individuals.

1. DEFINITIONS

“**Affiliate**” means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity.

“**Control**” for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

“**Controller**” means the entity which determines the purposes and means of the Processing of Personal Data.

“**Controller Affiliate**” means any of Customer’s Affiliate(s) (a) (i) that are subject to applicable Data Protection Laws of the European Union, the European Economic Area and/or their member states, Switzerland and/or the United Kingdom, and (ii) permitted to use the Services pursuant to the Agreement between Customer and Annotate, but have not signed their own Order Form and are not a “Customer” as defined under the Agreement, (b) if and to the extent Annotate processes Personal Data for which such Affiliate(s) qualify as the Controller.

“Data Protection Laws” means all laws and regulations, including laws and binding regulations of the European Union, the European Economic Area and their member states, Switzerland and the United Kingdom, applicable to the Processing of Personal Data under the Agreement.

“Data Subject” means the identified or identifiable person to whom Personal Data relates. **“GDPR”** means the 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 (General Data Protection Regulation).

“Personal Data” means any Customer Data that relates to an identified or identifiable natural person, to the extent that such information is protected as personal data under applicable Data Protection Laws. **“Processing”** 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, restriction, erasure or destruction.

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

“Security Practices Datasheet” means Annotate’s Security Practices, as updated from time to time, a copy of which shall be made available on reasonable written request.

“Annotate” means Annotate Software Limited

“Annotate Affiliates” means corporate affiliates of Annotate or third-party contractors or companies engaged by Annotate to provide the Services under the Contract.

“Annotate Group” companies within Annotate Software Limited group of companies

“Standard Contractual Clauses” means the agreement pursuant to the European Commission’s decision (C(2010)593) of 5 February 2010 on Standard Contractual Clauses for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection.

“Sub-processor” means any entity engaged by Annotate or a member of the Annotate Group to Process Personal Data in connection with the Services.

“Supervisory Authority” means an independent public authority which is established by an EU Member State pursuant to the GDPR.

2. PROCESSING OF PERSONAL DATA

Roles of the Parties

2.1 The parties acknowledge and agree that with regard to the Processing of Personal Data, Customer is the Controller, Annotate is the Processor and that Annotate, or members of the Annotate group of companies will engage Sub-processors pursuant to the requirements set forth in Section 4 “Subprocessors” below.

2.2 Customer’s Processing of Personal Data. Customer shall, in its use of the Services and provision of instructions, Process Personal Data in accordance with the requirements of applicable Data Protection Law. Customer shall have sole responsibility for the accuracy, quality, and legality of Personal Data and the means by which Customer acquired Personal Data.

2.3 Annotate’s Processing of Personal Data. As Customer’s Processor, Annotate shall only Process Personal Data for the following purposes: (i) Processing in accordance with the Agreement and applicable Order Form(s); (ii) Processing initiated by Authorised Users in their use of the Services; and (iii) Processing to comply with other reasonable instructions provided by Customer (e.g., via email or support tickets) that are consistent with the terms of the Agreement (individually and collectively, the “Purpose”). Annotate acts on behalf of and on the instructions of Customer in carrying out the Purpose.

2.4 Details of the Processing. The subject-matter of Processing of Personal Data by Annotate is as described in the Purpose in Section 2.3. The duration of the Processing, the nature and purpose of the Processing, the types of Personal Data and categories of Data Subjects Processed under this DPA are further specified in Exhibit A to this DPA.

3. RIGHTS OF DATA SUBJECTS

3.1 Data Subject Requests. Annotate shall, to the extent legally permitted, promptly notify Customer if Annotate receives any requests from a Data Subject to exercise the following Data Subject rights in relation to Personal Data: access, rectification, restriction of Processing, erasure (“right to be forgotten”), data portability, objection to the Processing, or to not be subject to an automated individual decision making (each, a “Data Subject Request”). Taking into account the nature of the Processing, Annotate shall assist Customer by appropriate technical and organizational measures, insofar as this is possible, for the fulfilment of Customer’s obligation to respond to a Data Subject Request under applicable Data Protection Laws. In addition, to the extent Customer, in its use of the Services, does not have the ability to address a Data Subject

Request, Annotate shall, upon Customer's request, provide commercially reasonable efforts to assist Customer in responding to such Data Subject Request, to the extent Annotate is legally permitted to do so and the response to such Data Subject Request is required under applicable Data Protection Laws. To the extent legally permitted, Customer shall be responsible for any costs arising from Annotate's provision of such assistance, including any fees associated with provision of additional functionality.

4. SUB-PROCESSORS

4.1 Appointment of Sub-processors. Customer acknowledges and agrees that (a) Annotate's Affiliates may be retained as Sub-processors through written agreement with Annotate and (b) Annotate and Annotate's Affiliates respectively may engage third-party Sub-processors in connection with the provision of the Services. As a condition to permitting a third-party Sub-processor to Process Personal Data, Annotate or an Annotate Affiliate will enter into a written agreement with each Sub-processor containing data protection obligations that provide at least the same level of protection for Personal Data as those in this DPA, to the extent applicable to the nature of the Services provided by such Sub-processor.

4.2 List of Current Sub-processors and Notification of New Sub-processors. A current list of Subprocessors for the Services including the identities of those Sub-processors and their country of location, shall be made on written request to the Customer; Customer is to email by e-mailing privacy@annotate.com, if it requires this information. Annotate shall provide the subscriber with notification of new Sub-processor(s) before authorizing such new Sub-processor(s) to Process Personal Data in connection with the provision of the applicable Services, such notification shall be communicated via email to the email address given on the Customer's Order Form.

4.3 Objection Right for New Sub-processors. Customer may reasonably object to Annotate's use of a new Sub-processor (e.g., if making Personal Data available to the Sub-processor may violate applicable Data Protection Law or weaken the protections for such Personal Data) by notifying Annotate promptly in writing within ten (10) business days after receipt of Annotate's notice in accordance with the mechanism set out in Section 4.2. Such notice shall explain the reasonable grounds for the objection. In the event Customer objects to a new Sub-processor, as permitted in the preceding sentence, Annotate will use commercially reasonable efforts to make available to Customer a change in the Services or recommend a commercially reasonable change to Customer's configuration or use of the Services to avoid Processing of Personal Data by the objected-to new Sub-processor without unreasonably burdening Customer. If Annotate is unable to make available such change within a reasonable period of time, which shall not exceed thirty (30) days, either party may terminate without penalty the applicable Order Form(s) with respect only to those Services which cannot be provided by Annotate without the use of the objected-to new Sub-processor by providing written notice to Annotate. Annotate will refund Customer any prepaid fees covering the remainder of the term of such Order Form(s) following the effective date of termination with respect to such terminated Services, without imposing a penalty for such termination on Customer.

4.4 Liability. Annotate shall be liable for the acts and omissions of its Sub-processors to the same extent Annotate would be liable if performing the Services of each Sub-processor directly under the terms of this DPA.

5. SECURITY

5.1 Controls for the Protection of Personal Data. Annotate shall maintain appropriate technical and organizational measures for protection of the security (including protection against unauthorised or unlawful Processing and against accidental or unlawful destruction, loss or alteration or damage, unauthorised disclosure of, or access to, Personal Data), confidentiality and integrity of Personal Data. Annotate regularly monitors compliance with these measures. Annotate will not materially decrease the overall security of the Services during a subscription term.

5.2 Third-Party Certifications and Audits. Annotate has obtained the third-party certifications and audits set forth in the Security Practices Datasheet. Upon Customer's request, and subject to the confidentiality obligations set forth in the Agreement, Annotate shall make available to Customer (or Customer's independent, third-party auditor) information regarding the Annotate Group's compliance with the obligations set forth in this DPA in the form of the third-party certifications and audits. Customer may contact Annotate in accordance with the "Notices" Section of the Agreement to request an on-site audit of Annotate's procedures relevant to the protection of Personal Data, but only to the extent required under applicable Data Protection Law and subject always to the scope, nature, duration and dates of the audit being agreed between the parties in advance. Annotate may terminate or postpone any audit if it believes in its reasonable option that such audit may impact Annotate's other business activities. Customer shall reimburse Annotate for any time expended for any such on-site audit at the Annotate Group's then-current rates, which shall be made available to Customer upon request. Before the commencement of any such on-site audit, Customer and Annotate shall mutually agree the reimbursement rate for which Customer shall be responsible. All reimbursement rates shall be reasonable, taking into account the resources expended by Annotate. Customer shall promptly notify Annotate with information regarding any non-compliance discovered during the course of an audit (and such information shall constitute Confidential Information of Annotate for the purposes of the Agreement) and Annotate shall use commercially reasonable efforts to address any confirmed non-compliance.

6. PERSONAL DATA INCIDENT MANAGEMENT AND NOTIFICATION

Annotate maintains security incident management policies and procedures specified in the Security Practices Datasheet. Annotate shall notify Customer without undue delay of any breach relating to Personal Data (within the meaning of applicable Data Protection Law) of which Annotate becomes aware and which may require a notification to be made to a Supervisory Authority or Data Subject under applicable Data Protection Law or which Annotate is required to notify to Customer under applicable Data Protection Law (a “Personal Data Incident”). Annotate shall provide commercially reasonable cooperation and assistance in identifying the cause of such Personal Data Incident and take commercially reasonable steps to remediate the cause to the extent the remediation is within Annotate’s control. Except as required by applicable Data Protection Law, the obligations herein shall not apply to incidents that are caused by Customer, Authorised Users and/or any Non-Annotate Products.

7. RETURN AND DELETION OF PERSONAL DATA

Upon termination of the Services for which Annotate is Processing Personal Data, Annotate shall, upon Customer’s request, and subject to the limitations described in the Agreement and Annotate’s Security Practices, return all Personal Data in Annotate’s possession to Customer or securely destroy such Personal Data and demonstrate to the satisfaction of Customer that it has taken such measures, unless applicable law prevents it from returning or destroying all or part of Personal Data. For clarification, depending on the Service plan purchased by Customer, access to export functionality may incur additional charge(s) and/or require purchase of a Service upgrade.

8. CONTROLLER AFFILIATES

8.1 Contractual Relationship. The parties acknowledge and agree that, by executing the DPA in accordance with “HOW TO EXECUTE THIS DPA”, Customer enters into the DPA on behalf of itself and, as applicable, in the name and on behalf of its Controller Affiliates, thereby establishing a separate DPA between Annotate and each such Controller Affiliate subject to the provisions of the Agreement and this Section 8 and Section 9. Each Controller Affiliate agrees to be bound by the obligations under this DPA and, to the extent applicable, the Agreement. For the avoidance of doubt, a Controller Affiliate is not and does not become a party to the Agreement and is only a party to the DPA. All access to and use of the Services by Controller Affiliates must comply with the terms and conditions of the Agreement and any violation of the terms and conditions of the Agreement by a Controller Affiliate shall be deemed a violation by Customer.

8.2 Communication. The Customer that is the contracting party to the Agreement shall remain responsible for coordinating all communication with Annotate under this DPA and be entitled to make and receive any communication in relation to this DPA on behalf of its Controller Affiliates.

8.3 Rights of Controller Affiliates. If a Controller Affiliate becomes a party to the DPA with Annotate, it shall, to the extent required under applicable Data Protection Laws, also be entitled to exercise the rights and seek remedies under this DPA, subject to the following:

8.3.1 Except where applicable Data Protection Laws require the Controller Affiliate to exercise a right or seek any remedy under this DPA against Annotate directly by itself, the parties agree that (i) solely the Customer that is the contracting party to the Agreement shall exercise any such right or seek any such remedy on behalf of the Controller Affiliate, and (ii) the Customer that is the contracting party to the Agreement shall exercise any such rights under this DPA not separately for each Controller Affiliate individually but in a combined manner for all of its Controller Affiliates together (as set forth, for example, in Section 8.3.2, below).

8.3.2 The parties agree that the Customer that is the contracting party to the Agreement shall, if carrying out an on-site audit of the Annotate procedures relevant to the protection of Personal Data, take all reasonable measures to limit any impact on Annotate by combining, to the extent reasonable possible, several audit requests carried out on behalf of different Controller Affiliates in one single audit.

9. LIMITATION OF LIABILITY

Each party’s and all of its Affiliates’ liability, taken together in the aggregate, arising out of or related to this DPA, and all DPAs between Controller Affiliates and Annotate, whether in contract, tort or under any other theory of liability, is subject to the ‘Limitation of Liability’ section of the Agreement, and any reference in such section to the liability of a party means the aggregate liability of that party and all of its Affiliates under the Agreement and all DPAs together. For the avoidance of doubt, Annotate’s and its Affiliates’ total liability for all claims from the Customer and all of its Controller Affiliates arising out of or related to the Agreement and each DPA shall apply in the aggregate for all claims under both the Agreement and all DPAs established under the Agreement, including by Customer and all Controller Affiliates, and, in particular, shall not be understood to apply individually and severally to Customer and/or to any Controller Affiliate that is a contractual party to any such DPA.

10. EUROPEAN SPECIFIC PROVISIONS

10.1 GDPR. With effect from 25 May 2018, Annotate will Process Personal Data in accordance with the GDPR requirements directly applicable to Annotate's provisioning of the Services.

10.1.1 Data Protection Impact Assessment. Upon Customer's request, Annotate shall provide Customer with reasonable cooperation and assistance needed to fulfil Customer's obligation under the GDPR to carry out a data protection impact assessment related to Customer's use of the Services, to the extent Customer does not otherwise have access to the relevant information, and to the extent such information is available to Annotate. Annotate shall provide reasonable assistance to Customer in the cooperation or prior consultation with the Supervisory Authority, to the extent required under the GDPR.

10.1.2 For transfers of Personal Data under this DPA from the European Union, the European Economic Area and/or their member states and Switzerland to countries which do not ensure an adequate level of data protection within the meaning of applicable Data Protection Laws of the foregoing territories, to the extent such transfers are subject to such applicable Data Protection Laws, the Standard Contractual Clauses apply. The Standard Contractual Clauses will not apply to Customer Data that is not transferred, either directly or via onward transfer, outside the EEA. Notwithstanding the foregoing, the Standard Contractual Clauses (or obligations the same as those under the Standard Contractual Clauses) will not apply if the recipient of the data is compliant with an alternative recognised compliance standard for the lawful transfer of personal data (as defined in the GDPR) outside the EEA.

Right of Agency

10.2 The Customer agrees that Annotate may share such data (including where necessary Customer Personal Data) with an Annotate Affiliate (data importer), including where the transfer is to a location outside of EEA, provided that:

- (a) that data will be shared solely, and only to the extent necessary, for the provision of the Services and the proper performance of Annotate or Annotate Affiliate's obligations under the Contract.
- (b) details of each such data importer, and their location shall be communicated in advance in writing to the Customer on the Customer's request;
- (c) Annotate will at all material times remain liable to the Customer under the relevant Contract for the default of any Annotate Affiliate.
- (d) before sharing data with an Annotate Affiliate outside of the EEA, Annotate enters into a contractual agreement with the relevant Annotate Affiliate on the basis of the European Union's Standard Contractual Clauses (at Exhibit C of this DPA) for the transfer of personal data to processors in third countries which do not ensure an adequate level of data protection as set out in Standard Clauses provided that the Clauses shall be entered into between:
 - i. the Customer (as controller and data exporter); and
 - ii. the Annotate Affiliate receiving such data (as processor and data importer).
- (e) The Customer hereby instructs and authorises Annotate to enter into the Clauses as agent for the Customer, acting on its behalf and in its name. On request, Annotate shall provide a copy of the executed Standard Clauses to the Customer.

10.3 Notwithstanding any other term of the Contract or this DPA, the Customer agrees that Annotate may enter in to Standard Contractual Clauses issued by the Annotate Affiliate from time to time and in Annotate's sole discretion and these shall replace the Exhibit A, Exhibit B and Exhibit C (as applicable) once executed. Annotate shall notify the Customer of any revised or replacement terms applicable under this clause 10.3 by publishing a notice on the Annotate Website

11. LEGAL EFFECT This DPA shall only become legally binding between Customer and Annotate when the formalities steps set out in the Section "HOW TO EXECUTE THIS DPA" above have been fully completed. If Customer has previously executed a data processing addendum with Annotate, this DPA supersedes and replaces such prior Data Processing Addendum.

12. GOVERNING LAW This DPA and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England.

On behalf of Customer:

Name (written out in full):

Position:

Address:

On behalf of Annotate Software Limited:

A handwritten signature in blue ink that reads "MBangs".

Name: Martin Bangs

Position: Director

Address:
Annotate Software Limited
30/2 Frederick Street
Edinburgh
EH2 2JR
Scotland

[Exhibit A: Additional Data Transfer Terms](#)

[Exhibit B: Description of Processing Activities](#)

[Exhibit C: Standard Contractual Clauses](#)