

Zentyal Data Protection Addendum

This Data Protection Addendum ("Addendum") forms part of your agreement with Zentyal, in accordance to the Terms of Sale available at <https://zentyal.com/terms-of-sale/>, your purchase order and any other applicable documents and terms ("Principal Agreement") between: (i) Millsico LLC (hereinafter, "Zentyal"), a company duly organized and existing under the Laws of United States, with business address in 304W 115th st PH B, Nueva York, NY, 10026, United States of America, acting on its own behalf; and (ii) _____ ("Customer") acting on its own behalf.

The terms used in this Addendum shall have the meanings set forth herein. Capitalized terms not otherwise defined herein shall have the meaning given to them in the Principal Agreement. Except as modified below, the terms of the Principal Agreement shall remain in full force and effect.

In consideration of the mutual obligations set out herein, the parties hereby agree that the terms and conditions set out below shall be added as an Addendum to the Principal Agreement. Except where the context requires otherwise, references in this Addendum to the Principal Agreement are to the Principal Agreement as amended by, and including, this Addendum.

1. Definitions

1.1. In this Addendum, the following terms shall have the meanings set out below and cognate terms shall be construed accordingly:

1.1.1. "Applicable Laws" means European Union or Member State laws with respect to any Customer Personal Data, including EU Directive 95/46/EC, as transposed into domestic legislation of each Member State and as amended, replaced or superseded from time to time, including by the GDPR and laws implementing or supplementing the GDPR;

1.1.2. "Customer Personal Data" means any Personal Data processed by Zentyal on behalf of the Customer and pursuant to or in connection with the Principal Agreement;

1.1.3. "GDPR" means EU General Data Protection Regulation 2016/679;

1.1.4. "Services" means the services and other activities to be supplied to or carried out by or on behalf of Zentyal for Customer pursuant to the Principal Agreement;

1.1.5. "Subprocessor" means any person (including any third party and any Zentyal Affiliate, but excluding an employee of Zentyal or any of its sub-contractors) appointed by or on behalf of Zentyal to Process Personal Data on behalf of any Customer in connection with the Principal Agreement; and

1.1.6. "Zentyal Affiliate" means an entity that owns or controls, is owned or controlled by or is or under common control or ownership with Zentyal, where control is defined as the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities, by contract or otherwise.

1.2. The terms, "Commission", "Controller", "Data Subject", "Member State", "Personal Data", "Personal Data Breach", "Processing" and "Supervisory Authority" shall have the same meaning as in the GDPR, and their cognate terms shall be construed accordingly.

2. Processing of Customer Personal Data

2.1. Zentyal and each Zentyal Affiliate shall:

2.1.1. comply with all applicable Data Protection Laws in the Processing of Customer Personal Data; and

2.1.2. not Process Customer Personal Data other than on the relevant Customer's documented instructions unless Processing is required by Applicable Laws to which the relevant Contracted Processor is subject, in which case Zentyal or the relevant Zentyal Affiliate shall to the extent permitted by Applicable Laws inform the relevant Customer of that legal requirement before the relevant Processing of that Personal Data.

2.2. Each Customer:

- 2.2.1. instructs Zentyal and each Zentyal Affiliate (and authorises Zentyal and each Zentyal Affiliate to instruct each Subprocessor) to:
 - 2.2.1.1. Process Customer Personal Data; and
 - 2.2.1.2. in particular, transfer Customer Personal Data to any country or territory,
as reasonably necessary for the provision of the Services and consistent with the Principal Agreement; and
- 2.2.2. warrants and represents that it is and will at all relevant times remain duly and effectively authorised to give the instruction set out in section [2](#) on behalf of each relevant Customer Affiliate.

2.3. Annex 1 to this Addendum sets out certain information regarding the Contracted Processors' Processing of the Customer Personal Data as required by article 28(3) of the GDPR (and, possibly, equivalent requirements of other Data Protection Laws). Customer may make reasonable amendments to Annex 1 by written notice to Zentyal from time to time as Customer reasonably considers necessary to meet those requirements. Nothing in Annex 1 (including as amended pursuant to this section [2.3](#)) confers any right or imposes any obligation on any party to this Addendum.

3. Zentyal and Zentyal Affiliate Personnel

Zentyal and each Zentyal Affiliate shall take reasonable steps to ensure the reliability of any employee, agent or contractor of any Contracted Processor who may have access to the Customer Personal Data, ensuring in each case that access is strictly limited to those individuals who need to know / access the relevant Customer Personal Data, as strictly necessary for the purposes of the Principal Agreement, and to comply with Applicable Laws in the context of that individual's duties to the Contracted Processor, ensuring that all such individuals are subject to confidentiality undertakings or professional or statutory obligations of confidentiality.

4. Security

4.1. 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, Zentyal and each Zentyal Affiliate shall in relation to the Customer Personal Data implement appropriate technical and organizational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1) of the GDPR.

5. Subprocessing

- 5.1. Each Customer authorises Zentyal and each Zentyal Affiliate to appoint (and permit each Subprocessor appointed in accordance with this section [5](#) to appoint) Subprocessors in accordance with this section and any restrictions in the Principal Agreement.
- 5.2. Zentyal and each Zentyal Affiliate may continue to use those Subprocessors already engaged by Zentyal or any Zentyal Affiliate as at the date of this Addendum, subject to Zentyal and each Zentyal Affiliate in each case as soon as practicable meeting the obligations set out in section [5.4](#).

Zentyal shall give Customer prior written notice of the appointment of any new Subprocessor, including full details of the Processing to be undertaken by the Subprocessor. If, within 30 days of receipt of that notice, Customer notifies Zentyal in writing of any objections (on reasonable grounds) to the proposed appointment, Zentyal shall work with Customer in good faith to make available a commercially reasonable change in the provision of the Services which avoids the use of that proposed Subprocessor; and where such a change cannot be made within 90 days from Zentyal's receipt of Customer's notice, notwithstanding anything in the Principal Agreement, Customer may by written notice to Zentyal with immediate effect terminate the Principal Agreement to the extent that it relates to the Services which require the use of the proposed Subprocessor.

6. Data Subject Rights

6.1. Taking into account the nature of the Processing, Zentyal and each Zentyal Affiliate shall assist each Customer by implementing appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Customers' obligations, as reasonably understood by Customer, to respond to requests to exercise Data Subject rights under the Data Protection Laws.

6.2. Zentyal shall:

6.2.1. promptly notify Customer if any Contracted Processor receives a request from a Data Subject under any Data Protection Law in respect of Customer Personal Data; and

6.2.2. ensure that the Contracted Processor does not respond to that request except on the documented instructions of Customer or the relevant Customer Affiliate or as required by Applicable Laws to which the Contracted Processor is subject, in which case Zentyal shall to the extent permitted by Applicable Laws inform Customer of that legal requirement before the Contracted Processor responds to the request.

7. Personal Data Breach

7.1. Zentyal shall notify Customer without undue delay upon Zentyal or any Subprocessor becoming aware of a Personal Data Breach affecting Customer Personal Data, providing Customer with sufficient information to allow each Customer to meet any obligations to report or inform Data Subjects of the Personal Data Breach under the Data Protection Laws.

7.2. Zentyal shall co-operate with Customer and each Customer and take such reasonable commercial steps as are directed by Customer to assist in the investigation, mitigation and remediation of each such Personal Data Breach.

8. Data Protection Impact Assessment and Prior Consultation

Zentyal and each Zentyal Affiliate shall provide reasonable assistance to each Customer with any data protection impact assessments, and prior consultations with Supervising Authorities or other competent data privacy authorities, which Customer reasonably considers to be required of any Customer by article 35 or 36 of the GDPR or equivalent provisions of any other Data Protection Law, in each case solely in relation to Processing of Customer Personal Data by, and taking into account the nature of the Processing and information available to, the Contracted Processors.

9. Deletion or return of Customer Personal Data

9.1. Subject to sections [9.2](#) and [9.3](#) Zentyal and each Zentyal Affiliate shall promptly and in any event within 30 days of the date of cessation of any Services involving the Processing of Customer Personal Data (the "Cessation Date"), delete and procure the deletion of all copies of those Customer Personal Data.

9.2. Each Contracted Processor may retain Customer Personal Data to the extent required by Applicable Laws and only to the extent and for such period as required by Applicable Laws and always provided that Zentyal and each Zentyal Affiliate shall ensure the confidentiality of all such Customer Personal Data and shall ensure that such Customer Personal Data is only Processed as necessary for the purpose(s) specified in the Applicable Laws requiring its storage and for no other purpose.

10. Audit rights

10.1. Subject to sections [[10.2](#) to [10.4](#)], Zentyal and each Zentyal Affiliate shall make available to each Customer on request all information necessary to demonstrate compliance with this Addendum, and shall allow for and contribute to audits, including inspections, by any Customer or an auditor mandated by any Customer in relation to the Processing of the Customer Personal Data by the Contracted Processors.

10.2. Information and audit rights of the Customer only arise under section [10.1](#) to the extent that the Principal Agreement does not otherwise give them information and audit rights meeting the relevant requirements of Data Protection Law (including, where applicable, article 28(3)(h) of the GDPR).

11. General Terms

Governing law and jurisdiction

11.1. The parties to this Addendum hereby submit to the choice of jurisdiction stipulated in the Principal Agreement with respect to any disputes or claims howsoever arising under this Addendum, including disputes regarding its existence, validity or termination or the consequences of its nullity; and;

11.2. This Addendum and all non-contractual or other obligations arising out of or in connection with it are governed by the laws of the country or territory stipulated for this purpose in the Principal Agreement.

Order of precedence

- 11.3. Nothing in this Addendum reduces Zentyal's or any Zentyal Affiliate's obligations under the Principal Agreement in relation to the protection of Personal Data or permits Zentyal or any Zentyal Affiliate to Process (or permit the Processing of) Personal Data in a manner which is prohibited by the Principal Agreement. In the event of any conflict or inconsistency between this Addendum and any Standard Contractual Clauses, the Standard Contractual Clauses shall prevail.
- 11.4. In the event of inconsistencies between the provisions of this Addendum and any other agreements between the parties, including the Principal Agreement and including (except where explicitly agreed otherwise in writing, signed on behalf of the parties) agreements entered into or purported to be entered into after the date of this Addendum, the provisions of this Addendum shall prevail.

Severance

- 11.5. Should any provision of this Addendum be invalid or unenforceable, then the remainder of this Addendum shall remain valid and in force. The invalid or unenforceable provision shall be either (i) amended as necessary to ensure its validity and enforceability, while preserving the parties' intentions as closely as possible or, if this is not possible, (ii) construed in a manner as if the invalid or unenforceable part had never been contained therein.

IN WITNESS WHEREOF, this Addendum is entered into and becomes a binding part of the Principal Agreement with effect from the date first set out.

[Customer]

Signature _____

Name _____

Title _____

Date Signed _____

[Zentyal]

Signature _____

Name _____

Title _____

Date Signed _____

ANNEX 1: DETAILS OF PROCESSING OF CUSTOMER PERSONAL DATA

This Annex 1 includes certain details of the Processing of Customer Personal Data as required by Article 28(3) GDPR.

Subject matter and duration of the Processing of Customer Personal Data

The subject matter and duration of the Processing of the Customer Personal Data are set out in the Principal Agreement and this Addendum.

The nature and purpose of the Processing of Customer Personal Data

Those necessary to provide support services as agreed in the Principal Agreement.

The types of Customer Personal Data to be Processed

Customer users' identification data (ids, email).

The categories of Data Subject to whom the Customer Personal Data relates

Users (Customer employee's and clients)

The obligations and rights of Customer and Customer Affiliates

The obligations and rights of Customer and Customer Affiliates are set out in the Principal Agreement and this Addendum.

Subprocessors

Atlassian PTY Ltd, Atlassian, Inc. and other affiliates, provider of Jira Service Desk. Atlassian complies with Data Protection Laws and has signed a data protection addendum as detailed at <https://www.atlassian.com/legal/data-processing-addendum>.