

GDPR for Partners

Frequently Asked Questions

These FAQs supplement the materials for [GDPR FAQs available on the Microsoft Trust Center](#).

As a Microsoft partner, your engagement with Microsoft and customers is dynamic, which means your responsibilities under GDPR are as well. For example, when you build an application on Azure, transact through the Cloud Solution Provider (CSP) program, or resell Microsoft Products to end users, you undertake separate and distinct GDPR obligations.

These FAQs address the most common scenarios you face as a partner, including participating in Co-Sell programs, the referral engine, and other go-to-market programs. In addition to common scenarios, these FAQs also address GDPR for three common partner types:

1. Commercial LSPs, Distributors and Resellers,
2. CSP Partners, and
3. Build-With Partners.

Because GDPR is complex and highly fact-specific, we are unable to provide specific guidance (you should engage a legal professional), but we hope the below helps you to understand roles and responsibilities and areas where you may need to ensure new processes are instituted to address GDPR requirements

Background

What is the GDPR?

The General Data Protection Regulation (GDPR) is a new European privacy regulation that covers 'personal data' of EU residents. Failure to comply with the GDPR could result in significant penalties. Enforcement of the GDPR begins on May 25, 2018. And while GDPR is a European regulation, it applies much more broadly. See our [GDPR Overview](#) for additional details.

Who is a Microsoft Partner?

For the purposes of this FAQ, Microsoft Partner means commercial partner who is a member of the Microsoft Partner Network acting on behalf of our mutual customers, excluding your role as a Microsoft Supplier.

Who is a Microsoft Supplier?

A Microsoft Supplier means a third party who processes Microsoft personal data or confidential information as a part of a services engagement for or on behalf of Microsoft.

Who is a Commercial LSP, Distributor or Reseller?

This category refers partners who resell or distribute Microsoft software, technology, hardware, professional support, consulting service, online service, documentation, or annuity offerings to end users or third party resellers under a channel or distributor authorization.

Who is a CSP Partner?

CSP Partners means partners who resell subscriptions to Microsoft online services and products to end users or third party resellers under the Microsoft Cloud Solution Provider program.

Who is a Build-With Partner?

Build-With Partners means partners who use their Microsoft subscription to deploy an application for their end customers (also known as the "EA Hosting Exception").

What is a Data Processing Agreement (DPA) and do I need one with my Customers?

If you are processing data on behalf of a customer, then a data processing agreement is required. Under GDPR, a data processing agreement is a contract between a controller and a processor that sets forth processing instructions for the processor and data protection obligations consistent with Article 28 of GDPR.

Do I need a Data Processing Agreement (DPA) with Microsoft?

Generally, the answer will be no, but there are some exceptions. The personal data that is usually shared between Microsoft and its partners would be data that we would both use as independent controllers (i.e. account data for our mutual customers for which we would separately determine for ourselves the purpose and means of processing). In that case, no data processing agreement is required but we would both need to have a lawful basis for providing that data to each other. A lawful purpose can include a consent but can also include having a contractual basis or legitimate interest in sharing. See Article 6 of GDPR for more.

What are processors and controllers under GDPR?

A controller is a party that determines the purposes and means of the processing of personal data. A processor processes personal data on behalf of the controller, pursuant only to its instructions. Your role will be determined by the factual circumstances under which you handle personal data. GDPR defines 'processing' as "any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction."

What is Microsoft doing to comply with GDPR?

We have a number of resources available on the [Microsoft Trust Center](#) which discuss our GDPR journey. In particular, please see [Microsoft's Journey to GDPR Compliance](#).

Common GDPR Scenarios for Partners

As a Microsoft Partner, do I need to comply with GDPR?

Yes, where applicable. In general, GDPR applies to the processing of personal data where such processing activities relate to goods or services offered in the EU. As partners, our commitments to one another are mutual. Each party must not use or share personal data outside the bounds of the customer's consent, handle and assist with relevant data subject requests, and take appropriate security measures to protect personal data. Each party must also comply with any data protection laws applicable to you or Microsoft, which may or may not include GDPR.

I currently have a data processing agreement with my customer, do I need to update it for GDPR?

Probably. Through Article 28, GDPR introduces new requirements for data processing agreements such as data breach notification obligations, commitments related to subprocessors, and obligations to assist with data subject requests, security, and data protection impact assessments, which must be included.

How can I use GDPR Compliance to achieve more and deliver great solutions to my customers?

GDPR represents a paradigm shift in global privacy requirements. So, what does that mean for you? Opportunities to position your business as a leader in the privacy and data management space. By leveraging Microsoft's innovative technology and collaboration tools, you can now streamline your GDPR compliance and help your customers do the same. [Here are resources that can help partners intelligently approach GDPR.](#)

Tip

Leverage Microsoft's broad portfolio of enterprise cloud services to meet your GDPR obligations for areas including deletion, rectification, transfer of, access to and objection to processing of personal data.

Can I use the Microsoft's data processing agreement instead of providing my own?

No. Where you process personal data on behalf of your customers, you must enter into an independent data processing agreement with that customer.

Tip

When drafting your data processing agreement, look at Microsoft's approach in the [Online Services Terms](#) for reference.

I use a third-party service provider to support my customers, do I need a data processing agreement?

Yes, if you ask the third-party service provider to process customer personal data of EU residents on your behalf. Under Article 28 of GDPR, you must obtain prior specific or written authorization from the customer prior to engaging a service provider and have a data processing agreement with each of your

processors or sub-processors of personal data that includes the same data protection obligations as set out between you and the customer.

How does Microsoft make its GDPR commitments to our respective customers?

When using Microsoft Products, Microsoft makes its GDPR commitments directly to customers through Attachment 4 of the Microsoft [Online Services Terms](#). These commitments cover Microsoft's processing of the customer's personal data. You will need to make independent GDPR commitments to your customers that cover your own processing of personal data. For more information, see the [Microsoft Trust Center GDPR FAQs](#).

Where does Microsoft make GDPR commitments to its partners?

Microsoft's GDPR commitment that covers processing of partner personal data is in the Microsoft Partner Network Agreement as of May 25, 2018

What are my GDPR obligations when participating in a co-sell program?

Through a co-sell program, you may receive contact information of a customer with personnel residing in the European Union, in which case you must (1) not use or share personal data for a purpose for which you have not obtained consent; (2) establish independent procedures for managing and responding to any communication from a customer seeking to exercise its rights under GDPR; and (3) take appropriate security measures that are required by GDPR.

How long may I retain customer personal data shared by Microsoft?

In general, you may only retain customer personal data received by Microsoft for a period that is necessary to fulfill the purpose of the agreement (e.g., carrying out a transaction of interest to the customer). Any customer personal data provided to you directly by the customer may be retained in accordance with your agreement with such customer.

What if I cannot comply with GDPR?

If GDPR is applicable to your business, then you will need to be able to comply with GDPR. Under your MPN Agreement, you are obligated to ensure that you comply with applicable privacy laws, including GDPR. However, the Microsoft Partner Network has resources available to help you get ready for GDPR as well as connect you with partners who are GDPR ready.

Tip

For a list of GDPR ready partners, see <https://blogs.partner.microsoft.com/mpn/gdpr-service-providers-ready-help/>

Will Microsoft seek to modify terms of existing commercial partner agreements because of GDPR?

Microsoft is updating the Microsoft Partner Network Agreement on May 25, 2018 for GDPR. Other applicable partner agreement (Channel Agreements, SPLA, Device Reseller, etc.) currently require all partners to comply with applicable law, which will include GDPR on May 25, 2018.

As a partner in the EU, how does Microsoft enable lawful transfer of my personal data to the US?

Microsoft has long used the Standard Contractual Clauses (also known as the Model Clauses) as a basis for transfer of data for its enterprise online services. The Standard Contractual Clauses are standard terms provided by the European Commission that can be used to transfer data outside the European Economic Area in a compliant manner. Microsoft has incorporated the Standard Contractual Clauses into all of our Volume Licensing agreements via the [Online Services Terms](#). The Article 29 Working Party has specifically found Microsoft's implementation of the Standard Contractual Clauses are compliant.

And when the EU-US Privacy Shield became available, Microsoft was the first company to certify. See [Microsoft's certification to the Privacy Shield](#), and read the [Online Services Terms](#). The EU-US Privacy Shield helps customers that want to transfer their data to the US do so in a manner consistent with their data protection obligations.

As a partner, do I need to appoint a Data Protection Officer (DPO)?

As a partner, you must comply with data protection laws applicable to your business, which may include GDPR. The circumstances for appointing a DPO are set out in Article 37 of the GDPR generally provides that a data protection officer needs to be appointed where: (a) the processing is carried out by most public authorities, with some exceptions; (b) any entity where its core activities consist of processing which, requires regular and systematic monitoring of data subjects on a large scale; or (c) any entity where its core activities consist of processing "Sensitive Data" or criminal records on a large scale. Other data protection laws may require a DPO (or other similarly-titled privacy officers).

GDPR for Commercial LSPs, Distributors and Resellers

What are my GDPR responsibilities as a Commercial LSP, Distributor or Resellers?

As a one of these partners, your access to customer personal data is relatively limited and generally covers customer account and purchase information, which may include some personal data ("Account Data"). Before sharing Account Data with Microsoft, you must obtain authorization from the customer to share with Microsoft as a data controller under GDPR.

GDPR for Build-With Partners

Does my role change when I provide Azure Customer Solutions or Azure Managed Services?

Potentially yes. As a Build-With Partner, you use your Microsoft subscription to deploy an application for customers, which means you may be processing personal data on behalf of your customers – making you

a processor under GDPR. For example, if you are providing your customers with an Azure Customer Solution or Azure Managed Services you will likely be considered a processor for the personal data that is being processed in connection with those solutions or services. In those cases, you will need to ensure that you have a valid data processing agreement in place with the customers, which agreement will need to, among other things, contain processing instructions for you as processor and meet the requirements set out in Article 28 of the GDPR. As a customer of Azure, you will already have a valid data processing agreement in place with Microsoft via our Online Services Terms, which includes our GDPR terms. In the event you are a processor for the customer, Microsoft will be your processor, and, with respect to our shared customer, Microsoft will be a subprocessor. (i.e., you will only operate in accordance with the instructions you receive from the controller and Microsoft will only operate in accordance with the instructions it receives from you on behalf of the controller).

What should my Data Processing Agreement with my customers look like?

As a Build-With Partner, Microsoft has a direct contractual relationship with you and as such you have access to Microsoft's commitments under the [Online Services Terms \(OST\)](#), including Microsoft's Standard Contractual Clauses and GDPR commitments to you. However, unlike CSP, there is no direct relationship between Microsoft and customers using your Azure Customer Solution or Azure Managed Services. As such, our OST commitments will apply directly to you, but do not apply directly to your customers.

Your DPA with your customers should reflect the processing instructions and GDPR commitments with respect to your Azure Customer Solution or Azure Managed Services. However, where those Solutions or Services are using component of our Online Services, your DPA with your customers should not be inconsistent with Microsoft's obligations to you under the OST.

GDPR for CSPs

What are my GDPR responsibilities when reselling cloud services?

As a CSP Partner, both you and Microsoft will process customers' data (Microsoft in operating the service and partner in providing services to the customer. Accordingly, you must work directly with the customer and any other party providing personal data to obtain consent for your and Microsoft's use and processing set forth in the [applicable customer agreement for such program](#). And you must ensure that you abide by the requirements of GDPR, including those in Article 28.

What if I am selling or distributing CSP Services to my Customers?

The CSP structure requires that you cause the customer to accept the terms of our [Microsoft Cloud Agreement](#) ("Customer Agreement"), which in turn includes the [Online Services Terms](#). As such, Microsoft has a direct contractual relationship with the customer and for most of personal data being processed, we will be acting a processor of the customer/controller. For administrative or billing data for the customer, as noted above, we would be acting as a controller.

As you will process personal data of the customer, you will also be acting as a processor, independent of Microsoft, for the customer/controller. As a result, you will have to ensure that your independent contract



with the customer for the provision of CSP services includes a valid data processing agreement meeting the requirements set out in Article 28 of the GDPR. As a rule of thumb, if you have "Administer on Behalf Of" (AOBO) rights for a customer, you should have a valid data processing agreement in place.

In order to better help our customers meet their compliance requirements under GDPR, we will be instituting new procedures on our partners to ensure that, among other things, the date of the agreement and name of the customer signatory is recorded for each agreement. By doing so, we will be able to better respond to any customer request and better assist customers who need to promptly respond to regulatory inquiries. More information about the Partner Center features, new partner certification requirement, and implementation timeline will be shared when available.