

THIS PAGE IS FOR INFORMATIONAL PURPOSES ONLY.

This cover page to the following Data Privacy Exhibit will be removed from this agreement prior to signing.



THE J.M. SMUCKER Co

The J. M. Smucker Company Data Privacy Exhibit Background & Context

- *As a matter of company policy, The J. M. Smucker Company's ("Smucker") Data Privacy Exhibit ("Privacy Exhibit") is included in every Master Service Agreement or software agreement ("MSA") that Smucker enters into with a vendor, whether or not you believe you are a service provider defined by applicable privacy law(s).*
 - *Doing the right thing is a basic belief at Smucker, meaning that it is a foundational principle guiding all of the company's actions.*
 - *Doing the right thing includes complying with all applicable laws.*
 - *This Privacy Exhibit is necessary to ensure that Smucker complies (and its vendors comply) with all applicable data privacy laws and regulations.*
 - *Therefore, it must be included in every Smucker MSA.*
- *Smucker has drafted this Privacy Exhibit in a way that it will only apply to those vendors that, in fact, are service providers that process personal information for Smucker.*
 - *Consequently, if you (Smucker's vendor) are not a service provider and do not presently process Personal Data (as defined in the Privacy Exhibit) for Smucker, the Privacy Exhibit will not apply, even though it remains included as part of the MSA.*
 - *Additionally, privacy laws are complex and require specific legal expertise in interpreting whether Personal Data is processed as this term is defined under applicable laws.*
 - *Therefore, there is no adverse impact to including the Privacy Exhibit, and its inclusion actually protects both parties because if Privacy Data is processed, applicable law would require an addendum like the Privacy Exhibit to apply to Smucker and vendor alike.*
- *The flexible nature of the Privacy Exhibit ensures that both Smucker and you (Smucker's vendors who are either current service providers for Smucker or are anticipated to become service providers for Smucker in the future) take a proactive approach to data privacy compliance, which reduces potential administrative burden in the future as our relationship evolves.*
 - *Even if you do not presently process Personal Data for Smucker (a current service provider), there is always potential that you will do so in the future (a future service provider) at which time Smucker would have the same expectation as it does today about ensuring your compliance with applicable privacy laws.*
 - *Given that potential, including this Privacy Exhibit in every MSA from contract commencement adds efficiency by eliminating the need to execute it in the future should circumstances change and you begin processing Personal Data for Smucker.*
 - *Therefore, this approach helps ensure that our relationship remains dynamic, allowing it to organically grow and evolve as smoothly as possible.*
- *If you (Smucker's vendor) require assistance interpreting the applicability of the Privacy Exhibit on the services vendor will be providing for Smucker, it is your duty to seek legal counsel.*



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DATA PRIVACY

Version: November 2, 2023

In the event that any provisions of this Exhibit are inconsistent or conflict with the terms of the Agreement and/or any Statement of Work, purchase order, insertion order, or other terms between the Parties, the provisions of this Exhibit shall govern. The obligations herein shall survive expiration or termination of the Agreement to the extent that Service Provider has any Smucker Personal Data (as defined herein) in its possession or control.

1. Applicable Law. For purposes of this Exhibit, “**Applicable Law**” means all applicable laws, rules, regulations, ordinances, rulings, decisions, regulatory guidance and interpretations, and industry guidelines, including, without limitation, the California Consumer Privacy Act, the California Privacy Rights Act, the Colorado Privacy Act, the Connecticut Data Privacy Act, the Utah Consumer Privacy Act, the Virginia Consumer Data Protection Act, MA 201 C.M.R. §§ 17.00 *et seq.*, the New York SHIELD Act and all other applicable data privacy, protection, and security laws and all related amendments, implementing laws, and regulations, all as may be enacted, amended, restated, or replaced from time to time.
2. Personal Data. As used herein, “**Personal Data**” shall mean any information that identifies, relates to, describes, is capable of being associated with or identifying, or could reasonably be linked (directly or indirectly) with a particular individual, consumer, household, or device, which includes, without limitation, any inferences drawn about individuals, consumers, households, or devices, or derivatives thereof, and/or any other information that is regulated as “personal data,” “personally identifiable information,” “personal information,” or similar term as otherwise defined under Applicable Law.
3. Smucker Personal Data. As used herein, “**Smucker Personal Data**” shall mean i) any Personal Data that is collected by or on behalf of, identifies, relates to, describes, is capable of being associated with or identifying, or could reasonably be linked (directly or indirectly) with Smucker, including without limitation, any Personal Data that relates to or could be associated with Smucker’s employees, customers, and/or prospects, and/or other end-users of Smucker’s products, services, websites, advertisements, or content; and ii) any Personal Data acquired by or obtained by or on behalf of Smucker, or Processed by or on behalf of Smucker, or made available to Service Provider or any third party on behalf of Smucker in connection with, or in relation to, the Agreement, this Exhibit, and/or the provision of any products or services to, or on behalf of, Smucker. Smucker Personal Data includes any aggregated, deidentified or other derivative of other Smucker Personal Data. As between Service Provider and Smucker, all Smucker Personal Data is and will be deemed to be and will remain the exclusive property of Smucker.
4. Use of Smucker Personal Data. All Smucker Personal Data shall constitute Confidential Information of Smucker, and Smucker Personal Data will be accessed, used, maintained, stored, collected, modified, adapted, merged, analyzed, combined, aggregated, transferred, disseminated, retained, erased, processed, and disclosed (“**Processed**” or “**Processing**”) by Service Provider only as is necessary for Service Provider to perform its obligations to Smucker under this Exhibit or the Agreement, and as otherwise instructed in writing by Smucker. Service Provider is prohibited from (i) using, retaining, disclosing, or otherwise Processing Smucker Personal Data for any other business, commercial, or other purpose or otherwise outside of the direct business relationship between Smucker and Service Provider; (ii) combining, updating, comingling or merging Smucker Personal Data with any other Personal Data; (iii) Processing Smucker Personal Data for behavioral advertising purposes; and/or (iv) re-identifying or attempting to re-identify information that has been deidentified or aggregated. Service Provider shall promptly inform Smucker of any requirement under Applicable Law that would require Processing Smucker Personal Data in any way other than per Smucker’s instructions, or if Smucker’s instructions may infringe or violate any Applicable Law. Service Provider shall notify Smucker immediately if it makes a determination that it can no longer meet its obligations under Applicable Law; provided, however, that this will not relieve Service Provider from liability resulting from Service Provider’s failure to comply with an obligation under the Agreement. Smucker may take reasonable and appropriate steps to ensure that

Service Provider uses Smucker Personal Data consistent with Smucker's obligations under Applicable Law. For the avoidance of doubt, Service Provider may not sell, share, resell, lease, assign, rent, sublicense, distribute, transfer, disclose, make available, time-share or otherwise exchange Smucker Personal Data for monetary or other consideration. No right, title, or interest in Smucker Personal Data is transferred to Service Provider.

5. Access Limitations. Service Provider shall not disclose, transfer, or otherwise make available Smucker Personal Data to any third party, including, without limitation, any agent, contractor, or subcontractor, without the prior written consent and authorization of Smucker. Without limiting the foregoing, any third party to which Service Provider discloses Smucker Personal Data shall be required by Service Provider to enter into written contractual obligations that are no less stringent than the obligations imposed upon Service Provider by this Exhibit before any such party is provided with access to any Smucker Personal Data. Service Provider will restrict access to Smucker Personal Data only to those individuals who have a need to know or otherwise access the Smucker Personal Data to enable Service Provider to perform its obligations under this Exhibit and the Agreement, and as otherwise permitted by this Exhibit, provided that: (a) subject to applicable law, a background check has first been conducted of those individuals and no adverse, material background information has been discovered, (b) Service Provider and its subcontractors have a written policy governing the grant and control of access privileges including revocation of access privileges as individual's roles change or immediately upon employment termination and discipline for unauthorized access. Upon Smucker's written request, or alternatively via running list on a shared document, Service Provider will promptly identify in writing all individuals who have been granted access to the Smucker Personal Data as of the date of the request and Service Provider will provide Smucker with copies of agreements (redacted to exclude commercial terms) executed by all third parties with access to Smucker Personal Data, for Smucker's inspection. Service Provider will at all times cause its employees and others to whom it provides Smucker Personal Data to strictly abide by Service Provider's obligations under this Exhibit. The acts or omissions of Service Provider's Representatives will also be deemed the acts or omissions of Service Provider for which Service Provider is fully liable.
6. Assistance. Should Service Provider receive a request from an individual exercising their rights under Applicable Law, Service Provider shall promptly (and in any event, within five (5) days) and at no charge to Smucker, provide all assistance required by Smucker in the fulfillment of Smucker's obligation to respond to such request. Individual requests may seek, without limitation, easily portable copies of, corrections to, or deletion of all Smucker Personal Data relating to the individual. Service Provider shall implement procedures necessary to categorize, access, modify, delete, and upload Smucker Personal Data so that Service Provider may promptly and fully assist Smucker if and as requested (including, without limitation, notifying other parties as instructed by Smucker). If Service Provider receives a request directly from an individual, Service Provider will, unless otherwise directed in writing by Smucker, and to the extent not prohibited by applicable law or any regulatory authority: (a) promptly (and in no event longer than 24 hours after receipt of such request) notify the designated representative for Smucker and forward the request to Smucker for handling; (b) if requested, provide Smucker with copies of documents or other relevant data relating to the request; (c) not refer to Smucker or its affiliates in any correspondence with the requester without Smucker's prior written consent; and (d) not disclose any confidential information of Smucker or its affiliates without Smucker's prior written consent. Service Provider shall, upon Smucker's request, cooperate in good faith with Smucker to enter into additional or modified contract terms to address any modifications, amendments, or updates to Applicable Law.
7. Confidentiality. Service Provider shall: (i) keep confidential and comply with Section 4 of the Agreement with respect to all Smucker Personal Data that it accesses or otherwise Processes, including, without limitation, return or destruction obligations in Section 4(b) of the Agreement; (ii) ensure that each person Processing Smucker Personal Data is subject to a duty of confidentiality with respect to such Smucker Personal Data that is at least as protective of such Smucker Personal Data as the terms of the Agreement and this Exhibit; and (iii) ensure employees and Representatives permitted to access Smucker Personal Data are trained with respect to the obligations imposed by this Exhibit and Applicable Law and sign an undertaking to comply with these obligations as described herein.
8. Security. Service Provider warrants that it has adopted and implemented, and will maintain and enforce for as long as the Agreement is in effect or as long as Service Provider stores or Processes Smucker Personal Data (whichever is later), a written information security program and data security measures appropriate to the nature of the Smucker Personal Data in its possession or control, that include, without limitation, administrative, organizational, technical, physical, and other safeguards sufficient to protect

Personal Data and Smucker Personal Data against accidental, unauthorized or unlawful Processing, destruction, loss, alteration, communication, use, disclosure, and access, and against all other unlawful activities, and that complies with all Applicable Law. Without limiting the generality of the foregoing, Service Provider warrants that it shall at all times comply with or operate in alignment with all security standards and procedures set forth in the Center for Internet Security CIS Controls 8.0 for Implementation Group 3 (or successor version).

9. Data Retention. Except as otherwise required by law, all Smucker Personal Data shall be securely deleted or destroyed (in a manner as specified by Smucker) once such information is no longer required for Service Provider to perform its obligations under the Agreement, applicable Statement of Work, or this Exhibit. Except as may otherwise be directed by Smucker in a separate writing, Service Provider shall immediately delete or securely return, at Smucker's discretion, all copies of Smucker Personal Data upon expiration or termination of the Agreement, or upon Smucker's request. Any Smucker Personal Data retained by Service Provider shall be safeguarded in accordance with the terms of this Exhibit and the Agreement for so long as such Smucker Personal Data is retained.
10. Data Incidents. In the event of any actual or reasonably suspected unauthorized, unlawful, and/or accidental access to, loss of control over and/or loss, unavailability, alteration, Processing, disclosure, communication, acquisition, use, reproduction, modification, destruction, or deletion of Personal Data or Smucker Personal Data ("**Data Incident**"), Service Provider shall inform Smucker's designated representative via email of the same within twenty-four (24) hours of Service Provider becoming aware of such Data Incident. Smucker may take reasonable and appropriate steps to stop and remediate any unauthorized use of Smucker Personal Data. In addition, Service Provider shall investigate and remediate the Data Incident and, to the extent that a Data Incident involves Smucker Personal Data or results in a legal obligation on Service Provider or Smucker to notify impacted individuals or regulatory authorities, or would put impacted individuals at risk, Service Provider shall provide Smucker as soon as reasonably possible with assurances satisfactory to Smucker that the Data Incident has been remediated and will not recur. Service Provider warrants that if there has been a Data Incident, all responsive steps will be documented and a post-incident review will be made of both the events and also actions taken, if any, to change business practices relating to Personal Data and Smucker Personal Data. Service Provider agrees to fully cooperate with Smucker in Smucker's handling of any Data Incident involving Smucker Personal Data, including without limitation any investigation, reporting or other obligations required by Applicable Law, or as otherwise required by Smucker, and will work with Smucker to otherwise respond to and mitigate any damages caused by the Data Incident. Unless required by Applicable Law, Service Provider shall not notify any third party of a Data Incident involving Smucker Personal Data without Smucker's prior, written authorization. Service Provider shall reimburse Smucker for all costs incurred in responding to and/or mitigating damages caused by a Data Incident involving Smucker Personal Data, including, without limitation, costs of forensic investigation, regulatory fines, notification costs, credit monitoring, and/or reasonable attorneys' fees.
11. No Export. Service Provider will not transmit, directly or indirectly, any Smucker Personal Data to any country outside of the country from which such Smucker Personal Data was collected without the prior written consent of Smucker. Any such international transfers must be in compliance with Applicable Law. Without limiting the foregoing, Service Provider shall take all appropriate additional measures necessary to ensure an adequate level of data protection for any data transferred from one country to another.
12. Cooperation. Service Provider shall provide reasonable assistance, information, and cooperation to Smucker for Smucker's compliance with Applicable Law, including, without limitation, with respect to conducting privacy and data protection impact assessments, taking into account the nature of Processing and the information available to Service Provider and Service Provider further grants Smucker the right to take reasonable and appropriate steps to stop and remediate any unauthorized use of Smucker Personal Data. Service Provider shall make available to Smucker all information necessary to demonstrate compliance with Applicable Law. Smucker reserves the right to conduct (by itself or through a designated, reputable third party) ongoing manual and/or automated reviews, scans, audits, and assessments, including, without limitation, on-site audits and testing of any locations where Smucker Personal Data is stored or otherwise Processed, to monitor, assess, and ensure Service Provider's compliance with its obligations under Applicable Law and this Exhibit. Service Provider will promptly, at its sole expense, remediate any material deficiencies identified in any audit and provide documentation of its remediation of such deficiencies to Smucker.

13. Representations and Warranties. Service Provider represents and warrants that it has the authorization necessary to enter into this Exhibit, and no consent, approval, or other action is necessary in connection with the execution or performance of this Exhibit. Service Provider further represents and warrants that it will perform all of its duties and obligations under this Exhibit, it will comply with Applicable Law in the fulfillment of its obligations, in Processing any Personal Data and/or Smucker Personal Data, and otherwise in its rendering of services to Smucker, and that Service Provider's failure to comply with any provisions of this Exhibit shall be deemed a material breach of the Agreement. Service Provider represents and warrants that it has created written guidelines to ensure its compliance with its obligations under this Exhibit and shall provide those written guidelines to Smucker upon request.
14. Indemnification/Remedies. Service Provider agrees to indemnify, hold harmless, and defend, on demand, Smucker, its Affiliates, and their directors, officers, agents and employees from and against any and all liabilities, damages, losses, expenses, demands, suits, or judgments, including, without limitation, all attorney's fees, costs, and expenses incidental thereto, arising out of: i) Service Provider's and/or any Representative(s)' intentional or willful misconduct; ii) Service Provider's and/or any Representative(s)' failure, or alleged failure, to comply with this Exhibit or any Applicable Law; or iii) any Data Incident. Service Provider's indemnification and reimbursement obligations under this Exhibit shall not be subject to any disclaimer of damages, cap on liability, or other limitation of liability contained in the Agreement. Service Provider agrees that, without limiting any of its other rights or remedies under the Agreement or at law, Smucker will have the right to terminate the Agreement upon written notice to the Service Provider in the event of breach by Service Provider of any of its obligations under this Exhibit.
15. Additional Details of Processing. The Parties anticipate that Service Provider will Process Smucker Personal Data under this Exhibit and the Agreement as described below; provided, however, that failing to complete, in whole or in part, will not create a waiver for or relieve Service Provider of any representations, warranties, or obligations under this Exhibit:

Nature and Purpose of Processing: _____

Categories of Personal Data:

- Contact information
- Demographic data (e.g. date of birth)
- Location data
- Online/electronic activity (e.g., IP address, cookies, browser history, etc.)
- Commercial information (e.g., purchase history, transactions, etc.)
- Preferences, characteristics, interests, insights
- Social media data
- Video/audio recordings or photographs
- Device trackers (e.g. MAC address, device ID, keystrokes, etc.)
- Professional or employment related data
- Financial information
- Educational information
- Other _____

Categories of Sensitive Personal Data:

- Race or ethnic origin
- Religious beliefs
- Bank account or payment card details
- Precise geolocation data
- Government I.D. data (e.g., SSN, other national ID number, driver's license, etc.)
- Citizenship, nationality or immigration information
- Political opinions/affiliations
- Biometric data
- Facial recognition data
- Health/allergy/dietary data
- Log-in credentials
- Data concerning a professional trade/union
- Data concerning a minor
- Data from minor
- Data concerning a person's sex life or sexual orientation
- Other: _____

Categories of Data Subjects:

- Consumers/General Public
- Minors (under 18)
- Smucker Employees/Personnel
- Job Applicants
- Business Contacts
- Contractors/Vendors
- Other _____

Duration: As set forth under this Exhibit and the Agreement.

Obligations/Rights of Smucker: As set forth under this Exhibit and the Agreement.