

# **White Paper**

## Data Security

Supporting compliance with EU  
personal data transfer requirements

# Overview

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## Purpose of this document

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Peter Berry Consultancy Pty Ltd (PBC) is an Australian based company. We are committed to supporting our clients' privacy compliance efforts when processing the personal information (or personal data) they are responsible for in connection with our products and services.

PBC has developed this security whitepaper to provide:

- Guidance to Distributors, Clients, and Users of the Hogan360 products and services on recommended steps to ensure adequate protection of any personal data that is transferred to PBC from the European Union(EU); and
- Information on the steps PBC takes as a data processor, including relevant supplementary measures, to help ensure the adequate protection of the personal data we may access and process in Australia from time to time

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## Standard Contractual Clauses

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PBC does not currently have an establishment in the EU. PBC relies on the European Commission's current published Standard Contractual Clauses (SCCs)<sup>1</sup> as the appropriate legal transfer mechanism under the General Data Protection Regulation (GDPR)<sup>2</sup> for the transfer of personal data from EU countries to Australia when it accesses and processes this personal data from time to time. The SCCs are expressly included in our standard terms of agreement that we enter into with our European Distributors and clients on request under the processor-to-processor module.

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## EDPB Recommendations

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The European Data Protection Board (EDPB) has published non-binding recommendations on supplementary measures that companies should implement to ensure the adequate protection of personal data transferred outside the EU (Recommendations).<sup>3</sup> They confirm the SCCs may be used as the legal basis to transfer personal data.

PBC has evaluated the practical risks of, and protections applied to, transfers of personal data in light of applicable data access laws and practices and the circumstances of its data processing in Australia to ensure the effectiveness of the GDPR safeguards to protect the personal data that may be transferred to it from the EU from time to time.

The Recommendations expect the data exporter and data importer to make a risk-based assessment and, taking into consideration the details of the transfer, identifying the supplementary measures (contractual, technical, or organisational) to put into place when transferring personal data which will depend on a case-by-case basis.

The EDPB recommends data exporters take the following six steps to assess their data transfers and help determine if they need to implement supplementary measures.

# EDPB Recommendations Overview

The EDPB outlines 6 steps that data exporters should follow when assessing personal data transfers and considering if supplementary measures are required.

**Step 1: Map all transfers of personal data to third countries**

**Step 2: Verify the transfer mechanism that will be used**

**Step 3: Assess whether the mechanism is effective**

**Step 4: Identify and adopt any supplementary measures**

**Step 5: Take formal procedural steps**

**Step 6: Re-evaluate**

# Steps

## Step One: Description of Transfers

PBC is an Australian entity. We provide the Hogan360 suite of assessments and other assessments including the Agile 360 and the High Performing Team Assessment (360 Tools). The 360 Tools are comprehensive multi-rater feedback tools designed to help individuals and leaders at any level of an organisation gain a better understanding of how they are perceived by managers, peers, direct peers, direct reports, and others. We have developed the Hogan360 suite and co branded the assessments with a USA-based psychometric test publisher firm Hogan Assessments Inc. We market our products through Hogan distributor channels worldwide (Distributors). Distributors provide the Hogan 360 and related products to their clients (Clients) who use the products with their workforce users (Users). PBC also enters into arrangements directly with some Clients.

The Hogan360 is hosted and accessed through the Qualtrics platform (a cloud-based service) with servers located in Germany.<sup>4</sup> User personal data is collected and processed on the platform when they access and use the tool. PBC may access this personal data on a limited and ad hoc basis when authorised to do so by Distributors on behalf of their Clients or by our Clients directly for product implementation support and reporting purposes. When we access personal data in this way it is considered a transfer of User personal data to Australia from PBC's Distributor to PBC (processor to processor) on behalf of the Client who is the data controller.

## Step Two: Transfer Tools

The legal basis for transfers of the personal data of EU Users to Australia under Article 46 of the GDPR is the SCCs which are implemented through the Processor-to-Processor Standard Contractual Clauses Agreement that is entered into between PBC and each of its EU Distributors.

## Step Three: Potential privacy risks under local laws and relevant practices Legal Assessment

As PBC relies on the SCCs as the legal transfer tool, it has assessed whether the tool is effective, adopting a risk-based and proportionate approach considering all relevant circumstances of the data transfers that may occur from time to time.

PBC's has assessed that, in the circumstances of its activities and the relevant data transfers, the relevant legislation and practices in Australia should not impinge on the effectiveness of the SCCs as the primary legal transfer tool that PBC relies on. As part of our assessment, we have considered the legislation relevant to the processing of the data transferred and having regard to the SCCs as well as the practices of relevant Australian public authorities being national security, intelligence and law enforcement agencies at July 2024. This assessment may be updated from time to time as practices and laws change.

PBC's Privacy Policy which is available at <https://peterberryconsultancy.com/privacy-policy/> explains how individuals whose personal information we collect and hold can exercise their privacy rights in relation to that information. This privacy policy may be updated from time to time to reflect any changes to our data processing practices and legal obligations. PBC can assist its Distributors and Clients on request with their local assessment.

**The Recommendations state that, on the basis of such an assessment, no further supplementary measures would be required in relation to the current state of transfers.**


**To support the obligations under the SCCs and adopting a proportionate and risk-based assessment of the transfers in the circumstances PBC has taken a layered or combination approach (consistent with the Recommendations) to further measures it has implemented, or can implement, to provide further confidence to our Distributors and Clients. These supplementary measures are detailed below.**

**Step Four: Safeguards in place to ensure an equivalent level of protection under SCCs.****Technical Controls** **Data is encrypted in transit and at rest.**

All access to Qualtrics front-end Services is via Hypertext Transfer Protocol Secure (HTTPS) and enforces HTTP Strict Transport Security (HSTS). Access to the back-end services using the Qualtrics API supports TLS v1.2. Disk level encryption is standard for Data stored on the platform. Data at rest uses AES 256-bit encryption.

 **Encryption keys**

Encryption keys are stored within a software vault where they are encrypted with key encrypting keys of equivalent strength. Keys are rotated whenever data storage volumes are rebuilt.

 **Vulnerability Management Program**


Qualtrics has a robust vulnerability management program which includes using multiple methods to identify vulnerabilities in the environment. These methods include anti-malware software, internal and external penetration tests, vulnerability scans and source code scans.

 **Access to personal data in motion**

PBC does not and is generally contractually bound not to access the personal data through the Distributor or Client brands on the Qualtrics platform, unless instructed in writing to do so by the Distributor or the Client and in accordance with PBC's contractual obligations and technical and organisational measures.

 **Access Control**


Only a limited number of staff at PBC have access to each or Client Distributor brand as the brand administrator. Any alternative staff member must be nominated with the approval of PBC's Managing Partner.

**Organisational Controls** **Governance for requests for information from public authorities**

PBC has trained professionals who deal with any regulatory requests and seek legal advice as required. PBC has a documented process to review requests that include collaborating with the data processor and data controller for input.

 **Privacy Training**

Privacy training is delivered to new staff as part of their induction, and there is regular training for all staff that includes cyber security training. PBC also receives updates on any relevant changes to its privacy related obligations.

 **Organisational methods and data minimisation**

PBC has entered into an agreement with Qualtrics as its sub-processor to provide their platform to PBC. PBC are brand administrators on the Qualtrics platform. Under separate brands which may be set up for each of the Clients and any Distributor on request, PBC is required to configure the Hogan360 suite and related assessment tools on the platform and manage it. This is the only way the assessments are available to Distributors and their Clients.

 **Internal Access Control**


PBC staff are subject to appropriate confidentiality obligations in their employment contracts, and only certain staff have access to the Qualtrics platform on a need-to-know work related basis. For PBC staff, access is limited, to ensure coverage in the event of one employee being absent.

 **Logging**


Logs are available of access to personal data through the Qualtrics platform, which can be obtained from the brand on request by Distributors and Clients.

**Contractual Controls**


Contractual controls may be slightly different between Distributors depending on contractual arrangements. The common contractual controls PBC will include in these arrangements are:

 **Reporting about requests from authorities to access documents**

PBC offers quarterly reporting. To provide further context, as of the date of this whitepaper, PBC has not received any requests from any Australian government authority or any court/tribunal order or request exercising any power or authority to access the personal data on Qualtrics. Given the nature of PBC's business activities, the types of personal data involved and the nature and purpose of the data processing, in the circumstances, PBC considers it very unlikely that it would receive such requests.

 **Notification of access requests**

PBC is required by the SCCs to notify its Distributors and Clients (to the extent it is permitted or receives a waiver on any restriction) of any legally binding request it receives from an Australian government authority or court/tribunal or where it becomes aware of direct access.

 **Challenging the legality of any requests**

PBC has detailed obligations in relation to challenging the legality of any requests under the SCCs. This ensures that Distributors and their Clients are fully informed of the steps it may be required to take so they can obtain their own legal advice and take steps they consider appropriate.

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**Step Four (continued): Optional controls**

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On a case-by-case basis, PBC may be able to implement the following optional controls, if requested by Distributors and Clients:

- ensuring Distributors and Clients only send PBC encrypted data when requesting assistance or reports;
- on a Distributor's or client's instruction, restricting PBC's access to demographic information (from survey answers);
- not providing group reports that would involve PBC accessing personal data;
- implementation of multi-factor authentication (if the Distributor requests their own brand configuration); and
- provision of reports to Distributors to demonstrate ongoing compliance with security controls.

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**Step Four: Take formal procedural steps**

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PBC must then take procedural steps if it has identified any supplementary measures that need to be put in place. This step is only required when the assessment of the effectiveness of the transfer mechanism indicates that supplementary measures are required.

PBC's assessment does not indicate that further supplementary measures are currently required in the circumstances and based on the existing legal assessment. However, we have outlined above the supplementary measures we have in place to assist our Distributors and Clients.

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**Step Six: Re-evaluate**

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The final step requires the data exporter and importer to periodically reassess the protections in place for personal data.

PBC monitors regulatory and operational changes or developments that may affect past data transfers or could impact future data transfers, seeks legal and technical advice as required and updates its agreements when necessary. PBC will notify our Distributors and Clients in relation to any material impacts on its contractual arrangements or data processing. Clients and Distributors should also undertake their own monitoring and inform PBC of any changes to their data transfer practices or if they become aware of any changes to the applicable regulatory obligations in relation to their data transfers.

# Contact/About PBC

PBC provides customer-focused, evidence-based solutions that enable organisations to select and develop talent, build better leaders, and enhance performance.

PBC works on the premise that science informs practice, and we therefore use diagnostics at the core of all our human capital solutions. We represent Hogan Assessments (USA) in Australia and New Zealand, and we are the publisher of the Hogan 360 suite and the High Performing Team Assessment. We use these assessments to build integrated assessment, consulting and coaching solutions for our clients globally. PBC is also well known for our research and thought leadership expertise.

For more information or questions about this whitepaper, please contact [privacy@peterberry.com.au](mailto:privacy@peterberry.com.au).

For more information about how PBC handles the personal information it collects and processes or to access the personal information we hold about you please refer to our Privacy Policy available at <https://peterberryconsultancy.com/privacy-policy/> or by contacting us at [privacy@peterberry.com.au](mailto:privacy@peterberry.com.au) or +61289180888.

## References

- 1 [Standard Contractual Clauses \(SCC\) - European Commission \(implementing decision 2021/914\)](#).
- 2 [General Data Protection Regulation \(GDPR\) - Regulation \(EU\) 2016/679](#).
- 3 [Recommendations 01/2020 on measures that supplement transfer tools to ensure compliance with the EU level of protection of personal data](#).
- 4 [For more information on Qualtrics data security measures, please see Security Statement - Qualtrics](#).

### Disclaimer

The information contained in this document is for the intended audience and general use only. It is not legal advice. It is intended to be a summary of relevant information based on PBC's assessment at a point in time and is for information and reference purposes only. The information is provided as of the date of the document and does not consider any changes to the regulatory frameworks after the date of publication. The information in this document may not be disclosed or distributed to any third party without PBC's permission.

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### **About Peter Berry Consultancy (PBC)**

PBC is a multidisciplinary global consulting firm with over 30 years' experience in the delivery of solutions aimed at maximising the potential of individuals, teams, leaders and organisations. We undertake research to support our evidence-based solutions and have a network of partners and distributors globally.

PBC is the Australian and New Zealand distributor of Hogan Assessments and the authors of a range of diagnostics including the Hogan 360 suite, Agile suite, High Performing Team Assessment (HPTA), and co-authored the Hogan Safety Climate Survey.

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