MacStadium

Standard Contractual Clauses

For the purposes of Article 26(2) of Directive 95/46/EC for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection, the data exporter and the data importer identified in the signature pages to these clauses, each a 'party', together 'the parties', HAVE AGREED on the following Contractual Clauses (the Clauses) in order to adduce adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals for the transfer by the data exporter to the data importer of the personal data specified in Appendix 1. (These Clauses can be located in their original text on the European Commission website here: http://ec.europa.eu/justice/data-protection/international-transfers/transfer/index_en.htm).

Clause 1

Definitions

For the purposes of the Clauses:

(a) *'personal data', 'special categories of data', 'process/processing', 'controller', 'processor', 'data subject'* and *'supervisory authority'* shall have the same meaning as in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;

(b) '*the data exporter'* means the controller who transfers the personal data;

(c) *'the data importer'* means the processor who agrees to receive from the data exporter personal data intended for processing on his behalf after the transfer in accordance with his instructions and the terms of the Clauses and who is not subject to a third country's system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC;

(d) *'the subprocessor'* means any processor engaged by the data importer or by any other subprocessor of the data importer who agrees to receive from the data importer or from any other subprocessor of the data importer personal data exclusively intended for processing activities to be carried out on behalf of the data exporter after the transfer in accordance with his instructions, the terms of the Clauses and the terms of the written subcontract;

(e) '*the applicable data protection law'* means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which the data exporter is established;

(f) *'technical and organisational security measures'* means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

Clause 2

Details of the transfer

The details of the transfer and in particular the special categories of personal data where applicable are specified in Appendix 1 which forms an integral part of the Clauses.

Clause 3

Third-party beneficiary clause

1. The data subject can enforce against the data exporter this Clause, Clause 4(b) to (i), Clause 5(a) to (e), and (g) to (j), Clause 6(1) and (2), Clause 7, Clause 8(2), and Clauses 9 to 12 as third-party beneficiary.

2. The data subject can enforce against the data importer this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where the data exporter has factually disappeared or has ceased to exist in law unless

any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity.

3. The data subject can enforce against the subprocessor this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.

4. The parties do not object to a data subject being represented by an association or other body if the data subject so expressly wishes and if permitted by national law.

Clause 4

Obligations of the data exporter

The data exporter agrees and warrants:

(a) that the processing, including the transfer itself, of the personal data has been and will continue to be carried out in accordance with the relevant provisions of the applicable data protection law (and, where applicable, has been notified to the relevant authorities of the Member State where the data exporter is established) and does not violate the relevant provisions of that State;

(b) that it has instructed and throughout the duration of the personal data processing services will instruct the data importer to process the personal data transferred only on the data exporter's behalf and in accordance with the applicable data protection law and the Clauses;

(c) that the data importer will provide sufficient guarantees in respect of the technical and organisational security measures specified in Appendix 2 to this contract;

(d) that after assessment of the requirements of the applicable data protection law, the security measures are appropriate to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented by the processing and the nature of the data to be protected having regard to the state of the art and the cost of their implementation;

(e) that it will ensure compliance with the security measures;

(f) that, if the transfer involves special categories of data, the data subject has been informed or will be informed before, or as soon as possible after, the transfer that its data could be transmitted to a third country not providing adequate protection within the meaning of Directive 95/46/EC;

(g) to forward any notification received from the data importer or any subprocessor pursuant to Clause 5(b) and Clause 8(3) to the data protection supervisory authority if the data exporter decides to continue the transfer or to lift the suspension;

(h) to make available to the data subjects upon request a copy of the Clauses, with the exception of Appendix 2, and a summary description of the security measures, as well as a copy of any contract for subprocessing services which has to be made in accordance with the Clauses, unless the Clauses or the contract contain commercial information, in which case it may remove such commercial information;

(i) that, in the event of subprocessing, the processing activity is carried out in accordance with Clause 11 by a subprocessor providing at least the same level of protection for the personal data and the rights of data subject as the data importer under the Clauses; and

(j) that it will ensure compliance with Clause 4(a) to (i).

Clause 5

Obligations of the data importer

The data importer agrees and warrants:

(a) to process the personal data only on behalf of the data exporter and in compliance with its instructions and the Clauses; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly the data exporter of its inability to comply, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;

(b) that it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from the data exporter and its obligations under the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by the Clauses, it will promptly notify the change to the data exporter as soon as it is aware, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;

(c) that it has implemented the technical and organisational security measures specified in Appendix 2 before processing the personal data transferred;

(d) that it will promptly notify the data exporter about:

(i) any legally binding request for disclosure of the personal data by a law enforcement authority unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation,

(ii) any accidental or unauthorised access, and

(iii) any request received directly from the data subjects without responding to that request, unless it has been otherwise authorised to do so;

(e) to deal promptly and properly with all inquiries from the data exporter relating to its processing of the personal data subject to the transfer and to abide by the advice of the supervisory authority with regard to the processing of the data transferred;

(f) at the request of the data exporter to submit its data processing facilities for audit of the processing activities covered by the Clauses which shall be carried out by the data exporter or an inspection body composed of independent members and in possession of the required professional qualifications bound by a duty of confidentiality, selected by the data exporter, where applicable, in agreement with the supervisory authority;

(g) to make available to the data subject upon request a copy of the Clauses, or any existing contract for subprocessing, unless the Clauses or contract contain commercial information, in which case it may remove such commercial information, with the exception of Appendix 2 which shall be replaced by a summary description of the security measures in those cases where the data subject is unable to obtain a copy from the data exporter;

(h) that, in the event of subprocessing, it has previously informed the data exporter and obtained its prior written consent;

(i) that the processing services by the subprocessor will be carried out in accordance with Clause 11;

(j) to send promptly a copy of any subprocessor agreement it concludes under the Clauses to the data exporter.

Clause 6

Liability

1. The parties agree that any data subject, who has suffered damage as a result of any breach of the obligations referred to in Clause 3 or in Clause 11 by any party or subprocessor is entitled to receive compensation from the data exporter for the damage suffered.

2. If a data subject is not able to bring a claim for compensation in accordance with paragraph 1 against the data exporter, arising out of a breach by the data importer or his subprocessor of any of their obligations referred to in Clause 3 or in Clause 11, because the data exporter has factually disappeared or ceased to exist in law or has become insolvent, the data importer agrees that the data subject may issue a claim against the data importer as if it were the data exporter, unless any successor entity has assumed the entire legal obligations of the data exporter by contract of by operation of law, in which case the data subject can enforce its rights against such entity.

   The data importer may not rely on a breach by a subprocessor of its obligations in order to avoid its own liabilities.

3. If a data subject is not able to bring a claim against the data exporter or the data importer referred to in paragraphs 1 and 2, arising out of a breach by the subprocessor of any of their obligations referred to in Clause 3 or in Clause 11 because both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, the subprocessor agrees that the data subject may issue a claim against the data subprocessor with regard to its own processing operations under the Clauses as if it were the data exporter or the data importer, unless any successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The liability of the subprocessor shall be limited to its own processing operations under the Clauses.

Clause 7

Mediation and jurisdiction

1. The data importer agrees that if the data subject invokes against it third-party beneficiary rights and/or claims compensation for damages under the Clauses, the data importer will accept the decision of the data subject:

   (a) to refer the dispute to mediation, by an independent person or, where applicable, by the supervisory authority;

   (b) to refer the dispute to the courts in the Member State in which the data exporter is established.

2. The parties agree that the choice made by the data subject will not prejudice its substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.

Clause 8

Cooperation with supervisory authorities

1. The data exporter agrees to deposit a copy of this contract with the supervisory authority if it so requests or if such deposit is required under the applicable data protection law.

2. The parties agree that the supervisory authority has the right to conduct an audit of the data importer, and of any subprocessor, which has the same scope and is subject to the same conditions as would apply to an audit of the data exporter under the applicable data protection law.

3. The data importer shall promptly inform the data exporter about the existence of legislation applicable to it or any subprocessor preventing the conduct of an audit of the data importer, or any subprocessor, pursuant to paragraph 2. In such a case the data exporter shall be entitled to take the measures foreseen in Clause 5(b).

Clause 9

Governing Law

The Clauses shall be governed by the law of the Member State in which the data controller is established.

Clause 10

Variation of the contract

The parties undertake not to vary or modify the Clauses. This does not preclude the parties from adding clauses on business related issues where required as long as they do not contradict the Clause.

Clause 11

Subprocessing

1. The data importer shall not subcontract any of its processing operations performed on behalf of the data exporter under the Clauses without the prior written consent of the data exporter. Where the data importer subcontracts its obligations under the Clauses, with the consent of the data exporter, it shall do so only by way of a written agreement with the subprocessor which imposes the same obligations on the subprocessor as are imposed on the data importer under the Clauses. Where the subprocessor fails to fulfil its data protection obligations under such written agreement the data importer shall remain fully liable to the data exporter for the performance of the subprocessor's obligations under such agreement.

2. The prior written contract between the data importer and the subprocessor shall also provide for a third-party beneficiary clause as laid down in Clause 3 for cases where the data subject is not able to bring the claim for compensation referred to in paragraph 1 of Clause 6 against the data exporter or the data importer because they have factually disappeared or have ceased to exist in law or have become insolvent and no successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.

3. The provisions relating to data protection aspects for subprocessing of the contract referred to in paragraph 1 shall be governed by the law of the Member State in which the data controller is established.

4. The data exporter shall keep a list of subprocessing agreements concluded under the Clauses and notified by the data importer pursuant to Clause 5(j), which shall be updated at least once a year. The list shall be available to the data exporter's data protection supervisory authority.

Clause 12

Obligation after the termination of personal data processing services

1. The parties agree that on the termination of the provision of data processing services, the data importer and the subprocessor shall, at the choice of the data exporter, return all the personal data transferred and the copies thereof to the data exporter or shall destroy all the personal data and certify to the data exporter that it has done so, unless legislation imposed upon the data importer prevents it from returning or destroying all or part of the personal data transferred. In that case, the data importer warrants that it will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore.

2. The data importer and the subprocessor warrant that upon request of the data exporter and/or of the supervisory authority, it will submit its data processing facilities for an audit of the measures referred to in paragraph 1.

APPENDIX 1 TO

THE STANDARD CONTRACTUAL CLAUSES

These Appendices 1 and 2 form part of the Clauses.

Data exporter

The data exporter is the Customer, acting as data exporter on behalf of itself or a customer where applicable. Activities relevant to the transfer include the performance of services for the Customer and its customer(s).

Data importer

MacStadium is not a data importer for any Customer or its customer(s). Nonetheless, if MacStadium is found to be a data importer, activities relevant to a transfer include the performance of services for the Customer and customers, if applicable.

Data subjects

The personal data transferred may concern the following categories of data subjects: Employees, contractors, business partners, representatives and end customers of customers, and other individuals whose personal data is processed by or on behalf of the Customer or the Customer's customers and delivered as part of the Services.

Categories of data

The personal data transferred may concern the following categories of data:

Personal Data related directly or indirectly to the delivery of services or Performance, including online and offline customer, prospect, partner, and MacStadium data, and personal data provided by customers in connection with the resolution of support requests.

Special categories of data

The personal data transferred may concern the following special categories of data:

Data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs or trade union memberships, and data concerning health or sex life, and data relating to offenses, criminal convictions or security measures.

Processing operations

The personal data transferred may be subject to the following basic processing activities, as may be further set forth in contractual agreements entered into from time to time between the Customer and customers: (a) customer service activities, such as processing orders, providing technical support and improving offerings, (b) sales and marketing activities as permissible under applicable law, (c) consulting, professional, security, storage, hosting and other services delivered to customers, including services offered by means of the products and solutions described by MacStadium, and (d) internal business processes and management, fraud detection and prevention, and compliance with governmental, legislative, and regulatory requirements.

APPENDIX 2

DATA PRIVACY & DATA SECURITY AGREEMENT

*This Data Privacy & Data Security Agreement (the "**DPA**") is between MacStadium, Inc. ("**MacStadium**"), a Georgia corporation, and Appetize.io, LLC indicated below who uses MacStadium Services ("**Customer**"). Customer and MacStadium are referred to as the "**Parties**." This DPA governs the Parties' obligations with regard to the privacy and security of Customer Data and shall be incorporated into the Master Services Agreement ("**Agreement**") by and between MacStadium and Customer. Any capitalized terms not defined in this DPA shall have the meaning stated in the Agreement.*

Background

MacStadium is the provider of private cloud-based infrastructure services. MacStadium provides a physical location for the operation of certain computing equipment, the personal computers and servers themselves, data center-related services, such as physical security, electricity, HVAC, and similar services, and internet connectivity. The setup and operation of the computers and servers themselves are operated exclusively by MacStadium's Customers, other than certain services where MacStadium has access to Customer computing infrastructure solely to configure such computers, including storage and virtualization. All Customer Data transmitted to or stored on MacStadium's computing infrastructure or equipment is required to be in encrypted form. MacStadium does not possess any decryption keys to Customer Data at any time, and accordingly, MacStadium has no ability to determine what Customer Data is being received, processed or stored. The Parties desire to enter into this DPA for the purposes of compliance with various data privacy requirements, including the requirements of the GDPR, while allocating responsibilities under such requirements in a manner that is consistent with the Services being provided by MacStadium and its lack of access to unencrypted Customer Data at any time.

The Parties agree as follows:

1. Definitions.

*"**Authorized Persons**" means MacStadium's employees, agents, and contractors that have a need to know or otherwise access Customer Data to enable MacStadium to provide the Services.*

*"**Customer Data**" means all data relating to Customer or Customer's users that is (i) provided to MacStadium by or on behalf of Customer or a Customer's user or (ii) otherwise obtained, accessed, developed, or produced by MacStadium. Customer Data may include Personal Data.*

*"**Controller**" means a controller as defined under the GDPR.*

*"**Data Protection Laws**" means all international, federal, national and state data laws and regulations with regard to data privacy or data security.*

*"**Data Breach**" means any loss or unauthorized access, acquisition, theft, destruction, disclosure or use of Customer Data that is caused by MacStadium while such Customer Data is in the possession of or under the control of MacStadium.*

*"**GDPR**" means the EU General Data Protection Regulation 2016/679.*

*"**Personal Data**" means information relating to an identified or identifiable natural person (the "**Data Subject**"). An identifiable natural person is a natural person who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.*

*"**Process**" or "**Processing**" means any operation or set of operations that are performed upon Customer Data, whether or not by automatic means, such as collection, accessing, processing, use, recording, organization, storage, adaptation or alteration, retrieval, consultation, use, disclosure, dissemination, transmittal, alignment or combination, blocking, erasure, destruction or otherwise used as set out in the applicable Data Protection Laws.*

*"**Processor**" means a processor as defined under the GDPR. (*

*"**Services**" means the services, solutions and products to be provided to or carried out by or on behalf of MacStadium for Customer.*

*"**Sub-Processor**" shall mean an entity engaged by MacStadium to assist it in Processing the Customer Data in fulfilment of its obligations with regard to the Services.*

*"**Third Party**" is any person or entity other than MacStadium and Customer.*

2. Data Privacy.

2.1 Compliance with Laws. The Parties shall comply with their obligations under all applicable Data Protection Laws. For purposes of the

GDPR, Customer is considered the Controller and MacStadium is its Processor. If Customer is considered a Processor for purposes of the GDPR, then MacStadium is considered its Sub-Processor. However, MacStadium is not a Processor of Customer Data in any way.

2.2 Distribution of Customer Data. Customer shall only provide MacStadium with Personal Data that is needed by MacStadium to provide the Services. MacStadium shall not be responsible for any additional Personal Data. Customer represents and warrants that it has obtained all consents from any Controller or Data Subject necessary to provide the Personal Data that it makes available to MacStadium pursuant to this DPA.

2.3 Limitations on Use of Personal Data. The Parties acknowledge and agree that, by the nature of the Services, MacStadium cannot and therefore agrees not to Process Customer Data other than for the purposes specifically directed by Customer. Because MacStadium has no access to unencrypted data of Customer, MacStadium cannot and agrees not to Process Customer Data for the benefit of any Third Party. Customer shall not provide unencrypted Customer Data to MacStadium. The Parties agree that MacStadium has no knowledge of the nature of the Customer Data stored and is therefore unable to determine, and will have no obligation to limit, the time within which Customer Data is stored. MacStadium does not provide backup or data retention services for Customers.

2.4 Restrictions. MacStadium will not: (a) use Customer Data other than as necessary for MacStadium to provide the Services and its obligations under this DPA, (b) disclose, sell, assign, lease or otherwise provide Customer Data to Third Parties (other than to its affiliates or Sub-Processors), or (c) merge Customer Data with other data, modify or commercially exploit any Customer Data. The Parties acknowledge and agree that because MacStadium has no access to unencrypted Customer Data and has no access to any decryption keys to Customer Data, MacStadium has no practical ability to do any of the foregoing.

2.5 Sensitive Personal Data. In no event will Customer provide any Sensitive Personal Data to MacStadium. "**Sensitive Personal Data**" means (a) information that reveals a natural person's racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade- union membership, (b) information or data concerning a natural person's health or sex life or sexual orientation; or (c) genetic data or biometric data about a natural person.

3. **Sub-Processors**. MacStadium may engage Sub-Processors in connection with the provision of the Services, provided, however, that MacStadium will not, and the Parties acknowledge and agree that MacStadium cannot, provide any Sub-Processor with access to any Customer Data in unencrypted form, nor can MacStadium provide any Sub-Processor with access to any decryption keys to Customer Data. MacStadium may not provide a Sub-Processor with access to Customer Data unless the Sub-Processor has: (i) a business need to know/access the relevant Customer Data, as necessary for the purposes of the Services; (ii) signed a written obligation of confidentiality or are under professional obligations of confidentiality; and (iii) implemented technical, operational, physical, and organization safeguards to protect Customer Data against accidental or unlawful destruction or alteration and

unauthorized disclosure or access. The Parties acknowledge and agree that service providers to MacStadium, whose scope of services do not include the Processing of Customer Data, are not Sub-Processors under the terms of this Section.

4. **Data Subject Rights; Cooperation.** To the extent consistent with MacStadium only having access to encrypted Customer Data and not having knowledge of the content of any Customer Data, and not having access to Customer's computing platform, other than physical possession of the computing hardware, MacStadium shall use commercially reasonable efforts to cooperate and assist with a Data Subject's exercise of his/her rights under applicable Data Protection Laws with respect to Personal Data Processed by MacStadium, including, without limitation, the right to be forgotten, the right to data portability, and the right to access data under the GDPR. MacStadium shall promptly notify Customer if MacStadium receives any such request. Customer acknowledges that MacStadium has little if any ability to assist with the Data Subject's rights set forth in this Section.

5. **Return or Destruction of Customer Data**. Customer acknowledges that at all times Customer retains the ability (i) to retrieve any or all Customer Data and (ii) to permanently and securely delete Customer Data. However, if MacStadium is required by law to retain Customer Data, then MacStadium will continue to protect such Customer Data in accordance with this DPA and limit any use to the purposes of such retention or as required by law.

6. Data Security.

6.1 Security Program Requirements. MacStadium will maintain a program of physical security that contains administrative, technical, and physical safeguards appropriate to the complexity, nature, and scope of its activities. MacStadium's physical security program shall be designed to protect the security and confidentiality of Customer Data against unlawful or accidental access to, or unauthorized processing, disclosure, destruction, damage or loss of Customer Data. Customer acknowledges and agrees that, other than physical security, Customer solely controls and is solely responsible for all other aspects of the security of Customer Data.

6.2 Regular Reviews. MacStadium shall ensure that its physical security measures are regularly reviewed and revised to address evolving threats and vulnerabilities. MacStadium has the right to install patches that address security vulnerabilities. MacStadium will not be liable for any inability, delay, failure or mistake in the implementation of any security upgrade or patch.

7. Data Breach Procedures.

7.1 Notification. MacStadium shall notify Customer of any Data Breach caused by MacStadium as soon as practicable, and without undue delay, after becoming aware of it. Such notification shall at a minimum: (i) describe the nature of the Data Breach, if known; (ii) communicate the name and contact details of MacStadium's data protection officer or other relevant contact from whom more information may be obtained; and (iii) describe the measures taken or proposed to be taken to address the Data Breach. The Parties acknowledge and agree that since MacStadium only receives and stores Customer Data in encrypted form, upon the occurrence of a Data Breach, MacStadium will be unable to provide the categories and numbers of Data Subjects concerned and the categories and numbers of Personal Data records concerned.

7.2 Remedial Actions. In the event of a Data Breach caused by MacStadium, MacStadium will use commercially reasonable efforts, but only consistent with the Services and the limitations of the Services provided to: (a) remedy the Data Breach condition, investigate, document, restore Customer service(s), and undertake required response activities; (b) provide regular status reports to Customer on Data Breach response activities; (c) assist Customer with the coordination of media, law enforcement, or other Data Breach notifications; and (d) assist and cooperate with Customer in its Data Breach response efforts.

8. Cross-Border Transfers.

8.1 Location. MacStadium systems and MacStadium's Processing of Customer Data will occur within the following jurisdictions: United States of America and the European Union (the "**Processing Jurisdictions**"). MacStadium will not transfer any Customer Data outside of the Processing Jurisdictions without the prior written agreement of Customer. Customer acknowledges that MacStadium does not have sufficient access to the computing systems provided by the Services to transfer Customer Data to any location.

8.2 Sub-Processors. Before knowingly providing Customer Data of a European citizen to Sub-Processors, MacStadium will use commercially reasonable efforts to ensure that the Sub-Processors will adhere to and comply with the EU-prescribed Standard Contractual Clauses (the "**Clauses**") or execute the Clauses. (These Clauses can be located in their original text on the European Commission website here: http://ec.europa.eu/justice/data-protection/international-transfers/transfer/index_en.htm). The Parties acknowledge and agree that service providers to MacStadium, whose scope of services do not include the Processing of Customer Data, are not Sub-Processors under the terms of this Section.

8.3 Customer further acknowledges and agrees that MacStadium has no knowledge of the content of the data processed by Customer using the Services.

9. **Indemnification.** Customer shall defend, indemnify, and hold harmless MacStadium and its subsidiaries, affiliates, and their respective officers, directors, employees, agents, successors, and permitted assigns ("Indemnified Parties") from and against all losses, damages, liabilities, actions, judgments, penalties, fines, costs, or expenses (including reasonable attorneys' fees) arising from any Third Party claims against any such Indemnified Parties (collectively, "Losses") to the extent such Losses result from (i) Customer's failure to materially comply with any of its obligations under this DPA, (ii) Customer's failure to properly encrypt any Customer Data in transit or at rest in connection with the Services; or (iii) Customer's failure to adequately protect decryption keys. Customer's obligations are subject to the Indemnified Party's: (a) promptly notifying the Customer of the claim giving rise to the indemnity; (b) providing the Customer with sole control and authority over the defense of such claim and all related settlement negotiations; and (c) providing the Customer, at the Customer's request and expense, with all information and assistance under the possession or control of the Customer Party that is reasonably necessary or useful by the to defend and/or settle any such claim or action. MacStadium shall defend, indemnify, and hold harmless Customer, and its subsidiaries, affiliates, and their respective officers, directors, employees, agents, successors, and permitted assigns ("Customer Indemnified Parties") from and against all losses, damages, liabilities, actions, judgments, penalties, fines, costs, or expenses (including reasonable attorneys' fees) arising from any Third Party claims against any such Customer Indemnified Parties to the extent such Losses result from MacStadium's failure to comply

with any of its obligations under this DPA, and any applicable data protection law. MacStadium's obligations are subject to the Customer Indemnified Party's: (a) promptly notifying MacStadium of the claim giving rise to the indemnity; (b) providing the MacStadium with sole control and authority over the defense of such claim and all related settlement negotiations; and (c) providing MacStadium, at MacStadium's request and expense, with all information and assistance under the possession or control of Customer that is reasonably necessary or useful by Customer to defend to defend and/or settle any such claim or action.

10. **Audits Reports**. Without limiting any of MacStadium's other obligations under this Section 10, if MacStadium engages a third party auditor to perform a Statement on Standards for Attestation Engagements No. 16 (SSAE 16) or other data security audit of MacStadium's operations, information security program or disaster recovery/business continuity plan, MacStadium shall provide a copy of the audit report to Customer within a reasonable time after Customer's written request for a copy of such report. Any such audit reports shall be MacStadium's confidential information.

11. **Remedies.** Each Party acknowledges that any breach of its covenants or obligations set forth in this DPA may cause the other Party irreparable harm for which monetary damages would not be adequate compensation and agrees that, in the event of such breach or threatened breach, the other Party is entitled to seek equitable relief, including a restraining order, injunctive relief, specific performance, and any other relief that may be available from any court, in addition to any other remedy to which it may be entitled at law or in equity. Such remedies shall not be deemed to be exclusive but shall be in addition to all other remedies available at law or in equity, subject to any express exclusions or limitations in this DPA to the contrary.

MACSTADIUM, INC.

Authorized Signature:

_____

Printed Name: _____

Position/Title: _____

Date Signed: _____

CUSTOMER:

Authorized Signature:

_____

Printed Name: _____

Position/Title: _____

Date Signed: _____