

Platform.sh Data Processing Addendum

This GDPR Data Processing Addendum (“DPA”) and the exhibits to this DPA apply to the Processing of Customer Personal Data on behalf of _____ (the “Customer”) in order to provide Services Customer may have ordered from Platform.sh. This DPA forms part of the Terms of Service available at <https://platform.sh/tos> or such other location as the Terms of Service may be posted from time-to-time or such alternative agreement Customer may have entered into with Platform.sh pursuant to which Customer has accessed Platform.sh’s Services, as defined in the applicable agreement (the “Agreement”). In the event of a conflict between the term of this DPA and the terms of the Agreement, the terms of this DPA shall prevail, unless the Agreement explicitly provides otherwise, identifying the relevant portion of the DPA that it is superseding.

If the Customer entity entering into this DPA has executed an order form or statement of work with Platform.sh pursuant to the Agreement (an “Ordering Document”), but is not itself a party to the Agreement, this DPA is an addendum to that Ordering Document and applicable renewal Ordering Documents.

In the course of providing Services to Customer pursuant to the Agreement, Platform.sh may process Customer Personal Data on behalf of Customer. Platform.sh agrees to comply with the following provisions with respect to any Customer Personal Data submitted by or on behalf of Customer for the Services or collected and processed through the Services.

1. INTERPRETATION

- 1.1 Capitalized terms not defined in this DPA shall have the meaning ascribed to such terms in the applicable Agreement or in the applicable Data Protection Laws.
- (a) “**Anonymized Data**” means Customer Personal Data which has been anonymized such that the Data Subject to whom it relates cannot be identified, directly or indirectly, by Processor or any third party.
 - (b) “**Cessation Date**” has the meaning given in Paragraph 9.1.
 - (c) “**Customer Personal Data**” means any Personal Data Processed by Processor on behalf of Customer pursuant to or in connection with the Agreement.
 - (d) “**Data Protection Laws**” means, until 24 May 2018, EU Directive 95/46/EC, as transposed into domestic legislation of each Member State and, with effect from 25 May 2018, the GDPR.
 - (e) “**Data Subject Request**” means the exercise of rights by Data Subjects of Customer Personal Data under Chapter III of the GDPR.
 - (f) “**Delete**” means to remove or obliterate Personal Data such that it cannot be recovered or reconstructed, and “**Deletion**” shall be construed accordingly.
 - (g) “**Processor Services**” or “**Services**” means those services and activities to be supplied to or carried out by or on behalf of Processor for Customer pursuant to the Agreement.
 - (h) “**GDPR**” means the EU General Data Protection Regulation 2016/679 and to the extent the GDPR is no longer applicable in the United Kingdom, any implementing legislation or legislation having equivalent effect in the United Kingdom. References to “**Articles**” or “**Chapters**” of the GDPR shall be construed accordingly.

- (i) “**Transfer**” means the transfer of Customer Personal Data outside the EU/European Economic Area (“EEA”).
- (j) “**Personnel**” means a Party’s employees, agents, consultants or contractors.
- (k) “**Standard Contractual Clauses**” means the standard contractual clauses issued by the European Commission for the transfer of Personal Data from Data Controllers established in the EU/EEA to Data Processors established outside the EU/EEA, currently in the form annexed to the European Commission’s decision of 5 February 2010 on Standard Contractual Clauses for the transfer of personal data to processors established in third countries.
- (l) “**Subprocessor**” means any third party appointed by or on behalf of Processor to process Customer Personal Data.

1.2 In this DPA, the terms, “Data Controller”, “Data Processor”, “Data Subject”, “Member State”, “Personal Data”, “Personal Data Breach”, “Process/Processing” and “Supervisory Authority” shall have the meaning ascribed to such terms in the Data Protection Laws.

2. PROCESSING OF COMPANY PERSONAL DATA

2.1 Processor shall: (a) comply with all applicable Data Protection Laws in Processing Customer Personal Data; and (b) not Process Customer Personal Data other than: (i) on Customer’s instructions (subject always to Paragraph 2.9); and (ii) as required by applicable laws.

2.2 To the extent permitted by applicable laws, Processor shall inform Customer of: (a) any Processing to be carried out under Paragraph 2.3; and (b) the relevant legal requirements that require it to carry out such Processing; before the relevant Processing of that Customer Personal Data by Processor.

2.3 Customer instructs Processor to Process Customer Personal Data as necessary: (a) to provide the Processor Services to Customer (including, to improve and update the Processor Services and to carry out Processing initiated by Customer’s users in their use of the Processor Services); and (b) to perform Processor’s obligations and exercise Processor’s rights under the Agreement.

2.4 The Appendix to this DPA sets out certain information regarding Processor’s Processing of Customer Personal Data as required by Article 28(3) of the GDPR.

2.5 Either Party may amend Appendix 1 to this DPA (in signed writing by each Party hereto) from time-to-time, as may be necessary to meet any applicable requirements of Data Protection Laws.

2.6 Where Processor receives an instruction from Customer that, in its reasonable opinion, violates the GDPR, Processor shall inform Customer.

2.7 Customer acknowledges and agrees that any instructions issued by Customer with regards to the Processing by Processor of Customer Personal Data pursuant to or in connection with the Agreement shall: (a) be strictly required for the sole purpose of ensuring compliance with Data Protection Laws; and (b) not relate to the scope of the Processor Services or otherwise materially change the Services to be provided by Processor under the Agreement.

- 2.8 Notwithstanding anything to the contrary herein, Processor may terminate the Agreement in its entirety upon written notice to Customer with immediate effect if Processor considers (in its absolute discretion) that: (a) it is unable to adhere to, perform or implement any instructions issued by Customer due to the technical limitations of its systems, equipment and/or facilities, and/or (b) to adhere to, perform or implement any such instructions would require disproportionate effort (whether in terms of time, cost, available technology, manpower or otherwise).
- 2.9 Customer represents and warrants on an ongoing basis that, for the purposes of Article 6 of the GDPR, there is, and will be throughout the term of the Agreement, a legal basis for the Processing by Processor of Customer Personal Data in accordance with this DPA and the Agreement (including, any and all instructions issued by Customer from time to time in respect of such Processing).

3. PROCESSOR PERSONNEL

Processor shall take reasonable steps to ensure the reliability of any Processor Personnel who may Process Customer Personal Data, ensuring in each case that access is strictly limited to those individuals who need to know or access the relevant Customer Personal Data for the purposes described in this DPA, and to comply with applicable laws, ensuring that all such individuals are subject to confidentiality undertakings or professional or statutory obligations of confidentiality.

4. SECURITY

- 4.1 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, Processor shall in relation to the Customer Personal Data implement appropriate technical and organizational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1) of the GDPR.
- 4.2 In assessing the appropriate level of security, Processor shall take account the risks presented by Processing, in particular from a Personal Data Breach.

5. SUBPROCESSING

- 5.1 **Sub-processors.** For the purpose of the appointment of Sub-processors, Customer provides a general consent for Processor to engage Processor affiliates and third party sub-processors (collectively, "**Sub-processors**") in connection with the Agreement to process the Personal Data on Processor's behalf in the EU and outside of the EU (e.g., the United States of America). When requested by the Customer, the Processor shall make available to Customer an up-to-date list of all Sub-processors used for the processing of Customer Personal Data.
- 5.2 **Objection to Sub-processors.** The Customer shall be notified in writing of any new Sub-processors appointed. Customer may object to the new or changed Sub-processor within five calendar days after receipt of Processor's notice. If, within five (5) calendar days of receipt of that notice, Customer notifies Processor of an objection to an appointment (based on reasonable grounds relating to data protection), then (i) Processor shall work with Customer in good faith to make available a commercially reasonable change in the provision of the Services which avoids the use of that proposed Sub-processor; and (ii) where such a change cannot be made within thirty (30) days from Processor's receipt of Customer's objection notice, notwithstanding anything in the

Agreement, Customer may, by such notice to Processor, terminate the Agreement to the extent that it relates to the Services which require the use of the proposed Sub-processor.

- 5.3 **Sub-processor obligations.** Where a Sub-processor is engaged by Processor as described in this Section 5, Processor: (a) has or shall enter into a written agreement (the “Sub-processing Agreement”) containing data protection obligations no less protective than those in the Agreement and/or this DPA with respect to the protection of Personal Data to the extent applicable to the nature of the Services provided by such Sub-processor; and (b) restrict the Sub-processor’s access to Personal Data only to what is necessary to perform the subcontracted services and meet the requirements of Article 28(3) of the GDPR Processor shall be liable for the acts and omissions of its Sub-processors to the same extent Processor would be liable for the acts and omissions of each Sub-processors directly under the terms of this DPA.

6. DATA SUBJECT RIGHTS

- 6.1 Taking into account the nature of the Processing, Processor shall, at Customer’s cost, provide Customer with such assistance as may be reasonably necessary and technically possible in the circumstances, to assist Customer in fulfilling its obligation to respond to Data Subject Requests.
- 6.2 Processor shall: (a) promptly notify Customer if Processor receives a Data Subject Request; and (b) ensure that Processor does not respond to any Data Subject Request except on the documented instructions of Customer (and in such circumstances, at Customer’s cost) or as required by applicable laws, in which case Processor shall to the extent permitted by applicable laws, inform Customer of that legal requirement before Processor responds to the Data Subject Request.

7. PERSONAL DATA BREACH

- 7.1 Processor shall notify Customer without undue delay upon Processor becoming aware of a Personal Data Breach affecting Customer Personal Data, providing Customer with sufficient information (insofar as such information is within Processor’s possession) to allow Customer to meet any obligations to report or inform affected Data Subjects of the Personal Data Breach under Data Protection Laws.
- 7.2 Processor shall cooperate with Customer and take such reasonable commercial steps as may be directed by Customer to assist in the investigation, mitigation, and remediation of each such Personal Data Breach.

8. DATA PROTECTION IMPACT ASSESSMENT AND PRIOR CONSULTATION

Processor shall provide reasonable assistance to Customer, at Customer’s cost, with any data protection impact assessments, and prior consultations with Supervisory Authorities, which Customer reasonably considers to be required of Customer by Article 35 or 36 of the GDPR, in each case solely in relation to Processing of Customer Personal Data by, and taking into account the nature of the Processing and information available to, Processor.

9. DELETION OR RETURN OF COMPANY PERSONAL DATA

- 9.1 Subject to Paragraph 9.2 below, at Customer’s election, made by written notice to Processor following thirty (30) days of the date of cessation of any Processor Services involving the Processing of Customer Personal Data (the “**Cessation Date**”), and shall procure that all Sub-processors: (a) return a complete copy of all Customer Personal Data to Customer in a format and manner requested by Customer and reasonably acceptable to Processor; and (b) immediately

Delete and/or procure the Deletion of all copies of the Customer Personal Data Processed by Processor or any Sub-processor.

- 9.2 In accordance with Article 5(1)(e), the Processor may retain Customer Personal Data after the Cessation Date to the extent required by applicable law, European Union law or the law of an EU Member state (e.g., France's laws on confidence in the digital economy or LCEN) and only to the extent and for such period as required by applicable laws and always provided that Processor shall ensure the confidentiality of all such Customer Personal Data and shall ensure that such Customer Personal Data is only Processed as necessary for the purpose(s) specified in the applicable laws requiring its storage and for no other purpose.

10. AUDIT RIGHTS

- 10.1 Subject to Paragraphs 10.2 and 10.3, Processor shall make available to Customer on request information reasonably necessary to demonstrate compliance with this DPA, and shall allow for and contribute to audits, including inspections, by Customer or an auditor mandated by Customer in relation to the Processing of the Customer Personal Data by Processor.
- 10.2 Customer shall give Processor reasonable notice of any audit or inspection to be conducted under Paragraph 10.1 (which shall in no event be less than thirty (30) days' notice unless required by a Supervisory Authority pursuant to Paragraph 10.3(f)(ii)) and shall use its best efforts (and ensure that each of its mandated auditors uses its best efforts) to avoid causing, and hereby indemnifies Processor in respect of, any damage, injury or disruption to Processor's premises, equipment, personnel, data, and business (including any interference with the confidentiality or security of the data of Processor's other customers or the availability of the Processor Services to such other customers) while its personnel are on those premises in the course of such an audit or inspection.
- 10.3 Processor need not give access to its premises for the purposes of such an audit or inspection:
- (a) to any individual unless he or she produces reasonable evidence of identity and authority;
 - (b) to any auditor whom Processor has not given its prior written approval (not to be unreasonably withheld);
 - (c) unless the auditor enters into a non-disclosure agreement with Processor on terms acceptable to Processor;
 - (d) where, and to the extent that, Processor considers, acting reasonably, that to do so would result in interference with the confidentiality or security of the data of Processor's other customers or the availability of the Processor Services to such other customers;
 - (e) outside normal business hours at those premises; or
 - (f) on more than one (1) occasion in each period of twelve (12) months during the term of the Agreement (or where the term of the Agreement is less than (12) months, on more than one (1) occasion during such shorter term), except for any additional audits or inspections which:
 - (i) Customer reasonably considers necessary because of a Personal Data Breach; or
 - (ii) Customer is required to carry out by Data Protection Law or a Supervisory Authority, where Customer has identified the Personal Data Breach or the relevant requirement in its notice to Processor of the audit or inspection.

10.4 Notwithstanding Paragraphs 10.2 and 10.3, the Parties shall discuss and agree upon scope, timing, duration, and the costs of any inspection or audit to be carried out by or on behalf of Customer pursuant to this DPA Paragraph 10 in advance of such inspection or audit and, unless otherwise agreed in writing between the Parties, Customer shall bear any third party costs in connection with such inspection or audit and reimburse Processor for all costs incurred by Processor and time spent by Processor (at Processor's then-current professional services rates) in connection with any such inspection or audit.

11. RESTRICTED TRANSFERS

11.1 Subject to Paragraph 11.2, the Parties agree that no Customer Personal Data shall be Processed by Processor or any Sub-processor outside the EEA, without the Customer's consent.

11.2 The Standard Contractual Clauses will apply to Processing of Personal Data that is transferred outside the EEA, either directly or via onward transfer, to any recipient not (i) located in a country recognized by the European Commission as providing an adequate level of protection for personal data; or (ii) covered by a framework recognized by the relevant authorities or courts as providing an adequate level of protection for personal data, including, without limitation, Binding Corporate Rules or the E.U.-U.S. Privacy Shield Framework (each such recipient, a "Third Country Recipient"). Where Customer provides its prior written consent in respect of any Transfer: (a) from Customer to Processor, each Party agrees that the Standard Contractual Clauses shall be entered into by and between Customer as the 'data exporter' and Processor as the 'data importer'; and/or (b) from Processor to a Sub-processor, Customer agrees that the Standard Contractual Clauses shall be entered into by and between Processor (as agent for Customer) as the 'data exporter' and the Sub-processor as the 'data importer'; in each case to allow the relevant Transfer to take place without breach of applicable Data Protection Laws. Customer acknowledges and agrees that certain sub-processors that are identified in the Agreement (e.g., payment processors) shall be deemed approved by Customer and the obligations of this Section satisfied as to the identified sub-processors in the Agreement.

Appendix 1 to DPA

Data Processing Details

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

Subject matter and duration of the Processing of Customer Personal Data

- The subject matter and duration of the Processing of the Customer Personal Data are set out in the Agreement and the DPA.

The nature and purpose of the Processing of Customer Personal Data

- To liaise with Customer's Personnel in the provisioning and deprovisioning of the Processor Services.
- To inform the Customer of the relevant offers of the Processor where opted in and consented to such communications.
- To analyze certain usage data and/or patterns of the Customer in order to enhance Processor Services of Customer Data.
- To perform the Processor Services.
- To perform financial transactions relating to Processor Services.
- To perform backups of Customer Data.
- To comply with legal obligations.

The types of Customer Personal Data to be Processed

- The names, email addresses and other contact details of Customer's Personnel with whom Processor needs to liaise in the provision of the Processor Services.
- Platform.sh may also collect: (a) names; (b) addresses; (c) countries; (d) email addresses, (e) telephone numbers; (f) financial data relating to orders; (g) IP Addresses; and (h) log files; as may be necessary to perform the Processor Services and/or bill for such Processor Services.

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

- Personal data of users of Customer or its affiliates.
- Personnel of Customer or its affiliates.
- Third parties with whom Customer or any of its affiliates has, or may potentially develop, a commercial relationship (such as advertisers, commercial partners and contractors).

The obligations and rights of Customer are set out in the Agreement and this DPA.

**** Signature Page Follows****

CUSTOMER:

By: _____

Name:

Title:

Date signed: _____

Legal name of Customer:

Legal address:

PROCESSOR:

By:  _____

Name: Joey Stanford

Title: Security, Compliance, and Data Protection
Officer

Date signed: 2018-06-04 _____

Legal name of Processor:

Platform.sh SAS

Legal address:

131, Boulevard de Sébastopol Paris, 75002 France