



DATA PRIVACY & DATA SECURITY AGREEMENT

This Data Privacy & Data Security Agreement (the “**DPA**”) is between MacStadium, Inc. (“**MacStadium**”), a Georgia corporation, and the MacStadium customer 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 fulfillment 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 either be certified under the EU-US Privacy Shield or that the Sub-Processors execute EU-prescribed Standard Contractual Clauses. 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 Indemnified Party that is reasonably necessary or useful by the Indemnified 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.