

## UPSTASH DATA PROCESSING ADDENDUM

Last Update Date: January, 2025

This Data Processing Addendum (“**DPA**”) is entered into as of the Addendum Effective Date by and between: (1) **Upstash, Inc.**, a Delaware corporation (“**Upstash**”); and (2) the entity or other person who is a counterparty to the Agreement (as defined below) into which this DPA is incorporated and forms a part (“**Customer**”), together the “**Parties**” and each a “**Party**.”

### HOW AND WHEN THIS DPA APPLIES

- This DPA is incorporated into and forms a binding and effective part of the Agreement on and from the Addendum Effective Date.
- This DPA applies only if and to the extent Applicable Data Protection Laws govern Upstash’s Processing of Customer Personal Data in performance of the Service(s) as a “processor,” “service provider,” or similar role defined under Applicable Data Protection Laws.
- Accordingly, this DPA does **not** apply to Upstash’s Processing of any Personal Data for its own business/customer relationship administration purposes, its own marketing activities or service analytics, its own information and systems security purposes supporting the operation of the Services, nor its own legal, regulatory, or compliance purposes.

### 1. INTERPRETATION

1.1 In this DPA (including the explanatory notes above) the following terms shall have the meanings set out in this Section 1, unless expressly stated otherwise:

- (a) “**Addendum Effective Date**” means the effective date of the Agreement.
- (b) “**Agreement**” means the Terms of Service set out at <https://upstash.com/trust/terms.pdf>, and any other agreement entered into by the Parties that provides that this DPA will be incorporated therein by reference.
- (c) “**Applicable Data Protection Laws**” means the privacy, data protection and data security laws and regulations of any jurisdiction directly applicable to Upstash’s Processing of Customer Personal Data under the Agreement (including, as and where applicable, the GDPR and State Privacy Laws).
- (d) “**Controller**” means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the Processing of Personal Data.
- (e) “**Customer Personal Data**” means any Personal Data Processed by Upstash or its Sub-Processor on behalf of Customer to perform the Services under the Agreement (including, for the avoidance of doubt, any such Personal Data included within Customer Data).
- (f) “**Data Subject**” means the identified or identifiable natural person to whom Customer Personal Data relates.
- (g) “**Data Subject Request**” means the exercise by a Data Subject of its rights in accordance with Applicable Data Protection Laws in respect of Customer Personal Data and the Processing thereof.
- (h) “**EEA**” means the European Economic Area.
- (i) “**GDPR**” means, as and where applicable to Processing concerned: (i) the General Data Protection Regulation (Regulation (EU) 2016/679) (“**EU GDPR**”); and/or (ii) the EU GDPR as it forms part of UK law (as amended from time to time) (“**UK GDPR**”).

- (j) **“Personal Data”** means “personal data,” “personal information,” “personally identifiable information” or similar term defined in Applicable Data Protection Laws.
- (k) **“Personal Data Breach”** means a breach of Upstash’s security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Customer Personal Data in Upstash’s possession, custody or control. For clarity, Personal Data Breach does not include unsuccessful attempts or activities that do not compromise the security of Customer Personal Data (such as unsuccessful log-in attempts, pings, port scans, denial of service attacks, or other network attacks on firewalls or networked systems).
- (l) **“Personnel”** means a person’s employees, agents, consultants, contractors or other staff.
- (m) **“Process”** and inflections thereof means any operation or set of operations performed on Personal Data or on sets of Personal Data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.
- (n) **“Processor”** means a natural or legal person, public authority, agency or other body that Processes Personal Data on behalf of the Controller.
- (o) **“Restricted Transfer”** means the disclosure, grant of access or other transfer of Customer Personal Data to any person located in: (i) in the context of the EU GDPR, any country or territory outside the EEA which does not benefit from an adequacy decision from the European Commission (an **“EEA Restricted Transfer”**); and (ii) in the context of the UK GDPR, any country or territory outside the UK, which does not benefit from an adequacy decision from the UK Government (a **“UK Restricted Transfer”**), which would be prohibited without a legal basis under Chapter V of the GDPR.
- (p) **“SCCs”** means the standard contractual clauses approved by the European Commission pursuant to implementing Decision (EU) 2021/914.
- (q) **“Services”** means the Upstash Services (or the “Service” or “Cloud Services” as defined in the Terms of Service).
- (r) **“State Privacy Laws”** means the California Consumer Privacy Act of 2018, as amended, including by the California Privacy Rights Act of 2020, together with its implementing regulations (collectively, “CCPA”), the Colorado Privacy Act, the Virginia Consumer Data Protection Act, the Connecticut Data Privacy Act, the Utah Consumer Privacy Act, the Oregon Consumer Privacy Act, and the Texas Data Privacy and Security Act and any other applicable U.S. state data privacy laws that become effective during the Subscription Term, in each case only if and to the extent applicable to Upstash’s Processing of Customer Personal Data under the Agreement.
- (s) **“Sub-Processor”** means any third party appointed by or on behalf of Upstash to Process Customer Personal Data.
- (t) **“Supervisory Authority”**: (i) in the context of the EEA and the EU GDPR, shall have the meaning given to that term in the EU GDPR; and (ii) in the context of the UK and the UK GDPR, means the UK Information Commissioner’s Office.
- (u) **“UK Transfer Addendum”** means the template Addendum B.1.0 issued by the ICO and laid before Parliament in accordance with s119A of the Data Protection Act 2018 on 2 February 2022, as it is revised under Section 18 of the UK Mandatory Clauses included in Part 2 thereof (the **“UK Mandatory Clauses”**).

1.2 Unless otherwise defined in this DPA, all capitalized terms in this DPA shall have the meanings given to them in the Agreement.

## 2. APPLICATION OF THIS DATA PROCESSING ADDENDUM

2.1 The body of this DPA applies generally to Upstash’s Processing of Customer Personal Data under the Agreement.

- 2.2 Annex 2 (European Annex) applies only if and to the extent Upstash's Processing of Customer Personal Data under the Agreement is subject to the GDPR.
- 2.3 Annex 3 (State Privacy Laws Annex) applies only if and to the extent Upstash's Processing of Customer Personal Data under the Agreement is subject to any of the State Privacy Laws.
- 2.4 Section 9 of this DPA applies to Upstash's Processing of Customer Personal Data to the extent required under Applicable Data Protection Laws for contracts with Processors, and in such cases, only in respect of Processing of Customer Personal Data subject to such laws.

### 3. DATA TRANSFERS

3.1. **Data Deployment Locations.** Customer controls the region(s) in which Customer Personal Data physically resides through Customer's chosen configuration of the Services (the "**Deployment Region**"). When required by Applicable Data Protection Laws, any transfers by Customer of Customer Personal Data between Deployment Regions will be governed by the transfer mechanisms described in Section 3.3 below.

3.2. **Other Processing Locations.** Customer may choose to use certain optional features of the Services that require transfers of Customer Personal Data outside of the EEA, Switzerland or the United Kingdom. When required by Applicable Data Protection Laws, such transfers will be governed by the provisions of Section 3.3 below.

3.3. **Transfer Mechanism and Data Privacy Framework.** Upstash complies with the EU-U.S. Data Privacy Framework (EU-U.S. DPF), the UK Extension to the EU-U.S. DPF, and, upon entering into force, the Swiss-U.S. Data Privacy Framework (Swiss-U.S. DPF) as set forth by the U.S. Department of Commerce. Upstash has certified to the U.S. Department of Commerce that it adheres to the EU-U.S. Data Privacy Framework Principles (EU-U.S. DPF Principles) with regard to the processing of personal data received from the European Union in reliance on the EU-U.S. DPF and from the United Kingdom (and Gibraltar) in reliance on the UK Extension to the EU-U.S. DPF. Upstash has certified to the U.S. Department of Commerce that, upon entering into force, it adheres to the Swiss-U.S. Data Privacy Framework Principles (Swiss-U.S. DPF Principles) with regard to the processing of personal data received from Switzerland in reliance on the Swiss-U.S. DPF. If there is any conflict between the terms in this Notice and the EU-U.S. DPF Principles and/or the Swiss-U.S. DPF Principles, the Principles shall govern. To learn more about the Data Privacy Framework (DPF) program, and to view our certification, please visit the [Data Privacy Framework website](#).

In compliance with the EU-U.S. DPF, the UK Extension to the EU-U.S. DPF, and the Swiss-U.S. DPF, Upstash commits to resolve DPF Principles-related complaints about our collection and use of your personal information. EU, UK, and Swiss individuals with inquiries or complaints regarding our handling of personal data received in reliance on the EU-U.S. DPF, the UK Extension to the EU-U.S. DPF, and the Swiss-U.S. DPF, should first contact us at [privacy@upstash.com](mailto:privacy@upstash.com)

For transfers of personal information to a third party acting as a controller, Upstash complies with the DPF [Notice Principle](#) and [Choice Principle](#). For onward transfers, Upstash is responsible for the processing of personal information it receives under the DPF Principles and subsequently transfers to a third party acting as an agent on its behalf. Upstash remains liable under the DPF Principles if its agent processes such personal information in a manner inconsistent with the DPF Principles, unless Upstash proves that it is not responsible for the event giving rise to the damage.

In compliance with the EU-U.S. DPF, the UK Extension to the EU-U.S. DPF, and the Swiss-U.S. DPF, Upstash commits to cooperate and comply respectively with the advice of the panel established by the EU data protection authorities (DPAs), the UK Information Commissioner's Office (ICO) and the Gibraltar Regulatory Authority (GRA), and the Swiss Federal Data Protection and Information Commissioner (FDPIC) with regard to unresolved complaints concerning our handling of personal data received in reliance on the EU-U.S. DPF, the UK Extension to the EU-U.S. DPF, and the Swiss-U.S. DPF.

The Federal Trade Commission has jurisdiction over Upstash's compliance with the EU-U.S. Data Privacy Framework (EU-U.S. DPF) and the UK Extension to the EU-U.S. DPF, and the Swiss-U.S. Data Privacy Framework (Swiss-U.S. DPF).

In compliance with the EU-U.S. DPF, the UK Extension to the EU-U.S. DPF, and the Swiss-U.S. DPF, Upstash is obligated to arbitrate claims and follow the terms as set forth in [Annex I of the DPF](#)

[Principles](#). You have the possibility, under certain conditions, to invoke binding arbitration for complaints regarding DPF compliance not resolved by any of the other DPF mechanisms. For additional information please see [Annex I](#).

#### **4. PROCESSING OF CUSTOMER PERSONAL DATA**

- 4.1 The Parties acknowledge and agree that the details of Upstash's Processing of Customer Personal Data (including the respective roles of the Parties relating to such Processing) are as described in Annex 1 (Data Processing Details) to the DPA. With respect to such Processing, both Customer and Upstash shall comply with Applicable Data Protection Laws.
- 4.2 Upstash shall not Process Customer Personal Data other than: (a) on Customer's written instructions and as permitted under the Agreement; or (b) as required by applicable laws provided that, in such circumstances, Upstash shall inform Customer in writing in advance of the relevant legal requirement requiring such Processing if and to the extent Upstash is: (i) required to do so by Applicable Data Protection Laws; and (ii) permitted to do so in the circumstances. Customer instructs and authorizes Upstash to Process Customer Personal Data for the purposes set out in the Agreement (as further described in Annex 1 (Data Processing Details) to the DPA). The Agreement is a complete expression of such instructions, and Customer's additional instructions will be binding on Upstash only pursuant to any written amendment to this DPA signed by both Parties. Where required by Applicable Data Protection Laws, if Upstash receives an instruction from Customer that, in its reasonable opinion, infringes Applicable Data Protection Laws, Upstash shall notify Customer.
- 4.3 The Parties acknowledge that Upstash's Processing of Customer Personal Data authorized by Customer's instructions stated in this DPA is integral to the Services and the business relationship between the Parties. Access to Personal Data does not form part of the consideration exchanged between the Parties in respect of the Agreement or any other business dealings.

#### **5. UPSTASH PERSONNEL**

Upstash shall take commercially reasonable steps designed to ascertain the reliability of any Upstash Personnel who Process Customer Personal Data, and shall enter into written confidentiality agreements with all Upstash Personnel who Process Customer Personal Data that are not subject to professional or statutory obligations of confidentiality.

#### **6. SECURITY**

- 6.1 Upstash shall implement and maintain technical and organisational measures in relation to Customer Personal Data designed to protect Customer Personal Data against Personal Data Breaches as described at <https://upstash.com/static/trust/security-measures.pdf> (the "**Security Measures**").
- 6.2 Upstash may update the Security Measures from time to time, provided the updated measures do not decrease the overall protection of Customer Personal Data.

#### **7. DATA SUBJECT RIGHTS**

- 7.1 Upstash, taking into account the nature of the Processing of Customer Personal Data, shall provide Customer with such assistance as may be reasonably necessary and technically feasible to assist Customer in fulfilling its obligations to respond to Data Subject Requests. If Upstash receives a Data Subject Request, Customer will be responsible for responding to any such request provided that Upstash promptly notifies Customer in writing of such request.
- 7.2 Upstash shall: (a) promptly notify Customer if it receives a Data Subject Request; and (b) not respond to any Data Subject Request, other than to advise the Data Subject to submit the request to Customer, except as required by Applicable Data Protection Laws.

#### **8. PERSONAL DATA BREACH**

- 8.1 Upstash shall notify Customer without undue delay upon Upstash's confirmation of a Personal Data Breach affecting Customer Personal Data. Upstash shall provide Customer with information (insofar as

such information is within Upstash's possession and knowledge and does not otherwise compromise the security of any Personal Data Processed by Upstash) to allow Customer to meet its obligations under the Applicable Data Protection Laws to report the Personal Data Breach. Upstash's notification of or response to a Personal Data Breach shall not be construed as Upstash's acknowledgement of any fault or liability with respect to the Personal Data Breach.

- 8.2 Customer is solely responsible for complying with applicable laws (including notification laws) and fulfilling any third-party notification obligations related to any Personal Data Breaches.
- 8.3 If Customer determines that a Personal Data Breach must be notified to any Supervisory Authority, any other governmental authority, any Data Subject(s), the public or others under Applicable Data Protection Laws or otherwise, to the extent such notice directly or indirectly refers to or identifies Upstash, where permitted by applicable laws, Customer agrees to: (a) notify Upstash in advance; and (b) in good faith, consult with Upstash and consider any clarifications or corrections Upstash may reasonably recommend or request to any such notification, which: (i) relate to Upstash's involvement in or relevance to such Personal Data Breach; and (ii) are consistent with applicable laws.

## **9. SUB-PROCESSING**

- 9.1 Customer generally authorises Upstash to appoint Sub-Processors in accordance with this Section 8. Information about Upstash's Sub-Processors, including their functions and locations is as shown in the Sub-Processor list displayed from time to time at <https://upstash.com/static/trust/subprocessors.pdf> or any successor page (the "**Sub-Processor List**"). Without limitation, Customer authorises Upstash engagement of the Sub-Processors listed on the Sub-Processor List as of the Effective Date.
- 9.2 Upstash shall give Customer prior written notice of the appointment of any proposed Sub-Processor, including reasonable details of the Processing to be undertaken by the Sub-Processor by providing Customer with an updated copy of the Sub-Processor List by sending a 'mailshot' or similar to Customer's contact point set out in Annex 1 (Data Processing Details). If, within five (5) days of receipt of that notice, Customer notifies Upstash in writing of any objections to the proposed appointment (which must be made in good faith, based upon appropriately evidenced concerns that the use of that proposed Sub-Processor would cause Customer to be in material breach of Applicable Data Protection Laws causing unavoidable and material harm to Customer): (a) Upstash shall respond to that objection within thirty (30) days of receipt to confirm it has accepted such objection as having been made in accordance with the standard required by foregoing, in which case, it will use reasonable efforts to make available a commercially reasonable change in the provision of the Services, which avoids the use of that proposed Sub-Processor (which may include provision of a workaround, or an instruction to Customer to re-configure its settings within the Services); and (b) where Upstash has accepted such objection and: (i) such a change cannot be made within ninety (90) days from Upstash's receipt of Customer's notice; (ii) no commercially reasonable change is available (as determined by Upstash in its sole discretion); and/or (iii) Customer acting in good faith declines to bear the cost of the proposed change, then Customer may terminate the Agreement by written notice to Upstash as its sole and exclusive remedy.
- 9.3 If Customer does not object to Upstash's appointment of a Sub-Processor during the objection period referred to in Section 8.2, Customer shall be deemed to have approved the engagement and ongoing use of that Sub-Processor.
- 9.4 With respect to each Sub-Processor, Upstash shall maintain a written contract between Upstash and the Sub-Processor that includes terms which offer at least an equivalent level of protection for Customer Personal Data as those set out in this DPA (including the Security Measures). Upstash shall be liable for the acts and omissions of its Sub-Processors to the same extent Upstash would be liable if performing the services of each Sub-Processor directly under the terms of this DPA.

## **10. AUDITS**

- 10.1 Upstash shall make available to Customer on request such information as Upstash (acting reasonably) considers appropriate in the circumstances to demonstrate its compliance with this DPA.
- 10.2 Subject to Sections 9.3 to 9.6, in the event that Customer (acting reasonably) is able to provide documentary evidence that the information made available by Upstash pursuant to Section 9.1 is not sufficient in the circumstances to demonstrate Upstash's compliance with this DPA, Upstash shall allow for and contribute to audits, including on-premise inspections, by Customer or an auditor mandated by Customer in relation to the Processing of Customer Personal Data by Upstash.

- 10.3 Customer shall give Upstash reasonable notice of any audit or inspection to be conducted under Section 9.2 (which shall in no event be less than fourteen (14) days' notice) and shall use appropriate efforts (and require that each of its mandated auditors uses appropriate efforts) to avoid causing any destruction, damage, injury or disruption to Upstash's premises, equipment, Personnel, data, and business (including any interference with the confidentiality or security of the data of Upstash's other customers or the availability of Upstash's services to such other customers).
- 10.4 Prior to conducting any audit, Customer must submit a detailed proposed audit plan providing for the confidential treatment of all information exchanged in connection with the audit and any reports regarding the results or findings thereof. The proposed audit plan must describe the proposed scope, duration, and start date of the audit. Upstash will review the proposed audit plan and provide Customer with any feedback, concerns or questions (for example, any request for information that could compromise Upstash security, privacy, employment or other relevant policies). Upstash will work cooperatively with Customer to agree on a final audit plan.
- 10.5 If the controls or measures to be assessed in the requested audit are assessed in a SOC 2 Type 2, ISO, NIST or similar audit report performed by a qualified third-party auditor within the twelve (12) months prior to Customer's audit request ("**Audit Report**") and Upstash has confirmed in writing that there have been no known material changes in the controls audited and covered by such Audit Report(s), Customer agrees to accept provision of such Audit Report(s) in lieu of requesting an audit of such controls or measures. Upstash shall provide copies of any such Audit Reports to Customer upon request; provided that they shall constitute the Confidential Information (as defined in the Agreement) of Upstash, which Customer shall use only for the purposes of confirming compliance with the requirements of this DPA or meeting Customer's obligations under Applicable Data Protection Laws.
- 10.6 Upstash need not give access to its premises for the purposes of such an audit or inspection: (a) where an Audit Report is accepted in lieu of such controls or measures in accordance with Section 9.5; (b) to any individual unless they produce reasonable evidence of their identity; (c) to any auditor whom Upstash has not approved in advance (acting reasonably); (d) to any individual who has not entered into a non-disclosure agreement with Upstash on terms reasonably acceptable to Upstash; (e) outside normal business hours at those premises; or (f) on more than one occasion in any calendar year during the term of the Agreement, except for any audits or inspections which Customer is required to carry out under the GDPR or by a Supervisory Authority. Nothing in this DPA shall require Upstash to furnish more information about its Sub-Processors in connection with such audits than such Sub-Processors make generally available to their customers. Nothing in this Section 9 shall be construed to obligate Upstash to breach any duty of confidentiality.

## **11. RETURN AND DELETION**

- 11.1 Upon expiration or earlier termination of the Agreement, Upstash shall return and/or delete all Customer Personal Data in Upstash's care, custody or control in accordance with Customer's instructions as to the post-termination return and deletion of Customer Personal Data expressed in the Agreement. To the extent that deletion of any Customer Personal Data contained in any back-ups maintained by or on behalf of Upstash is not technically feasible within the timeframe set out in Customer's instructions, Upstash shall (a) securely delete such Customer Personal Data in accordance with any relevant scheduled back-up deletion routines (e.g., those contained within Upstash's relevant business continuity and disaster recovery procedures); and (b) pending such deletion, put such Customer Personal Data beyond use.
- 11.2 Notwithstanding the foregoing, Upstash may retain Customer Personal Data to the extent required by applicable laws, provided that Upstash shall (a) maintain the confidentiality of all such Customer Personal Data and (b) Process the Customer Personal Data only as necessary for the purpose(s) and duration specified in the applicable law requiring such retention. Without limitation to the deletion and return obligations relating to Customer Personal Data set out in Section 10.1, Upstash may continue to freely use and otherwise process any information derived from Customer Personal Data that has been deidentified, anonymized, and/or aggregated in such a manner that the resultant data no longer constitutes Personal Data (i.e., it no longer relates to any identified or identifiable individual, nor to Customer), including to improve the Upstash Platform, if and as permitted under the Agreement.

## **12. CUSTOMER'S RESPONSIBILITIES**

- 12.1 Customer agrees that, without limiting Upstash's obligations under Section 5 (Security), Customer is solely responsible for its use of the Services, including (a) making appropriate use of the Services to maintain a level of security appropriate to the risk in respect of the Customer Personal Data; (b) securing the account authentication credentials, systems and devices Customer uses to access the

Services; (c) securing Customer's systems and devices that Upstash uses to provide the Services; and (d) backing up Customer Personal Data.

- 12.2 Customer shall ensure: (a) that there is, and will be throughout the term of the Agreement, a valid legal basis for the Processing by Upstash 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) for the purposes of all Applicable Data Protection Laws (including Article 6, Article 9(2) and/or Article 10 of the GDPR (where applicable)); and (b) that all Data Subjects have (i) been presented with all required notices and statements (including as required by Article 12-14 of the GDPR (where applicable)); and (ii) provided all required consents, in each case (i) and (ii) relating to the Processing by Upstash of Customer Personal Data.
- 12.3 Customer agrees that the Services, the Security Measures, and Upstash's commitments under this DPA are adequate to meet Customer's needs, including with respect to any security obligations of Customer under Applicable Data Protection Laws, and provide a level of security appropriate to the risk in respect of the Customer Personal Data.
- 12.4 Customer shall not provide or otherwise make available to Upstash any Customer Personal Data that contains any (a) Social Security numbers or other government-issued identification numbers; (b) protected health information subject to the Health Insurance Portability and Accountability Act (HIPAA) or other information regarding an individual's medical history, mental or physical condition, or medical treatment or diagnosis by a health care professional; (c) health insurance information; (d) passwords to any online accounts; (e) credentials to any financial accounts; (f) tax return data; (g) any payment card information subject to the Payment Card Industry Data Security Standard; (h) Personal Data of children under 16 years of age; or (i) any other information that falls within any special categories of personal data (as set out in Article 9(1) of the GDPR); 'sensitive personal information' or 'sensitive personal data' as defined in the CCPA and the other State Privacy Laws, respectively; and/or data relating to criminal convictions and offences or related security measures (together, "**Restricted Data**").

### 13. LIABILITY

- 13.1 The total aggregate liability of either Party towards the other Party, howsoever arising, under or in connection with this DPA and the SCCs (if and as they apply) will under no circumstances exceed any limitations or caps on, and shall be subject to any exclusions of, liability and loss agreed by the Parties in the Agreement; provided that, nothing in this Section 12 will affect any person's liability to Data Subjects under relevant third party beneficiary provisions of the SCCs (if and as they apply).

### 14. MISCELLANEOUS

- 14.1 Except to the extent prohibited by Applicable Data Protection Laws, Customer shall compensate Upstash at Upstash's then-current professional services rates for, and reimburse any actual costs reasonably incurred by Upstash in the course of providing, cooperation, information, or assistance requested by Customer pursuant to Section 6 (Data Subject Rights) and/or Section 9 (Audits) of this DPA (provided that Upstash shall bear its own costs in the event that any audit or inspection conducted in accordance with that Section 9 reveals any material non-compliance by Upstash with this DPA and/or Applicable Data Protection Laws), and Paragraph 1 of Annex 2 (European Annex)), in each case, beyond providing self-service features included as part of the Services.
- 14.2 Upstash may on notice vary this DPA to the extent that (acting reasonably) it considers necessary to address the requirements of Applicable Data Protection Laws from time to time, including to apply a new transfer mechanism to comply with relevant requirements of the GDPR, such as by varying or replacing the SCCs in the manner described in Paragraph 2.5 of Annex 2 (European Annex) and/or to reflect any relevant changes in the Services and its Processing of Customer Personal Data as part thereof.
- 14.3 This DPA shall be incorporated into and form part of the Agreement with effect on and from the Effective Date. In the event of any conflict or inconsistency between: (a) this DPA and the Agreement, this DPA shall prevail; or (b) any SCCs entered into pursuant to Paragraph 2 of Annex 2 (European Annex) and this DPA and/or the Agreement, the SCCs shall prevail in respect of the Restricted Transfer to which they apply.

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## Annex 1

### Data Processing Details

**Note:** this Annex 1 (Data Processing Details) to the DPA includes certain details of the Processing of Customer Personal Data as required: (a) by certain Applicable Data Protection Laws; and (b) to populate the Appendix to the SCCs in the manner described in Paragraph 2.2(d) of Annex 2 (European Annex).

#### **UPSTASH / 'DATA IMPORTER' DETAILS**

|   |  |
|---|--|
| <b>Name:</b>                                | Upstash, Inc., a Delaware corporation  |
| <b>Address:</b>                             | As set out in the pre-amble to the DPA   |
| <b>Contact Details for Data Protection:</b> | Role: Head of Privacy<br>Email: <a href="mailto:privacy@upstash.com">privacy@upstash.com</a> |
| <b>Upstash Activities:</b>                  | Upstash provides a data platform.  |
| <b>Role:</b>                                | Processor  |

#### **CUSTOMER / 'DATA EXPORTER' DETAILS**

|   |  |
|---|--|
| <b>Name:</b>                                | The entity or other person who is a counterparty to the Agreement  |
| <b>Address:</b>                             | The address set out in the Order Form; or if no such address is contained within the Order Form, Customer's principal business trading address – unless otherwise notified to Upstash's contact point noted above.   |
| <b>Contact Details for Data Protection:</b> | As set out in the Order Form, or such other email notified by Customer for the purpose of data protection-related communications or alerts.<br><br>Customer agrees that it is solely responsible for ensuring that such contact details are valid and up-to-date, and directing relevant communications to the appropriate individual within its organization.   |
| <b>Customer Activities:</b>                 | Customer's activities relevant to this DPA are the use and receipt of the Services as part of its ongoing business operations under and in accordance with the Agreement.  |
| <b>Role:</b>                                | <ul style="list-style-type: none"><li>• Controller – for any Processing of Customer Personal Data in respect of which Customer is a Controller in its own right; and</li><li>• Processor – for any Processing of Customer Personal Data in respect of which Customer is itself acting as a Processor on behalf of any other person (including, where applicable, Customer's own customers/end users for whom Customer is a Processor).</li></ul> |

#### **DETAILS OF PROCESSING**

|                                     |  |
|-------------------------------------|--|
| <b>Categories of Data Subjects:</b> | As between the Parties, Customer has control of the nature and volume of Customer Personal Data uploaded to the Services (and therefore Processed by Upstash under this DPA) as part of the Customer Data. Relevant categories of Data Subject whose Personal Data is comprised within Customer Data may include (without limitation): <ul style="list-style-type: none"><li>• Customer's customers, employees, suppliers, and end users</li></ul> |
|-------------------------------------|--|



|   |  |
|---|--|
| <b>Categories of Personal Data:</b>   | <p>As between the Parties, Customer has control of the nature and volume of Customer Personal Data uploaded to the Services (and therefore Processed by Upstash under this DPA) as part of the Customer Data. Relevant categories of Personal Data comprised within Customer Data may include (without limitation):</p> <ul style="list-style-type: none"> <li>● First and last name</li> <li>● Business contact details, such as business email address, telephone number and/or physical address</li> <li>● Professional information, such as job title, role, expertise, department etc.</li> <li>● Username</li> </ul> |
| <b>Sensitive Categories of Data, and associated additional restrictions/safeguards:</b> | <p><u>Categories of sensitive data:</u></p> <p>None – as noted in Section 11.4 of the DPA, Customer agrees that Restricted Data, which includes 'sensitive data' (as defined in Clause 8.7 of the SCCs), and 'sensitive personal information' or 'sensitive personal data' as defined in the CCPA and the other State Privacy Laws, respectively, must <b>not</b> be submitted to the Services.</p> <p><u>Additional safeguards for sensitive data:</u></p> <p>N/A</p>   |
| <b>Frequency of transfer:</b>   | <p>Ongoing – as initiated by Customer in and through its use, or use on its behalf, of the Services.</p>   |
| <b>Nature of the Processing:</b>  | <p>Processing operations required in order to provide the Services in accordance with the Agreement.</p>   |
| <b>Purpose of the Processing:</b>   | <p>Customer Personal Data will be processed: (i) as necessary to provide the Services as initiated by Customer in its use thereof, (ii) to improve the Services, including the Services provided to Customer, and (iii) to comply with any other reasonable instructions provided by Customer in accordance with the terms of this DPA.</p>  |
| <b>Duration of Processing / Retention Period:</b>                                       | <p>For the period determined in accordance with the Agreement and DPA, including Section 10 of the DPA.</p>  |
| <b>Transfers to (sub-)processors:</b>   | <p>Transfers to Sub-Processors are as, and for the purposes, described from time to time in the Sub-Processor List (as may be updated from time to time in accordance with Section 8 of the DPA).</p>  |

## Annex 2

### European Annex

#### 1. DATA PROTECTION IMPACT ASSESSMENT AND PRIOR CONSULTATION

Upstash, taking into account the nature of the Processing and the information available to Upstash, 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 it by Article 35 or Article 36 of the GDPR, in each case solely in relation to Processing of Customer Personal Data by Upstash.

#### 2. RESTRICTED TRANSFERS

##### 2.1 Entry into Transfer Mechanisms

(a) EEA Restricted Transfers. To the extent that any Processing of Customer Personal Data under this DPA involves an EEA Restricted Transfer from Customer to Upstash, the Parties shall comply with their respective obligations set out in the SCCs, which are hereby deemed to be (i) populated in accordance with Section 2.2 of this Annex 2 (European Annex); and (ii) entered into by the Parties and incorporated by reference into this DPA.

(b) UK Restricted Transfers. To the extent that any Processing of Customer Personal Data under this DPA involves a UK Restricted Transfer from Customer to Upstash, the Parties shall comply with their respective obligations set out in the SCCs, which are hereby deemed to be: (i) varied to address the requirements of the UK GDPR in accordance with the UK Transfer Addendum and populated in accordance with Sections 2.2 and 2.3 of this Annex 2 (European Annex); and (ii) entered into by the Parties and incorporated by reference into this DPA.

##### 2.2 Population of SCCs

(a) Signature of SCCs. Where the SCCs apply in accordance with Paragraph 2.1(a) and/or Paragraph 2.1(b) of this Annex 2 (European Annex), each of the Parties is hereby deemed to have signed the SCCs at the relevant signature block in Annex I to the Appendix to the SCCs.

(b) Modules of SCCs. As and where relevant: Module Two of the SCCs applies to any EEA Restricted Transfer involving Processing of Personal Data in respect of which Customer is a controller in its own right; and/or Module Three of the SCCs applies to any EEA Restricted Transfer involving Processing of Personal Data in respect of which Customer is a processor.

(c) Population of body of SCCs. As and where applicable to the relevant Module and the Clauses thereof: (i) in Clause 7: the 'Docking Clause' is not used; (ii) in Clause 9: 'Option 2: General Written Authorisation' applies, and the minimum time period for advance notice of the addition or replacement of Sub-Processors shall be the advance notice period set out in Section 8.2 of the DPA; (iii) in Clause 11: the optional language is not used; (iv) in Clause 13: all square brackets are removed and all text therein is retained; (v) in Clause 17: 'OPTION 1' applies, and the Parties agree that the SCCs shall be governed by the law of the Republic of Ireland in relation to any EEA Restricted Transfer; and (vi) in Clause 18(b): the Parties agree that any dispute arising from the SCCs in relation to any EEA Restricted Transfer shall be resolved by the courts of the Republic of Ireland.

(d) Population of Appendix to SCCs. Annex I to the Appendix to the SCCs is populated with the corresponding information detailed in Annex 1 (Data Processing Details) to the DPA, with: Customer being 'data exporter'; and Upstash being 'data importer', and Part C to that Annex I is populated with: the competent Supervisory Authority shall be determined as follows: (i) where Customer is established in an EU Member State: the competent Supervisory Authority shall be the Supervisory Authority of that EU Member State in which Customer is established; and (ii) where Customer is not established in an EU Member State, Article 3(2) of the GDPR applies and Customer has appointed an EEA Representative under Article 27 of the GDPR: the competent Supervisory Authority shall be the Supervisory Authority of the EU Member State in which Customer's EEA Representative relevant to the Processing hereunder is based (from time-to-time), which Customer shall notify to Upstash in writing. Annex II shall be populated with reference to the information contained in or determined by Section 5 of the DPA (including the Security Measures).

### 2.3 UK Restricted Transfers

- (a) UK Transfer Addendum. Where relevant in accordance with Section 2.1(b) of this Annex 2 (European Annex), the SCCs apply to any UK Restricted Transfers as varied by the UK Transfer Addendum in the following manner: (i) 'Part 1 to the UK Transfer Addendum': (A) the Parties agree: Tables 1, 2 and 3 to the UK Transfer Addendum are deemed populated with the corresponding details set out in Annex 1 (Data Processing Details) to the DPA and Section 2.2 of this Annex 2 (European Annex); and (B) Table 4 to the UK Transfer Addendum is completed with 'Data Importer' only; and (ii) 'Part 2 to the UK Transfer Addendum': the Parties agree to be bound by the UK Mandatory Clauses of the UK Transfer Addendum and that the SCCs shall apply to any UK Restricted Transfers as varied in accordance with those Mandatory Clauses.
- (b) Interpretation. As permitted by section 17 of the UK Mandatory Clauses, the Parties agree to the presentation of the information required by 'Part 1: Tables' of the UK Transfer Addendum in the manner determined by 2.3(a) of this Annex 2 (European Annex); **provided that** the Parties further agree that nothing in the manner of that presentation shall operate or be construed so as to reduce the Appropriate Safeguards (as defined in section 3 of the UK Mandatory Clauses). In relation to any UK Restricted Transfer to which they apply, where the context permits and requires, any reference in the DPA to the SCCs, shall be read as a reference to those SCCs as varied in the manner set out in this Section 2.3 of this Annex 2 (European Annex).

### 2.4 Operational Clarifications

- (a) When complying with its transparency obligations under Clause 8.3 of the SCCs, Customer agrees that it shall not provide or otherwise make available, and shall take all appropriate steps to protect Upstash's and its licensors' trade secrets, business secrets, confidential information and/or other commercially sensitive information.
- (b) Where applicable, for the purposes of Clause 10(a) of Module Three of the SCCs, Customer acknowledges and agrees that there are no circumstances in which it would be appropriate for Upstash to notify any third-party controller of any Data Subject Request and that any such notification shall be the sole responsibility of Customer.
- (c) For the purposes of Clause 15.1(a) of the SCCs, except to the extent prohibited by applicable law and/or the relevant public authority, as between the Parties, Customer agrees that it shall be solely responsible for making any notifications to relevant Data Subject(s) if and as required.
- (d) The terms and conditions of Section 8 of the DPA apply in relation to Upstash's appointment and use of Sub-Processors under the SCCs. Any approval by Customer of Upstash's appointment of a Sub-Processor that is given expressly or deemed given pursuant to that Section 8 constitutes Customer's documented instructions to effect disclosures and onward transfers to any relevant Sub-Processors if and as required under Clause 8.8 of the SCCs.
- (e) The audits described in Clauses 8.9(c) and 8.9(d) of the SCCs shall be subject to any relevant terms and conditions detailed in Section 9 of the DPA.
- (f) Certification of deletion of Personal Data as described in Clauses 8.5 and 16(d) of the SCCs shall be provided only upon Customer's written request.
- (g) In respect of any given Restricted Transfer, if requested of Customer by a Supervisory Authority, Data Subject or further Controller (where applicable) – on specific written request; accompanied by suitable supporting evidence of the relevant request), Upstash shall provide Customer with an executed version of the relevant set(s) of SCCs responsive to the request made of Customer (amended and populated in accordance with relevant provisions of this DPA in respect of the relevant Restricted Transfer) for countersignature by Customer, onward provision to the relevant requestor and/or storage to evidence Customer's compliance with Applicable Data Protection Laws.

### 2.5 Adoption of new transfer mechanism

Upstash may on notice vary this DPA and replace the relevant SCCs with: (a) any new form of the relevant SCCs or any replacement therefor prepared and populated accordingly; or (b) another transfer mechanism,

other than the SCCs, that enables the lawful transfer of Customer Personal Data by Customer to Upstash under this DPA in compliance with Chapter V of the GDPR.

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### Annex 3

#### State Privacy Laws Annex

1. In this Annex 3, the terms “**business**,” “**business purpose**,” “**commercial purpose**,” “**consumer**,” “**sell**,” “**share**,” and “**service provider**” shall have the respective meanings given thereto in the CCPA; and “**personal information**” shall mean Customer Personal Data that constitutes “personal information” as defined in and that is subject to the State Privacy Laws.
2. The business purposes and services for which Upstash is Processing personal information are for Upstash to provide the Services to and on behalf of Customer as set forth in the Agreement, as described in more detail in Annex 1 (Data Processing Details) to the DPA.
3. It is the Parties’ intent that with respect to any personal information, Upstash is a service provider. Upstash (a) acknowledges that personal information is disclosed by Customer only for limited and specific purposes described in the Agreement; (b) shall comply with applicable obligations under the State Privacy Laws and shall provide the same level of privacy protection to personal information as is required by the State Privacy Laws; (c) agrees that Customer has the right to take reasonable and appropriate steps under and subject to Section 9 (Audits) of the DPA to help ensure that Upstash’s use of personal information is consistent with Customer’s obligations under the State Privacy Laws; (d) shall notify Customer in writing of any determination made by Upstash that it can no longer meet its obligations under the State Privacy Laws; and (e) agrees that Customer has the right, upon notice, including pursuant to the preceding clause, to take reasonable and appropriate steps to stop and remediate unauthorized use of personal information.
4. Upstash shall not (a) sell or share any personal information; (b) retain, use or disclose any personal information for any purpose other than for the business purposes specified in the Agreement, or as otherwise permitted by State Privacy Laws; (c) retain, use or disclose the personal information outside of the direct business relationship between Upstash and Customer; or (d) combine personal information received pursuant to the Agreement with personal information (i) received from or on behalf of another person, or (ii) collected from Upstash’s own interaction with any consumer to whom such personal information pertains except as and to the extent necessary as part of Upstash’s provision of the Services.
5. Upstash shall implement reasonable security procedures and practices appropriate to the nature of the personal information received from, or on behalf of, Customer, in accordance with Section 5 (Security) of the DPA.
6. When Upstash engages any Sub-Processor, Upstash shall notify Customer of such Sub-Processor engagements in accordance with Section 8 (Sub-Processing) of the DPA and that such notice shall satisfy Upstash’s obligation under the State Privacy Laws to give notice of and an opportunity to object to such engagements.
7. Upstash agrees that Customer may conduct audits, in accordance with Section 9 of the DPA, to help ensure that Upstash’s use of personal information is consistent with Upstash’s obligations under the State Privacy Laws.
8. The parties acknowledge that Upstash’s retention, use and disclosure of personal information authorized by Customer’s instructions documented in the Agreement and DPA are integral to Upstash’s provision of the Services and the business relationship between the Parties.

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