

## **EU GDPR DATA PROCESSING ADDENDUM INSTRUCTIONS**

### **FOR Uptime.com LLC CUSTOMERS**

#### **WHO SHOULD EXECUTE THIS DPA?**

If you have determined that you qualify as a data controller under the GDPR, and need a data processing addendum (DPA) in place with vendors that process personal data on your behalf, we want to help make things easy for you.

Our GDPR compliant DPA is attached and ready for your signature in accordance with the instructions below.

#### **HOW TO EXECUTE THIS DPA:**

1. This DPA consists of two parts: the main body of the DPA, and Annexes 1, 2, and 3 (including Appendices 1 to 2).
2. This DPA has been pre-signed on behalf of Uptime.com. In addition, the Standard Contractual Clauses in Annex 2 (including Appendix 1 thereto) and the Security Measures in Annex 3 have been pre-signed by Uptime.com as the data importer.
3. To complete this DPA, Customer must complete the information in the signature boxes and sign on Pages 7, 13, 15 and 19.
4. Send the completed and signed DPA to Uptime.com by email, indicating the Customer's Legal Name (as set out on the applicable Uptime.com Agreement or invoice, if applicable), to [dpo@uptime.com](mailto:dpo@uptime.com).

Upon receipt of the validly completed DPA by Uptime.com at this email address, this DPA will become legally binding.

## **EU GDPR**

### **DATA PROCESSING ADDENDUM**

*(Version January 2021)*

This Data Processing Addendum (“**DPA**”), forms part of the Uptime.com Terms and Conditions (available at <https://uptime.com/terms-and-conditions>), or other written or electronic agreement, by and between Uptime.com LLC (“**Uptime.com**”) and the undersigned customer of Uptime.com (“**Customer**”) for certain security services (collectively, the “**Service**”) provided by Uptime.com (the “**Main Agreement**”). All capitalized terms not defined herein shall have the meanings set forth in the Main Agreement. Each of Customer and Uptime.com may be referred to herein as a “**party**” and together as the “**parties.**”

In connection with the Service, the parties anticipate that Uptime.com may process outside of the European Economic Area (“**EEA**”) and United Kingdom, and Switzerland, certain Personal Data in respect of which the Customer or any Affiliate of Customer may be a data controller or data processor, as applicable, under applicable EU Data Protection Laws.

The parties have agreed to enter into this DPA in order to ensure that adequate safeguards are put in place with respect to the protection of such Personal Data as required by EU Data Protection Laws.

#### **HOW TO EXECUTE THIS DPA:**

1. This DPA consists of two parts: the main body of the DPA, and Annexes 1, 2, and 3 (including Appendices 1 to 2).
2. This DPA has been pre-signed on behalf of Uptime.com. The Standard Contractual Clauses in Annex 2 (including Appendix 1 thereto) and the Security Measures in Annex 3 have been pre-signed by Uptime.com as the data importer.
3. To complete this DPA, Customer must complete the information in the signature boxes and sign on Pages 7, 13, 15 and 19.
4. Send the completed and signed DPA to Uptime.com by email, indicating the Customer’s Legal Name (as set out on the applicable Uptime.com Order Form or invoice, if applicable), to [dpo@uptime.com](mailto:dpo@uptime.com).

Upon receipt of the validly completed DPA by Uptime.com at this email address, this DPA will become legally binding.

#### **HOW THIS DPA APPLIES**

This DPA is an addendum to and forms part of the Main Agreement. The Customer entity signing this DPA must be the same as the Customer entity party to the Main Agreement.

If the Customer entity signing this DPA is not a party to the Main Agreement directly with Uptime.com, but is instead a customer indirectly via an authorized reseller of Uptime.com services, this DPA is not valid and is not legally binding. Such entity should contact the authorized reseller to discuss whether any amendment to its agreement with that reseller may be required.

#### **DATA PROCESSING TERMS**

In the course of providing the Service to Customer pursuant to the Main Agreement, Uptime.com may Process Personal Data on behalf of Customer. Uptime.com agrees to comply with the following provisions with respect to any Personal Data submitted by or for Customer to Uptime.com or collected and processed by or for Customer using Uptime.com’s Services.

The parties agree that the obligations under this DPA that are specific to the GDPR shall not apply until the GDPR has come into full force and effect.

#### **1. Definitions**

1.1 The following definitions are used in this DPA:

- a. **“Adequate Country”** means a country or territory that is recognized under General Data Protection Regulation (EU) 2016/679 as providing adequate protection for Personal Data;
- b. **“Affiliate”** means, with respect to a party, any corporate entity that, directly or indirectly, Controls, is Controlled by, or is under Common Control with such party (but only for so long as such Control exists);
- c. **“EU Data Protection Laws”** means all laws and regulations of the European Union, the European Economic Area, their member states, and the United Kingdom, and Switzerland, applicable to the processing of Personal Data under the Main Agreement, including (where applicable) the General Data Protection Regulation (Regulation (EU) 2016/679);
- d. **“GDPR”** means the General Data Protection Regulation (Regulation (EU) 2016/679 of the European Parliament and of the Council of 25 May 2018 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data);
- e. **“Personal Data”** means all data which is defined as ‘*personal data*’ under General Data Protection Regulation (EU) 2016/679 and to which General Data Protection Regulation (EU) 2016/679 apply and which is provided by the Customer to Uptime.com, and accessed, stored or otherwise processed by Uptime.com as a data processor as part of its provision of the Service to Customer;
- f. **“Verified Technical Resource”** means a category, in accordance with Article 13(1)(e) of the GDPR, of technical contractors verified by Uptime.com to be able to technically adhere to the security provisions of this DPA and the GDPR, have entered an agreement with Uptime.com at least as restrictive as this DPA; and may provide services to Uptime.com when requested.
- g. **“processing”, “data controller”, “data subject”, “supervisory authority” and “data processor”** shall have the meanings ascribed to them in General Data Protection Regulation (EU) 2016/679.

1.2 An entity **“Controls”** another entity if it: (a) holds a majority of the voting rights in it; (b) is a member or shareholder of it and has the right to remove a majority of its board of directors or equivalent managing body; (c) is a member or shareholder of it and controls alone or pursuant to an agreement with other shareholders or members, a majority of the voting rights in it; or (d) has the right to exercise a dominant influence over it pursuant to its constitutional documents or pursuant to a contract; and two entities are treated as being in **“Common Control”** if either controls the other (directly or indirectly) or both are controlled (directly or indirectly) by the same entity.

## 2. Status of the parties

2.1 The type of Personal Data processed pursuant to this DPA and the subject matter, duration, nature and purpose of the processing, and the categories of data subjects, are as described in Annex 1.

2.2 Each party warrants in relation to Personal Data that it will comply (and will procure that any of its personnel comply and use commercially reasonable efforts to procure that its sub-processors comply), with General Data Protection Regulation (EU) 2016/679. As between the parties, the Customer shall have sole responsibility for the accuracy, quality, and legality of Personal Data and the means by which the Customer acquired Personal Data.

2.3 In respect of the parties' rights and obligations under this DPA regarding the Personal Data, the parties hereby acknowledge and agree that the Customer is the data controller or processor, and Uptime.com is the data processor or sub-processor, as applicable, and accordingly Uptime.com agrees that it shall process all Personal Data in accordance with its obligations pursuant to this DPA.

2.4 If Customer is a data processor, Customer warrants to Uptime.com that Customer's instructions and actions with respect to the Personal Data, including its appointment of Uptime.com as another processor and concluding the standard contractual clauses (Annex 2), have been authorized by the relevant controller.

2.5 Where and to the extent that Uptime.com processes data which is defined as ‘personal data’ under EU Data Protection Laws as a data controller as set out in the Uptime.com Privacy Policy available at <https://uptime.com/privacy-policy>, Uptime.com will comply with applicable General Data Protection Regulation (EU) 2016/679 in respect of that processing

2.6 Each party shall appoint a Data Privacy Officer within its organization authorized to respond from time to time to enquiries regarding Personal Data, the parties shall make the Data Privacy Officer known to the other party, and the Data Privacy Officer shall deal with such enquiries promptly.

### 3. Uptime.com obligations

3.1 With respect to all Personal Data, Uptime.com warrants that it shall:

(a) only process Personal Data in order to provide the Service, and shall act only in accordance with: (i) this DPA, (ii) the Customer's written instructions as set forth in the Main Agreement and this DPA, and (iii) as required by applicable laws;

(b) upon becoming aware, inform the Customer if, in Uptime.com’s opinion, any instructions provided by the Customer under clause 3.1(a) are in conflict with the GDPR;

(c) implement appropriate technical and organizational measures to ensure a level of security appropriate to the risks that are presented by the processing of Personal Data, in particular protection against accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to Personal Data. Such measures include, without limitation, the security measures set out in Annex 3;

(d) take reasonable steps to ensure that only authorized personnel have access to such Personal Data and that any persons whom it authorizes to have access to the Personal Data are under obligations of confidentiality;

(e) without undue delay after becoming aware, notify the Customer of any breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Personal Data transmitted, stored or otherwise processed by Uptime.com, its sub-processors, or any other identified or unidentified third party (a “**Security Breach**”);

(f) promptly provide the Customer with reasonable cooperation and assistance in respect of a Security Breach and all reasonable information in Uptime.com’s possession concerning such Security Breach insofar as it affects the Customer, including, to the extent then known, the following:

(i) the possible cause and consequences for the Data Subjects of the Security Breach;

(ii) the categories of Personal Data involved;

(iii) a summary of the possible consequences for the relevant data subjects;

(iv) a summary of the unauthorized recipients of the Personal Data; and

(v) the measures taken by Uptime.com to mitigate any damage;

(g) not make any public announcement about a Security Breach (a “**Breach Notice**”) without the prior written consent of the Customer, unless required by applicable law;

(h) promptly notify the Customer if it receives a request from a data subject of Customer to access, rectify or erase that individual’s Personal Data, or if a data subject objects to the processing of, or makes a data portability request in respect of, such Personal Data (each a “**Data Subject Request**”). Uptime.com shall not respond to a Data Subject Request without the Customer’s prior written consent except to confirm that such request relates to the Customer, to which the Customer hereby agrees. To the extent that the Customer does not have the ability to address a Data Subject Request, then upon Customer’s request Uptime.com shall provide reasonable assistance to the Customer to facilitate such Data Subject Request to the extent able and in line with applicable law. To the extent Customer does not respond, Uptime.com may respond to the Data

Subject Request in any manner it deems appropriate. Customer shall cover all costs incurred by Uptime.com in connection with its provision of such assistance or response;

(i) other than to the extent required to comply with applicable law, following termination or expiry of the Main Agreement or completion of the Service, Uptime.com will delete all Personal Data (including copies thereof) processed pursuant to this DPA;

(j) taking into account the nature of processing and the information available to Uptime.com, provide such assistance to the Customer as the Customer reasonably requests in relation to Uptime.com's obligations under General Data Protection Regulation (EU) 2016/679 with respect to:

(i) data protection impact assessments (as such term is defined in the GDPR);

(ii) notifications to the supervisory authority under General Data Protection Regulation (EU) 2016/679 and/or communications to data subjects by the Customer in response to any Security Breach; and

(iii) the Customer's compliance with its obligations under the GDPR with respect to the security of processing;

provided that the Customer shall cover all costs incurred by Uptime.com in connection with its provision of such assistance.

#### **4. Sub-processing**

4.1 The Customer grants a general authorization: (a) to Uptime.com to appoint any Affiliate as sub-processors, and (b) to Uptime.com and any Affiliate to appoint any Verified Technical Resource to act as third party data center operators, and outsourced marketing, business, engineering and customer support providers as sub-processors to support the performance of the Service.

4.2 Uptime.com will only use a Verified Technical Resource as sub-processors of any Personal Data. If Uptime.com is reasonably able to provide the Service to the Customer in accordance with the Main Agreement without using the sub-processor and decides in its discretion to do so, then the Customer will have no further rights under this clause 4.2 in respect of the proposed use of the sub-processor. If Uptime.com requires use of a sub-processor in its discretion and Customer does not want Uptime.com to use a Verified Technical Resource as a sub-processor, Customer may provide written notification of any objections to Uptime.com. Within ninety (90) days from the Customer's notification of objections, the Customer may within thirty (30) days following the end of the ninety (90) day period referred to above, terminate the applicable Order Form without refund. If the Customer does not provide a timely objection to the use of a Verified Technical Resource in accordance with this clause 4.2, the Customer will be deemed to have consented to the use of any Verified Technical Resource as a sub-processor and waived its right to object. Uptime.com may use a new or replacement Verified Technical Resource as a sub-processor whilst the objection procedure in this clause 4.2 is in process.

4.3 Uptime.com will ensure that any sub-processor it engages to provide an aspect of the Service on its behalf in connection with this DPA does so only on the basis of a written contract which imposes on such sub-processor terms substantially no less protective of Personal Data than those imposed on Uptime.com in this DPA (the "**Relevant Terms**"). Uptime.com shall procure the performance by such sub-processor of the Relevant Terms and shall be liable to the Customer for any breach by such person of any of the Relevant Terms.

#### **5. Audit and records**

5.1 Uptime.com shall, in accordance with General Data Protection Regulation (EU) 2016/679, make available to the Customer such information in Uptime.com's possession or control as the Customer may reasonably request with a view to demonstrating Uptime.com's compliance with the obligations of data processors under General Data Protection Regulation (EU) 2016/679 in relation to its processing of Personal Data.

5.2 The Customer may exercise its right of audit under General Data Protection Regulation (EU) 2016/679 in relation to Personal Data, through Uptime.com providing:

- (a) an audit report not older than eighteen (18) months, prepared by an independent external auditor demonstrating that Uptime.com's technical and organizational measures are sufficient and in accordance with an accepted industry audit standard;
- b) additional information in Uptime.com's possession or control to an EU supervisory authority when it requests or requires additional information in relation to the processing of Personal Data carried out by Uptime.com under this DPA; and
- c) Customer shall cover all costs incurred by Uptime.com in connection with any such audit.

## **6. Data transfers**

6.1 To the extent any processing of Personal Data by Uptime.com takes place in any country outside the EEA (except if in an Adequate Country), the parties agree that the standard contractual clauses approved by the EU authorities under General Data Protection Regulation (EU) 2016/679 and set out in Annex 2 will apply in respect of that processing, and Uptime.com will comply with the obligations of the 'data importer' in the standard contractual clauses and the Customer will comply with the obligations of the 'data exporter'.

6.2 The Customer acknowledges and accepts that the provision of the Service under the Main Agreement may require the processing of Personal Data by sub-processors in countries outside the EEA.

6.3 If, in the performance of this DPA, Uptime.com transfers any Personal Data to a Verified Technical Sub-processor located outside of the EEA (without prejudice to clause 4), Uptime.com shall in advance of any such transfer ensure that a legal mechanism to achieve adequacy in respect of that processing is in place, such as:

- (a) the requirement for Uptime.com to execute or procure that the Verified Technical Sub-processor execute to the benefit of the Customer standard contractual clauses approved by the EU authorities under General Data Protection Regulation (EU) 2016/679 and set out in Annex 2;
- (b) the requirement for the Verified Technical Sub-processor to be certified under the EU-U.S. Privacy Shield Framework; or
- (c) the existence of any other specifically approved safeguard for data transfers (as recognized under General Data Protection Regulation (EU) 2016/679) and/or a European Commission finding of adequacy.

6.4 The following terms shall apply to the standard contractual clauses set out in Annex 2:

- (a) The Customer may exercise its right of audit under clause 5.1(f) of the standard contractual clauses as set out in, and subject to the requirements of, clause 5.2 of this DPA; and
- (b) Uptime.com may appoint Verified Technical Sub-processors as set out, and subject to the requirements of, clauses 4 and 6.3 of this DPA.

## **7. General**

7.1 This DPA is without prejudice to the rights and obligations of the parties under the Main Agreement which shall continue to have full force and effect. In the event of any conflict between the terms of this DPA and the terms of the Main Agreement, the terms of this DPA shall prevail so far as the subject matter concerns the processing of Personal Data.

7.2 Uptime.com's liability under or in connection with this DPA (including under the standard contractual clauses set out in Annex 3) is subject to the limitations on liability contained in the Main Agreement.

7.3 This DPA does not confer any third-party beneficiary rights, it is intended for the benefit of the parties hereto and their respective permitted successors and assigns only, and is not for the benefit of, nor may any provision hereof be enforced by, any other person.

7.4 This DPA and any action related thereto shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to any conflicts of laws principles. The parties consent to the personal jurisdiction of, and venue in, the courts of Delaware state.

7.5 This DPA is the final, complete and exclusive agreement of the parties with respect to the subject matter hereof and supersedes and merges all prior discussions and agreements between the parties with respect to such subject matter. Other than in respect of statements made fraudulently, no other representations or terms shall apply or form part of this DPA. No modification of, amendment to, or waiver of any rights under the DPA will be effective unless in writing and signed by an authorized signatory of each party. This DPA may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement. Each person signing below represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this DPA. Each party represents and warrants to the other that the execution and delivery of this DPA and the performance of such party's obligations hereunder, have been duly authorized and that this DPA is a valid and legally binding agreement on each such party, enforceable in accordance with its terms.

**IN WITNESS WHEREOF**, the parties have each caused this DPA to be signed and delivered by its duly authorized representative.

<b>CUSTOMER:</b>		<b>Uptime.com LLC</b> <small>DocuSigned by:</small>  <small>DCFBFB221C80476...</small>	
<b>BY</b>		<b>BY</b>	Benjamin Byrne
<b>NAME</b>		<b>NAME</b>	Benjamin Byrne
<b>TITLE</b>		<b>TITLE</b>	Data Protection Officer
<b>ADDRESS</b>		<b>ADDRESS</b>	5 Penn Plaza, 19th Floor, New York, NY
<b>DATE</b>		<b>DATE</b>	January 29, 2021

## **Annex 1**

### **Details of the Personal Data and processing activities**

- (a) The personal data comprises: in relation to visitors of the Customer's hosted status page, we will gather the visitor's emails upon subscription function.
- (b) The duration of the processing will be the date upon which processing is no longer necessary for the purposes of either party performing its obligations under the Terms and Conditions (to the extent applicable);
- (c) The processing will comprise: Processing necessary to provide the Service to Customer, pursuant to the Terms and Conditions ;
- (d) The purpose(s) of the processing is/ are: necessary for the provision of the Service;
- (e) Personal data may concern the following data subjects:
  - Prospective customers, customers, resellers, referrers, business partners, and vendors of the Customer (who are natural persons);
  - Employees or contact persons of the Customer's prospective customers, customers, resellers, referrers, sub-processors, business partners, and vendors (who are natural persons);
  - Employees, agents, advisors, and freelancers of the Customer (who are natural persons); and/or
  - Natural persons authorized by the Customer to use the Service.

## Annex 2

### **2010 EU Model clauses extracted from 2010/87/EU Annex EU Standard Contractual Clauses for the transfer of personal data to data processors established in third countries which do not ensure an adequate level of data protection**

#### **INTRODUCTION**

Both 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.

#### **AGREED TERMS**

##### **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 General Data Protection Regulation (EU) 2016/679 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 entity 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 General Data Protection Regulation (EU) 2016/679;
- d) the "**sub-processor**" means any processor engaged by the data importer or by any other sub-processor of the data importer who agrees to receive from the data importer or from any other sub-processor 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; and
- f) "**technical and organizational security measures**" means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

##### **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.

##### **3. Third-party beneficiary clause**

3.1 The data subject can enforce against the data exporter this Clause, Clause 4.1(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.

3.2 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.

3.3 The data subject can enforce against the sub-processor 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 sub-processor shall be limited to its own processing operations under the Clauses.

3.4 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.

#### **4. Obligations of the data exporter**

4.1 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,) including obtaining any explicit consent of the data subject required for such transfer, 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 organizational 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, unauthorized 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 General Data Protection Regulation (EU) 2016/679.
- g) to forward any notification received from the data importer or any sub-processor 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 sub-processing 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 sub-processing, the processing activity is carried out in accordance with Clause 11 by a sub-processor 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).

#### **5. Obligations of the data importer**

5.1 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 organizational 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 unauthorized access; and
  - (iii) any request received directly from the data subjects without responding to that request, unless it has been otherwise authorized 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 sub-processing, 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 sub-processing, it has previously informed the data exporter and obtained its prior written consent;
- i) that the processing services by the sub-processor will be carried out in accordance with Clause 11;
- j) to send promptly a copy of any sub-processor agreement it concludes under the Clauses to the data exporter.

## **6. Liability**

6.1 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 sub-processor is entitled to receive compensation from the data exporter for the damage suffered.

6.2 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 sub-processor 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 or 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 sub-processor of its obligations in order to avoid its own liabilities.

6.3 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 sub-processor 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 sub-processor agrees that the data subject may issue a claim against the data sub-processor 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 sub-processor shall be limited to its own processing operations under the Clauses.

## **7. Mediation and jurisdiction**

7.1 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.

7.2 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.

## **8. Co-operation with supervisory authorities**

8.1 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.

8.2 The parties agree that the supervisory authority has the right to conduct an audit of the data importer, and of any sub-processor, 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.

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

## **9. Governing law**

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

## **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.

## **11. Sub-processing**

11.1 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 unless such subcontractor is a Verified Technical Resource which is an already approved category of sub-processors as set forth in the DPA. Data importer confirms that all Verified Technical Resource providers are under written

agreements imposing the same obligations as data importer. In the event a Verified Technical Resource (sub-processor) fails to fulfill its data protection obligations under such written agreement the data importer shall remain fully liable to the data exporter for the performance of the sub-processor's obligations under such agreement.

11.2 The prior written contract between the data importer and the sub-processor 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 sub-processor shall be limited to its own processing operations under the Clauses.

11.3 The provisions relating to data protection aspects for sub-processing of the contract referred to in paragraph 1 shall be governed by the law of the Member State in which the data exporter is established.

11.4 The data exporter shall keep a list of sub-processing agreements concluded under the Clauses and notified by the data importer pursuant to Clause 5.1(j), which shall be updated at least once a year. The list shall be available to the data exporter's data protection supervisory authority.

**12. Obligation after the termination of personal data-processing services**

12.1 The parties agree that on the termination of the provision of data-processing services, the data importer and the sub-processor 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.

12.2 The data importer and the sub-processor 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.

This agreement has been entered into on the date shown at the beginning of the first page of this agreement.

<b>CUSTOMER (DATA EXPORTER):</b>		<b>Uptime.com LLC (DATA IMPORTER)</b> <small>DocuSigned by:</small> <i>Benjamin Byrne</i> <small>DCFBFB221C80476...</small>	
<b>BY</b>		<b>BY</b>	Benjamin Byrne
<b>NAME</b>		<b>NAME</b>	Benjamin Byrne
<b>TITLE</b>		<b>TITLE</b>	Data Protection Officer
<b>ADDRESS</b>		<b>ADDRESS</b>	5 Penn Plaza, 19th Floor, New York, NY
<b>DATE</b>		<b>DATE</b>	January 29, 2021

## **Appendix 1**

### **to the Standard Contractual Clauses**

This Appendix forms part of the Clauses and must be completed and signed by the parties.

The Member States may complete or specify, according to their national procedures, any additional necessary information to be contained in this Appendix.

#### **Data exporter**

The data exporter is (please specify briefly your activities relevant to the transfer):

The (i) legal entity that has created an account with Uptime.com, Inc. (“**Uptime.com**”) for provision of the Service, and executed the Clauses as a data exporter and, (ii) all affiliates of such entity established within the EEA, which have purchased services from Uptime.com or its Affiliates.

#### **Data importer**

The data importer is (please specify briefly activities relevant to the transfer):

Uptime.com that processes Personal Data upon the instruction of the data exporter in accordance with the terms of the agreement between the data exporter and Uptime.com.

#### **Data subjects**

The personal data transferred concern the following categories of data subjects (please specify):

The data exporter may submit Personal Data to Uptime.com and its Affiliates, the extent of which is determined and controlled by the data exporter in its sole discretion, and which may include, but is not limited to Personal Data relating to the following categories of data subjects:

- Prospective customers, customers, resellers, referrers, business partners, and vendors of the data exporter (who are natural persons);
- Employees or contact persons of the data exporter’s prospective customers, customers, resellers, referrers, subcontractors, business partners, and vendors (who are natural persons);
- Employees, agents, advisors, and freelancers of the data exporter (who are natural persons); and/or
- Natural persons authorized by the data exporter to use the services provided by Uptime.com, Inc. to the data exporter.

#### **Categories of data**

The personal data transferred concern the following categories of data:

The data exporter may submit Personal Data to Uptime.com, Inc. and its Affiliates, the extent of which is determined and controlled by the data exporter in its sole discretion, and which may include, but is not limited to, the following categories of Personal Data:

- Contact information (email).

#### **Special categories of data (if appropriate)**

The personal data transferred concern the following special categories of data: NONE

The data exporter should not provide or submit any special categories of data to Uptime.com and its Affiliates.

#### **Processing operations**

The personal data transferred will be subject to the following basic processing activities (please specify):

The objective of the processing of Personal Data by Uptime.com is to provide the Service, pursuant to the Main Agreement.

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## **Appendix 2**

### **to the Standard Contractual Clauses**

This Appendix forms part of the Clauses and must be completed and signed by the parties.

**Description of the technical and organizational security measures implemented by the data importer in accordance with Clauses 4(d) and 5(c) (or document/legislation attached):**

See Annex 3 to the DPA.

## **Annex 3**

### **Security Measures**

- A. Data importer/sub-processor has implemented and shall maintain a security program in accordance with industry standards.
- B. More specifically, data importer/sub-processor's security program shall include:

#### **Access Control of Processing Areas**

Data importer/sub-processor implements suitable measures in order to prevent unauthorized persons from gaining access to the data processing equipment (namely telephones, database and application servers and related hardware) where the personal data are processed or used, including:

- establishing security areas;
- protection and restriction of access paths;
- establishing access authorizations for employees and third parties, including the respective documentation;
- all access to the data center where personal data are hosted is logged, monitored, and tracked; and
- the data center where personal data are hosted is secured by a security alarm system, and other appropriate security measures.

#### **Access Control to Data Processing Systems**

Data importer/sub-processor implements suitable measures to prevent their data processing systems from being used by unauthorized persons, including:

- use of adequate encryption technologies;
- identification of the terminal and/or the terminal user to the data importer/sub-processor and processing systems;
- automatic temporary lock-out of user terminal if left idle, identification and password required to reopen;
- automatic temporary lock-out of the user ID when several erroneous passwords are entered, log file of events, monitoring of break-in-attempts (alerts); and
- all access to data content is logged, monitored, and tracked.

#### **Access Control to Use Specific Areas of Data Processing Systems**

Data importer/sub-processor commits that the persons entitled to use their data processing system are only able to access the data within the scope and to the extent covered by their respective access permission (authorization) and that personal data cannot be read, copied or modified or removed without authorization. This shall be accomplished by various measures including:

- employee policies and training in respect of each employee's access rights to the personal data;
- allocation of individual terminals and /or terminal user, and identification characteristics exclusive to specific functions;
- monitoring capability in respect of individuals who delete, add or modify the personal data;
- release of data only to authorized persons, including allocation of differentiated access rights and roles;
- use of adequate encryption technologies; and

- control of files, controlled and documented destruction of data.

### **Availability Control**

Data importer/sub-processor implements suitable measures to ensure that personal data are protected from accidental destruction or loss, including:

- infrastructure redundancy; and
- backup is stored at an alternative site and available for restore in case of failure of the primary system.

### **Transmission Control**

Data importer/sub-processor implements suitable measures to prevent the personal data from being read, copied, altered or deleted by unauthorized parties during the transmission thereof or during the transport of the data media. This is accomplished by various measures including:

- use of adequate firewall, VPN and encryption technologies to protect the gateways and pipelines through which the data travels;
- certain highly confidential employee data (e.g., personally identifiable information such as National ID numbers, credit or debit card numbers) is also encrypted within the system; and
- providing user alert upon incomplete transfer of data (end to end check); and
- as far as possible, all data transmissions are logged, monitored and tracked.

### **Input Control**

Data importer/sub-processor implements suitable input control measures, including:

- an authorization policy for the input, reading, alteration and deletion of data;
- authentication of the authorized personnel;
- protective measures for the data input into memory, as well as for the reading, alteration and deletion of stored data;
- utilization of unique authentication credentials or codes (passwords);
- providing that entries to data processing facilities (the rooms housing the computer hardware and related equipment) are kept locked;
- automatic log-off of user ID's that have not been used for a substantial period of time; and
- proof established within data importer/sub-processor's organization of the input authorization; and
- electronic recording of entries.

### **Separation of Processing for different Purposes**

Data importer/sub-processor implements suitable measures to ensure that data collected for different purposes can be processed separately, including:

- access to data is separated through application security for the appropriate users;
- modules within the data importer/sub-processor's database separate which data is used for which purpose, i.e. by functionality and function;
- at the database level, data is stored in different normalized tables, separated per module, per Controller Customer or function they support; and
- interfaces, batch processes and reports are designed for only specific purposes and functions, so data collected for specific purposes is processed separately.

**Documentation**

Data importer/sub-processor will keep documentation of technical and organizational measures in case of audits and for the conservation of evidence. Data importer/sub-processor shall take reasonable steps to ensure that persons employed by it and other persons at the place of work concerned, are aware of and comply with the technical and organizational measures set forth in this Appendix 2.

**Monitoring**

Data importer/sub-processor shall implement suitable measures to monitor access restrictions to data importer/sub-processor’s system administrators and to ensure that they act in accordance with instructions received. This is accomplished by various measures including:

- individual appointment of system administrators;
- adoption of suitable measures to register system administrators' access logs to the infrastructure and keep them secure, accurate and unmodified for at least six months;
- yearly audits of system administrators’ activity to assess compliance with assigned tasks, the instructions received by the data importer/sub-processor and applicable laws;
- keeping an updated list with system administrators’ identification details (e.g. name, surname, function or organizational area) and tasks assigned and providing it promptly to data exporter upon request.

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