Upstash Data Processing Agreement

This Data Processing Agreement (**"DPA"**) is incorporated into and forms a part of the Upstash Terms of Service, or other applicable service or subscription agreement between you and Upstash with respect to your use of the Upstash Cloud Services (**"Upstash Agreement"**). This DPA sets out data protection requirements with respect to the processing of Customer Personal Data (as defined below) that is collected, stored, or otherwise processed by Upstash for the purpose of providing the Cloud Services. This DPA is effective on the effective date of the Upstash Agreement, unless this DPA is separately executed in which case it is effective on the date of the last signature.

1. Definitions.

The following terms have the following meanings when used in this DPA. Any capitalized terms that are not defined in this DPA have the meaning provided in your Upstash Agreement.

"**California Consumer Privacy Act of 2018**" or **"CCPA"** means the California Consumer Privacy Act of 2018, as may be amended from time to time.
"**Customer**," "**you**" and "**your**" means the organization that agrees to an Order Form, or uses the Cloud Services subject to the relevant Upstash Agreement.
"**Customer Personal Data**" means any personal data that Customer uploads into the Cloud Services that is processed by Upstash.
"**Data Protection Law**" means GDPR, CCPA, and any other data protection legislation applicable to the respective party in its role in the processing of Customer Personal Data under the Upstash Agreement.
"**Data Subject Request**" has the meaning given to it in Section 5.1.
"**EEA**" means the European Economic Area.
"**GDPR**" means the General Data Protection Regulation ((EU) 2016/679) and any

national implementing laws, regulations and secondary legislation, as amended, updated or replaced from time to time, in the European Union, Switzerland and/or the United Kingdom.

"**Subprocessor**" means any third-party data processor engaged by Upstash to process Customer Personal Data.

"**Technical and Organizational Security Measures**" has the meaning given to it in Section 3.2.

 The terms "**controller**," "**data subject**," "**personal data**," "**personal data breach**," "**processor**," "**processing**" and "**supervisory authority**" have the meanings set forth in the GDPR.

2. Data Processing.

2.1. **Scope and Roles.** This DPA applies when Upstash processes Customer Personal Data in the course of providing the Cloud Services. In this context, Upstash is a "processor" to Customer, who may act as either a "controller" or "processor" with respect to Customer Personal Data.

 2.2. **Details of the Processing.**

   2.2.1. **Subject Matter.** The subject matter of the data processing under this DPA is Customer Personal Data.

   2.2.2. **Duration.** The duration of the data processing under this DPA is until the expiration or termination of the Upstash Agreement in accordance with its terms.

   2.2.3. **Nature and Purpose.** The purpose of the data processing under this DPA is the provision of the Cloud Services to Customer in accordance with the Upstash Agreement.

   2.2.4. **Types of Customer Personal Data.** The types of Customer Personal Data processed under this DPA include any Customer Personal Data uploaded to the Cloud Services by Customer.

   2.2.5. **Categories of Data Subjects.** The data subjects may include Customer's customers, employees, suppliers, and end users, or any other individual whose

personal data Customer uploads to the Cloud Services.

       2.2.6. **Processing Operations.** The objective of the processing of Customer Personal Data by Upstash is the provision of Cloud Services to the Customer in accordance with the Upstash Agreement.

 2.3. **Compliance with Laws.** Each party will comply with all applicable Data Protection Law, including the GDPR, in relation to the processing of Customer Personal Data.

 2.4. **Upstash's Processing.** Upstash will process Customer Personal Data only for the purposes of: (i) provisioning the Cloud Services, (ii) processing initiated by Customer in its use of the Cloud Services, and (iii) processing in accordance with your Upstash Agreement, this DPA, and your other reasonable documented instructions that are consistent with the terms of your Upstash Agreement. Any other processing will require prior written agreement between the parties.

2.5. **Customer Obligations.** Customer acknowledges that it controls the nature and contents of the Customer Personal Data. Customer will ensure that it has obtained all necessary and appropriate consents from and provided notices to data subjects where required by Data Protection Law to enable the lawful transfer of any Customer Personal Data to Upstash for the duration and purposes of this DPA and the Upstash Agreement.

3. Security.

3.1. **Confidentiality of Personnel.** Upstash will ensure that any of our personnel and any subcontractors who have access to Customer Personal Data are under an appropriate obligation of confidentiality.

3.2. **Security Measures.** We will implement appropriate technical and organizational security measures to ensure a level of security appropriate to the risks that are presented by the processing of Customer Personal Data. The current technical and organizational security measures are described at https://upstash.com/static/trust/security-measures.pdf ("**Technical and Organizational Security Measures**").

 3.3. **Optional Security Controls.** Upstash makes available a number of security controls, features, and functionalities that Customer may elect to use, as described in the Technical and Organizational Security Measures and our Documentation. Customer

is responsible for implementing those measures to ensure a level of security appropriate to the Customer Personal Data.

 3.4. **Breach Notification.** We will notify you without undue delay if we become aware of a personal data breach affecting Customer Personal Data.

4. Subprocessors.

4.1. **Authorized Subprocessors.** You acknowledge and agree that we may retain our affiliates and other third parties to further process Customer Personal Data on your behalf as Subprocessors in connection with the provision of the Cloud Services. We maintain a current list of our Sub processors at:
https://upstash.com/static/trust/subprocessors.pdf which we will update at least 30 days before the addition or replacement of any Subprocessor.

4.2. **Subprocessor Obligations.** Upstash will impose on each Subprocessor the same data protection obligations as are imposed on us under this DPA. We will be liable to you for the performance of the Subprocessors' obligations to the extent required by Data Protection Law.

5. Data Subject Requests.

5.1. To assist with your obligations to respond to requests from data subjects, the Cloud Services provide Customer with the ability to retrieve, correct, or delete Customer Personal Data. Customer may use these controls to assist it in connection with its obligations under the GDPR, including its obligations related to any request from a data subject to exercise their rights under Data Protection Law (each, a "**Data Subject Request**").

5.2. If a data subject contacts Upstash with a Data Subject Request that identifies Customer, to the extent legally permitted, we will promptly notify Customer. Solely to the extent that Customer is unable to access Customer Personal Data itself, and Upstash is legally permitted to do so, we will provide commercially reasonable assistance to Customer in responding to the Data Subject Request. To the extent legally permitted,

Customer will be responsible for any costs arising from Upstash's provision of such assistance, including any fees associated with the provision of additional functionality.

6. Requests for Customer Personal Data.

6.1. If we receive a valid and binding legal order ("**Request**") from any governmental body ("**Requesting Party**") for disclosure of Customer Personal Data, we will use commercially reasonable efforts to redirect the Requesting Party to seek that Customer Personal Data directly from Customer.

6.2. If, despite our efforts, we are compelled to disclose Customer Personal Data to a Requesting Party, we will:

(a) if legally permitted, promptly notify Customer of the Request to allow Customer to seek a protective order or other appropriate remedy. If we are prohibited from notifying Customer, we will use commercially reasonable efforts to obtain a waiver of that prohibition;

(b) challenge any over-broad or inappropriate Request (including Requests that conflict with the law of the European Union); and

(c) disclose only the minimum amount of Customer Personal Data necessary to satisfy the Request.

7. Cooperation. Taking into account the nature of the processing and the information available to us, at your request and cost, Upstash will provide reasonable assistance to ensure compliance with the obligations under applicable Data Protection Law with respect to implementing appropriate security measures, personal data breach notifications, impact assessments and consultations with supervisory authorities or regulators, in each case solely related to processing of Customer Personal Data by Upstash.

8. Customer Audit Rights.

8.1. Upon Customer's request, and subject to the confidentiality obligations set forth in your Upstash Agreement, Upstash will make available to Customer (or Customer's independent, third-party auditor) information regarding Upstash's compliance with the

security obligations set forth in this DPA in the form of third-party certifications and audits.

8.2. If that information is not sufficient to demonstrate our compliance with the security obligations in the DPA, you may contact Upstash in accordance with the notice provision of your Upstash Agreement to request an on-site audit of Upstash's procedures relevant to the protection of Customer Personal Data, but only to the extent required under applicable Data Protection Law. Customer will reimburse Upstash for its reasonable costs associated with any such on-site audit. Before the commencement of any such on-site audit, Customer and Upstash will mutually agree upon the scope, timing, and duration of the audit.

8.3. Customer will promptly notify Upstash with information regarding any non-compliance discovered during the course of an audit, and Upstash will use commercially reasonable efforts to address any confirmed non-compliance.

9. Data Transfers.

9.1. **Data Deployment Locations.** Customer's Data will only be hosted in the region(s) that Customer chooses to deploy its database/cluster in its configuration of the Cloud Services (the "**Deployment Region**"). Customer is solely responsible for any transfer of Customer Personal Data caused by Customer's subsequent designation of other Deployment Regions. When required by Data Protection Law, such transfers by Customer will be governed by the transfer mechanisms described in Section 9.3 below.

9.2. **Other Processing Locations.** You may choose to use certain optional features of the Cloud Services that require transfers of Customer Personal Data outside of the EEA, Switzerland or the United Kingdom. When required by Data Protection Law, such transfers will be governed by the provisions of Section 9.3 below.

9.3. **Transfer Mechanism.** Where the transfer of Customer Personal Data is from the EEA, Switzerland or the United Kingdom to a territory which has not been recognized by the European Commission as providing an adequate level of protection for personal data on the basis of Article 45 GDPR (or in the case of transfers from the United Kingdom, by the United Kingdom Government), Upstash agrees to process that

Customer Personal Data in compliance with the provisions set out in Schedule 1 below, which forms an integral part of this DPA.

10. Return or Deletion of Data. Customer may retrieve or delete all Customer Personal Data upon expiration or termination of the Upstash Agreement. Upon termination of your Upstash Agreement or upon your request, Upstash will delete any Customer Personal Data not deleted by Customer, unless we are legally required to store the Customer Personal Data.

11. CCPA Obligations. Upstash is a "service provider" as defined in the CCPA. You have provided notice to your end users that you share Customer Personal Data with your service providers. We will not retain, use, or disclose Customer Personal Data for any purpose other than providing the Cloud Services, and will not sell Customer Personal Data (as the term "sell" is described in the CCPA).
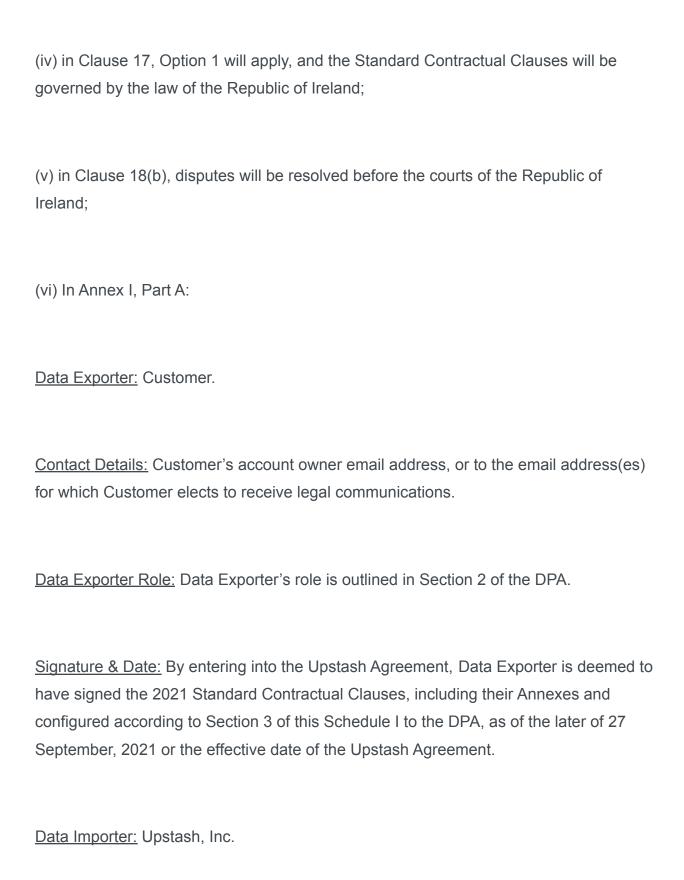
SCHEDULE 1

CROSS BORDER DATA TRANSFERS

1. Definitions

a. **"Standard Contractual Clauses"** means, as the circumstances may require, either:

(i) UK Standard Contractual Clauses; or

(ii) 2021 Standard Contractual Clauses.

b. **"UK Standard Contractual Clauses"** means the Standard Contractual Clauses for data controller to data processor transfers approved by the European Commission in decision 2010/87/EU.

c. **"2021 Standard Contractual Clauses"** means the Standard Contractual Clauses approved by the European Commission in decision 2021/914.

2. UK Standard Contractual Clauses. For transfers of Customer Personal Data out of the United Kingdom that are subject to Section 9.3 of this DPA, the UK Standard

Contractual Clauses will apply and are incorporated into the DPA by reference, provided that the illustrative indemnification clause within Appendix 2 of the UK Standard Contractual Clauses will not apply. Section 2 of the DPA will serve as Appendix 1 of the UK Standard Contractual Clauses. Section 3 of the DPA will serve as Appendix 2 of the UK Standard Contractual Clauses.

3. The 2021 Standard Contractual Clauses. For transfers of Customer Personal Data out of the EEA or Switzerland that are subject to Section 9.3 of the DPA, the 2021 Standard Contractual Clauses are incorporated into the DPA by reference, and will apply in the following manner:

a. Module Two (Controller to Processor) will apply where Customer is a controller of Customer Personal Data and Upstash is a processor of Customer Personal Data.

b. Module Three (Processor to Processor) will apply where Customer is a processor of Customer Personal Data and Upstash is a subprocessor of Customer Personal Data.

c. For each Module:

(i) Clause 7 will not apply;

(ii) in Clause 9(a), Option 2 will apply, and the time period for prior notice of Subprocessor changes will be as set forth in Section 4.1 of the DPA;

(iii) in Clause 11(a), the optional language will not apply;

(iv) in Clause 17, Option 1 will apply, and the Standard Contractual Clauses will be governed by the law of the Republic of Ireland;

(v) in Clause 18(b), disputes will be resolved before the courts of the Republic of Ireland;

(vi) In Annex I, Part A:

Data Exporter: Customer.

Contact Details: Customer's account owner email address, or to the email address(es) for which Customer elects to receive legal communications.

Data Exporter Role: Data Exporter's role is outlined in Section 2 of the DPA.

Signature & Date: By entering into the Upstash Agreement, Data Exporter is deemed to have signed the 2021 Standard Contractual Clauses, including their Annexes and configured according to Section 3 of this Schedule I to the DPA, as of the later of 27 September, 2021 or the effective date of the Upstash Agreement.

Data Importer: Upstash, Inc.

Contact Details: Upstash's DPO at privacy@Upstash.com

Data Importer Role: Data Importer's role is outlined in Section 2 of the DPA.

Signature & Date: By entering into the Upstash Agreement, Data Importer is deemed to have signed the 2021 Standard Contractual Clauses, including their Annexes and configured according to Section 3 of this Schedule 1 to the DPA, as of the later of 27 September, 2021 or the effective date of the Upstash Agreement;

(vii) In Annex I, Part B:

- The categories of data subjects are described in Section 2.2.5 of the DPA.
- The forms of Customer Personal Data transferred are described in Section 2.2.4 of the DPA.
- The frequency of the transfer is on a continuous basis for the duration of the Upstash Agreement.
- The nature of the processing is described in Section 2.2.3 of the DPA.
- The purpose of the processing is described in Section 2.2.3 of the DPA.
- The period of retention of Customer Personal Data in relation to the processing will end upon termination of the Upstash Agreement.
- For transfers to Subprocessors, the subject matter and nature of the processing is described at https://upstash.com/static/trust/subprocessors.pdf. The duration of processing by Subprocessors is the same as by Data Importer;

(viii) In Annex I, Part C: The competent supervisory authority/ies shall be determined in accordance with GDPR and Clause 13 of the 2021 Standard Contractual Clauses; and

(ix) Section 3 of the DPA serves as Annex II.

4. Additional Clauses. Each of the following forms part of the Standard Contractual Clauses and sets out the parties' understanding of their respective obligations under the Standard Contractual Clauses:

Clause 8.9 of the 2021 Standard Contractual Clauses and Clause 5(f) of the UK Standard Contractual Clauses: Audit. Data Exporter acknowledges and agrees that it exercises its audit right(s) under Clause 8.9 or Clause 5(f), as applicable, by instructing Data Importer to comply with the audit measures described in Section 8 (Customer Audit Rights) of the DPA.

Clause 9(c) of the 2021 Standard Contractual Clauses and Clause 5(j) of the UK Standard Contractual Clauses: Disclosure of Subprocessor agreements. The parties acknowledge that, pursuant to subprocessor confidentiality restrictions, Data Importer may be restricted from disclosing onward subprocessor agreements to Data Exporter. Even where Data Importer cannot disclose a subprocessor agreement to Data Exporter, the parties agree that, upon the request of Data Exporter, Data Importer shall (on a confidential basis) provide all information it reasonably can in connection with such subprocessing agreement to Data Exporter.

Clause 12 of the 2021 Standard Contractual Clauses and Clause 6 of the UK Standard Contractual Clauses: Liability. To the greatest extent permitted under Data Protection Law, any claims brought under the Standard Contractual Clauses will be subject to any aggregate limitations on liability set out in the Upstash Agreement.

Clause 11 of the UK Standard Contractual Clauses: Onward subprocessing. The parties acknowledge that Article 28 of the United Kingdom GDPR allows for the general written authorisation of a subprocessor subject to notice of and the opportunity to object to the subprocessor. Accordingly, Data Exporter provides a general consent to Data Importer, pursuant to Clause 11 of the UK Standard Contractual Clauses, to engage onward subprocessors. That consent is conditional on Data Importer's compliance with the requirements set out in Section 4 (Subprocessors) of the DPA.