

DATA PROCESSING AGREEMENT

(HEREAFTER REFERRED TO AS 'DPA')

This Data Processing Agreement ("DPA"), forms an integral part of the Agreement by and between **CLOUDWAYS LIMITED** (hereinafter referred to as "**Data Processor**") and the undersigned **Customer** of Cloudways (hereinafter referred to as "**Data Controller**") and shall be effective on the later date set down below ("**Effective Date**").

The Data Controller and the Data Processor are hereinafter jointly referred to as the "**Parties**" and individually as the "**Party**".

The terms, "**Controller**", "**Processor**", "**Processing**", "**Data Subject**", "**Personal Data**", "**Personal Data Breach**", and "**Supervisory Authority**" shall (where applicable) have the same meaning as in the **MDPA** (as defined hereunder) and, as of 25th May 2018, the **GDPR** (as defined hereunder).

'**SERVICES AGREEMENT**' – shall mean the services agreement entered into between the Data Controller and the Data Processor dated ("Effective Date");

WHEREAS:

- A. The Data Processor performs services on behalf of the Data Controller ("**Services**") in accordance with the Services Agreement;
- B. In providing the Services, the Data Processor collects, uses or otherwise processes personal data within the meaning of the Data Protection Laws (as defined hereunder) for which the Data Controller is responsible as provided under the said Data Protection Laws;
- C. This DPA regulates the data protection obligations of the Parties when processing the Data Controller's Personal Data under the Services Agreement and will ensure that such Processing will only take place on behalf of and under the instructions of the Controller and in accordance with the Data Protection Laws, including but not limited to Article 28 of the GDPR.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Subject-Matter, Duration of processing, and nature and purpose of Processing:

- 1.1. The **subject-matter, duration, nature and purpose** of the processing covered by this DPA are described in the Services Agreement.
- 1.2. The **type of personal data** to be processed under this DPA shall include: Identification data, personal data, connection data, financial data, or localization data (including IP addresses). Controller, their visitors and/or other partners may also upload personal data and special categories of data, the extent of which is determined and controlled by the sole discretion of the Controller. These special categories include, but not limited to, information revealing racial or ethnic origins, political opinions, religious or philosophical beliefs, trade-union membership, and the processing of data concerning an individual's health or sex life.
- 1.3. The **rights and obligations of the Data Controller** are stipulated in the Services Agreement and/or this DPA.

2. Mutual Data Protection obligations:

- 2.1. In addition to anything else agreed between them, the Parties, in whatever role they may occupy and with respect to any processing of personal data they may be involved in together, undertake to comply with the provisions of the **Maltese Data Protection Act** (Chapter 586 of the Laws of Malta) – the ‘**MDPA**’ – and any other relevant legislation which is applicable during the term of the Services Agreement and/or this DPA (whichever is longer), in so far as the same relates to the provisions and obligations of the Services Agreement and/or this DPA including, as of 25 May 2018, the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC - the ‘**GDPR**’, that will replace the said Directive and replace or amend the MDPA (all the above referred to as the ‘**Data Protection Laws**’).
- 2.2. Each Party shall not perform any of its obligations under this DPA and/or the Services Agreement in such a way as to cause either Party to breach any of its obligations arising under the Data Protection Laws or otherwise act or fail to act in such a manner that leads to such breach.

3. PROCESSOR’S OBLIGATIONS:

- 3.1. In view of its obligations under the Data Protection Laws, the Data Processor shall:
- 3.1.1. Act only upon the strict instructions of the Data Controller and not process any personal data that may be transferred to it by the Data Controller except as may be necessary for the performance of any service or task provided by the Data Processor to/for the Data Controller and, in particular, to process the said personal data only on documented instructions from the Data Controller, including with regard to transfers of personal data to a third country or an international organisation, unless required to do so by EU or Maltese law. In such a case, the Data Processor shall inform the Data Controller of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest;
- 3.1.2. Ensure that persons authorised to process the personal data (including but not limited to the Data Processor’s employees) have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
- 3.1.3. Implement appropriate technical and organisational measures to protect any personal data that may be processed on behalf of the Data Controller (if any) against accidental destruction or loss or unlawful forms of processing thereby providing the best possible level of security appropriate to the particular risks in question and take any other such measures as required by the Data Processor’s direct obligations as a data processor in terms of Article 32 of the GDPR;
- 3.1.4. Not engage another data processor without prior specific or general written authorisation of the Data Controller. In the case of general written authorisation, the Data Processor shall inform the Data Controller of any intended changes

concerning the addition or replacement of other processors, thereby giving the Data Controller the opportunity to object to such changes. Where the Data Processor engages another processor for carrying out specific processing activities on behalf of the Data Controller (as authorised by the Data Controller), the same data protection obligations as set out in this DPA shall be imposed on that other processor or sub-processor by way of a contract or other legal act under EU or Maltese law, in particular providing sufficient guarantees to implement appropriate technical and organisational measures in such a manner that the processing will meet the requirements of the GDPR. Where that other processor or sub-processor fails to fulfil its data protection obligations, the Data Processor shall remain fully liable to the Data Controller for the performance of that other processor or sub-processor's obligations. A list of sub-processors currently employed by Data Processor can be found in "Annex A";

- 3.1.5. Assist the Data Controller by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Data Controller's obligation to respond to requests for exercising the data subject's rights laid down in Chapter III of the GDPR, taking into account the nature of the processing;
- 3.1.6. Assist the Data Controller in ensuring compliance with the obligations pursuant to Articles 32 to 36 of the GDPR (security obligations, notification of personal data breach to the supervisory authority obligation, communication of a personal data breach to the data subject obligation, data protection impact assessment obligation and prior consultation with the supervisory authority obligation) taking into account the nature of processing and the information available to the Data Processor;
- 3.1.7. In any case, notify the Data Controller without undue delay after becoming aware of a personal data breach;
- 3.1.8. At the choice of the Data Controller, delete or return all the personal data to the Data Controller after the end of the provision of services relating to processing, and delete existing copies unless EU or Maltese law requires storage of the personal data;
- 3.1.9. Make available to the Data Controller all information necessary to demonstrate compliance with the obligations laid down in this Clause 2 and in the applicable data protection law(s) and allow for and contribute to audits, including inspections, conducted by the Data Controller or another auditor mandated by the Data Controller. In this regard, the Data Processor shall immediately inform the Data Controller if, in its opinion, an instruction in connection with point (h) of the first subparagraph of Article 28 of the GDPR infringes the GDPR or other EU or Maltese data protection provisions;
- 3.1.10. Take all such measures necessary to ensure that processing will meet the requirements of the GDPR and ensure the protection of the rights of data subjects.

4. CONTROLLER'S OBLIGATIONS:

- 4.1. In view of its obligations under the Data Protection Laws, the Data Controller shall:
- 4.1.1. Be responsible for fulfilling the obligations pertaining solely to the Data Controller in particular in order to ensure compliance with the Data Protection Laws (including but not limited to obtaining any consent(s) that may be required from any relevant data subjects within the scope of the Services Agreement and/or this DPA for the disclosure of personal data to the Data Processor under the terms of the Services Agreement and/or this DPA);
 - 4.1.2. Provide all required instructions to the Data Processor in a timely, sufficiently clear and detailed manner in either written or electronic form;
 - 4.1.3. Confirm in writing any verbal instructions given to the Data Processor as soon as is reasonably possible after such instructions are originally given;
 - 4.1.4. Notify the Data Processor in a timely manner and in writing of any individuals who are authorised by the Data Controller to issue instructions to the Data Processor;
 - 4.1.5. Take all such measures as are necessary to ensure that the Data Processor is in the best possible position to assist the Data Controller in the latter's obligations under the MDPA and the GDPR and to comply with the Data Processor's own obligations at law.

5. LIABILITY AND indemnity:

- 5.1. The Data Controller shall be liable for damages to concerned data subjects which are caused by processing of personal data which is not compliant with the Data Protection Laws and which are not caused by the Data Processor's acts or omissions.
- 5.2. Notwithstanding anything else agreed between the Parties, each Party (the First Party) shall indemnify the other Party (the Second Party) and hold such Second Party harmless from and against all claims, damages, losses, fines or other expenses whatsoever arising from any breach or default in the performance of any data protection obligation(s) on the First Party's part to be performed under the terms of the Services Agreement and this DPA and from and against all reasonable costs, advocates' fees, expenses and liabilities incurred in the defence of any claim or any action or proceeding brought thereon.

6. DURATION:

- 6.1. The rights, benefits and obligations of this DPA shall commence on the date of signature by both Parties of this DPA and shall terminate with the termination of the services under the Services Agreement.

7. Jurisdiction and Governing Law:

- 7.1. This DPA shall be governed by and construed in accordance with the Laws of the Republic of Malta and shall be subject to the jurisdiction of the Maltese courts.

8. DPA supersedes other agreements:

8.1. In so far as the Parties' data protection obligations in terms of the Services Agreement and of the Data Protection Laws are concerned, this DPA shall take precedence over any and/or all other agreements between the Parties.

Annex A - List of Cloudways sub-processors

Available upon request

Controller: _____

Signature _____

Name _____

Title _____

Date _____

Processor: Cloudways Limited

Signature _____ 

Name _____ **Aaqib Gadit**

Title _____ **Director & Co-Founder**

Date _____ **May 25th 2018**