DATA PROCESSING ADDENDUM

DATA PROCESSIN ed into by and betwee	IG ADDENDUM is dated April 26th, 2018 ("Effective Date") and is en:
at	, a corporation, with its principal place of business ("Customer"); and
	., a Delaware corporation, with its principal place of business at 3477 ½ rancisco, California 94110 (" MemCachier "),
each a " Party " and	d together, the "Parties".
KGROUND:	
The Parties entere	ed into an agreement on (the "Services Agreement") MemCachier agrees to provide the MemCachier Services to Customer.
	s intended to ensure that Customer Personal Data is Processed by cordance with Data Protection Laws.
PARTIES AGREE TH	IAT:
DEFINITIONS AN	D INTERPRETATION
	n (including the recitals above), the following terms shall have the in this clause 1.1, unless expressly stated otherwise:
" <u>Addendum</u> "	means this data processing addendum;
" <u>Anonymised</u> <u>Usage Data"</u>	means statistics concerning the use of the Services by Data Subjects which has been anonymised and/or aggregated such that the Data Subject is not or is no longer identifiable;
" <u>Customer</u> <u>Personal Data</u> "	means any Personal Data Processed by MemCachier on behalf of Customer pursuant to or in connection with the Services Agreement;
" <u>Data Protection</u> <u>Laws</u> "	means, until 24 May 2018, EU Directive 95/46/EC, as transposed into domestic legislation of each Member State and, with effect from 25 May 2018, the GDPR;
" <u>Data Subject</u> <u>Request</u> "	means the exercise of rights by Data Subjects of Customer Personal Data under Chapter III of the GDPR;
"GDPR"	means the EU General Data Protection Regulation 2016/679 and

to the extent the GDPR is no longer applicable in the United Kingdom, any implementing legislation or legislation having equivalent effect in the United Kingdom;

"<u>MemCachier</u> <u>Services</u>" means those services and activities to be supplied to or carried out by or on behalf of MemCachier for Customer pursuant to the Services Agreement;

"Transfer"

means the transfer of Customer Personal Data outside the EU/EEA;

"Security Documentation"

means all documents and information made available by MemCachier under clause 10.2;

"<u>Standard</u> <u>Contractual</u> <u>Clauses</u>" means the standard contractual clauses issued by the European Commission for the transfer of Personal Data from Data Controllers established in the EU/EEA to Data Processors established outside the EU/EEA;

"Subprocessor"

means any third party appointed by or on behalf of MemCachier to Process Customer Personal Data; and

1.2 In this Addendum:

- (a) the terms, "<u>Data Controller</u>", "<u>Data Processor</u>", "<u>Data Subject</u>", "<u>Member State</u>", "<u>Personal Data</u>", "<u>Personal Data Breach</u>", "<u>Process/Processing</u>" and "<u>Supervisory Authority</u>" shall have the meaning ascribed to such terms in the Data Protection Laws.
- (b) unless otherwise defined herein, all capitalised terms shall have the meaning given to them in the Services Agreement;
- (c) the singular includes the plural and vice versa, unless the context otherwise requires;
- (d) references to this Addendum include its Schedules;
- (e) references to clauses and/or Schedules are to clauses of, and Schedules to, this Addendum;
- (f) the words "including" and "include" shall be construed only as illustration or emphasis and shall not be construed or take effect as limiting the generality of any earlier words;
- (g) references to "laws" shall mean (a) any statute, regulation, by-law, or subordinate legislation; (b) the common law and the law of equity; (c) any binding court order, judgment or decree; or (d) any industry code, policy or standard enforceable by law; and

1.3 This Addendum shall be incorporated into and form part of the Services Agreement. In the event of any conflict or inconsistency between this Addendum and the main body of the Services Agreement, this Addendum shall prevail.

2. PROCESSING OF COMPANY PERSONAL DATA

- **2.1** MemCachier shall:
 - (a) comply with Data Protection Laws as applicable to MemCachier in Processing Customer Personal Data; and
 - (b) not Process Customer Personal Data other than (i) on Customer's instructions (subject always to clause 2.6) and (ii) as required by applicable laws.
- **2.2** To the extent permitted by applicable laws, MemCachier shall inform Customer of:
 - (a) any Processing to be carried out under clause 2.1(b)(ii); and
 - (b) the relevant legal requirements that require it to carry out such Processing,

before the relevant Processing unless the relevant law prohibits MemCachier from doing so on important grounds of public interest.

- 2.3 Customer instructs MemCachier to Process Customer Personal Data as necessary (i) to provide the MemCachier Services to Customer (including, without limitation, to improve and update the MemCachier Services and to carry out Processing initiated by Customer's users in their use of the MemCachier Services) and (ii) to perform MemCachier's obligations and exercise MemCachier's rights under the Services Agreement.
- 2.4 Schedule 1 to this Addendum sets out certain information regarding MemCachier's Processing of Customer Personal Data as required by Article 28(3) of the GDPR.
- 2.5 If Customer reasonably determines that it is necessary to modify Schedule 1 in order meet any applicable requirements of Data Protection Laws, Customer shall provide a written request to MemCachier specifying such amendment and the legal necessity for it; provided, however, that no amendment shall be made under this clause without MemCachier's prior written consent, which shall not be unreasonably withheld. Nothing in Schedule 1 (including as amended pursuant to this clause 2.5) confers any right or imposes any obligation on any Party to this Addendum.
- Customer acknowledges and agrees that any instructions issued by Customer with regards to the Processing by MemCachier of Customer Personal Data pursuant to or in connection with the Services Agreement shall (i) be strictly required for the sole purpose of ensuring compliance with Data Protection Laws, and (ii) not relate to the scope of the MemCachier Services or otherwise materially change the services to be provided by MemCachier under the Services Agreement. Notwithstanding anything to the contrary herein, MemCachier may terminate the Services Agreement in its entirety upon written notice to Customer with immediate effect if MemCachier considers (in its absolute discretion) that (a) it is unable to adhere to, perform or implement any instructions issued by Customer due to the technical limitations of its systems, equipment and/or facilities, and/or (b) to adhere to, perform or implement any such instructions would require disproportionate effort (whether in terms of time, cost, available technology, manpower or otherwise).

- 2.7 Customer represents and warrants on an ongoing basis that, for the purposes of Article 6 of the GDPR, there is, and will be throughout the term of the Services Agreement, a legal basis for the processing by MemCachier of Customer Personal Data in accordance with this Addendum and the Services Agreement (including, without limitation, any and all instructions issued by Customer from time to time in respect of such Processing).
- 2.8 Customer acknowledges that MemCachier may create and derive Anonymised Usage Data from processing related to the MemCachier Services, and use, publicise or share such Anonymized Usage Data with third parties to improve MemCachier's services and for its other legitimate business purposes.

3. MEMCACHIER PERSONNEL

MemCachier will grant access to Customer Personal Data only to employees, contractors and Subprocessors who need such access for the scope of their performance, and have committed themselves to confidentiality or are under an appropriate professional or statutory obligation of confidentiality.

4. SECURITY

- 4.1 MemCachier will implement and maintain technical and organizational measures designed to protect Customer Personal Data against accidental or unlawful destruction, loss, alteration, unauthorised disclosure or access as described in Schedule 2 Security Measures. MemCachier may update or modify the Security Measures from time to time provided that such updates and modifications do not result in the degradation of the overall security of the MemCachier Services.
- 1.1 Customer agrees that MemCachier will (taking into account the nature of the processing of Customer Personal Data and the information available to MemCachier) provide Customer with reasonable assistance necessary for Customer to comply with its obligations in respect of Customer Personal Data under the GPDR, including Articles 32 to 34 (inclusive) of the GDPR, by:
 - (a) implementing and maintaining the Security Measures in accordance with clause 4.1:
 - (b) complying with the terms of clause 7; and
 - (c) providing Customer with the Security Documentation in accordance with clause 10.2 and the Services Agreement including this Addendum.

5. SUBPROCESSING

- 5.1 Customer generally authorizes MemCachier's engagement of any other third parties as Subprocessors ("Third Party Subprocessors"). If Customer has entered into Standard Contract Clauses, the above authorizations will constitute Customer's prior written consent to the subcontracting by MemCachier of the processing of Customer Personal Data if such consent is required under the Standard Contract Clauses.
- 5.2 Information about Subprocessors, including their functions and locations, is set forth in Schedule 3 Authorized Subprocessors (as may be updated by MemCachier from time to time in accordance with this Addendum).

- **5.3** When engaging any Subprocessor, MemCachier will:
 - (a) ensure via a written contract that:
 - (i) the Subprocessor only accesses and uses Customer Personal Data to the extent required to perform the obligations subcontracted to it, and does so in accordance with the Services Agreement (including this Addendum) and any Standard Contract Clauses entered into or another solution that enables the lawful transfer of personal data to a third country in accordance with Article 45 or 46 of the GDPR (for example, the EU-U.S. Privacy Shield).
 - (ii) the data protection obligations set out in Article 28(3) of the GDPR are imposed on the Subprocessor in a similar manner as described in this Addendum; and
 - (b) remain fully liable for all obligations subcontracted to, and all acts and omissions of, the Subprocessor with respect to the provision of MemCachier Services.
- 5.4 When any new Third Party Subprocessor is engaged during the term of the Services Agreement, MemCachier will, at least thirty (30) days before the new Third Party Subprocessor processes any Customer Personal Data, notify Customer of the engagement (including the name and location of the relevant subprocessor and the activities it will perform).
- 5.5 Customer may object to any new Third Party Subprocessor by terminating the Services Agreement immediately upon written notice to MemCachier, on condition that Customer provides such notice within sixty (60) days of being informed of the engagement of the Third Party Subprocessor as described in clause 5.4. This termination right is Customer's sole and exclusive remedy if Customer objects to any new Third Party Subprocessor.

6. DATA SUBJECT RIGHTS

6.1 During the term of the Services Agreement, if MemCachier receives any request from a data subject in relation to Customer Personal Data, MemCachier will advise the data subject to submit their request to Customer and Customer will be responsible for responding to any such request. Taking into account the nature of the Processing, MemCachier shall, at Customer's cost, provide Customer with such assistance as may be reasonably necessary and technically possible in the circumstances, to assist Customer in fulfilling its obligation to respond to Data Subject Requests.

6.2 MemCachier shall:

- (a) notify Customer if MemCachier receives a Data Subject Reguest; and
- (b) not respond to any Data Subject Request except on the documented instructions of Customer (and in such circumstances, at Customer's cost) or as required by applicable laws, in which case MemCachier shall to the extent permitted by applicable laws inform Customer of that legal requirement before MemCachier responds to the Data Subject Request.

7. PERSONAL DATA BREACH

- 7.1 If MemCachier becomes aware of a Personal Data Breach, MemCachier will: (a) notify Customer of the Personal Data Breach promptly and without undue delay after becoming aware of the Personal Data Breach; and (b) promptly take reasonable steps to minimise harm and secure Customer Personal Data.
- 7.2 Notifications made pursuant to this clause will describe, to the extent possible and known, details of the Personal Data Breach, including steps taken to mitigate the potential risks and steps MemCachier recommends Customer take to address the Personal Data Breach.
- **7.3** Customer is solely responsible for complying with incident notification laws applicable to Customer and fulfilling any third party notification obligations related to any Personal Data Breach(s).
- 7.4 MemCachier's notification of or response to a Personal Data Breach under this clause 7 will not be construed as an acknowledgement by MemCachier of any fault or liability with respect to the Personal Data Breach

8. DATA PROTECTION IMPACT ASSESSMENT AND PRIOR CONSULTATION

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

9. DELETION OR RETURN OF COMPANY PERSONAL DATA

- 9.1 Upon the expiration or termination of the Services Agreement (the "Term End Date") subject to clause 9.2, Customer may in its absolute discretion by written notice to MemCachier within thirty (30) days of the Term End Date require MemCachier to (a) return a complete copy of all Customer Personal Data to Customer by secure file transfer in such format as is reasonably notified by Customer to MemCachier; and/or (b) delete and all copies of Customer Personal Data Processed by MemCachier. MemCachier shall comply with any such written request as soon as reasonably practicable and in all events within ninety (90) days of the date Customer's written notice is received by MemCachier.
- **9.2** MemCachier may retain Customer Personal Data after the Term End Date to the extent required by applicable laws.

10. AUDIT RIGHTS

- 10.1 MemCachier will allow an independent auditor appointed by Customer to conduct audits (including inspections) to verify MemCachier's compliance with its obligations under this Addendum in accordance with clause 10. Provided, however, MemCachier may object in writing to an auditor appointed by Customer to conduct any audit if the auditor is, in MemCachier's reasonable opinion, not suitably qualified or independent, a competitor of MemCachier, or otherwise manifestly unsuitable. Any such objection by MemCachier will require Customer to appoint another auditor.
- **10.2** Prior to the commencement of any audit or inspection, MemCachier and Customer will discuss and agree in advance on: (i) the security and confidentiality controls applicable to

any inspection or audit; and (ii) the reasonable start date, scope and duration of and security and confidentiality controls applicable to any audit.

- 10.3 Customer shall give MemCachier reasonable notice of any audit or inspection to be conducted under clause 10.1 (which shall in no event be less than thirty (30) days' notice unless required by a Supervisory Authority pursuant to clause 10.3(f)(ii)) and shall use its best efforts (and ensure that each of its mandated auditors uses its best efforts) to avoid causing, and hereby indemnifies MemCachier in respect of, any damage, injury or disruption to MemCachier's premises, equipment, personnel, data, and business (including any interference with the confidentiality or security of the data of MemCachier's other customers or the availability of the MemCachier Services to such other customers) while its personnel are on those premises in the course of such an audit or inspection. Provided, however, that MemCachier need not give access to its premises, equipment, personnel, data, business, Security Documentation or systems for the purposes of such an audit or inspection:
 - (a) to any individual unless he or she produces reasonable evidence of identity and authority;
 - (b) to any auditor whom MemCachier has not given its prior written approval;
 - (c) unless the auditor enters into a non-disclosure agreement with MemCachier on terms acceptable to MemCachier;
 - (d) where, and to the extent that, MemCachier considers, acting reasonably, that to do so would result in interference with the confidentiality or security of the data of MemCachier's other customers or the availability of the MemCachier Services to such other customers;
 - (e) outside normal business hours at those premises; or
 - (f) on more than one (1) occasion in each period of twelve (12) months during the term of the Services Agreement (or where the term of the Services Agreement is less than (12) months, on more than one (1) occasion during such shorter term), except for any additional audits or inspections which:
 - (i) Customer reasonably considers necessary because of a Personal Data Breach; or
 - (ii) Customer is required to carry out by Data Protection Law or a Supervisory Authority,

where Customer has identified the Personal Data Breach or the legal relevant requirement in its notice to MemCachier of the audit or inspection.

10.4 The Parties shall discuss and agree the costs of any inspection or audit to be carried out by or on behalf of Customer pursuant to this clause 10 in advance of such inspection or audit and, unless otherwise agreed in writing between the Parties, Customer shall bear any third party costs in connection with such inspection or audit and reimburse MemCachier for all costs incurred by MemCachier and time spent by MemCachier (at MemCachier's then-current professional services rates) in connection with any such inspection or audit.

10.5 Nothing in this clause 10 varies or modifies any rights or obligations of Customer or MemCachier under any Standard Contract Clauses entered into by the parties.

11. TRANSFERS

- **11.1** MemCachier may store and process Customer Personal Data anywhere MemCachier or its Subprocessors maintains facilities. MemCachier will provide information about the location of its data centers used to process Customer Personal Information upon request.
- To the extent applicable, in order to allow Transfers under this Addendum to take place under applicable Data Protection Laws, Customer agrees that:
 - (a) on or before the Effective Date, the Standard Contractual Clauses shall be entered into by and between Customer as the "data exporter" and MemCachier as the "data importer" and will apply to all Processing of Customer Personal Data by MemCachier under this Addendum; and
 - (b) in respect of any Transfer from MemCachier to a Subprocessor, Customer agrees that the Standard Contractual Clauses shall be entered into by and between MemCachier as agent for Customer as the "data exporter" and the Subprocessor as the "data importer".

12. PROCESSING RECORDS

Customer acknowledges that MemCachier may be required under the GDPR to: (a) collect and maintain records of certain information, including the name and contact details of each processor and/or controller on behalf of which MemCachier is acting and, where applicable, of such processor's or controller's local representative and data protection officer; and (b) make such information available to the supervisory authorities. Accordingly, Customer will, where requested, provide such information to MemCachier, and will ensure that all information provided is kept accurate and up-to-date.

13. LIABILITY

- 13.1 If Standard Contract Clauses have been entered into, the total combined liability of either party towards the other party under or in connection with the Services Agreement and such Standard Contract Clauses combined will be limited to limitations on liability or other liability caps agreed to by the parties in the Services Agreement, subject to clause 13.2.
- 13.2 Nothing in clause 13.1 will affect any party's liability to data subjects under the third party beneficiary provisions of the Standard Contract Clauses to the extent limitation of such rights is prohibited by the GDPR or other laws.

SIGNATURE PAGE TO DATA PROCESSING ADDENDUM

This Addendum has been entered into and become a binding and effective part of the Services Agreement with effect from Effective Date.

Signed by	
for and on behalf of on	Title:
Signed by Amit A Levy	Smil A Lan
for and on behalf of MemCachier, Inc. on April 26 th , 2018	Title: CEO

Schedule 1 - DETAILS OF PROCESSING OF COMPANY PERSONAL DATA

This Schedule 1 includes certain details of the Processing of Customer Personal Data as required by Article 28(3) GDPR.

Subject matter of the Processing of Customer Personal Data

MemCachier's provision of the MemCachier Services to Customer.

Nature and Purpose of the Processing

MemCachier will process Customer Personal Data for the purposes of providing the MemCachier Services to Customer in accordance with the Addendum.

Duration of the Processing

From the Effective Date of the Services Agreement until deletion of all Customer Personal Data by MemCachier in accordance with the Addendum.

The Categories of Customer Personal Data to be Processed

Data relating to individuals provided to MemCachier in connection with the MemCachier Services, by (or at the direction of) Customer.

The Categories of Data Subject to Whom the Customer Personal Data Relates

Data subjects include the individuals about whom MemCachier Processes data in connection with the MemCachier Services.

The Obligations and Rights of Customer

The obligations and rights of Customer are set out in the Services Agreement and this Addendum.

SCHEDULE 2 - SECURITY MEASURES

As from the Addendum Effective Date, MemCachier will implement and maintain the Security Measures set out in this Schedule 2. MemCachier reserves the right to revise the security measures set out in this Schedule 2 at any time, without notice, so long as such revisions do not materially reduce the protection provided for Personal Data that MemCachier processes in the course of providing the Services.

- 1) Organizational management and staff responsible for the development, implementation and maintenance of MemCachier's information security controls. Executive leadership is involved in reviewing and approving all security policies.
- 2) Audit and risk assessment procedures for the purposes of periodic review and assessment of security risks to MemCachier's organization, monitoring compliance with MemCachier's policies and procedures, and reporting the condition of its information security and compliance to internal senior management.
- 3) Data security controls that include logical segregation of data, restricted (e.g. role-based) access and monitoring, and utilization of commercially available and industry standard encryption technologies for Personal Data.
- a) Encryption in Transit: Customer content is encrypted in transit using Transport Layer Security. TLS is active on all accounts by default and cannot be disabled by end users.
- b) Encryption at Rest: Confidential customer data is encrypted at rest with Advance Encryption Standard (AES). Backups are encrypted at rest.
- 4) Logical access controls designed to manage electronic access to data and system functionality based on authority levels and job functions. Access accounts are provisioned for engineers on their hire date and deprovisioned on their closing date by a member of the senior engineering staff.
- 5) User IDs and password configuration requirements have been established that are designed to prevent unauthorized access to production systems. MemCachier has defined the following password requirements: (i) password length must have a minimum of 10 characters; (ii) password must contain both upper and lowercase characters; (iii) password must contain a number (0-9) and/or a special character; (iv) Password must be different from user's previous 10 passwords; and (v) password must be changed annually.
- 6) With respect to physical and environmental security, MemCachier's production resources, including data caching on behalf of MemCachier customers, are hosted by Amazon Web Services in a location selected by each customer. Physical and environmental security is handled entirely by Amazon and its vendors. Amazon has made available a list of compliance and regulatory security assurances, including representations of SOC 1-3 and ISO27001 compliance.

- 7) Operational procedures and controls to provide for application deployment and change management, capacity management, and separation of development, testing and production.
- 8) Incidents are handled in accordance with MemCachier's Incident Response Plan following the lifecycle of an incident: Discovery, Acknowledgement, Verification, Scope, Resolution and finally Response. The Privacy Officer(s) and Director of Engineering are responsible for managing the response process in accordance with the IRP, completing an afteraction review and coordinating any outbound communication that may be necessary following an incident.
- 9) Network security controls designed and implemented so that internet connections are required to use transport encryption. Default deny has been established for each application/service group/layer. Service to service connections must be explicitly allowed.
- 10) Vulnerability assessment and threat protection technologies and scheduled monitoring procedures designed to identify, assess, mitigate and protect against identified security threats, viruses and other malicious code.
- 11) Business resiliency/continuity and disaster recovery procedures designed to maintain service and/or recovery from foreseeable emergency situations or disasters.

SCHEDULE 3 – AUTHORIZED SUBPROCESSORS

Name	Function	Location
Amazon Web Services	Data storage and processing	AWS servers located globally;
		location selected by customer