



DATA PROCESSING AGREEMENT

(Version 1.2 - October 02, 2018)

This Data Processing Agreement (“DPA”) forms part of the Terms of Service between You and the Sqreen entity that is your counterparty to the Terms of Service (the “ToS”) to reflect the parties’ agreement with regard to the Processing of your Personal Data in accordance with the requirements of Data Protection Laws. All capitalized terms not defined herein shall have the meaning set forth in the ToS.

This DPA has been pre-signed by Sqreen. To complete this DPA, you must complete the information in the signature boxes of the main body of the DPA and the exhibits, and sign there. Then, you must send the completed and signed agreement to legal@sqreen.io. This DPA will then become legally binding.

1. Definitions

“**Data Protection Laws**” means the legislation relating to data protection and privacy applicable between Customer and Sqreen, including, if Customer is established in EU or processes personal data of EU data subjects, the General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (“**GDPR**”), together with any national implementing laws in any Member State of the European Union, as amended from time to time.

“**Data Subject**” means the individual to whom Personal Data relates.

“**Instructions**” mean the instructions issued by Customer to Sqreen, and directing the same to perform a specific action which may involve the Processing of Personal Data (including, but not limited to the instructions given by Customer to Sqreen when Customer enables plugins or as specified via Customer’s use of the Services (including the Services’ user interface dashboard and other functionality of the Services)).

“**Personal Data Breach**” means any unlawful access to any Customer Personal Data stored or processed by Sqreen or any unauthorized access to Sqreen’s equipment or facilities resulting in loss, disclosure, or alteration of Customer Personal Data.

“**Sub-processor**” means any Processor engaged by Sqreen.

The terms “**Personal Data**”, “**Data Subject**”, “**Processing**”, “**Controller**” and “**Processor**” as used in this DPA have the meanings given in the GDPR, and the terms “**Data Importer**” and “**Data Exporter**” have the meanings given in the Standard Contractual Clauses, in each case irrespective of whether other Data Protection Laws apply.

2. Processing of Personal Data

The parties agree that:

- Customer is the Controller, Sqreen is a Processor of the Customer Personal Data and Sqreen may engage Sub-processors pursuant to Section 5.

- Sqreen is Processing the Customer Personal Data in order to provide the Services, as described in the ToS and/or to fulfill any Instruction.

Both parties will comply with all applicable law, including applicable Data Protection Laws.

3. Customers Obligations

If Customer is a Processor itself, Customer warrants to Sqreen that Customer's instructions and actions with respect to the Customer Personal Data, including its appointment of Sqreen as another Processor, have been authorized by the relevant Controller.

Customer is solely responsible for its use of the Services, including securing its account authentication credentials, systems and devices that Customer uses to access the Services, so that only its personnel authorized to have access to the Customer Personal Data are permitted to access them via Sqreen.

4. Sqreen Personnel

Sqreen will ensure that any personnel whom Sqreen authorizes to process Personal Data on its behalf is subject to confidentiality obligations with respect to that Personal Data. The undertaking to confidentiality will continue after the termination of the above-entitled activities.

5. Sub-processors

Customer acknowledges and agrees that (a) Sqreen's Affiliates may be retained as Sub-processors; and (b) Sqreen may engage third-party Sub-processors in connection with the provision of the Services. Sqreen has entered into a written agreement with each Sub-processor containing data protection obligations not less protective than those in this ToS with respect to the protection of Customer Personal Data to the extent applicable to the nature of the Services provided by such Sub-processor.

Sqreen will make available to Customer a current list of Sub-processors for the respective Services with the identities of those Sub-processors on request, such request to be not more than once per annum unless such information is required by reason of an enquiry by a data protection authority.

6. Data Subject Rights

Sqreen enables Customer to access, rectify and restrict Processing of Customer Personal Data including by (1) deleting or rectifying Personal Data from Sqreen Dashboard or (2) by sending a request to Sqreen by email sent to legal@sqreen.io. If Sqreen is unable to delete Personal Data for technical or other reasons, Sqreen will apply measures to ensure that Personal Data is blocked from any further Processing.

If Customer receives a request for access to a person's Personal Data: Sqreen will provide Customer with commercially reasonable cooperation and assistance in relation to handling of a Data Subject's request for access to that person's Personal Data, to the extent legally permitted and to the extent Customer does not have access to such Personal Data through its use or receipt of the Services.

7. Security

Sqreen will take the appropriate technical and organizational measures to adequately protect Personal Data against accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to Personal Data, as described in the Standard Contractual Clauses.

8. Breach

In case of Personal Data Breach affecting Personal Data, Sqreen will notify Customer as soon as practicable. At the Customer's request, Sqreen will promptly provide Customer with all reasonable assistance necessary to enable the Customer to notify relevant Personal Data Breaches to competent

authorities and/or affected Data Subjects, if Customer is required to do so under the Data Protection Laws. Unsuccessful security breach attempt will not be subject to this Section.

9. Additional Terms

The Standard Contractual Clauses in Schedule 1 apply only to Personal Data processed by Sqreen that is transferred from the European Economic Area (EEA) or Switzerland to outside the EEA or Switzerland, either directly or via onward transfer, to any country or recipient: (i) not recognized by the European Commission as providing an adequate level of protection for personal data (as described in the EU Data Protection Directive or Swiss Federal Data Protection Act, as applicable), and (ii) not covered by a suitable framework recognized by the relevant authorities or courts as providing an adequate level of protection for personal data, including but not limited to Binding Corporate Rules for Processors.

The Standard Contractual Clauses apply to (i) the legal entity that has executed the Standard Contractual Clauses as a Data Exporter and, (ii) all Affiliates (as defined in the ToS) of Customer established within the European Economic Area (EEA) and Switzerland that have subscribed to the Services. For the purpose of the Standard Contractual Clauses and this Section 9, the Customer and its Affiliates shall be deemed to be "Data Exporters".

In the event of any conflict or inconsistency between the body of this DPA and the Standard Contractual Clauses, the Standard Contractual Clauses shall prevail.

For the purposes of Clause 5(a) of the Standard Contractual Clauses, the Instructions, as defined in Section 1, are deemed an instruction by the Data Exporter to Process Personal Data.

Pursuant to Clause 5(h) of the Standard Contractual Clauses, the Data Exporter acknowledges and expressly agrees that Sqreen's Affiliates may be retained as Sub-processors; and (b) Sqreen and Sqreen's Affiliates respectively may engage third-party Sub-processors in connection with the provision of the Services, in accordance with Section 5 of this DPA.

The parties agree that any audits described in the Standard Contractual Clauses should be carried out in accordance with the following specifications:

- Any audit will be subject to the confidentiality obligations set forth in the ToS, including the DPA.
- Sqreen should be provided with a reasonable notice period to provide the information that it would be required to provide in accordance with the Standard Contractual Clauses.
- Customer would reimburse Sqreen for any time expended for any on-site audit at Sqreen's then-current professional services rates, which shall be made available to Customer upon request.
- Before the commencement of any such on-site audit, the parties would mutually agree upon the scope, timing, and duration of the audit in addition to the reimbursement rate for which Customer will be responsible.

**Schedule 1
STANDARD CONTRACTUAL CLAUSES (PROCESSORS)**

For the purposes of Article 26(2) of Directive 95/46/EC for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection

Name of the data exporting organisation:

Address: _____

Tel. _____; fax _____; e-mail: _____

Other information needed to identify the organization:

(the data **exporter**)

And

Name of the data importing organisation: Sqreen Inc.,

Address: 188 King St, San Francisco, CA 94107, USA

E-mail: contact@sqreen.io

(the data **importer**)

Each a 'party'; together 'the 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.

Clause 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 Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data⁽¹⁾;
- (b) 'the data exporter' means the controller 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 Article 25(1) of Directive 95/46/EC;
- (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;

(f 'technical and organisational security measures' means those measures aimed at protecting) personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

Clause 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.

Clause 3

Third-party beneficiary clause

- 1 The data subject can enforce against the data exporter this Clause, Clause 4(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.
- 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 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.
- 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.

Clause 4

Obligations of the data exporter

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) 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) organisational 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, unauthorised 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 Directive 95/46/EC;
- (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).

Clause 5

Obligations of the data importer (2)

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 organisational 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 unauthorised access; and

 - (iii) any request received directly from the data subjects without responding to that request, unless it has been otherwise authorised 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.

Clause 6

Liability

- 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.

- 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.

- 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.

Clause 7

Mediation and jurisdiction

- 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.

- 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.

Clause 8

Cooperation with supervisory authorities

- 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.
- 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.
- 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).

Clause 9

Governing law

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

Clause 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.

Clause 11

Sub-processing

- 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. Where the data importer subcontracts its obligations under the Clauses, with the consent of the data exporter, it shall do so only by way of a written agreement with the sub-processor which imposes the same obligations on the sub-processor as are imposed on the data importer under the Clauses⁽³⁾. Where the sub-processor fails to fulfil 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.
- 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.

- 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, namely ...
- 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(j), which shall be updated at least once a year. The list shall be available to the data exporter's data protection supervisory authority.

Clause 12

Obligation after the termination of personal data-processing services

- 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.
- 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.

On behalf of the data exporter:

Name (written out in full): _____

Position: _____

Address: _____

Other information necessary in order for the contract to be binding (if any):

	Signature ...
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On behalf of the data importer:

Name of the data importing organisation: Sgreen Inc.,

Address: 188 King St, San Francisco, CA 94107, USA

Signature:


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⁽¹⁾ Parties may reproduce definitions and meanings contained in Directive 95/46/EC within this Clause if they considered it better for the contract to stand alone.

(²) Mandatory requirements of the national legislation applicable to the data importer which do not go beyond what is necessary in a democratic society on the basis of one of the interests listed in Article 13(1) of Directive 95/46/EC, that is, if they constitute a necessary measure to safeguard national security, defence, public security, the prevention, investigation, detection and prosecution of criminal offences or of breaches of ethics for the regulated professions, an important economic or financial interest of the State or the protection of the data subject or the rights and freedoms of others, are not in contradiction with the standard contractual clauses. Some examples of such mandatory requirements which do not go beyond what is necessary in a democratic society are, inter alia, internationally recognised sanctions, tax-reporting requirements or anti-money-laundering reporting requirements.

(³) This requirement may be satisfied by the sub-processor co-signing the contract entered into between the data exporter and the data importer under this Decision.

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 _____, the Customer in the Sscreen files (hereafter, the “Customer”).

Data importer

The data importer is Sscreen, Inc. (“Sscreen”), a global provider of application security monitoring and protection solutions.

Data subjects

The personal data transferred concern the following categories of data subjects:

- Employees or contact persons’ of Customers (who are natural person)
- Users of Customers’ websites and/or services (who are natural person).

Categories of data

The personal data transferred concern the following categories of data:

- First, Middle and Last Name (current and former)
- Employer
- Business Contact Information (company, email, physical address, phone number)
- ID data
- Connection data
- Localization data
- Data relating to attacks (IP address, city, country, browser, email address)

Processing operations

Customer Personal Data will be processed in accordance with the ToS, including the DPA.

DATA EXPORTER: _____ By: _____
 Name (written out in full): _____
 Position: _____
 Address: _____

Signature.....(with stamp of organisation)
 Date.....

DATA IMPORTER: Sscreen Inc.
 By: Pierre BETOUIN
 Position: Co-founder & Chief Executive Officer
 Address: 188 King St, San Francisco, CA 94107, USA

Signature 

Appendix 2 to the Standard Contractual Clauses

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

Data importer will maintain administrative, technical and physical safeguards designed to protect the security, confidentiality and integrity of personal data submitted to the subscribed services as described in the applicable Security Measures described at <https://www.sqreen.io/security> or otherwise made reasonably available by data importer:

DATA EXPORTER: _____ By:

Name (written out in full): _____

Position: _____

Address: _____

Signature..... (with stamp of organisation)

Date.....

DATA IMPORTER: Sqreen Inc.

By: Pierre BETOUIN

Position: Co-founder & Chief Executive Officer

Address: 188 King St, San Francisco, CA 94107, USA

Signature

DocuSigned by:
Pierre Betouin
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