

# PrivacyEngine

## General Terms and Conditions

These General Terms and Conditions apply to the use of the Services between Provider and Customer as identified in the Invoice. The Parties agree to abide by and comply with these General Terms and Conditions and acknowledge that these General Terms and Conditions apply to all aspects of the Services (including any Invoice) and any other contracts concluded between the Parties.

### 1. Definitions

**"Affiliate"** means, in relation to a Party: (i) an organisation, which directly or indirectly controls a Party; (ii) an organisation, which is directly or indirectly controlled by a Party; or (iii) an organisation, which is controlled, directly or indirectly, by the ultimate parent company of a Party. **"Control"** as per (i) to (iii) above is defined as owning more than fifty percent of the voting shares of a company or having otherwise the power to govern the financial and the operating policies or to appoint the management of an organisation.

**"Data Protection Law(s)"** means the Data Protection Acts 1988 to 2018, the GDPR (meaning the EU General Data Protection Regulation No 2016/679) and, any other applicable law or regulation relating to the Processing of Personal Data and to privacy (including the ePrivacy Directive 2002/58/EC and the European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011), as such legislation shall be supplemented, amended, revised or replaced from time to time

**"Documentation"** means any user manuals and technical documents that may be provided by Provider to customers in connection with the provision of the Software and the Services.

**"Implementation Services"** means the installation, integration and configuration of the Software in accordance with the Invoice.

**"Invoice"** means each specific ordering document duly executed by the Parties and attached (by reference or otherwise) to the Agreement, and which specifies the Services to be provided to the Customer and which thereby incorporates these General Terms and Conditions and other appendices.

**"Services"** means certain specific services to be provided to the Customer such as the Software, Implementation Services and any Managed Services (as defined under clause 3.1 below) as well as any other consultancy services agreed time to time, all as set out under the Invoice, along with fees and payment terms for the same.

**"SLA"** means the Service Level Agreement hereby incorporated by way of reference into these General Terms and Conditions and as more particularly set out under Schedule 2 below.

**"Software"** means the commercially available web-based software application(s) as specified in the Invoice, including any associated products.

The terms **"Controller"**, **"Data Subject"**, **"Processor"**, **"Personal Data"**, **"Processing"**, and **"Supervisory Authority"** shall have the same meanings as in the applicable Data Protection Laws, and their cognate and corresponding terms shall be construed accordingly.

### 2. Software usage rights and obligations/restrictions

Upon execution of each Invoice, and subject to Customer's payment of all applicable fees under such Invoice, Provider grants to Customer a limited, non-transferable, non-exclusive right to access and use the Software solely for the permitted purpose(s) stated in the Invoice.

- 2.1 Provider and/or its Affiliates will host and retain control over the Software as such and make the Software available through the internet for access, use and operation by Customer through a web-browser. Unless otherwise agreed to in writing, Provider will not deliver or otherwise make available any copies of computer programs or code from the Software to Customer.

- 2.2 Customer's Affiliates may access and use the Software and Documentation to the same extent as Customer. Unless specified in a Invoice or otherwise necessary in order to achieve the permitted purposes stated in an Invoice.
- 2.3 Customer may not make the Software or Documentation available to any third parties. The obligations and limitations as to Customer set forth herein apply also to Customer's Affiliates and any authorised third parties. Customer is responsible for ensuring that its employees, any authorised third parties, and its Affiliates (and their respective employees and authorized third parties) comply with the terms of these General Terms and Conditions. Any breach of these General Terms and Conditions by any of the foregoing shall be deemed a breach by Customer, and Customer is liable in the first instance for such breach(es).
- 2.4 Customer shall not make derivative works of, disassemble, reverse compile or reverse engineer any part of the Software or Documentation, or permit or allow access to the Software or Documentation to build a similar or competitive product or service (or contract directly or indirectly with a third party to do so).
- 2.5 Customer may not remove or alter any of the trademarks, logos, copyright notices, confidentiality or proprietary legends or other notices or markings in the Software or the Documentation.
- 2.6 Customer shall promptly supply Provider with all information, support, and trained, skilled personnel and/or resources it requests regarding Customer's use of the Software.
- 2.7 For the avoidance of any doubt whatsoever, any Invoice and all services are provided on the basis of there being a valid license in place between the Parties as provided under these General Terms and Conditions.
- 2.8 Diagnosis and solution of operational problems will normally be carried out remotely. If it becomes necessary to carry out support services on site, then such work will be chargeable at the Provider's then prevailing daily rates, payable monthly in arrears.

### **3. Managed Services**

- 3.1 Provider and/or its Affiliates may offer certain managed services such as a data protection officer as a service, completion of a data protection impact assessment and many other similar types of services. Provider may also by itself or through designated partners arrange Software certification courses at regular intervals. Any such Managed Services, training or courses may be purchased by Customer in a mutually executed Invoice specifying the scope and fees for the same (the "**Managed Services**").
- 3.2 Provider is entitled to prompt reimbursement of expenses reasonably incurred by Provider in connection with its provision of services under these General Terms and Conditions.

### **4. Provider's general Undertakings**

Provider shall, unless otherwise agreed to in writing:

- a) make the Software available to Customer through Provider's web portal on the internet;
- b) host and maintain the Software and in accordance with the SLA;
- c) as applicable, provide the Managed Services and the Implementation Services; and;
- d) provide customer support in the English language in accordance with the SLA.

## **5. Customer's general undertakings**

Customer shall, unless otherwise agreed to in writing:

- a) adhere to Provider's instructions regarding the use of the Software and the Services (as applicable);
- b) ensure that only duly authorised employees, consultants and other representatives (such as employees) have access to the Software;
- c) comply with all applicable laws and regulations, and obtain and maintain all necessary regulatory licenses, consents and permissions required for the use of Software;
- d) ensure that appropriate safety procedures are implemented whenever the Software alert functionality is utilised, e.g. in case of serious adverse event alerts;
- e) ensure the availability of skilled key Customer personnel required to fulfill the purpose of the Invoice; and
- f) ensure it complies with the requirements of any software particulars set out in any Invoice, subject to any changes agreed in advance and in writing with the Provider.

## **6. Fees and payment**

- 6.1 Customer shall pay the fees as set out under each Invoice, as well as for other services such as the Implementation Services and/or the Managed Services, all as may be more particularly specified in an Invoice. All amounts paid by Customer are non-refundable, except as otherwise provided in section 9.2 below.
- 6.2 Customer shall agree with the Provider on the start date and end date of the Services as well as the auto renew arrangements in the Invoice in each case as further provided under clause 14.1 below. If Customer has not fulfilled the obligations set out in Section 5 and no other agreement to the contrary has been made in writing, Provider shall be entitled (acting reasonably at all times) to charge Customer for any unavoidable additional hours needed to fulfill the purpose of the Invoice. For the avoidance of any doubt, if there are changes that occur which are outside Provider's control and they negatively impact (in the sole view of the Provider, acting reasonably at all times) on the provision of the Services, which shall include but not be limited to changes in the Customer's existing systems, then a new Invoice will be required to address such changes or modifications needed to any Services and/or modifications delivered by Provider under another Invoice.
- 6.3 Customer is not entitled to any set-off for claims.
- 6.4 All amounts shall be paid as set out under the Invoice. Should Customer fail to make payment in full on the due date for any payment, Provider shall be entitled to claim interest on an annual rate of 8% on the sum overdue until payment is made in full.
- 6.5 Payments are deemed made when the money is available in an account designated by Provider. All payments delivered under the Invoice and these General Terms and Conditions shall be made in EUR unless agreed otherwise in advance and in writing in the Invoice.
- 6.6 All fees and other charges payable by Customer to Provider under the Invoice and these General Terms and Conditions are exclusive of all taxes (including withholding taxes and VAT), duties, levies or other charges of any kind, which shall be paid by Customer. If Customer is required by any applicable law to deduct or withhold amounts otherwise payable to Provider under the Invoice, Customer will advise the Provider at least 60 days in advance and pay the required amount to the relevant governmental authority and provide Provider with an official receipt or certified copy or other documentation acceptable to Provider evidencing the payment and pay to Provider, and in addition to the payment to which Provider is otherwise entitled under the Invoice, such additional amount as is necessary to ensure that the net

amount actually received by Provider free and clear of all taxes equals the full amount Provider would have received had no such deduction or withholding been required.

- 6.7 In the event payment is not made within thirty (30) days of the date payment was due, and such payment is not the subject of a reasonably set out written dispute, Provider shall have the right, at its sole option, to suspend or limit Customer's use of the Services and publish notifications in the Software until payment is made. Provider will provide ten (10) days written notice to Customer prior to any suspension, limitation or notification in the provision of the Services.
- 6.8 The Provider reserves the right to amend usage policies and fees for any Invoice and any subsequent renewal of an Invoice upon providing the Customer with no less than 30 days prior written notice (and email shall suffice) of the same.

## **7. Data Protection**

- 7.1 Both parties shall comply with all applicable Data Protection Laws and regulations as well as the terms of the data processing agreement, attached hereto as Schedule 1.
- 7.2 The Customer warrants to the Provider that it has the legal right to disclose all Personal Data that it does in fact disclose to the Provider under or in connection with these General Terms and Conditions.
- 7.3 The Customer shall only supply to the Provider, and the Provider shall only process, in each case under or in relation to these General Terms and Conditions, the Personal Data of Data Subjects falling within the categories specified in Paragraph 1 of Schedule 1 (Data Processing information) (or such other categories as may be agreed by the parties in writing), and Personal Data of the types specified in Paragraph 2 of Schedule 1 (Data Processing information) (or such other types as may be otherwise agreed by the parties in writing from time to time).
- 7.4 The Provider shall only process the Customer Personal Data for the purposes specified in Paragraph 3 of Schedule 1 (Data Processing information).
- 7.5 The Provider shall only process the Customer Personal Data during the term of the Invoice, and for not more than 30 days following the end of the term, subject to the other provisions of this Clause 7.
- 7.6 The Provider shall only process the Customer Personal Data on the documented instructions of the Customer as set out in these General Terms and Conditions or any other document agreed by the parties in writing from time to time.
- 7.7 The Customer hereby authorises the Provider to transfer the Customer Personal Data internally to its own employees, offices and facilities in Ireland and the UK (as applicable), providing that such transfers must be protected by appropriate safeguards.
- 7.8 The Provider shall promptly inform the Customer if, in the opinion of the Provider, an instruction of the Customer relating to the processing of the Customer Personal Data infringes the Data Protection Laws.
- 7.9 Notwithstanding any other provision of these General Terms and Conditions, the Provider may process the Customer Personal Data if and to the extent that the Provider is required to do so by applicable law. In such a case, the Provider shall inform the Customer of the legal requirement before processing, unless that law prohibits such information on important grounds of public interest.
- 7.10 The Provider shall ensure that the persons authorised to process the Customer Personal Data have committed themselves to confidentiality, or are under an appropriate statutory obligation of confidentiality.
- 7.11 The Provider and the Customer shall each implement appropriate technical and organisational measures to ensure an appropriate level of security for the Customer Personal Data, including those measures specified in Paragraph 4 of Schedule 1 (Data Processing information).

- 7.12 The Provider shall, insofar as possible and taking into account the nature of the Processing, take appropriate technical and organisational measures to assist the Customer with the fulfilment of the Customer's obligation to respond to requests exercising a data subject's rights under the Data Protection Laws.
- 7.13 The Provider must notify the Customer of any Personal Data breach affecting the Customer Personal Data without undue delay.

## **8. Intellectual Property Rights**

- 8.1 Provider and/or its Affiliates shall retain all right, title and interest in and to the Software and the Documentation (including all intellectual property rights therein), as well as all processes and methodology and/or modifications and/or improvements or derivative works to any of the foregoing or any of the Services, regardless of whether Customer has provided feedback regarding such modifications and/or improvements. Provider and/or its Affiliates reserve all rights not expressly granted under these General Terms and Conditions.
- 8.2 Notwithstanding anything to the contrary in these General Terms and Conditions, Provider and/or its Affiliates may access and use in perpetuity all performance data related to any use of the Software.
- 8.3 Customer shall notify Provider as soon as it becomes aware of any illegal or unauthorised use of the Software or any of Provider's and/or its Affiliates' intellectual property rights therein or relating thereto. Customer shall assist Provider (at Provider's expense) in taking any reasonable steps to defend Provider's and/or its Affiliates' rights therein.

## **9. Warranties**

- 9.1 Provider represents and warrants that (i) Provider possesses all rights necessary to grant to Customer the rights set forth herein; (ii) the Software will perform substantially in accordance with the Documentation and the SLA; and (iii) any Implementation and/or Managed Services will be provided in a professional manner consistent with industry standards.
- 9.2 Provider does not guarantee or warrant that the Software will perform error-free or be uninterrupted or that Provider will correct all errors. For any breach of the above warranties, Customer's exclusive remedy and Provider's entire liability shall be (i) for Provider to correct the software errors that caused a breach of the warranty, or, if Provider cannot correct such breach in a commercially reasonable timeframe, Customer may terminate its Invoice for the specific Software product that is in breach or any part of the Services that are in breach and receive a refund of the amount of the fees prepaid by Customer as set out under the Invoice or (ii) for Provider to re-perform deficient Implementation or Managed Services.
- 9.3 TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, PROVIDER AND ITS AFFILIATES DISCLAIM AND EXCLUDE ALL WARRANTIES, CONDITIONS AND OTHER TERMS IMPLIED BY STATUTE, COLLATERALLY OR OTHERWISE, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
- 9.4 Customer represents and warrants that it will use the Software in accordance with all applicable laws, and shall remain liable for all aspects of its use of the Software including without limitation with respect to any data and Personal Data used and/or entered in the Software.
- 9.5 The Customer acknowledges that complex software is never entirely free from security vulnerabilities; and subject to the other provisions of these General Terms and Conditions, the Provider gives no warranty or representation that the Software will be entirely secure or wholly free from defects, error or bugs.

9.6 The Provider does not warrant or represent that the Software will be compatible with any other software unless specifically pointed out in the Invoice by the Customer.

## **10. Warranties**

10.1 The Provider or the Provider's appointed representative may (subject to the provision of 5 days prior notice) examine the computer systems, electronic files and paper files of the Customer at the premises of the Customer for the purpose of ascertaining whether the Customer is complying with the licenses granted under or in relation to these General Terms and Conditions. Such an examination shall be limited to those computer systems, electronic files and paper files the examination of which is reasonably necessary to achieve that purpose.

10.2 Any examination under this clause 10 shall be at the cost of the Provider unless the examination demonstrates that the Customer has breached the terms of any license under these General Terms and Conditions, in which case the Customer shall promptly pay to the Provider the reasonable costs of the examination as well as any retrospective licensing fees still owing as established by the Provider's auditor.

10.3 Provider shall permit inspections of Provider's facilities, business, records, and personnel by regulatory authorities, in relation to Customer's projects, and shall respond to any notices or requests for information by regulatory authorities for any documentation relevant for Customer's projects. Subject to applicable law, the Parties shall promptly give written notice to each other in advance of any scheduled inspection of Provider by a regulatory authority, where such inspection is likely to relate to projects under the Invoice and/or these General Terms and Conditions.

## **11. Indemnification**

11.1 Customer agrees to defend and indemnify Provider and its Affiliates, and their respective directors, officers, employees and agents from and against any liability, damage, loss or expenses (including attorneys' fees and costs of litigation) awarded by an arbitration tribunal, suffered or incurred by Provider and/or its Affiliates in relation to or arising out of Customer's use of the Software and/or breach of these General Terms and Conditions or infringement of any third party's intellectual property rights.

11.2 The Provider shall promptly give such assistance and information as the Customer may reasonably require in settling or defending any such claims.

## **12. Limitations of Liability**

12.1 IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OR ANY LOSS OF REVENUE, OR ANY FORCE MAJEURE EVENT, LOSS OF INCOME OR PROFITS, ANTICIPATED SAVINGS, USE OF DATA OR CORRUPTION OF ANY DATA OR DATABASE OR SOFTWARE, OR LOSS OF ANY BUSINESS, CONTRACTS OR OPPORTUNITIES ARISING UNDER THE PROVISION OF THE SERVICE AND THESE GENERAL TERMS AND CONDITIONSS.

12.2 PROVIDER'S MAXIMUM LIABILITY IN CONNECTION WITH THE PROVISION OF THE SERVICES AND THESE GENERAL TERMS AND CONDITIONS ON THE BASIS OF ANY THEORY OF LIABILITY OR CAUSE OF ACTION OR SERIES OF RELATED EVENTS, SHALL BE LIMITED TO THE FEES COLLECTED BY PROVIDER FROM CUSTOMER PURSUANT TO THE INVOICE IN THE TWELVE (12) MONTHS PRECEDING THE IMPOSITION OF LIABILITY.

12.3 THE EXCLUSIONS AND LIMITATIONS OF THIS SECTION 12 DO NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW OR TO CUSTOMER'S CONTRACTUAL PAYMENT OBLIGATIONS.

### **13. Indemnification**

- 13.1 Each Party agrees, in the event it receives confidential information (“Confidential Information”) of the other Party or its Affiliates to take all reasonable actions to protect and hold such information in confidence in order to prevent its disclosure to third parties, to use such confidential information only for those purposes contemplated under these General Terms and Conditions and to disclose confidential information only to its Affiliates and employees on a need-to-know basis. The obligations of each Party under this Section 13 shall survive for five (5) years after the expiration or termination of the Invoice.
- 13.2 Notwithstanding Section 13.1, the recipient shall have no obligations with respect to any portion of the received information which:
- a) is or becomes available to the public without the fault of the recipient;
  - b) the other Party suspends its payments for the Services or otherwise becomes insolvent to the extent that it may not be expected to fulfil its duties.

### **14. Term and termination**

- 14.1 The Term of each Invoice for the provision of the Software shall commence on the date of execution of the Invoice (“Effective Date”) and shall continue for an initial period of 12 months and shall (unless terminated earlier under clauses 14.3 and 14.4 below) automatically renew for successive 12 month periods thereafter.
- 14.2 The Term of each Invoice for the provision of the Managed Services shall commence on the Effective Date for the initial period set out under the Invoice and shall (unless terminated earlier under clauses 14.2 and 14.3 below) automatically renew for the same periods thereafter
- 14.3 Each Invoice for the provision of the Software can be terminated on the first 12 month anniversary of its Effective Date by way of at least 30 days prior written notice during the initial 12 month period, and the provision of at least 60 days prior written notice prior to second and any subsequent anniversary of the Effective Date.
- 14.4 Each Invoice for the provision of the Managed Services can be terminated on the first 12 month anniversary of its Effective Date by way of at least 30 days prior written notice during the initial 12 month period, and the provision of at least 60 days prior written notice prior to second and any subsequent anniversary of the Effective Date.
- 14.5 Any termination of an Invoice shall be made by written notice to the other Party.
- 14.6 Without prejudice to any remedy it may have against the other Party for breach or non-performance of these General Terms and Conditions, each Party shall have the right to terminate the Agreement in whole or in part with immediate effect by giving the other Party notice in writing if:
- a) the other Party is in material breach of these General Terms and Conditions and fails to remedy such breach or default within thirty (30) days of receipt of written notice from the Party asserting the material breach and requesting its remedy; or
  - b) the other Party suspends its payments for the Services or otherwise becomes insolvent to the extent that it may not be expected to fulfil its duties.
- 14.7 Termination shall be made without undue delay after the circumstance invoked as basis for termination becomes known to the terminating Party or should have been known to such Party.
- 14.8 Termination of an Invoice shall be without prejudice to any remedy either Party may have against the other Party for breach of these General Terms and Conditions.

#### 14.9 Upon termination of an Invoice:

- a) all rights and licenses granted by Provider to Customer, including without limitation the right to use the Software in any manner, shall terminate immediately;
- b) any materials and tangible manifestations and embodiments of disclosing Party's confidential information ("Confidential Information") provided by such Party pursuant to these General Terms and Conditions to the receiving Party shall be promptly destroyed or returned by the receiving Party to the disclosing Party, as instructed by the disclosing Party; and
- c) in no event shall termination of an Invoice release either Party from any accrued obligation, including Customer's obligation to pay any amounts due on or before the effective date of termination.

#### 15. Force majeure

15.1 Performance by either Party of its obligations under these General Terms and Conditions shall be excused for a period that is reasonable under the circumstances if failure or delay thereof is caused by any unforeseeable events or circumstances beyond such Party's control which could not have been reasonably foreseen or reasonably circumvented after occurrence (hereinafter "Force Majeure"), such as changes in laws and regulations or in the interpretation thereof, acts of authorities, war, acts of war, terrorism, labor disputes, blockades, pandemic, major accidents and currency restrictions.

15.2 A Party wishing to claim relief by reason of Force Majeure shall notify the other Party in writing without delay on the intervention and on the cessation thereof. If performance by either Party is delayed for a period of three (3) months or more, the other Party may terminate in writing the applicable Invoices between the Parties.

#### 16. Notices and languages

16.1 Any notice, request, consent and other communication to be given by a Party under these General Terms and Conditions shall be in English and deemed to be valid and effective if personally delivered to the other Party or sent by prepaid courier service, registered mail or email to the recipient Party's address set forth on the applicable Invoice.

16.2 A notice shall be deemed to have been given:

- a) all rights and licenses granted by Provider to Customer, including without limitation the right to use the Software in any manner, shall terminate immediately;
- b) any materials and tangible manifestations and embodiments of disclosing Party's confidential information ("Confidential Information") provided by such Party pursuant to these General Terms and Conditions to the receiving Party shall be promptly destroyed or returned by the receiving Party to the disclosing Party, as instructed by the disclosing Party; and
- c) in no event shall termination of an Invoice release either Party from any accrued obligation, including Customer's obligation to pay any amounts due on or before the effective date of termination.

16.3 Address changes shall be notified as set out in this Section **Error! Reference source not found.**

#### 17. Miscellaneous

17.1 Provider may engage subcontractors to perform any undertakings, services and/or actions under these General Terms and Conditions. Provider shall be fully liable to Customer for any acts or omissions of any subcontractor engaged by Provider.

- 17.2 Neither Party may in any respect represent the other Party nor enter into any agreement or other commitment on the other Party's behalf. Nothing herein shall be construed to, nor create the relationship of principal and agent, or employer and employee, or partnership, or joint venture between the Parties.
- 17.3 These General Terms and Conditions and such other terms and conditions set forth in the Invoice constitute the entire understanding and agreement by and between the Parties with respect to the transactions contemplated by the Invoice, and supersede any previous understandings or agreements between the Parties, whether written or oral, regarding the transactions contemplated by the Invoice. The provisions set forth within these General Terms and Conditions shall prevail should there be any inconsistency between the foregoing and the Invoice. No additional terms, conditions, consents, waivers, alterations, or modifications shall be binding unless in writing and signed by the parties. Customer's additional or different terms and conditions, whether stated in a purchase order or other document issued by Customer, are specifically rejected and shall not apply to the transactions contemplated by the Invoice.
- 17.4 The provisions of these General Terms and Conditions are severable and should any provision of these General Terms and Conditions be determined to be invalid or unenforceable under any controlling body of the law, such invalidity or unenforceability shall not in any way affect the validity or enforceability of the remaining provisions of these General Terms and Conditions, provided that the essential purpose of these General Terms and Conditions are not frustrated.
- 17.5 The failure of either Party to assert a right under these General Terms and Conditions or to insist upon compliance with any term or condition of these General Terms and Conditions shall not constitute a waiver of that right or excuse a similar subsequent failure to perform any such term or condition by the other Party.
- 17.6 Neither these General Terms and Conditions nor any of the rights and obligations arising hereunder may be assigned or transferred by either Party (including, without limitation, by operation of law) without the prior written consent of the other Party. Any attempted assignment shall be void. Such consent will not be unreasonably withheld or delayed. Both Parties shall however be entitled to transfer any of the rights and obligations arising hereunder as part of a merger or acquisition.
- 17.7 Any press release, public announcements or communication to any news media concerning these General Terms and Conditions and/or the Invoice is subject to written approval from the other Party. Such approval shall not be unreasonably withheld or delayed.

## **18. Governing law and Disputes**

- 18.1 These General Terms and Conditions shall be construed in accordance with and be governed by the laws of the Republic of Ireland, without any reference to its conflict of law principles and shall be subject to the exclusive jurisdiction of the Republic of Ireland.
- 18.2 Any dispute, controversy or claim arising out of or in connection with these General Terms and Conditions, or the breach, termination, or invalidity thereof, shall be finally settled by the Rules of Arbitration of the International Chamber of Commerce. The arbitral tribunal shall be composed of one (1) arbitrator, unless the Institute in its discretion determines, taking into account the complexity of the case, the amount in dispute and other circumstances, that the arbitral tribunal shall be composed of three (3) arbitrators. The place of arbitration shall be Dublin, Ireland. The language to be used in the arbitral proceedings shall be English.

## Schedule 1 – Data Processing Agreement

### 1. Introduction and definitions

1.1.1 **“Confidential Information”** has the meaning set out in the General Terms and Conditions.

1.1.2 **“Protected Data”** means Confidential Information and Personal Data collectively.

1.2 The Provider will act as a Data Processor in relation to all Personal Data it accesses or processes under the Services, and the Customer will act as the Data Controller with respect to such Personal Data. Provider shall, in its capacity as Data Processor, implement best industry practice to ensure that all appropriate technical, organisational and security measures are taken to ensure that the Personal Data is protected against unauthorised or unlawful processing and against accidental loss, destruction, or damage.

### 2. Software usage rights and obligations/restrictions

2.1 Provider shall promptly report activity that may reasonably lead to physical harm, loss of Protected Data or damage to personnel or facilities to the Customer.

2.2 Provider will implement and regularly evaluate a process to provide for continuation of business operations during unplanned, adverse events.

2.3 Without limiting Provider’s obligation of confidentiality in the provision of the Services, and as further described herein, Provider will be responsible for using best industry practice to establish and maintain an information security programme that is designed to: (i) ensure the security and confidentiality of Protected Data; (ii) protect against any anticipated threats or hazards to the security or integrity of the Protected Data; (iii) protect against unauthorised access to or use of the Protected Data; (iv) ensure the proper disposal of Protected Data; and, (v) ensure that all subcontractors of Provider, if any, comply with all of the foregoing. Provider will designate an individual to be responsible for the information security programme. Such individual will respond to the Customer inquiries regarding information security and to be responsible for notifying the Customer-designated contact(s) if a breach or an incident occurs.

2.4 Provider will conduct formal data security and data privacy awareness training for all personnel and contractors as soon as reasonably practicable after the time of hiring or prior to being appointed to work on Protected Data, and annually thereafter. Evidence of security awareness training will be retained by Provider and shall be made available for review by the Customer upon request.

2.5 Provider will promptly, and without undue delay, notify (but in no event more than one business day after the occurrence) the designated Customer security contact of any security attacks or incidents. The notice shall include the approximate date and time of the occurrence and a summary of the relevant facts, including a description of measures taken to address the occurrence. Provider will also promptly respond to requests for information from the Customer related to any actual or suspected security incidents. A “security incident” includes any unauthorised information system or data access, unauthorised or unplanned disruption of the Services due to a malicious act(s), or related impacts to Provider's data protection controls. The Customer or its third-party designee may perform audits and security tests of Provider’s environment that may include interviews of relevant personnel, review of documentation, or technical inspection of systems, as they relate to the provision of the Services. Any such audits undertaken by the Customer shall be at the Customer's sole cost and expense, and not exceed one such audit per calendar year. Provider shall promptly provide all information reasonably requested by the Customer in connection with any such audits and shall provide reasonable access and assistance to the Customer or its agents upon request. Provider agrees to comply with all reasonable mutually agreed recommendations that result from such inspections, tests, and audits within reasonable timeframes.

- 2.6 Provider fully acknowledges and agrees that any disclosure of Protected Data in the provision of the Services will in no way be construed to be an assignment, transfer, or conveyance of title to or ownership rights in such Personal Data from the Customer to Provider.

### **3. Network and Communications Security**

- 3.2 All Provider connectivity to Customer information systems shall be through secured remote access mechanisms.
- 3.3 Provider will use best industry practice to ensure that Provider's systems connecting to Customer's systems and anything provided to Customer through such systems does not knowingly contain any malicious code designed to, or that would enable, the disruption, modification, deletion, damage, deactivation, disabling, harm or otherwise be an impediment to the operation of the Customer's systems.
- 3.4 At end-of-life, all electronic storage media containing Protected Data will be wiped or degaussed for physical destruction or disposal, in a manner meeting best industry practice.
- 3.5 All media containing Protected Data will be contained in secure, environmentally controlled storage areas controlled by Provider. All portable media containing Protected Data will be encrypted.

### **4. Location of Personal Data**

- 4.1 Provider will not store Personal Data in any country or territory outside the European Economic Area without the prior written consent of the Customer.
- 4.2 In the event that Provider receives a request from a Data Subject (as defined under the Data Protection Law) Provider will promptly notify the Customer of such request, and will not respond to such request without the Customer's prior written consent, except where required by applicable law.
- 4.3 Provider will not transfer or otherwise make available Personal Data to any third party (including a subcontractor or law enforcement agency) without the prior written consent of the Customer, except as required by applicable law. Provider will not transfer or permit the transfer of Personal Data to a subcontractor for any reason without first entering into a written agreement containing terms no less protective than the terms set out under this annex.
- 4.4 In the event that Provider receives a request or demand for Personal Data by a law enforcement, supervisory authority or other governmental agency, Provider will direct the agency to the Customer and promptly notify the Customer of the request or demand, except where prohibited from doing so by applicable law.

### **5 Processing**

- 5.1 The processing of Personal Data by Provider under this data processing agreement shall be for:
- a) the subject-matter;
  - b) the duration;
  - c) the nature and purpose;
  - d) the type of Personal Data; and

e) categories of data subjects,

all as more particularly set out below.

5.1.1 **Subject Matter.** The subject matter of the processing shall relate to Provider's provision of the Services.

5.1.2 **Nature and Purpose.** The nature and purpose of the processing shall relate to the provision of data privacy services that provides compliance for businesses in GDPR, CCPA or HIPPA sectors.

5.1.3 **Duration of Processing.** The processing of the Personal Data shall be for the term of the Invoice, and for the purpose of and only to the extent required to provide the Services, provided that Personal Data shall not be Processed for longer than is necessary for the purpose for which it was collected or is being Processed (except where a statutory exception applies).

5.1.4 **Data Subjects.** The data subjects shall include current and former contractors, employees and clients of the Customer.

5.2 **Personal Data in Scope.** Provider may process the following types and categories of Personal Data:

- a) contact information - subject email addresses, subject name, subject title
- b) location information - subject location and function
- c) system security information - other information critical to the secure fulfilment of the Services (including IP address data for access validation, password information for user authentication, and other security data elements).

5.3 The Customer may, from time to time, make reasonable requests for amendments to this Clause 5 by written notice to Provider as the parties reasonably consider necessary to reflect the nature of the Services and as required to comply with all applicable Data Protection Law in force from time to time.

## **Schedule 2 - Service Level Agreement**

### **1. Introduction**

1.1 This Schedule 2 sets out the service levels applicable to the support services ("**Support Services**"). The purpose of the Support Services is to provide clarifications on the appropriate integrity, availability, and responsiveness of the Services. Any failures to address these matters over a three-month time period can be flagged to the Provider's Account Manager who is assigned to escalate the matter (if so required) with senior management for prompt resolution all as more particularly set out in this Schedule.

### **2. Provision of Support Services and Service Levels**

2.1 The Support Services shall be provided remotely, save to the extent that the parties agree otherwise in advance and in writing.

2.2 The service levels shall be provided as set out under Appendix 1 of this Schedule 2.

### **3. Limitations on Support Services**

3.1 If the total hours spent by the personnel of the Provider performing the Support Services during any calendar month exceeds 10 hours then:

- a) the Provider will cease to have an obligation to provide Support Services to the Customer during the remainder of that period; and

b) the Provider may agree to provide Support Services to the Customer during the remainder of that period, but the provision of those Support Services will be subject to additional charges.

3.2 The Provider shall have no obligation to provide Support Services in respect of any issue caused by:

a) any factor outside the scope of the Support Services;

b) the improper use of the Software or the Services by the Customer; or

c) any alteration to the Software made without the prior written consent of the Provider.

3.2 If the Provider provides Support Services at the request of the Customer and the Provider, after beginning the provision of those Support Services, reasonably concludes that the Provider has no obligation to provide those Support Services under the Agreement then the Provider may levy additional charges in respect of:

a) those Support Services; and

b) any subsequent Support Services provided in relation to the issue with the consent of the Customer, at its standard time-based rates.

#### **4. Updates and Upgrades**

4.1 As part of the Support Services, the Customer will receive Software “patches” as deemed necessary by the Provider and may be entitled to Updates (means a hotfix, patch or minor version update to the Software) and or Upgrades (means a major version upgrade of the Software) to the Software. For two years after the introduction of a new generally available Update or Upgrade, the Provider shall use reasonable efforts to support the previous release of the Software.

4.2 Software releases that are over two years old will not be supported by the Provider and the Customer will be obliged to upgrade to a later supported release of the Software.

#### **5. Customer’s Responsibilities**

5.1 The Provider shall ensure that it will:

5.1.1 Be responsible for backing up its own system, performing routine system maintenance and keeping current with the latest anti-virus and Provider’s Software releases;

5.1.2 attempt to resolve its own problems with the Software before placing a call to the Provider’s support helpdesk noted above; and

5.1.3 be trained on the use of the Software, to include self-tutoring using the user manual, peer training or the Provider’s more formal training programs. Again, it is to be understood and hereby agreed that the Provider’s support help desk is not to be used in lieu of obtaining user training or for training replacement personnel.

## Appendix 1- Service Levels

Performance indicators	Area of performance	Measure	Performance target
1.1 <b>Response Time</b>	System Efficiency	Provider will provide, a target response time from PrivacyEngine. This will be a reasonable value, determined from the capabilities which are under Provider' direct control, such as application performance, hardware capability, and database efficiency.	An average server response time of 250ms.
1.2 <b>Uptime</b>	System Availability	<p>Provider will ensure availability of the system based on Microsoft's Azure availability commitment and will put in place actions to resolve any uptime issues. We will provide support Mon-Friday from 9AM to 17.30PM GMT. Issues can be logged on our online support ticket in PrivacyEngine.</p> <p>Any issues relating to System Availability will be treated as <i>Critical</i>, as defined above and will be resolved within 1 hour of the issue being logged.</p> <p>Provider' maintenance windows will be between 6PM and 11PM during work weeks. Some loss of access may occur, but a public announcement will be made up to 5 days prior to a scheduled release, and no less than 6 hours for any emergency releases</p>	Provider will provide a 99.5% availability of the system.
1.3 <b>Patching</b>	System Availability	Provider will apply system and application patches to the PrivacyEngine infrastructure once a month on the first Saturday at 9AM. Provider may require rebooting of the production environment during this time period. All patches will be deployed and tested on our staging environment first to identify compatibility with the live environment before commencement of deployment.	No more than three manual reboots of the production environment for the deployment of system patches, all on the first Saturday in each month, per quarter.
1.4 <i>Infrastructure Support</i>	Quality Assurance	<p>Infrastructure issues will be resolved based on a process of identification, validation and then resolution. Based on the nature of the issue reported Provider will:</p> <ul style="list-style-type: none"> <li>• Validate the existence of the issue through internal testing;</li> <li>• Agree within internal governance processes, as to the severity of the issue;</li> <li>• Put in place a work-around if possible;</li> <li>• Based on the severity we will agree to resolve the issue within an agreed timeframe;</li> </ul> <p>The definition of support request priorities is as follows:</p> <p><i>Critical</i>- System down and non-responsive;</p> <p><i>High</i>- System non-functional. No work around possible;</p> <p><i>Medium</i>- An issue is preventing complete access to the service. A workaround is possible;</p> <p><i>Low</i>- An issue that is not preventing the availability of the service and a workaround is possible;</p>	<p>Provider will provide the following response and resolution targets for issue fixing:</p> <p><b>Response Targets:</b></p> <ul style="list-style-type: none"> <li>• <i>Critical</i>- 1 hour;</li> <li>• <i>High</i>- 2-3 hours;</li> <li>• <i>Medium</i>- 1 Working Day;</li> <li>• <i>Low</i>- 3 Working Days;</li> </ul> <p><b>Resolution Targets:</b></p> <ul style="list-style-type: none"> <li>• <i>Critical</i>- 1 Working Day;</li> <li>• <i>High</i>- 2 Working Days;</li> <li>• <i>Medium</i>- 5 Working Days;</li> <li>• <i>Low</i>- 15 Working Days;</li> </ul>
1.5 <b>Monitoring</b>	System Efficiency	<p>Provider will monitor the performance of the PrivacyEngine infrastructure in real time, 24/7/365. Provider will monitor CPU usage, RAM Usage, HDD capacity &amp; performance and system response times.</p> <p>Provider will action with Microsoft Azure as appropriate if CPU usage goes over 90% for more than three hours, RAM usage goes over 95% for more than two hours and HDD capacity is over 70%. Long term patterns will be managed in consultation with Microsoft for the deployment of added resources.</p> <p>Provider will action system response times as discussed in <i>Response Time</i>, above.</p>	<p>Provider will maintain an average CPU usage below 90% on a monthly measurement cycle.</p> <p>Provider will maintain an average memory usage of below 95% on a monthly measurement cycle.</p> <p>Provider will maintain an average HDD capacity below 70% on a monthly measurement cycle.</p>

<p>1.6 <b>Backups &amp; Redundancy</b></p>	<p>System Availability</p>	<p>Provider will perform regular backups of both the database and all necessary application folders across the PrivacyEngine Infrastructure system as well as appropriate periodic testing. Backups will be encrypted utilizing 256bit encryption to a remote secure environment in a separate datacenter.</p> <p>Interim database backups (Incremental &amp;/or Transaction log) will be automatically executed every two hours.</p> <p>Full database backups will be automatically executed nightly.</p> <p>Full application backups will be manually executed after the successful deployment of a new version or release.</p> <p>Full redundancy is built into the infrastructure and is covered by <i>Uptime</i>, above.</p>	<p>Transaction Log backups every two hours.</p> <p>Full database backup each night.</p> <p>Secure and encrypted transfer to a remote location.</p> <p>Full backups of the application folders and unstructured data folders each night.</p>
<p>1.7 <b>Recovery</b></p>	<p>System Availability</p>	<p>Full redundancy is built into the System layer and there will be minimum loss of service. If the System fails a replacement will be put in situ within 3 working hours, depending on the nature of the fault. Full consultation with clients will take place during this time.</p> <p>All data and applications will be restored utilizing the backup services in place with Microsoft Azure and within the timelines specified above with regards to a system failure.</p>	<p>Target availability is 99.5%</p> <p>Full restore within 3 hours.</p>
<p>1.8 <b>Infrastructure/Application/Data base Security</b></p>	<p>Security</p>	<p>Provider will put in place all required best practice to ensure the infrastructure, application and database is secure. Provider will provide an agreed suite of tests to verify on a monthly basis and will hire a third party to conduct tests once a year.</p> <p>Provider will audit:</p> <ul style="list-style-type: none"> <li>• Buffer overflow, cross-site scripting, SQL injection.</li> <li>• Network eaves-dropping, Brute force attack, dictionary attacks, cookie replay, credential theft.</li> <li>• Elevation of privilege, disclosure of confidential data, data tampering, luring attacks,</li> <li>• Unauthorized access, over-privileged service and process accounts.</li> <li>• Session hi-jacking, session replay.</li> <li>• Poor key generation, weak or custom encryption.</li> <li>• Query string manipulation, form field manipulation, cookie manipulation.</li> <li>• Denial of Service.</li> </ul>	<p>Maintain a 24/7/365 Azure Security Centre to audit and alert on any threats to the infrastructure, application or database.</p>
<p>1.9 <b>Office Security</b></p>	<p>Security</p>	<p>Provider will put in place required security practices for its internal staff and office facilities as well as IT assets, to ensure no compromising of PrivacyEngine information is allowed.</p> <p>Access control will include:</p> <ul style="list-style-type: none"> <li>• CCTV</li> <li>• Visitors policy</li> <li>• Mobile devices (to include full security encryption and entry/password controls on laptops etc.)</li> <li>• Controlled paper environment</li> <li>• Shredding facilities</li> <li>• Storage</li> <li>• Security signs &amp; notices</li> </ul>	<p>No specific action</p>