

Badgy

Terms of Service

1. DEFINITIONS AND INTERPRETATION

1.1. The definitions and rules of interpretation in this clause apply in this Agreement.

8bytes / 8bytes Development Limited: a company incorporated in Ireland with registration number 523022 and headquartered at Willow Court, Chapel Road, Blacklion, Greystones, Wicklow;

Badgy System: means all parts of the Badgy online platform.

Affiliate: means any entity directly or indirectly controlling or controlled by or under direct or indirect common control with another entity; and “control” means the power, directly or indirectly, to direct, or cause the direction of the management and policies of an entity through the ownership of voting securities, by contract or otherwise.

Additional Services: means the additional professional services provided by 8bytes as set out in a Statement of Work.

Agreement: means these Terms of Service and its schedules together with any Order Forms agreed between the parties and any ancillary agreements or documents referred to herein.

API Key: means the unique key issued to Client as set out in Clause 2.

Authorised Users: means those employees, agents, subcontractors and End Users who are authorised by Client to use the Services.

Business Day: means a day other than a Saturday, Sunday or public holiday when public authorities are open for business in Ireland.

Business Hours: 9am - 5pm during Business Days.

Client: means the client set out on the Order Form.

Client Application: means the application, platforms, systems and applications owned or operated by the Client and in respect of which any Services are to be provided, as set out on the Order Form.

Client Data: the information, materials, branding and data (including personal data) inputted by Client, Authorised Users, or 8bytes on Client's behalf for the purpose of using the Services or facilitating Client's use of the Services.

Confidential Information: means all documentation, technical information, software, business information, feedback, trade secrets or know how or other materials of a confidential nature or that are disclosed in confidence by either party to the other during the term of this contract.

Data Protection Laws: means all applicable data protection and privacy laws that apply to 8bytes's performance under this Agreement pertaining to the collection, use, disclosure, security or protection of personal data.

DPA: means the Data Processing Agreement agreed between the parties.

Effective Date: means the date set out on the Order Form.

End User: means the individual attendee and any clients of Client.

End User Data: means the end user personal data as set out in the DPA.

Fees: means the fees for the Services as set out in the Order Form.

Term: means the term of this agreement as set out in the Order Form.

Services: means access to the Badgy service, and any other services as more particularly described in the Order Form.

Statement of Work: the statement of work agreed between the parties setting out details of the Additional Services to be provided by 8bytes, which forms part of and shall be subject to the terms and conditions of the Agreement.

Virus: means anything or device (including any software, code, file or programme) which may prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

1.2. Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement. A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular. Reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it. A reference to writing or written includes faxes and e-mail.

2. SERVICES

- 2.1. Subject to the terms and conditions of this Agreement, 8bytes hereby grants to Client a non-exclusive, non-transferable right, without the right to grant sublicences, of access to and use of the Services during the Term.
- 2.2. On execution of the Order Form, 8bytes shall issue Client with a unique link and access key. It is Client's responsibility to keep its unique link and access key secure and not to share same with any other party.
- 2.3. In order to avail of the Services, Client must, at its own cost, integrate the Customer Application and other systems in accordance with the reasonable technical instructions provided by 8bytes with the Badgy System. If Client encounters any issues in relation to the integration process, Client may contact 8bytes for support.
- 2.4. Any Additional Services requested by Client shall be agreed in a Statement of Work. Client will give 8bytes timely access to any Client materials reasonably needed for the Additional Services, and if Client fails to do so, 8bytes's obligation to provide the Additional Services will be excused until access is provided.
- 2.5. The Services are not intended for, and may not be used by, anyone under the age of 16. Client is responsible for ensuring that all Authorised Users are at least 16 years old.

2.6. If Client receives access to the Services on a free or trial basis or as an alpha, beta or early access offering (“Trials and Betas”), use is permitted only for Client’s evaluation during the period designated by 8bytes or agreed in the Order. Trials and Betas are optional and either party may terminate Trials and Betas at any time for any reason. Trials and Betas may be incomplete or include features that 8bytes may never release, and their features and performance information are 8bytes’s Confidential Information. Notwithstanding anything else in this Agreement, 8bytes provides no warranty or indemnity for Trials and Betas and its liability for Trials and Betas will not exceed €100.

3. CLIENT OBLIGATIONS

- 3.1. Client shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and in the event of any such unauthorised access or use, promptly notify 8bytes.
- 3.2. Client shall be responsible for the acts and omissions of its Affiliates and Authorised Users who access the Services, as though they were the acts and omissions of Client. Client agrees to indemnify and hold harmless 8bytes, its Affiliates and subcontractors against any claims, costs, losses, damages liabilities or expenses arising from the acts or omissions of its Affiliates and Authorised Users.
- 3.3. Client assumes full and sole responsibility for the following:
- 3.3.1. ensuring that all necessary notices are provided to, and consents obtained from, End Users to permit 8bytes to provide the Services; and
 - 3.3.2. at all times operating within the terms and conditions of all agreements governing the Client’s relationship with the End User;
 - 3.3.3. compliance with all applicable laws in respect to its activities under this Agreement, including without limitation, Data Protection Laws;
 - 3.3.4. ensuring that all notices and information are provided to the End User to enable them to exercise any End User rights under Data Protection Laws;

- 3.3.5. informing 8bytes in a timely manner of any requests by any End Users to exercise their End User right where such requests confer a legal obligation on 8bytes to erase or cease processing of any End User Data relating to the End User in question, including providing all particulars of the request which are reasonably required by 8bytes to enable 8bytes to identify the End User Data in question and to respond. Subject to Client's compliance with this clause 3.3.5, 8bytes will provide all reasonable assistance required by Client to enable Client to respond to any End Users who exercise their End User rights;
- 3.3.6. the lawfulness, performance and security of the Client Application and all promotional materials or representations made relating to the Client Application;
- 3.3.7. ensuring the Client Application is capable of collecting the End User Data and transmitting it in the format prescribed by 8bytes through the Badgy System;
- 3.3.8. storing and making back-ups of all End User Data; and
- 3.3.9. for procuring and maintaining its network connections and telecommunications links from its systems and Client Application to the Badgy System, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to Client's network connections or telecommunications links or caused by traversing the internet

3.4. Client shall not:

- 3.4.1. attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Services in any form or media or by any means; attempt to decipher, decompile, reverse compile, disassemble, reverse engineer, translate, screen scrape or otherwise reduce to derive source code, algorithms, tags, specification, architecture, structure or other elements of the Services, in whole or in part; access all or any part of the Services or its outputs in order to build a product or service which competes with or replaces the Services; or work around any technical limitations in the Services;

- 3.4.2. access, store, distribute or transmit any Viruses, or any material that (i) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; or (ii) facilitates illegal activity, depicts sexually explicit images, promotes unlawful violence; or (iii) is discriminatory or otherwise illegal or causes damage or injury to any person or property; (iv) contains any unsolicited or unauthorised advertising, promotional or marketing materials; or (v) encourages conduct that could constitute a criminal offense, give rise to civil liability or otherwise violate any applicable law or regulation;
 - 3.4.3. remove any Badgy water mark, logo, trade name, copyright notice and/ or any other proprietary notice (as applicable) from the Services; or
 - 3.4.4. do or permit to be done any act or omission in relation to the performance of its obligations under this Agreement which does or may adversely materially affect the reputation, goodwill, or image of Badgy or 8bytes.
- 3.5. Without prejudice to 8bytes's other rights in law or equity, 8bytes reserves the right, without liability to Client, to suspend or disable Client's or any Authorised Users or End User's access to the Services where a Client, Authorised User or End User breaches the provisions of this clause 3 and Client shall not thereby be entitled to claim any refund or compensation for such suspension. Given the nature of the obligations in this clause 3 and the impact a breach of same could have on 8bytes and the Services, no remedy period shall be granted prior to 8bytes exercising the suspension rights herein.

4. FEES AND PAYMENT

- 4.1. 8bytes shall invoice Client and Client shall pay the Fees in accordance with the provisions of the Order Form and this clause 4. Fees for any renewal shall be at the Badgy Service's then-current rates, regardless of any discounted pricing in a prior Order Form.

- 4.2. If 8bytes has not received payment of Fees before the event date in accordance with the payment terms set out in the Order Form, and without prejudice to any other rights and remedies of 8bytes, 8bytes may with notice and without liability to Client disable Client's access to all or part of the Services. 8bytes shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid. In addition, interest shall accrue on a daily basis on such due amounts at an annual rate equal to 8 percentage points above the European Central Bank's reference rate or if such rate shall exceed any applicable permissible legal interest rate, then at the highest legally permissible rate, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 4.3. All amounts stated or referred to in this Agreement are non-cancellable and non-refundable unless stated elsewhere in the Agreement and are exclusive of all sales, use, value-added, withholding and other taxes and duties which shall be added to 8bytes's invoice(s) at the appropriate rate. Client will pay all taxes and duties (including withholding tax) assessed in connection with this Agreement. Client shall pay all Fees in full without set off or counterclaim.
- 4.4. Where any usage limitations are indicated on an Order Form, 8bytes may notify Client in the event of such limitations being breached at any time together with details of increased rates to apply to continued usage during the billing period. Invoices for overage charges shall be issued monthly in arrears and shall be subject to the payment terms set out in the Order Form.

5. SUPPORT AND MAINTENANCE

- 5.1. Client may contact 8bytes for support in relation to the Services by contacting support@badgy.ie during Business Hours.
- 5.2. From time to time it may be necessary for 8bytes to complete maintenance on the Services. If the maintenance is likely to result in unavailability of the Services then 8bytes will endeavour to advise Client in advance. Unscheduled maintenance in respect of a significant event may be required to be performed at any time without notice.

6. WARRANTIES AND DISCLAIMER

- 6.1. Each party warrants that it has the full corporate power: (i) to enter into this Agreement; (ii) to carry out its obligations hereunder; and (iii) to grant the rights herein granted to the other party.
- 6.2. Client warrants that Client Data, material, content or links provided to 8bytes by or on behalf of Client: (i) are owned by Client or are provided with the express consent from the third party holding any ownership rights (including copyright) over such material, or, alternatively, are in the public domain, and are not owned by any third party or otherwise covered by copyright laws; (ii) do not breach the rights of any person or entity, including rights of publicity, privacy, or under Data Protection Laws or direct marketing laws and are not defamatory; and (iii) do not result in consumer fraud (including being false or misleading), product liability, tort, breach of contract, breach of Intellectual Property, injury, damage or harm of any kind to any person or entity.
- 6.3. Other than with respect to the express warranties set forth herein, the Services are provided “as is” and all warranties express or implied, representations, conditions and all other terms of any kind whatsoever implied by statute or common law, including those of non-infringement, merchantability and fitness for a particular purpose, all are, to the fullest extent permitted by applicable law, are hereby disclaimed and excluded by 8bytes from this Agreement. Client is solely responsible for determining the suitability of the Services for its use in light of any applicable legislation or regulations including without limitation Data Protection Laws.
- 6.4. 8bytes does not warrant that Client’s use of the Services will be uninterrupted or error-free or that the Services will operate in combination with third party services used by Client save where otherwise agreed. The Service may be subject to limitations, delays and other problems inherent in the use of the internet and electronic communications. 8bytes is not responsible for any delays, delivery failures, or other damage resulting from the transfer of data over communications networks and facilities, including the internet and for any third party platforms as further set out in clause 6.5.
- 6.5. Client may choose to use the Services with third-party platforms. Use of third-party platforms is subject to Client’s agreement with the relevant provider and not this Agreement. 8bytes does not control and has no liability for third-party platforms, including their security, functionality, operation, availability or interoperability or how the third-party platforms or their providers use Client Data. If Client enables a third-party platform with the Services, 8bytes may access and exchange Client Data with the third-party platform on Client’s behalf.

- 6.6. 8bytes reserves the right to introduce new or enhanced features and functionalities to the Services which do not negatively impact the Services.

7. INTELLECTUAL PROPERTY RIGHTS

- 7.1. Client acknowledges and agrees that 8bytes and/or its licensors own all Intellectual Property Rights in the Services, 8bytes API and 8bytes System (including any modifications or enhancements thereto). Except as expressly stated herein, this Agreement does not grant Client any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services, 8bytes API and 8bytes System. Client shall have no rights therein and shall not be entitled to assert any rights, title, or interest in respect thereof.
- 7.2. Client shall own all right, title and interest in and to all Client Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Client Data.

8. DATA

- 8.1. In providing its Services under this Agreement, 8bytes may be required to process Personal Data on Client's behalf. In such circumstances, the parties record their intention that Client and its Affiliates (as applicable) shall be the data controller and 8bytes shall be a data processor and each party shall comply with the DPA and all Data Protection Laws.
- 8.2. Client acknowledges and agrees that 8bytes may collect and use anonymised data from the Services relating to outcomes, usage data and other information. This data shall be irreversibly anonymised and shall therefore no longer be considered personal data under the Data Protection Laws.

9. INDEMNITY

- 9.1. 8bytes will indemnify Client in respect of any and all third party claims, suits, demands and actions and for resulting damages, awards of damages, losses, costs, expenses and liabilities (including reasonable legal fees, fines and penalties) to the extent arising out of claims by third parties that the Services infringes a third-party's copyright, trademark existing or patent granted as of the date of delivery in any country in which the Services are delivered. If Services are or are likely to be held to be infringing, 8bytes will at its expense and option either: (i) procure the right for Client to continue using it, (ii) replace it with a non-infringing equivalent, (iii) modify it to make it non-infringing, or (iv) terminate this Agreement and refund to Client fees paid for any unused portion of the Services.
- 9.2. Notwithstanding the above, 8bytes shall have no liability to Client to the extent that any claim is based upon: (i) modifications to the Services made by anyone other than 8bytes or a party authorised by 8bytes; (ii) combination of the Services with software not provided by 8bytes or specified in any agreed documentation; (iii) Client's failure to use modifications to the Services provided by 8bytes to avoid infringement or misappropriation; or (iv) unauthorised use or misuse of the Services or (vi) any Trials and Betas or other free or evaluation use
- 9.3. The rights granted to Client under Clause 10.1 shall be Client's sole and exclusive remedy and 8bytes's entire liability for any alleged or actual infringement of Intellectual Property Rights of any third party.
- 9.4. Client shall defend indemnify and hold harmless 8bytes, its Affiliates and each of its officers, employees agents and subcontractors from and against all claims, demands, damages, awards of damages, losses, costs, expenses and liabilities (including any regulatory fines and reasonable legal fees) that result or arise in connection with Client or its Authorised User's: (i) unauthorised use of the Services; (ii) infringement or violation of 8bytes's Intellectual Property Rights; (iii) breach of applicable law including violations of third party rights due to Client's use of the Services; or (iv) breach of the Client's obligations in Clause 3 & 6.2.
- 9.5. The indemnities set forth in this Agreement are conditioned on the following: (i) the party claiming indemnification (the "Indemnitee") shall promptly notify the indemnifying party (the "Indemnitor") of any matters in respect of which it seeks to be indemnified, and shall give the Indemnitor full cooperation and opportunity to control the response thereto and the defense thereof, including without limitation any settlement thereof (provided that the Indemnitor will not enter into any settlement of such claim without the prior

approval of the Indemnitee, which approval will not be unreasonably withheld); (ii) the Indemnitor shall have no obligation for any claim under this Agreement if the Indemnitee makes any admission, settlement or other communication regarding such claim without the prior written consent of the Indemnitor, which consent shall not be unreasonably withheld; and (iii) the Indemnitee's failure to promptly give notice to the Indemnitor shall affect the Indemnitor's obligation to indemnify the Indemnitee only to the extent the Indemnitor's rights are materially prejudiced by such failure. The Indemnitee may participate, at its own expense, in such defense and in any settlement discussions directly or through counsel of its choice.

10. LIMITATION OF LIABILITY

- 10.1. Nothing in this Agreement limits or excludes liability of either party in respect of any claims for death or personal injury caused by negligence, fraud or any other liability which cannot be excluded or limited by law.
- 10.2. To the maximum extent permitted by applicable law, 8bytes will not have any liability to Client for any loss of profits, loss of business, loss of revenue, loss of data, reputational damage, or for any indirect, special, incidental, punitive, or consequential damages however caused and under any theory of liability whether or not 8bytes has been advised of the possibility of such.
- 10.3. Subject to clauses 10.1 and 10.2, to the maximum extent permitted by applicable law, 8bytes's and its Affiliates total aggregate liability arising out of or related to this Agreement or the Services under any theory of law (including liability for negligence or breach of statutory duty or an indemnity claim) shall not exceed the total amount of the Fees paid excluding support fees by Client for the event under which the liability has arisen.

11. TERM AND TERMINATION

- 11.1. This Agreement shall commence on the Effective Date and shall, unless otherwise terminated as provided for herein, continue for the Term. Thereafter, the Agreement may be renewed by the parties in writing.
- 11.2. Either party shall be entitled to terminate the Agreement on written notice in the event of:
 - 11.2.1. a material breach of this Agreement by the other party which, if capable of remedy, is not remedied by the defaulting party within fifteen (15) days of its receipt of written notice of the breach from the non-defaulting party;

- 11.2.2. fraud or wilful default of the other party; or
 - 11.2.3. the other party becoming insolvent or unable to pay its debts when due (as defined by applicable law) or has a liquidator, receiver or manager appointed to it, or a winding-up order instituted against it.
- 11.3. 8bytes reserves the right, without prejudice to its other rights or remedies, to terminate this Agreement in the event that undisputed invoice(s) remain unpaid despite issuing written notice to the Client. Additionally, in the context of a credit-based system, 8bytes may choose to expire unused credits with prior notice to the Client. Refunds for expired credits are at the sole discretion of 8bytes and may or may not be granted.
- 11.4. On termination of this Agreement for any reason:
- 11.4.1. all licences and rights of access to the Services granted under this Agreement shall immediately terminate;
 - 11.4.2. each party shall return and make no further use of any software, confidential information, property and other items (and all copies of them) belonging to the other party; and
 - 11.4.3. any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination shall not be affected or prejudiced.

12. CONFIDENTIALITY

- 12.1. Each party (the "Receiving Party") acknowledges that, in the course of this Agreement, it may obtain Confidential Information from the other Party, (the "Disclosing Party"). The Receiving Party shall keep in confidence and protect the Confidential Information of the Disclosing Party from unauthorised disclosure or dissemination and use no less than that degree of care it uses to protect its own like information, and in any event no less than reasonable care. The Receiving Party shall not use such Confidential Information except in furtherance of this Agreement.
- 12.2. The Receiving Party shall not disclose any Confidential Information to any person without the Disclosing Party's prior written consent except that the Receiving Party may disclose the Confidential Information to its officers, employees, independent contractors and agents ("Representatives") on a "need-to-know" basis, provided that such Representatives are bound by a

written agreement with materially the same terms and conditions as this clause 12 and the Receiving Party remains ultimately liable for any breach thereof. In addition, either party may provide a copy of this Agreement or otherwise disclose its terms in connection with any audit, financing transaction, regulatory or due diligence inquiry provided the recipients are subject to obligations of confidentiality at least as restrictive as those contained herein. Except as expressly provided in this Agreement, no ownership or license rights are granted in any Confidential Information.

- 12.3. The obligations of confidentiality shall continue during the term of this Agreement and thereafter, unless and until such Confidential Information falls within one of the exceptions outlined in clause 12.4.
- 12.4. This clause 12 shall not apply with respect to information the Receiving Party can document: (a) is in the public domain as a result of no act or omission of the Receiving Party or its employees or agents; (b) is received by the Receiving Party from third parties without restriction and without breach of a duty of nondisclosure by such third party; (c) was independently developed by the Receiving Party without reliance on the Confidential Information; or (d) is required to be disclosed by operation of law or by order of a court or administrative body of competent jurisdiction (provided that, where permitted under law, prior to such disclosure, the Receiving Party shall first give notice to the Disclosing Party such that the Disclosing Party has the opportunity to contest such order or requirement of disclosure or seek appropriate protective order).
- 12.5. Any breach or threatened breach by the Receiving Party of an obligation under this Agreement may cause the Disclosing Party immediate and irreparable harm for which damages alone may not be an adequate remedy. Consequently, the Disclosing Party has the right, in addition to other remedies available at law or in equity, to seek injunctive relief against the Receiving Party or to compel specific performance of this clause.
- 12.6. A Receiving Party must notify the Disclosing Party in writing, giving full details known to it immediately, when it becomes aware of any actual, suspected, likely or threatened breach by any person of any obligation in relation to the Confidential Information, or any actual, suspected, likely or threatened theft, loss, damage, or unauthorised access, use or disclosure of or to any Confidential Information.

13. FORCE MAJEURE

8bytes shall have no liability to Client under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by unforeseeable acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of 8bytes or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm, pandemic, epidemic, provided that Client is notified of such an event and its expected duration. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations, provided that if the period of delay or non- performance continues for three (3) months, the party not affected may terminate this Agreement by giving one calendar month written notice to the other party.

14. MISCELLANEOUS

- 14.1. Waiver. No failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law, or a single or partial exercise of such right or remedy, shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy.
- 14.2. Invalidity. If any provision (or part of a provision) of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.
- 14.3. Entire Agreement. This Agreement (which includes all Order Forms and the DPA), and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover. Additional Order Forms may be agreed between the parties referencing this Agreement, each of which shall form part of the Agreement.

- 14.4. Assignment. Either party may assign on written notice all of its rights and obligations under this Agreement to (i) an Affiliate, (ii) a purchaser of all or substantially all assets related to this Agreement, or (iii) a third party participating in a merger, acquisition, sale of assets or other corporate reorganization in which a party is participating. Any attempt to assign this Agreement in violation of this provision shall be void and of no effect. This Agreement will bind and inure to the benefit of the parties and their respective permitted successors and assigns.
- 14.5. Publicity. Neither party may publicly announce this Agreement except with the other party's prior consent or as required by applicable laws. However, 8bytes may include Client and its trademarks in 8bytes's customer lists and promotional materials but will cease this use at Client's written request.
- 14.6. No agency. Nothing in this Agreement is intended to or shall operate to create a partnership, agency or joint venture between the parties, or authorize either party to act as agent for the other.
- 14.7. Notice. Any notice to be given by either party for the purposes of the Agreement shall be sent by mail/email to the contact party whose details are set out in the Order Form. A notice delivered (i) by hand shall be deemed to have been received when delivered or if delivery is not in Business Hours, at 9am on the first Business Day following delivery, (ii) by post if correctly addressed by prepaid registered delivery shall be deemed delivered two days from the date of posting and five days for pre-paid registered airmail, and (iii) by email shall be deemed to have been received at 9.00am on the next Business Day after transmission.
- 14.8. Amendment. No amendment of this Agreement shall be valid or effective unless it is in writing, refers to this Agreement and is duly signed or executed by, or on behalf of, each party.
- 14.9. Third Party Rights. Unless otherwise expressly provided, no provision of this Agreement is intended or shall be construed to confer upon or give to any person or entity other than 8bytes and Client any rights, remedies or other benefits under or by reason of this Agreement.
- 14.10. Survival. The following Clauses shall survive the termination or expiration of this Agreement: clause 3, 6, 7, 8, 9, 10, 11, 12, 13, and this clause 14.
- 14.11. Counterparts. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Agreement, but all the counterparts shall together constitute the same agreement.

- 14.12. Dispute Resolution. The Parties shall do their best acting in good faith to settle amicably any dispute, controversy or claim arising out of or in connection with the existence, validity, construction, performance and termination of the Agreement (or any terms thereof). Escalation to the Senior Management of the Parties shall be the preferred dispute resolution methodology. If Senior Management cannot resolve the dispute within 30 days of first notification of the dispute the matter shall be referred to the courts of Ireland in accordance with clause 14.12.
- 14.13. Governing Law and Jurisdiction. This Agreement and any disputes or claims arising out of or in connection with it are governed by and construed in accordance with the laws of the Republic of Ireland. The parties irrevocably agree that the courts of the Republic of Ireland have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

SCHEDULE

DATA PROCESSING AGREEMENT

This Data Processing Agreement (“DPA”) sets out the additional terms, requirements and conditions on which 8bytes will process Personal Data when providing the Services and contains the mandatory clauses required by Article 28(3) of the General Data Protection Regulation ((EU) 2016/679) (“GDPR”) for contracts between controllers and processors

AGREED TERMS

1. INTRODUCTION

- 1.1. In providing the Services under the Agreement, 8bytes may be required to process Personal Data on Client’s behalf. The parties record their intention that Client and its Affiliates (as applicable) shall be the Controller and 8bytes shall be a Processor.
- 1.2. Client and its Affiliates shall, at all times, comply with their respective obligations as Controller and shall be responsible for Processing of all Personal Data processed under or in connection with the Agreement by their respective contractors or agents and Authorised Users in accordance with their obligations under applicable Data Protection Laws.
- 1.3. Client shall ensure that Authorised Users, End Users and all relevant third parties have, been informed of, and have given their consent, as required by Data Protection Laws to the specific Processing as contemplated by this DPA.
- 1.4. Annex 1 to this DPA sets out certain information regarding 8bytes and its subprocessors Processing of the Personal Data as required by article 28(3) of the GDPR.
- 1.5. Client hereby instructs 8bytes (and consents and authorises 8bytes to instruct each subprocessor) to process Client Personal Data as reasonably necessary for the provision of the services and consistent with this DPA.
- 1.6. The terms "**Controller**", "**Processor**", "**Data Subject**", "**Personal Data**", "**Personal Data Breach**" and "**Process/Processing**" have the same meaning as described in GDPR and shall be construed accordingly.

2. DATA PROTECTION OBLIGATIONS

2.1. To the extent that 8bytes Processes Client Personal Data pursuant to the Agreement, 8bytes warrants, represents and undertakes to Client that it shall:

- 2.1.1. not process, disclose to or source from any third party, any Personal Data except to the extent, and in such a manner, as is reasonably necessary for the provision of the Services and then only where 8bytes is acting on and in accordance with the express written instructions of Client and/or its Affiliates, and at all times in accordance with all Data Protection Laws;
- 2.1.2. implement and maintain appropriate technical and organisational measures to protect Client Personal Data including but not limited to against accidental unauthorised or unlawful loss, destruction, damage, alteration, access, disclosure or other Processing;
- 2.1.3. not transfer or Process any Client Personal Data outside the European Economic Area, including any transfer via electronic media, without the express prior written consent of Client (and subject then in any event to the execution of an appropriate data transfer agreement);
- 2.1.4. cooperate as reasonably requested by Client to enable Client to: (i) comply with any exercise of rights by a Data Subject under the Data Protection Laws in respect of Personal Data processed by 8bytes under this DPA and shall implement and maintain appropriate technical and organisational measures to assist Client in responding to such requests from Data Subjects and shall notify Client promptly upon receipt of any such request from a Data Subject; and (ii) comply with any assessment, enquiry, notice or investigation under the Data Protection Laws which includes assisting Client where required in its obligations under Articles 35 and 36 of GDPR (including but not limited to the completion of a data protection impact assessment) to the extent this relates to the Services. Any such reasonable assistance shall be at the cost of Client;
- 2.1.5. maintain proper up to date records of any Client Personal Data Processed by or on behalf of 8bytes pursuant to this DPA;
- 2.1.6. ensure that all 8bytes Personnel engaged in the provision of the Services have entered into a confidentiality agreement with 8bytes and shall further ensure that such 8bytes Personnel are made aware of and observe 8bytes's obligations under this DPA with regard to the security and protection of Personal Data;

- 2.1.7. at Client's option within thirty (30) days in writing to 8bytes, either (i) return to Client, or, (ii) delete from its systems, or destroy and make permanently unusable, all Client Personal Data and any copies, records, analysis, memoranda or other notes to the extent containing or effecting any Personal Data and 8bytes shall provide a certificate of confirmation from a senior authorised representative of 8bytes that this paragraph 2.1.7 has been complied with in full in accordance with 8bytes extract, return and deletion procedures and no longer than thirty (30) days from receipt of the request;
- 2.1.8. appoint and identify to Client a named individual within 8bytes to act as a point of contact for any enquiries from Client relating to Personal Data and cooperate in good faith with Client concerning all such enquires within a reasonable time period;
- 2.1.9. only sub-contract any element of the data Processing provided that (i) Client has given its express prior written consent to the use of such a sub-contractor or (ii) has given its prior general consent to sub-contracting of the data Processing by 8bytes from time to time. In the case of (ii), 8bytes will maintain a list of subcontractors used from time to time in relation to the data Processing and will make such list available to Client with any proposed additional or replacement sub-contractors prior to the introduction of any such addition or replacement. Client may acting reasonably object to the 8bytes or replacement of any particular sub-contractor proposed by 8bytes. If no written objections have been received within ten (10) days, the proposed subprocessor shall be deemed accepted. 8bytes shall ensure that (i) the terms governing the engagement between 8bytes and any subcontractors are not less protective with respect to Processing of Client Personal Data compared to the provisions of this DPA and any other relevant provisions of the Agreement to the extent those requirements are applicable to the nature of the services provided by the subprocessor; and (ii) 8bytes will remain responsible for the sub-contractor's compliance with its obligations and for any acts or omissions of such subcontractor.

3. PERSONAL DATA BREACH

Without prejudice to the other provisions of this DPA, 8bytes shall promptly upon becoming aware of any Personal Data Breach (and in any event within twenty four (24) hours of becoming aware of the Personal Data Breach) notify Client of the Personal Data Breach by telephone and by email, and where the Personal Data Breach directly affects Client Personal Data or the Services being offered to Client. 8bytes shall, at no additional cost to Client (save that Client shall reimburse 8bytes's reasonable costs where 8bytes has complied fully with its obligations under this DPA and such Personal Data Breach is not due to 8bytes default or neglect), provide Client with all resources and assistance as required by Client for Client to notify the Office of the Data Protection Commissioner and/or Information Commissioners Office (or analogous body in any other relevant jurisdiction and/or any bodies which may succeed or replace them from time to time and any other relevant Regulatory Authorities) of the Personal Data Breach and for Client to provide such reports or information as may be requested by it in relation to such Personal Data Breach and/or for Client to notify the relevant Data Subjects of such Personal Data Breach, as applicable.

4. SUBPROCESSORS AND DATA TRANSFERS

- 4.1. Client acknowledges and confirms its prior general consent to sub-contracting of the data Processing by 8bytes from time to time to its subprocessors, an up to date list of which is maintained by 8bytes and available on request, and which may be changed in accordance with Clause 2.1.9.
- 4.2. 8bytes shall process Client Personal Data in the EU/European Economic Area (EEA) and Client Personal Data shall not be transferred outside of EU/EEA to a country that the European Commission has not determined has adequate protection for Personal Data, without Client's prior written consent. Where Client Personal Data for EEA data subjects is transferred outside of the EU/EEA, the parties shall enter into appropriate data transfer agreements.

5. CHANGES IN DATA PROTECTION LAWS

- 5.1. Should changes to applicable Data Protection Laws, including the interpretation thereof, entail increased costs for 8bytes or its Subprocessors, 8bytes may, subject to providing written notice to Client, increase the rates charged to Client to reflect the increased costs. The increase to Client should be fair and reasonable and should be proportional to what other similar 8bytes clients are being asked to pay.
- 5.2. 8bytes may propose variations to this Appendix which 8bytes reasonably considers to be necessary to address the requirements of any Data Protection Laws. The Parties shall promptly discuss the proposed variations and negotiate in good faith with a view to agreeing and implementing those or alternative variations designed to address the requirements identified as soon as is reasonably practicable. Client shall not unreasonably withhold or delay agreement to any consequential variations to this Appendix proposed by 8bytes to protect 8bytes and the Subprocessors against additional risks associated with the variations proposed.

6. AUDIT

Upon 30 days written request by Client, not more than once per year, Client may conduct an audit of 8bytes systems, processes, and procedures relevant to the protection of Personal Data at locations where Personal Data is Processed. 8bytes will work cooperatively with Client to agree on an audit plan in advance of any audit. If the scope of the audit is addressed in an ISO 27001/27701 or similar audit report performed by a qualified third party auditor within the prior 12 months, and 8bytes data protection or other relevant officer certifies in writing there are no known material changes in the controls audited, Client shall agree to accept those reports in lieu of requesting an audit of the controls covered by the report. 8bytes will reasonably cooperate with and assist Client where a Regulator requires an audit of the data processing facilities from which 8bytes process Personal Data in order to ascertain or monitor Client's compliance with Data Protection Laws.

7. INDEMNITY

8bytes shall indemnify Client from and against any and all third party claims, suits, demands and actions and for resulting damages, awards of damages, losses, costs, and expenses (including but not limited to any regulatory fines and reasonable legal and professional fees) incurred by Client that result or arise from any breach by 8bytes of the terms and conditions of this DPA and/or Data Protection Laws. 8bytes shall be liable on a comparative basis for the portion of those damages directly attributable to its breach of its obligations and the indemnity shall be subject to the limitations of liability in the Agreement.

ANNEX 1: DETAILS OF PROCESSING OF CLIENT AND AUTHORISED USER PERSONAL DATA

This Annex 1 includes certain details of the Processing of Client and Authorised User Personal Data as required by Article 28(3) GDPR.

(A) Subject matter and duration of the Processing of Client and Authorised User Personal Data

The subject matter is Client Personal Data, Authorised User Personal Data and End User Data and the duration of the Processing is for the Term of the Agreement

(B) The nature and purpose of the Processing of Client and Authorised User Personal Data

8bytes will Process Personal Data as necessary to perform the Services pursuant to the Agreement and as further instructed by the Client in its use of the Services.

(C) The types of Personal Data to be Processed

Client and Authorised User and End User Personal Data relating to the following type of data categories:

- First name and last name
- Contact Information (email, phone, work location)

The types of Personal Data may change from time to time, according to any additional or amended Services to be provided by 8bytes.

(D) The categories of Data Subject to whom Client and Authorised User Personal Data relates

Client Personal Data relating to the following type of Data Subjects:

- Client employees; and
- Authorised Users (as defined in the Agreement)
- End Users (as defined in the Agreement)

(E) The obligations and rights of Client

These are as set out in the Agreement and this DPA.

8bytes may provide notice of change to these provisions where an update is required due to changes to services or changes required due to applicable Data Protection Laws, including the interpretation thereof.