



GENERAL TERMS & CONDITIONS

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General Terms & Conditions

1. Introduction

These terms of service (collectively "Terms") are a legal agreement between you, either an individual or a single legal entity ("You" or "you"), and Sleepless. These Terms govern your use of any Sleepless services ("Services"), the Sleepless website ("Site"), the client software distributed with this Agreement and any other software provided by Sleepless, including any updates and any accompanying documentation ("Software"). Collectively, the Software, the Site and the Services may be referred to as the "Products". By clicking the "I AGREE" or similar button, by signing a Service Level Agreement, Order Form, or by using any Products, you agree to these Terms. If you do not agree to these Terms, then do not indicate acceptance and do not use the Products. If you agree to these Terms on behalf of a legal entity, you represent that you have the authority to bind that legal entity to these Terms.

2. Your Obligations

You agree to do each of the following: (i) comply with applicable law (ii) pay when due the fees for the Services, (iii) use reasonable security precautions in light of your use of the Services, (iv) cooperate with Sleepless' reasonable investigation of outages, security problems, and any suspected breach of the Agreement, (v) keep your billing contact and other account information up to date; and (vi) immediately notify Sleepless of any unauthorised use of your account or any other breach of security.

3. Accounts, Fees & Auto-Renewal

You agree to keep your registration information accurate, complete and up-to-date as long as you continue to use the Services. You agree to pay the fixed subscription and variable usage-based fees, if any, for the service type you have selected and agree to any applicable restrictions, including quotas on the amount of storage you are allowed to use. If you exceed any quota allocated to your account, you agree that Sleepless may restrict your ability to use the Services in full until you reduce your usage or sign-up to another type of account with a higher quota or no quota at all. If you use a card for payment, you authorise Sleepless to automatically renew your Services and subscription for successive renewal terms each equal in length to the initial term purchased by you and charge the then-current renewal fees to the card associated with your account unless you notify Sleepless in advance that you do not want your subscription renewed. If you use an alternative payment method, you authorise Sleepless to automatically renew your subscription for successive renewal terms each equal in length to the initial term purchased by you and you agree to pay the then-current renewal fees when invoiced. Sleepless may send you at least one email to remind you of each upcoming renewal of the Services or subscription. Sleepless may change the renewal price of the Services or subscription as of the next renewal date and we will provide you with prior notice if we do so. You can elect to cancel an automatic renewal for the Services or subscription at any time and for any reason (including if you do not agree to a price change) by contacting Sleepless at least 45 days in advance of the renewal. You agree that you are responsible for payment of all fees related to the Services set to auto-renew. Once the service renewal has been processed it cannot be reversed nor any fees refunded. Any request for cancellation of services must be submitted in writing to accounts@sleepless.ie, and acknowledged, with minimum 60 days notice to Sleepless.

4. Use of Services & Software

Subject to these Terms, [Sleepless](#) grants you a limited, non-exclusive, non-transferable and revocable licence to access the Site and use the Services and Software. You may install and use the Software in executable form only on the number and type of devices that are specified in the then-current documentation for your service type as described on the Site or as specified in other transaction documentation provided by [Sleepless](#) or an authorised reseller or Partner. You acknowledge that certain third party code may be provided with the Software and that the licence terms accompanying that code will govern its use.

You acknowledge that [Sleepless](#) or third parties own all right, title and interest in and to the Products, including all intellectual property rights. Except for the licence granted in these Terms, [Sleepless](#) and its licensors retain all rights in the Products, and no implied licences are granted to you.

You specifically agree that you will not, nor will you permit another person to (without the express written consent of [Sleepless](#)):

- sub-licence, lease, rent, loan, transfer or distribute any portion of the Products;
- modify, adapt, translate or create derivative works from the Products;
- decompile, reverse engineer, disassemble or otherwise attempt to derive source code from the Products; or
- remove, obscure or alter any trademark, copyright or other proprietary rights notices displayed in the Software or on the Site.

5. Service Fees and Payments

If the fees are not paid in accordance with the agreed payment terms as per the Service Level Agreement or otherwise for the particular Service, [Sleepless](#) reserves the right to terminate the Services. Cancellation will terminate the license and will deny you and your designated users access to, and use of the Services. All of your data will be deleted from [Sleepless](#) servers at the expiration of thirty (30) days after termination of the Services for reasons of non-payment or for other reasons set forth elsewhere in these Terms. [Sleepless](#) may terminate the Services with 30 days prior notice if you fail to comply with any of these Terms. In the event of you availing of co-location services, you agree that [Sleepless](#) may disconnect your equipment at the expiration of 30 days and dispose of the equipment within 60 days if same is not removed from the premises.

6. Termination for Breach

We may terminate the Agreement for breach on written notice if: (i) we discover that the information you provided to us about yourself or your proposed use of the Services was materially inaccurate or incomplete, (ii) if you are an individual, you were not at least 18 years old or otherwise did not have the legal capacity to enter into the Agreement, or if you are an entity or fiduciary, the individual did not have the legal right or authority to enter into the Agreement on behalf of the person represented to be the customer, (iii) your payment of any invoiced amount is overdue, and you do not pay the overdue amount within thirty (30) days of our written notice, (iv) you fail to comply with any other provision of the Agreement and do not remedy the failure within thirty (30) days of our notice to you describing the failure. Upon expiration or termination of Service, you shall immediately cease all use of the Software and Service and destroy all copies of the Software and relevant documentation.

7. Illegal Use

The Subscriber shall not use the Services for the storage, possession, creation or transmission of any information, which violates any law, statute, ordinance or regulation or that, may in any manner injure

any party or property. Such uses include but are not limited to use of the Service for stolen materials, obscene materials or child pornography. Information which is defamatory, libelous, unlawfully threatening or unlawfully harassing, is obscene or indecent in violation of applicable law, or any use intended to damage any system or data including the propagation of viruses, worms, Trojans or other such programs.

8. Intellectual Property Protection

Sleepless. respects the intellectual property of others and requires that users of the Service do the same. When you use the Products, you may not upload, store, share, display, post, email, transmit or otherwise make available any material that infringes any copyright, patent, trademark, trade secret or other proprietary rights of any person or entity. In appropriate circumstances, **Sleepless.** will terminate the accounts of repeat infringers.

9. User Indemnity

You agree to defend, indemnify and hold **Sleepless.**, its suppliers, resellers, partners and their respective affiliates harmless from and against any claims, liabilities, damages, losses and expenses, including reasonable legal fees and costs, in connection with:

- your use of the Products;
- your breach of these Terms;
- your infringement of any third party right, including any intellectual property right; or
- any claim that use of your data caused damage to a third party.

This indemnity obligation will survive the termination or expiration of your account and these Terms.

10. Warranties, Indemnity and Disclaimers

Nothing in these terms and conditions excludes, restricts or affects your statutory rights.

The Service will be provided to you with reasonable skill and care. In this context, you specifically acknowledge and accept that the Service, as with other internet applications, is not capable of being 100% secure and **Sleepless.** does not guarantee the prevention or detection of any unauthorised attempts to access your data through the Service, the Site and/or our other systems and services.

Sleepless. also cannot be held responsible for any loss or corruption of data or any unauthorised access of such data that takes place over third party systems and services used by you to transmit the data to or retrieve the data from **Sleepless.** It is also entirely your responsibility to protect your computer from computer viruses, or other malicious software / "malware" by implementing adequate protections as appropriate.

The Customer agrees to hold harmless and indemnify **Sleepless.**, and its subsidiaries, affiliates, officers, agents, employees, advertisers, licensors, suppliers or partners, (collectively " **Sleepless.** and Partners") from and against any third party claim arising from or in any way related to your use of **Sleepless.** services, violation of the Terms or any other actions connected with use of **Sleepless.** services, including any liability or expense arising from all claims, losses, damages (actual and consequential), suits, judgments, litigation costs and lawyers' fees, of every kind and nature. In such a case, **Sleepless.** will provide you with written notice of such claim, suit or action.

Without prejudice to any other provision of this agreement, if a failure with the Site, the Software, the Service, and other content, information, material, software or other items or services made available or provided by **Sleepless.** through the Site or the service ("Other Materials") materially or permanently prevents you from accessing or retrieving any data that you have stored through the Service, then

Sleepless. shall, at our option either (a) resolve the issue or (b) refund to you that proportion of the price you paid for the Service which is reasonably attributable to the data in question, taking into account its size relative to the total volume of data stored by you during the term of this agreement. To the maximum extent permitted under applicable law, such resolution or refund is **Sleepless.** entire liability and your exclusive remedy relating to any such failure. Without prejudice to any other provision of this agreement, **Sleepless.** recommends that you backup your data. Additionally, **Sleepless.** will notify you as soon as is practicable of any development which would affect **Sleepless.** ability to carry out its services effectively and in compliance with applicable laws and regulatory requirements.

TO THE FULLEST EXTENT PERMITTED BY LAW, **Sleepless.** AND ANY THIRD PARTY SOFTWARE AND SERVICE SUPPLIERS, EXCLUDE ALL OTHER EXPRESS OR IMPLIED TERMS AND CONDITIONS, CONDITIONS, WARRANTIES, REPRESENTATIONS OR ENDORSEMENTS WHATSOEVER WITH REGARD TO THE SITE, THE SOFTWARE, THE SERVICE AND/OR OTHER MATERIALS INCLUDING WITHOUT LIMITATION THOSE AS TO SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT OF PROPRIETARY RIGHTS AND ANY WARRANTIES OR OTHER TERMS REGARDING THE AVAILABILITY, SECURITY, RELIABILITY, TIMELINESS, AND PERFORMANCE OF THE SOFTWARE OR SERVICE AND SUCH THIRD PARTY SOFTWARE OR SERVICES.

Sleepless. SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE RESULTING FROM THE ILLEGAL, INCORRECT OR INAPPROPRIATE USE OF THE SITE, THE SOFTWARE, THE SERVICE AND/OR OTHER MATERIALS BY YOU OR ANYONE ELSE USING YOUR ACCOUNT.

Sleepless. MAY REQUIRE YOU TO REIMBURSE US FOR ANY REASONABLE AND FORESEEABLE LOSSES, COSTS, EXPENSES, DAMAGES OR OTHER LIABILITY THAT **Sleepless.** INCURS AS A DIRECT RESULT OF THE MISUSE OF THE SITE, THE SOFTWARE, THE SERVICE AND/OR ANY OTHER MATERIALS EITHER BY YOU OR BY SOMEONE USING YOUR ACCOUNT. FOR THE PURPOSE OF THIS PARAGRAPH, "MISUSE" SHALL BE CONSTRUED AS INCLUDING (I) ANY USE OF THE SITE, THE SOFTWARE, THE SERVICE AND/OR OTHER MATERIALS THAT IS IN BREACH OF THIS AGREEMENT (INCLUDING THE PRIVACY POLICY); AND/OR (II) ANY USE OF THE SITE, THE SOFTWARE, THE SERVICE AND/OR OTHER MATERIALS IN CONNECTION WITH WHICH **Sleepless.** IS REQUIRED TO DEFEND ITS OWN INTERESTS BEFORE A COURT, GOVERNMENT AGENCY, INDUSTRY REGULATOR, SELF-REGULATORY BODY OR SIMILAR MEMBERSHIP ORGANISATION, OR DISPUTE RESOLUTION BODY AND/OR INCURS ANY LOSSES, COSTS, EXPENSES, DAMAGES OR OTHER LIABILITY IN CONNECTION WITH ANY THREATENED OR ACTUAL CIVIL, CRIMINAL OR ADMINISTRATIVE PROCEEDINGS.

11. Limitation of Liability

UNDER NO CIRCUMSTANCES SHALL **Sleepless.**, OR ITS SUPPLIERS, RESELLERS, PARTNERS OR THEIR RESPECTIVE AFFILIATES BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES ARISING FROM OR RELATED TO THE SOFTWARE OR SERVICE, WHETHER SUCH CLAIM IS BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, (EVEN IF **Sleepless.** HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES).

WITHOUT LIMITING THE FOREGOING, SAVE IN THE CASE OF DEATH OR PERSONAL INJURY CAUSED BY OUR NEGLIGENCE OR THE NEGLIGENCE OF OUR EMPLOYEES, OR WHERE WE HAVE ACTED FRAUDULENTLY, THE TOTAL AGGREGATE LIABILITY OF **Sleepless.**, AND ITS SUPPLIERS, RESELLERS, PARTNERS AND THEIR RESPECTIVE AFFILIATES ARISING FROM OR RELATED TO THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT WITHIN THE TERM OF THE AGREEMENT, IF ANY, PAID BY YOU TO **Sleepless.** FOR THE SOFTWARE OR SERVICES. IF THE SOFTWARE AND SERVICES ARE PROVIDED

WITHOUT CHARGE, THEN Sleepless. AND ITS SUPPLIERS SHALL HAVE NO LIABILITY TO YOU WHATSOEVER.

THE FOREGOING LIMITATIONS OF LIABILITY SHALL APPLY WHETHER THE DAMAGES ARISE FROM USE OR MISUSE OF AND RELIANCE ON THE SOFTWARE OR SERVICE, FROM INABILITY TO USE THE SOFTWARE OR SERVICE, OR FROM THE INTERRUPTION, SUSPENSION, OR TERMINATION OF THE SOFTWARE OR SERVICE (INCLUDING SUCH DAMAGES INCURRED BY THIRD PARTIES). SUCH LIMITATION SHALL APPLY NOTWITHSTANDING A FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY AND TO THE FULLEST EXTENT PERMITTED BY LAW.

THE SOFTWARE AND SERVICE ARE NOT INTENDED FOR USE IN CONNECTION WITH ANY NUCLEAR, AVIATION, MASS TRANSIT, OR MEDICAL APPLICATION OR ANY OTHER INHERENTLY DANGEROUS APPLICATION THAT COULD RESULT IN DEATH, PERSONAL INJURY, CATASTROPHIC DAMAGE, OR MASS DESTRUCTION, AND YOU AGREE THAT Sleepless. WILL HAVE NO LIABILITY OF ANY NATURE AS A RESULT OF ANY SUCH USE OF THE SOFTWARE.

12. Miscellaneous Provisions

You acknowledge and agree that the Software which is the subject of this Agreement, may be controlled for export purposes. You agree to comply with all United States export laws and regulations. You assume sole responsibility for any required export approval and/or licenses and all related costs and for the violation of any United States export law or regulation. If you are located in a country subject to embargo by the United States government, you are not entitled to use the Software or Service.

This agreement will be governed by and construed in accordance with the laws of the Republic of Ireland, without giving effect to any conflict of laws and provisions that would require the application of the laws of any other jurisdiction.

The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

The failure of Sleepless. to exercise or enforce any right or provision of this Agreement does not constitute a waiver of such right or provision. If for any reason a court of competent jurisdiction finds any provision or portion of this Agreement to be unenforceable, the remainder of this Agreement will continue in full force and effect.

This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes and replaces all prior or contemporaneous understandings or agreements, written or oral, regarding such subject matter. Any waiver of any provision of this Agreement will be effective only if in writing and signed by Sleepless..

All disputes arising out of this Agreement will be subject to Irish law and the parties agree and submit to the personal and exclusive jurisdiction and venue of the Irish courts, except that nothing will prohibit Sleepless. from instituting an action in any court of competent jurisdiction to obtain injunctive relief or protect or enforce its intellectual property rights.

You may not assign or transfer any of your rights or obligations under this Agreement to a third party without the prior written consent of Sleepless.. Sleepless. may freely assign this Agreement. Any attempted assignment or transfer in violation of the foregoing will be void from the beginning.

Sleepless. reserves the right to make amendments to these Terms. You will be responsible for checking for any updates to these terms as notification of amendments may not be otherwise provided. You agree to be bound by any amended Terms whether or not you have read the new Terms.

FORCE MAJEURE: Neither of us will be in violation of the Agreement if the failure to perform the obligation is due to an event beyond our control, such as significant failure of a part of the power grid, significant failure of the Internet, natural disaster, war, riot, insurrection, epidemic, strikes or other organised labour action, terrorism, or other events of] a magnitude or type for which precautions are not generally taken in the industry.

Data Processing Agreement

13. Introduction

The Customer (as defined on the authorisation page) agreeing to these terms and Sleepless. have entered into one or more Agreements or Contracts herein referred to as “the Contract” or “Contract”.

This Data Processing Agreement as related to the products and services as detailed in the Contract as and from the Effective Date, be effective and replace any previously applicable data processing agreement and/or other terms previously applicable to privacy, data processing and/or data security.

14. Definitions

In this Agreement the following expressions shall have the following meanings unless the context otherwise requires:

References to the “**Data Controller**” and the “**Data Processor**” have the meanings ascribed to those terms under Data Protection Legislation;

“**Acts**” means Data Protection Acts 1988 and 2003;

“**Confidential Information**” means any information and/or material relating to the customers, business, affairs, finances, systems, processes and/or methods of operation of either party (including Personal Data) which is disclosed by one Party to the other in connection with the operation of the Contract (whether oral or in writing and whether or not such information is expressly stated to be confidential or marked as such);

“**Customer Data**” means data submitted, stored, sent or received via the Services by the Customer, its Affiliates or End Users.

“**Customer Personal Data**” means personal data contained within the Customer Data.

“**Data Protection Commissioner**” means the Office of the Data Protection Commissioner or any successor to or replacement of that office;

“**Data Protection Legislation**” means any laws governing the processing, use and disclosure of personal data including (without limitation):

- a) the Data Protection Acts 1988 and 2003 in Ireland, the European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011, EU Data Protection Directive 95/46/EC, the Data Protection (Registration) Regulations 2001, the Data Protection Act 1988 (Section 16(1)) Regulations 2007;
- b) to the extent applicable to this Agreement or the services provided pursuant to this Agreement, the data protection and information privacy laws of any other jurisdiction;
- c) any re-enactment, replacement or amendment of the laws referred to in (a) or (b) in force from time to time including the GDPR, all national implementing legislation; and
- d) all industry guidelines (whether statutory or non-statutory) or applicable Codes of Practice and Guidance Notes issued by the Data Protection Commissioner, the European Commission or European Data Protection Board relating to the Processing of personal data or privacy or any amendments and re-enactments thereof;

“**Data Protection Impact Assessments**” shall have the meaning provided in the GDPR;

“**Data Subject**”, “**Personal Data**”, and “**Processing**” shall have the same meanings set out in the Data Processing Legislation and “**Process**” shall be construed accordingly;

“**Data Security Breach**” means any known potential or actual breach of the agreed security arrangements or any obligations or duties owed by the Data Processor to the Data Controller relating to the confidentiality, integrity or availability of Confidential Information or Personal Data;

“**DPA**” means this Data Processing Agreement;

“**Effective Date**” means the date on which the Customer accepted, or the parties otherwise agreed, this DPA;

“**EEA**” means European Economic Area;

“**GDPR**” means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the Processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation);

“**Group**” of a party means in relation to a party, that party, any Subsidiary or Holding Company of that party, and any Subsidiary of a Holding Company of that party;

“**Parties**” means [Sleepless](#). and the Customer and “**Party**” shall be construed accordingly;

“**Personnel**” of a person means (i) the officers, employees, agents and contractors (including subcontractors) of that person and the members of its Group; and (ii) the officers, employees, contractors and agents of the contractors (including subcontractors) of that person and the members of its Group;

“**Prior Consultations**” shall have the meaning provided in the GDPR;

“**Regulator**” means any regulator or regulatory body (including the Data Protection Commissioner) to which the Data Controller or a member of its Group is subject from time to time or whose consent, approval or authority is required so that the Data Controller or a member of the its Group can lawfully carry on its business; and

“**Security Measures**” means the appropriate security measures to be taken in respect of Personal Data as more particularly described at Article 32 of the GDPR;

“**Services**” means the services provided by the Supplier as specified in the Contract;

“**Sub-processors**” means third parties authorised under this Data Processing Agreement to have logical access to and process Customer Data in order to provide parts of the Services and related technical support.

15. Duration of this Data Processing Agreement

This DPA will remain effective from the date agreed (Effective Date) until the date of expiry of the Contract, notwithstanding expiry of the Contract, remain in effect and automatically expire upon the deletion of all Customer Data by Sleepless. from all live and back up systems, software and servers.

16. Personal Data within our Commercial Relationship

In relation to the role of the Customer and of Sleepless. during our normal commercial relationship, Sleepless. is the Data Controller and the Customer is the Data Processor, as defined within the GDPR. Within the boundaries of the business relationship, the following applies:

16.1. Personal Information We Process

- a) **Your employee contact details:** information that allows us to contact your employees directly to allow us to administer the products and service as described within the contract – names, email addresses, telephone numbers, IP addresses and User credentials where furnished to us
- b) **Records of your discussions with our customer support teams, including call recordings:** when you share comments and opinions with us, ask us questions or make a complaint, including when you phone us, we will keep a record of this. This includes when you send us emails, letters, phone our support team or contact us through social media or our website
- c) **Responses to surveys, competitions and promotions:** we keep records of any surveys you respond to or your entry into any competition or promotion we run.
- d) **How you use mobile applications and websites:** when you use our applications or websites, we collect information about the pages you look at and how you use them, your device type, operating system and browser type.
- e) **Advertising and Direct Marketing:** Where you have opted in you may receive direct marketing. While you are online, you may be exposed with our digital advertising. Information about how you respond, or interact with, any direct marketing or advertising communications directed to you, including any requests for these communications to stop.

16.2. The Legal Grounds Under Which We Process This Personal Data

We process this information solely because you are the Customer. Information described in a) and b) is essential to allow us to maintain our business relationship and as such the legal grounds for processing this data is that *'processing is necessary for the performance of a contract to which the data subject is party'*. Information described in c) through e) ensures that we monitor our customer engagement, provide multiple lines of customer support, facilitate communications and ensure we continue to grow the business commercially. All activities described in c) through e) are done so with the users consent and so the legal grounds for processing this data is that *'the data subject has given consent to the processing of his or her personal data for one or more specific purposes'*. Sleepless. ensure we have the users consent through the various policies on the various portals, such as our website, newsletters, etc.

17. Personal Data within the Products and Services Provided

17.1. Roles and Authorisations

In relation to the role of the Customer and Sleepless. during the delivery of products and services we provide as per the Contract that is in place, Sleepless. is the Data Processor and the Customer is the Data Controller or a Data Processor, as defined within the EDPR. Sleepless. commits to ensuring compliance with Article 28 of the GDPR.

If the GDPR applies to the processing of Customer Personal Data and the Customer is a processor, the Customer warrants to Sleepless. that the Customer's instructions and actions with respect to that Customer Personal Data, including its appointment of Sleepless. as another processor, have been authorised by the relevant Data Controller.

17.2. Scope of Processing

Sleepless. will process Customer Personal Data submitted, stored, sent or received by Customer, its Affiliates or End Users via the Services for the purposes of providing the Services and related technical support to Customer in accordance with the Data Processing Agreement.

Personal data submitted, stored, sent or received via the Services may concern the following categories of data subjects: End Users including Customer's employees and contractors; the personnel of Customer's customers, suppliers and subcontractors; and any other person who transmits data via the Services, including individuals collaborating and communicating with End Users.

The Customer is in complete control over the data stored or processed within the scope of the Contract as agreed. Sleepless. has no knowledge of this data in terms of its type, contents or purpose. As such, the Customer is fully responsible for ensuring that the data is processed in accordance with GDPR and that the terms of the Contract are appropriate for its intended purpose.

17.2.1. The Customer's Instructions

By entering into this Data Processing Agreement, Customer instructs Sleepless. to process Customer Personal Data only in accordance with applicable law:

- a) to provide the Services and related technical support;
- b) as further specified via Customer's use of the Services and related technical support;
- c) as documented in the form of the applicable Contract, including this Data Processing Agreement; and
- d) as further documented in any other written instructions given by Customer and acknowledged by Sleepless. as constituting instructions for purposes of this Data Processing Agreement.

17.2.2. Sleepless.'s Compliance with Instructions

As from the effective date of this DPA, Sleepless. will comply with the instructions described in the Customer's Instructions (including with regard to data transfers) unless EU or Irish law to which Sleepless. is subject requires other processing of Customer Personal Data by Sleepless., in which case Sleepless. will inform Customer (unless that law prohibits Sleepless. from doing so on important grounds of public interest).

17.3. Data Security

17.3.1. Sleepless.'s Security Responsibilities

Sleepless. commits to ensuring compliance with Article 32 as it applies within the scope of Article 28 of the GDPR. Sleepless. will implement and maintain technical and organisational measures to protect Customer Data against accidental or unlawful destruction, loss, alteration, unauthorised disclosure or access. Security Measures include measures to help ensure ongoing confidentiality, integrity, availability and resilience of Sleepless.'s systems and services; to help restore timely access to personal data following an incident; and for regular testing of effectiveness. Sleepless. may update or modify the Security Measures from time to time provided that such updates and modifications do not result in the degradation of the overall security of the Services.

Sleepless. will take appropriate steps to ensure compliance with the Security Measures by its employees, contractors and Sub-processors to the extent applicable to their scope of performance, including ensuring that all persons authorised to process Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.

Sleepless. has a mature information security management system. **Sleepless.** holds and commits to continuing to hold certification to ISO 27001 and ISO 27018.

By agreeing to this DPA, the Customer specifically authorises the engagement of Sub-processors by **Sleepless.**, within the terms of this DPA and the Contract.

Sleepless. will not transfer Customer Data outside of the EEA without the explicit written instruction of the Customer and only then within the scope permitted by Articles 44-50 of the GDPR.

17.3.2. **Sleepless.'s Security Assistance**

The Customer agrees that **Sleepless.** will (taking into account the nature of the processing of Customer Personal Data and the information available to **Sleepless.**) assist Customer in ensuring compliance with any of Customer's obligations in respect of security of personal data and personal data breaches, including if applicable Customer's obligations pursuant to Articles 32 to 34 (inclusive) of the GDPR.

Compliance with Data Subject Requests

Where the Customer has received a Data Subject Access Request or a Data Subject Deletion Request, **Sleepless.** will comply within the scope of and as allowed by the GDPR and/or other applicable EU or Irish law to which **Sleepless.** is subject and facilitate the Customer in complying with the request.

Data Breaches

If **Sleepless.** becomes aware of a Data breach, **Sleepless.** will notify the Customer promptly without undue delay and take reasonable steps to minimise and secure Customer Data.

Sleepless. will not assess the contents of Customer Data in order to identify information subject to any specific legal requirements.

Without prejudice to **Sleepless.'s** obligations relating to Data Breaches, the Customer is solely responsible for complying with data breach notification laws applicable to Customer and fulfilling any third-party notification obligations related to any data breaches.

Sleepless.'s notification of or response to a data breach will not be construed as an acknowledgement by **Sleepless.** of any fault or liability with respect to the data breach.

Right to Audit / Relations with Regulators

As required by applicable law or regulation, **Sleepless.** will provide any relevant competent authority a direct right to examine the Online Services that have been subscribed to from **Sleepless.**, including examination on premises and access to information, records, reports, documents and other data related to the Online Services. Such authority will not be permitted to access third party data relating to any other **Sleepless.** customer and you will be liable for **Sleepless.' reasonable** additional costs associated with such examination.

17.3.3. **The Customer's Security Responsibilities**

The Customer agrees that, without prejudice to **Sleepless.'s** Security Responsibilities

- a) Customer is solely responsible for its use of the Services, including:

- a. making appropriate use of the Services to ensure a level of security appropriate to the risk in respect of the Customer Data;
 - b. securing the account authentication credentials, systems and devices Customer uses to access the Services; and
 - c. retaining copies of its Customer Data as appropriate; and
- b) **Sleepless.** has no obligation to protect copies of Customer Data that Customer elects to store or transfer outside of **Sleepless.**'s and its Sub-processors' systems (for example, offline or on-premise storage), unless this is specifically within the scope of the Contract.

17.3.4.The Customer's Security Assessment

- (a) The Customer is solely responsible for assessing and evaluating for itself whether the Services, the Security Measures and **Sleepless.**'s commitments within this DPA and the Contract will meet Customer's needs, including with respect to any security obligations of Customer under the European Data Protection Legislation and/or Non-European Data Protection Legislation, as applicable.
- (b) The Customer acknowledges and agrees that (taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of the processing of Customer Personal Data as well as the risks to individuals) the Security Measures implemented and maintained by **Sleepless.** as set out in this DPA and the Contract provide a level of security appropriate to the risk in respect of the Customer Data.

17.3.5.Passwords and Security

You are responsible for keeping your passwords secure, and you agree not to disclose your passwords to any third party. You are solely responsible for any activity that occurs under your user names and accounts, including any sub-accounts. If you lose your passwords or the encryption keys for your accounts, you will not be able to access your data. You must notify **Sleepless.** immediately of any unauthorised use of your accounts or any other security breach related to the Service. If **Sleepless.** determines that a security breach has occurred or is likely to occur, **Sleepless.** may suspend your accounts and require you to change your user names and passwords.