

DATA PROCESSING AGREEMENT

THIS DATA PROCESSING AGREEMENT (the “DPA”) is made and entered into as of the Effective Date as set forth in the Quote between PrimePay, LLC, a Delaware limited liability company (“PrimePay”) and the employer who is subject to Applicable Privacy Laws and signed up for certain PrimePay services subject to the [PrimePay Product Terms](#) (“Customer”) indicated on the signed order form or quote (the “Quote”). Collectively, the Product Terms and Quote shall be referred to as the Agreement. PrimePay and Customer may individually be referred to as a Party, or collectively, the Parties.

WHEREAS, the Parties have entered into an Agreement pursuant to which PrimePay shall provide certain services to Customer, and Customer provides compensation to Customer for such services, as more fully described in the Agreement; and

WHEREAS, the Parties desire to add additional terms to the Agreement to comply with privacy obligations of such Parties. The Parties agree that the terms of this DPA constitute an integral part of the Agreement and the terms of such Agreement shall also apply to this DPA. In the event of any conflict between the Agreement and this DPA, the terms of this DPA shall control.

NOW THEREFORE, in consideration of the promises and mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to the following:

1. DEFINITIONS

- 1.1 “**Applicable Privacy Laws**” means all applicable laws which govern the use of Consumer Personal Information, including the California Consumer Privacy Act of 2018 (“CCPA”) and the Virginia Consumer Data Protection Act (“VCDPA”), as amended or replaced from time to time, along with any implementing regulation.
- 1.2 “**Consumer**” means natural persons who reside in a state which has passed an Applicable Privacy Law and are protected by such laws, including (1) individuals who are in that state for a temporary and transitory purpose and (2) individuals who are domiciled in state but are outside the state for a temporary or transitory purpose.
- 1.3 “**Consumer Request**” means any request submitted by a Consumer to exercise a right provided by Applicable Privacy Laws in relation to that Consumer’s Personal Information.
- 1.4 “**Consumer Personal Information**” is personal information, as defined under Applicable Privacy Laws, of any Consumer, which is Processed by PrimePay on behalf of Customer pursuant to the Agreement.
- 1.5 “**Process**” means any operation or set of operations that are performed on Consumer Personal Information by PrimePay, or any Subcontractor(s), pursuant to the Agreement.
- 1.6 “**Regulator**” means any entity which has jurisdiction to enforce the Parties compliance with Applicable Privacy Laws.
- 1.7 “**Services**” refers to the services selected by Customer as set forth in the Agreement and through the performance of which PrimePay may Process Consumer Personal Information.
- 1.8 Terms such as “**Sell**,” “**Share**,” “**De-identify**”, and “**Aggregate**” shall have the meaning ascribed to them in the Applicable Privacy Laws.

2. CUSTOMER’S OBLIGATIONS

- 2.1 **Consumer Requests.** Subject to PrimePay complying with its obligations under Section 3.3, Customer shall be responsible for all communications in relation to all Consumer Requests in relation to Consumer Personal Information under Applicable Privacy Laws.
- 2.2 **Communications with Regulators.** Subject to PrimePay complying with its obligations under this DPA, Customer shall be responsible for all communications with Regulators that relate to Consumer Personal Information, in accordance with Applicable Privacy Laws.

- 2.3 **Monitor Compliance.** Customer reserves the right to take reasonable and appropriate steps to help ensure that PrimePay Processes Consumer Personal Information in a manner consistent with Customer's obligations under Applicable Privacy Laws, including without limitation the right, upon notice, to stop and remediate any unauthorized Processing of Consumer Personal Information.

3. PRIMEPAY'S OBLIGATIONS

- 3.1 **Restrictions on Personal Information.** PrimePay agrees to Process Consumer Personal Information in compliance with Applicable Privacy Laws and only for the limited and specified purpose of performing the Services as contracted for in the Agreement, and will not under any circumstances collect, use, disclose, retain, access, share, transfer, or otherwise Process Consumer Personal Information for any other purpose not directly related to providing such Services or outside of the direct business relationship with Customer. PrimePay agrees and warrants that it will not (i) Sell Consumer Personal Information, (ii) Share Consumer Personal Information with any third party in exchange for any monetary or other valuable consideration, or (iii) Share Consumer Personal Information for the purpose of cross-context behavioral advertising and hereby certifies that it understands the restrictions in this Section 3.1 and will comply with them.
- 3.2 **Exception for Subcontractors.** Notwithstanding the restrictions in Section 3.1, PrimePay may share or transfer Consumer Personal Information with its own service providers ("Subcontractors") to the extent necessary to perform the Services specified in the Parties' Agreement, and as permitted by Applicable Privacy Laws. PrimePay agrees that if it uses Subcontractors to perform any of its obligations under the Agreement, it shall use appropriate due diligence in selecting such Subcontractor and shall ensure that each of its Subcontractors are bound by contract terms that are no less restrictive with respect to Consumer Personal Information than this DPA. PrimePay represents and warrants that it shall contract with Subcontractors to comply with all Applicable Privacy Laws and will be fully responsible for and liable for all acts and omissions of its Subcontractors. Upon Customer's request, PrimePay shall promptly provide a list of its current Subcontractors. If Customer reasonably objects to any of PrimePay's current Subcontractors, and the Parties are not able to agree on a suitable alternative, Customer shall have the option to terminate the Agreement without incurring further liability.
- 3.3 **Assistance with Consumer Requests.** In the event that PrimePay receives a Consumer Request regarding Consumer Personal Information disclosed by Customer to PrimePay, PrimePay shall notify Customer in writing within fourteen (14) days and request additional instructions from Customer.
- 3.4 **Cooperation.** PrimePay shall cooperate with and assist Customer in: (a) fulfilling its legal obligations under Applicable Privacy Laws; and (b) responding to any Regulator request or legal action.
- 3.5 **Disclosure to Law Enforcement or Government Authorities.** The restrictions on disclosure of Consumer Personal Information shall not apply to the extent that PrimePay is required to disclose such information under any applicable law, regulation or order from a court, regulatory agency or other governmental authority, and further provided that PrimePay:
- 3.5.1 Promptly notifies Customer before complying with such disclosure request;
 - 3.5.2 Provides Customer with reasonable cooperation in its efforts to resist the disclosure, upon reasonable request by Customer and at Customer's expense; and
 - 3.5.3 Discloses only the portion of the Consumer Personal Information that is required to be disclosed under such Applicable Privacy Law.
- 3.6 **Returning and Deleting Consumer Personal Information.** Upon request of Customer, PrimePay will provide any and all Consumer Personal Information supplied to, or otherwise obtained by PrimePay in connection with the Agreement, as requested by Customer in the applicable request. PrimePay will certify in writing that it has fully complied with this obligation within fourteen (14) days following the date it receives a request from Customer for such certification. Upon the request of Customer or at the termination of this DPA or the Agreement, PrimePay will either securely destroy or return the Consumer Personal Information to Customer promptly, or in any event within sixty (60) days, unless PrimePay is required to retain such Consumer Personal Information under any applicable law. PrimePay shall send Customer a certification that all Consumer Personal Information has been removed from its systems within fourteen (14) days or its rationale for being unable to comply with such request.

- 3.7 **Confidentiality.** PrimePay will treat all Consumer Personal Information as strictly confidential and will inform all employees, contractors or other third parties engaged in Processing the Consumer Personal Information of the confidential nature of such information. PrimePay shall ensure that all such persons or parties have signed an adequate confidentiality agreement or are under appropriate statutory obligation of confidentiality.
- 3.8 **Reasonable Security Measures and Practices.** PrimePay warrants that it has reasonable security measures and practices in place appropriate to the nature of such Consumer Personal Information.
- 3.9 **Compliance with Legal Obligations.** PrimePay certifies that it (i) understands the obligations and restrictions imposed on it by Applicable Privacy Laws; (ii) will comply with all such obligations, including providing the same level of privacy protection as required by Applicable Privacy Laws; and (iii) shall notify Customer immediately if PrimePay determines that it can no longer meet its obligations under Applicable Privacy Laws or this DPA.
4. **AUDIT RIGHTS.** For the purpose of verifying PrimePay’s compliance with this DPA, PrimePay agrees to permit Customer, upon reasonable notice of no less than thirty (30) days, at Customer’s cost and no more than once annually, to conduct an audit of its security controls through a third-party auditor approved by PrimePay, if such assessment is required by Applicable Privacy Laws. PrimePay agrees to cooperate in good faith with the audit and promptly (i) provide access to books, records (including, but not limited to, security scan records), systems, files, and other information necessary for the audit, and (ii) at Customer’s reasonable request enable access to PrimePay’s premises if absolutely necessary to properly conduct the audit or required under applicable law. Notwithstanding the forgoing, Customer may not conduct any security scans or other intrusion testing on PrimePay’s systems without the express prior written consent of PrimePay. Customer agrees to (x) schedule audits to minimize disruption to PrimePay’s business, (y) require any third party it employs to sign a non-disclosure agreement, and (z) make the results of the audit available to PrimePay. Customer will only disclose the results of the audit to third parties to the extent such disclosure is (A) required to demonstrate Customer’s own compliance with Applicable Privacy Laws, or (B) otherwise required under applicable law.
5. **INDEMNIFICATION.** PrimePay shall indemnify, defend and hold harmless Customer, its affiliates, and each of its respective directors, officers, employees, agents, subcontractors, and representatives from and against any and all claims, damages, liabilities, losses, costs and expenses (including, but not limited to, attorney’s fees and court costs) arising from or in connection with: 1) PrimePay’s breach or an alleged breach of this DPA; 2) PrimePay’s failure to comply with Applicable Privacy Laws; or 3) any data breach occurring as a result of PrimePay failing to provide commercially reasonable data-security protections including, but not limited to, encrypting Consumer’s Personal Information.
6. **GENERAL.** Any provision of this DPA that is prohibited or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. The Parties will attempt to agree upon a valid and enforceable provision that is a reasonable substitute and shall incorporate such substitute provision into this DPA.