Data Processing Agreement

Date

_____

Parties

Name	**Raygun Limited**	
Short form name	**Provider**	
Notice details	Attention:	Autohive DPO
	Email:	privacy@autohive.com
	Address:	L2, 14 Allen Street, Wellington, New Zealand 6011
Name	_____	
Short form name	**Customer**	
Notice details	Attention:	_____
	Email:	_____
	Address:	_____

Background

A The Provider operates and provides, and the Customer accesses and uses, the Autohive Platform under the terms of the Autohive Terms and Conditions.

B The Provider may be required to Process Personal Data on the Customer's behalf in the course of providing the Autohive Platform.

C This Agreement governs the Provider's processing of Personal Data:

(i) provided by the Customer to the Provider through the Autohive Platform; or

(ii) pursuant to the Provider's provision of the Autohive Platform,

under the terms of the Autohive Terms and Conditions and this Agreement is incorporated into the Autohive Terms and Conditions.

Agreed terms

1. Defined terms and interpretation

1.1 Definitions

Agreement means this Data Processing Agreement.

Autohive Terms and Conditions means the terms of the Autohive Platform located at Terms of Service or other agreement in place between the Customer and the Provider covering the Customer's use of the Autohive Platform and all related products and services.

Authorised Persons means the persons or categories of persons that the Customer authorises to give the Provider written Personal Data Processing instructions and from whom the Provider agrees to accept such instructions.

Business Purposes means operating and providing access to the Autohive Platform in accordance with the Autohive Terms and Conditions.

Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Processing, and Supervisory Authority have the meanings given to them in the GDPR.

Data Protection Legislation means all applicable data protection and privacy legislation in force from time to time including the GDPR and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications).

EEA means the European Economic Area.

GDPR means Regulation (EU) 2016/679 General Data Protection Regulation.

Standard Contractual Clauses or **SCC** means the European Commission's Standard Contractual Clauses for the transfer of Personal Data from the European Union to Processors established in third countries (Controller-to-Processor transfers), as set out in the Commission Implementing Decision (EU) 2021/914 of 4 June 2021 on standard contractual clauses for the transfer of Personal Data to third countries pursuant to the GDPR, or decisions and standard contractual clauses that replace these clauses.

Sub-processor means any third party engaged by the Provider to Process Customer Personal Data. As at the date of this Agreement, the Sub-processors are the organisations listed in Annex A.

1.2 Interpretation

(a) Interpretations and defined terms set forth in the Autohive Terms and Conditions apply to the interpretation of this Agreement.

(b) The Annex forms part of this Agreement and will have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Annex.

(c) A reference to writing or written includes email.

(d) A reference to a party is to a party to this Agreement.

(e) In the case of conflict or ambiguity between:

(i) any provision contained in the body of this Agreement and any provision contained in the Annex, the provision in the body of this Agreement will prevail;

(ii) the terms of any accompanying invoice or other documents annexed to this Agreement and any provision contained in the Annexes, the provision contained in the Annexes will prevail;

(iii) any of the provisions of this Agreement and the provisions of the Autohive Terms and Conditions, the provisions of this Agreement will prevail; and

(iv) any of the provisions of this Agreement and any executed SCC, the provisions of the executed SCC will prevail.

2. Personal Data types and Processing purposes

The Customer and the Provider agree and acknowledge that for the purpose of the Data Protection Legislation:

(a) the Customer is the Controller and the Provider is the Processor; and

(b) the Customer retains control of the Personal Data and remains responsible for its compliance obligations under the applicable Data Protection Legislation, including but not limited to providing any required notices and obtaining any required consents, and for the written Processing instructions it gives to the Provider.

3. Provider's obligations

3.1 The Provider will only Process the Personal Data to the extent, and in such a manner, as is necessary for the Business Purposes in accordance with Customer's written instructions as recorded in the Autohive Terms and Conditions. The Provider will not Process the Personal Data for any other purpose or in a way that does not comply with this Agreement or the Data Protection Legislation. The Provider must promptly notify the Customer if, in its opinion, the Customer's instructions do not comply with the Data Protection Legislation.

3.2 The Provider must comply promptly with any Customer written instructions from Authorised Persons requiring the Provider to amend, transfer, delete or otherwise Process the Personal Data, or to stop, mitigate or remedy any unauthorised Processing.

3.3 The Provider will maintain the confidentiality of the Personal Data and will not disclose the Personal Data to any third party unless the Customer or this Agreement specifically authorises the disclosure, or as required by domestic law, court or regulator (including the EU Commissioner). If a domestic law, court or regulator (including the EU Commissioner) requires the Provider to Process or disclose the Personal Data to a third party, the Provider must first inform the Customer of such legal or regulatory requirement and give the Customer an opportunity to object or challenge the requirement, unless the domestic law prohibits the giving of such notice.

3.4 The Provider will reasonably assist the Customer, at no additional cost to the Customer, with meeting the Customer's compliance obligations under the Data Protection Legislation, taking into account the nature of the Provider's Processing and the information available to the Provider, including in relation to Data Subject rights, data protection impact assessments and reporting to and consulting with the EU Commissioner, Supervisory Authority or other relevant regulator under the Data Protection Legislation.

3.5 The Provider must promptly notify the Customer of any changes to the Data Protection Legislation that may reasonably be interpreted as adversely affecting the Provider's performance of the Autohive Terms and Conditions or this Agreement.

4. Provider's employees

The Provider will ensure that all of its employees or persons authorised to Process the Personal Data:

(a) are informed of the confidential nature of the Personal Data and are bound by confidentiality obligations and use restrictions in respect of the Personal Data;

(b) have undertaken training on the Data Protection Legislation relating to handling Personal Data and how it applies to their particular duties; and

(c) are aware of the Provider's duties and their personal duties and obligations under the Data Protection Legislation and this Agreement.

5. Security

5.1 The Provider must at all times implement appropriate technical and organisational measures against unauthorised or unlawful Processing, access, copying, modification, reproduction, display or distribution of the Personal Data, and against accidental or unlawful loss, destruction, alteration, disclosure or damage of Personal Data.

5.2 The Provider must implement such measures to ensure a level of security appropriate to the risk involved, including as appropriate:

(a) the pseudonymisation and encryption of Personal Data;

(b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of Processing systems and services;

(c) the ability to restore the availability and access to Personal Data in a timely manner in the event of a physical or technical incident; and

(d) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the Processing.

5.3 The parties will take steps to ensure that any natural person acting under the authority of the Customer or the Provider who has access to the Personal Data does not process Personal Data except on instructions from the Customer, unless he or she is required to do so by Union or Member State law (as defined in the GDPR).

6. Personal Data Breach

6.1 The Provider will notify the Customer without undue delay and, where feasible, within 72 hours if it becomes aware of:

(a) the loss, unintended destruction or damage, corruption, or unusability of part or all of the Personal Data. The Provider will restore such Personal Data at its own expense as soon as possible;

(b) any accidental, unauthorised or unlawful Processing of the Personal Data; or

(c) any Personal Data Breach.

6.2 Where the Provider becomes aware of any of the events in clause 6.1(a), 6.1(b) or 6.1(c) above, it shall, without undue delay, also provide the Customer with the following information:

(a) description of the nature of the event, including the categories of in-scope Personal Data and approximate number of both Data Subjects and the Personal Data records concerned;

(b) the likely consequences; and

(c) a description of the measures taken or proposed to be taken to address the event, including measures to mitigate its possible adverse effects.

6.3 Immediately following any accidental, unauthorised or unlawful Personal Data Processing or Personal Data Breach, the parties will co-ordinate with each other to investigate the matter. Further, the Provider will reasonably co-operate with the Customer at no additional cost to the Customer, in the Customer's handling of the matter, including but not limited to:

(a) assisting with any investigation;

(b) providing the Customer with physical access to any facilities and operations affected;

(c) facilitating interviews with the Provider's employees, former employees and others involved in the matter including, but not limited to, its officers and directors;

(d) making available all relevant records, logs, files, data reporting and other materials required to comply with all Data Protection Legislation or as otherwise reasonably required by the Customer; and

(e) taking reasonable and prompt steps to mitigate the effects and to minimise any damage resulting from the Personal Data Breach or accidental, unauthorised or unlawful Personal Data Processing.

6.4 The Provider will not inform any third party of any accidental, unauthorised or unlawful Processing of all or part of the Personal Data and/or a Personal Data Breach without first obtaining the Customer's written consent, except when required to do so by domestic law.

6.5 The Provider agrees that the Customer has the sole right to determine:

(a) whether to provide notice of the accidental, unauthorised or unlawful Processing and/or the Personal Data Breach to any Data Subjects, the Commissioner, other in-scope regulators, law enforcement agencies or others, as required by law or regulation or in the Customer's discretion, including the contents and delivery method of the notice; and

(b) whether to offer any type of remedy to affected Data Subjects, including the nature and extent of such remedy.

6.6 The Provider will cover all reasonable expenses associated with the performance of the obligations under clause 6.3 unless the matter arose from the Customer's specific written instructions, negligence, wilful default or breach of this Agreement, in which case the Customer will cover all reasonable expenses.

6.7 The Provider will also reimburse the Customer for actual reasonable expenses that the Customer incurs when responding to an incident of accidental, unauthorised or unlawful Processing and/or a Personal Data Breach to the extent that the Provider caused such, including all costs of notice and any remedy as set out in clause 6.5.

7. Cross-border transfers of Personal Data

7.1 The Provider (and any Sub-processor) must not transfer or otherwise Process the Personal Data outside the EEA without obtaining the Customer's prior written consent. The Customer consents to transfers as set out in this Agreement and the Autohive Terms and Conditions.

7.2 Where such consent is granted, the Provider may only Process, or permit the Processing, of the Personal Data outside the EEA under the following conditions:

(a) the Provider is Processing the Personal Data in a territory which is subject to adequacy regulations under the Data Protection Legislation that the territory provides adequate protection for the privacy rights of individuals. The Provider must identify in Annex A the territory that is subject to such adequacy regulations; or

(b) the Provider participates in a valid cross-border transfer mechanism under the Data Protection Legislation, so that the Provider (and, where appropriate, the Customer) can ensure that appropriate safeguards are in place to ensure an adequate level of protection with respect to the privacy rights of individuals as required by the GRPR. The Provider must identify in Annex A the transfer mechanism that enables the parties to comply with these cross-border data transfer provisions and the Provider must immediately inform the Customer of any change to that status; or

(c) the transfer otherwise complies with the Data Protection Legislation for the reasons set out in Annex A.

7.3 If the Customer consents to appointment by the Provider of a Sub-processor located outside the EEA in compliance with the provisions of clause 8, then the Customer authorises the Provider to enter into a SCC with the Sub-processor in the Customer's name and on its behalf, or to rely on another authorised ground for transfer as set out in the Data Protection Legislation. The Provider will make the executed SCC available to the Customer on request.

8. Sub-processors

8.1 By entering into this Agreement, the Customer authorises the Provider to engage the Sub-processors listed in Annex A to Process Customer Data. The Provider:

(a) must enter into a written agreement with each Sub-processor approved by the Customer imposing data protection terms that require the Sub-processor to protect Customer Personal Data to the standard required by the Data Protection Law and to the same standard provided by this Agreement;

(b) will remain liable to Customer if such Sub-processor fails to fulfil its data protection obligations with regard to the relevant Processing activities under the Agreement; and

(c) will provide prior notice to the Customer of any changes to the Sub-processors listed in Annex A.

8.2 Other than those Sub-processors as set out in Annex A, the Provider shall not engage any other third party or subcontractor to Process the Customer's Personal Data without prior authorisation of the Customer.

8.3 Our Sub-processor OpenAI provides the large language model used by the Autohive Platform. OpenAI's terms and conditions and privacy policy will apply to OpenAI's use of your Customer Personal Data submitted via the Autohive Platform. The Customer is responsible for reviewing those terms, in particular in relation to how OpenAI will use your Customer Personal Data, including for straining the OpenAI model.

8.4 As part of the Autohive Platform, the Provider makes available access to Agents that are created by the Customer themselves or Third-Party Agent Creators. Use of Third-Party Agents are subject to separate terms and conditions between the Customer and the Third-Party Agent Creator. The Provider does not control the sub-processors used by Third-Party Agent Creators in their Third-Party Agents, or that Customers may choose to use in their own Agents. The Customer is responsible for reviewing the terms of any Third-Party Agents for details of any sub-processors used in those Third-Party Agents, and for reviewing the service terms of any sub-processors that the Customer uses in its own Agents. The Provider is not responsible for Processing by Third-Party Agent Creator sub-processors, or any of the Customer's own sub-processors, even if facilitated by the Autohive Platform. The Provider does not provide Customer Data to Third-Party Agent Creators.

9. Complaints, Data Subject requests and third-party rights

9.1 The Provider must, at no additional cost to the Customer, take such technical and organisational measures as may be appropriate, and promptly provide such information to the Customer as the Customer may reasonably require, to enable the Customer to comply with:

(a) the rights of Data Subjects under the Data Protection Legislation, including subject access rights, the rights to rectify, port and erase Personal Data, object to the Processing and automated Processing of Personal Data, and restrict the Processing of Personal Data; and

(b) information or assessment notices served on the Customer by the Supervisory Authority or other relevant regulator under the Data Protection Legislation.

9.2 The Provider must notify the Customer immediately in writing if it receives any complaint, notice or communication that relates directly or indirectly to the Processing of the Personal Data or to either party's compliance with the Data Protection Legislation.

9.3 The Provider must notify the Customer within five days if it receives a request from a Data Subject for access to their Personal Data or to exercise any of their other rights under the Data Protection Legislation.

9.4 The Provider will give the Customer, at no additional cost to the Customer, its full co-operation and assistance in responding to any complaint, notice, communication or Data Subject request.

9.5 The Provider must not disclose the Personal Data to any Data Subject or to a third party other than in accordance with the Customer's written instructions, or as required by domestic law.

10. Term and termination

10.1 This Agreement will commence on the date it is signed by both parties and will remain in full force and effect so long as:

(a) the Customer has an account on the Autohive Platform; or

(b) the Provider retains any of the Personal Data related to the Autohive Terms and Conditions in its possession or control.

10.2 Any provision of this Agreement that expressly or by implication should come into or continue in force on or after termination of the Autohive Terms and Conditions in order to protect the Personal Data will remain in full force and effect.

10.3 If a change in any Data Protection Legislation prevents either party from fulfilling all or part of its obligations under this Agreement, the parties may agree to suspend the Processing of the Personal Data until that Processing complies with the new requirements. If the parties are unable to bring the Personal Data Processing into compliance with the Data Protection Legislation, either party may terminate the Autohive Terms and Conditions with immediate effect on written notice to the other party.

11. Data return and destruction

11.1 At the Customer's request, the Provider will give the Customer, or a third party nominated in writing by the Customer, a copy of or access to all or part of the Personal Data in the Provider’s possession or control in the format and on the media reasonably specified by the Customer.

11.2 On termination of the Autohive Terms and Conditions for any reason or expiry of its term, the Provider will securely delete or destroy or, if directed in writing by the Customer, return and not retain, all or any of the Personal Data related to this Agreement in its possession or control.

11.3 If any law, regulation, or government or regulatory body requires the Provider to retain any documents or materials or Personal Data that the Provider would otherwise be required to return or destroy, it will notify the Customer in writing of that retention requirement, giving details of the documents, materials or Personal Data that it must retain, the legal basis for retention, and establishing a specific timeline for deletion or destruction once the retention requirement ends.

11.4 On written request from Customer, the Provider will certify in writing to the Customer that it has deleted or destroyed the Personal Data.

12. Records

12.1 The Provider will keep detailed, accurate and up-to-date written records regarding any Processing of the Personal Data, including but not limited to, the access, control and security of the Personal Data, approved Sub-processors, the Processing purposes, categories of Processing, any transfers of Personal Data to a third country and related safeguards, and a general description of the technical and organisational security measures referred to in clause 5.

12.2 The Provider will ensure that the Records are sufficient to enable the Customer to verify the Provider's compliance with its obligations under this Agreement and the Provider will provide the Customer with copies of the Records upon request.

12.3 On request, the Provider will provide reasonable assistance to the Customer to complete a Data Privacy Impact Assessment (**DPIA**) prior to the commencement of Processing to assist the Customer's assessment of the impact of the Processing on the protection of the Personal Data and to describe the Processing operations, proportionality, risks to Data Subjects, technical and administrative safeguards and compliance with GDPR. The Provider will assist the customer with a review the DPIA on request at least once each year of the term of this Agreement to confirm its current accuracy and update it when required to reflect current practices.

13. Audit

13.1 At least once each year during the term of this Agreement, the Provider will conduct site audits of its Personal Data Processing practices and the information technology and information security controls for all facilities and systems used in complying with its obligations under this Agreement, including, but not limited to, obtaining a network-level vulnerability assessment performed by a recognised third-party audit firm based on recognised industry best practices.

13.2 On the Customer's written request, the Provider will make all of the relevant audit reports available to the Customer for review. The Customer will treat such audit reports as the Provider's confidential information under the Autohive Terms and Conditions.

13.3 The Provider will promptly address any exceptions noted in the audit reports with the development and implementation of a corrective action plan by the Provider's management.

Annex A List of Sub-Processors

Sub-processor	Sub-processor Contact	Description of Processing	Location	Basis for transfer (if outside EU)
Amazon Web Services, Inc.	Aws-dpa-submissioinns@amamazon.com	Hosting	USA	Standard Contractual Clauses (SCCs)
Google (G Suite)	DPO contact	Analytics, email, & document platform	USA	Standard Contractual Clauses (SCCs)
Looker	dpaprocessing@looker.com	Business intelligence application software	USA	Standard Contractual Clauses (SCCs)
Slack	dpa@slack-corp.com	Team based instant messaging tool	USA	Standard Contractual Clauses (SCCs)
Xero	support@xero.com	Accounting software	New Zealand	Adequacy Decision
Taxify	privacy@sovos.com	US state sales tax tool	USA	Standard Contractual Clauses (SCCs)
Stitch	legal@talend.com	Data management tool	USA	Standard Contractual Clauses (SCCs)
Box.com	dpaprocessing@box.com	File management system	USA	Standard Contractual Clauses (SCCs)
Front	compliance@frontapp.com	Shared inbox management tool	USA	Standard Contractual Clauses (SCCs)
Productboard	gdpr@productboard.com	Product management tool	USA	Standard Contractual Clauses (SCCs)
Windcave	support@windcave.com	Payment gateway platform	New Zealand	Adequacy Decision
Microsoft	Contact DPO	Microsoft Office software platform	USA	Standard Contractual Clauses (SCCs)

Sub-processor	Sub-processor Contact	Description of Processing	Location	Basis for transfer (if outside EU)
dbt Cloud	support@getdbt.com	Data pipeline transformation tool	USA	Standard Contractual Clauses (SCCs)
Zoom	privacy@zoom.us	Communication platform	USA	Standard Contractual Clauses (SCCs)
Gong	privacy@gong.io	Communication and sales platform	USA	Standard Contractual Clauses (SCCs)
OpenAI	privacy@openai.com	Artificial Intelligence enablement	USA	Standard Contractual Clauses (SCCs)
Hubspot	privacy@hubspot.com	CRM, support and marketing platform	USA	Standard Contractual Clauses (SCCs)
Quip	privacy@salesforce.com	Documentation and collaboration platform	USA	Standard Contractual Clauses (SCCs)
Notion	privacy@makenotion.com	Documentation and collaboration platform	USA	Standard Contractual Clauses (SCCs)
Stripe	*privacy@stripe.com*	Payment gateway platform	USA	Standard Contractual Clauses (SCCs)

Signing page

EXECUTED as an agreement

SIGNED by **RAYGUN LIMITED**

Signature

John-Daniel Trask

Name

SIGNED by _____

Signature of [director / authorised signatory]

Name of [director / authorised signatory]