



## End-User License Agreement (EULA)

The following document details the legal terms that govern the use of PrivacyLayer® and related technology services by Private Access, which the owner of this website and/or application has elected to use to help assure that your privacy wishes are respected, including your rights as a user of this system. While this document is a bit long and somewhat technical, it is important that you read and understand it.

Why is this so important? If you have read our [Privacy Statement](#), you are aware of Private Access' objective to allow patients to establish and maintain the desired balance of privacy and access with respect to their personal health information. And if you've reviewed the [PrivateAccess® Web site](#) or articles about what we're building and the relevance of our technology to helping advance medical research and care, you also know we're convinced that permitting consumers to be confident that their wishes will be respected is essential to creating an environment of trust. The terms of this agreement are designed to help us achieve this goal. Please let us know if you have any questions or suggestions.

### IMPORTANT - PLEASE READ THIS CAREFULLY

This Private Access Agreement with Individual Users (“Agreement”) governs the terms of the legal relationship between Private Access, Inc., a California corporation (“Private Access” (with a space between the two words), “we”, “us” or “our”) and you (“you”, “your” or “yourself”), when you create a PrivateAccess® account for yourself or another person (an “Account”) in conjunction with your use of this website, application or other service employing our PrivacyLayer® technology (a “Site”).

This Agreement is entered between you and us, and is effective as of the date you click on the “**CLICK HERE TO ACCEPT**” icon at the bottom of this Agreement. You and we are sometimes together referred to as the “Parties” and each alone as a “Party.” Any licensors, licensees, vendors, suppliers, officers, directors, owners, employees, agents, contractors, and other representatives we employ to help us fulfill our services and operations are referred to as “Related Parties.”

BY CLICKING THE “**CLICK HERE TO ACCEPT**” ICON AT THE BOTTOM OF THIS AGREEMENT, YOU AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, DO NOT CLICK “**CLICK HERE TO ACCEPT**” AND INSTEAD CLICK “**CLICK HERE TO DECLINE AND EXIT**”.

Our [Privacy Statement](#), which is posted on the Site, is incorporated by reference into this Agreement.

**Welcome to *PrivateAccess*®!**

***PrivacyLayer*® is a consumer-centric web-based service offered by Private Access, Inc. to help you manage your confidential information. This service, which you access through creating a PrivateAccess® Account, lets you create and manage settings called “Privacy Preferences” to express who may view the information you share through this Site, and how this information may be used, accessed or disclosed to others whom you choose. You may also create Privacy**

**Preferences for your children and other persons for whom you serve as a legal representative regarding the use, access or disclosure of their information.**

***This agreement covers the use of PrivacyLayer® by individuals. If you are a professional, organizational or business user of our services, this Agreement does not apply to you.***

#### **A. Fees**

1. There is no charge for you to (a) create a PrivateAccess® Account; (b) create and manage Privacy Preferences regarding the information you share about yourself, your children or others for whom you are a legal representative (collectively, "Information"); or (c) view an activity log that details who has requested or viewed your Information, as well as when these actions have occurred (collectively, "Basic Services").
2. Both third party entities and we may offer privacy-enabled services that interact with PrivacyLayer® (collectively, "Service Applications", and individually a "Service Application"). We may charge fees to entities that offer such privacy-enabled services, including fees charged to entities in which we may have an ownership interest. (You may [click here](#) for more details regarding current Service Applications, including Service Applications offered by us.) For example, we may charge a transaction fee in connection with a Service Application that calls upon PrivacyLayer® to determine whether your Privacy Preferences permit use, access or disclosure of your Information.
3. The fees we charge owners of Service Applications are based on one-time set-up or custom programming fees for work we perform, annual maintenance fees, and transactional fees based on the features of PrivacyLayer® operating in the intended manner. We charge owners of Service Applications fees based upon multiple pricing structures, including (a) one-time set-up or custom programming, (b) annual maintenance, (c) transaction-based, and (d) service-based such as leveraging our payment system to bill for their services. Our business model is for our fees charged for Service Applications to leverage PrivacyLayer® to be the same regardless of whether your Privacy Preferences instruct us to withhold or grant access to your Information to or through such Service Applications.
4. We may share a portion of the fees we receive with third-parties, including an entity that may have referred you to us and for whom such fees would be appropriate and consistent with all applicable laws.
5. We may expand our services in the future to include additional services, possibly including premium features available to individual users for a fee. You will have the option, without any obligation, to sign-up for these additional features; and your decision will not affect your right to continue to receive the Basic Services without charge.

#### **B. Authorized Use of Private Access, Restrictions, and Disclosures**

1. You must be at least 18 years of age, legally competent, and a U.S. resident to open an Account.

2. To open a custodial Account for another person, you must be the parent, guardian, or other legal representative of the other person, as defined by applicable law.
3. PrivacyLayer® provides you with tools to create Privacy Preferences concerning how much or how little Information you choose to provide to or through Service Applications. Therefore, to help us be of the greatest value to you and other members of your family in protecting your privacy wishes, it is very important that you provide accurate and up to date Information about yourself or, if you are creating a custodial account, about the person who is the subject of the custodial account. We may remind you from time to time to update your Information.
4. We agree to only disclose, and you agree that we can disclose, Information in a manner that is consistent with your Privacy Preferences and our [Privacy Statement](#). In order to help protect you and others against identity theft or fraud, you grant us permission to verify (a) that you are who you say you are, and (b) in the case of a custodial account, your relationship with any person who is the subject of that account.
5. You acknowledge and agree that we are not engaged in the practice of medicine, either through the Site or associated services, and that the Site is not a substitute for professional medical advice. The Information in your Account is provided by you or others, not us. IF YOU HAVE ANY QUESTIONS ABOUT YOUR MEDICAL CONDITION OR NEED MEDICAL HELP, YOU SHOULD CONSULT WITH A HEALTHCARE PROVIDER. WE HAVE NO RESPONSIBILITY TO PROVIDE MEDICAL ADVICE OR TO TAKE ANY MEDICALLY RELATED ACTION IN RESPONSE TO INFORMATION YOU PROVIDE ON THE SITE OR THROUGH ANY SERVICE APPLICATION.
6. We use various interactive security and identity verification controls to help protect the Information in your Account, including user names, passwords, challenge questions, and user images such as site keys (collectively, "[Verification Controls](#)"). You are responsible for safeguarding and maintaining the confidentiality of Verification Controls associated with your Account. You are solely responsible for any consequences arising from or relating to your sharing of, or your accidental disclosure of, your Verification Controls or any other inadequate security protections on your part.
7. In the interest of limiting unauthorized access to your Information, you should notify us promptly after learning of any unauthorized use affecting your Account, including a compromise of your password. We will also notify you promptly (but in no event later than required by applicable law) after we learn of any unauthorized use affecting your Account.
8. This Site or Service Applications you use might contain health-related information that you may find to be sexually explicit or otherwise offensive. We will not be responsible for any impact of such materials upon you or others.
9. We may remove content from your Account without prior notice if we reasonably believe it is in violation of this Agreement.
10. We do not assume responsibility to respond or take specific action in response to communications with us that are not in the English language.

11. We reserve the right to change the content of PrivacyLayer® and to suspend or deny access to PrivacyLayer® services for maintenance or modifications.
  
12. You may create Privacy Preferences to grant access or allow disclosure of your Information to a family member, friend, caregiver, health care provider, researcher, personal health record, or other person or entity, or to communicate your instructions or preferences to us or a Service Application about how your Information is to be used or shared.<sup>1</sup> You should consider all such decisions carefully. Although we will communicate your Privacy Preferences to others on your behalf, once your Information is conveyed to a third party in accordance with your Privacy Preferences, we can make no warranty whatsoever concerning the third party's actions, including his or her use or further disclosure of your Information. Accordingly, neither this Agreement nor our [Privacy Statement](#) applies to any third party's use or disclosure of your Information.

## C. Termination of an Account

### 1. Termination of Your Account by You

You may terminate your Account at any time and for any reason by logging into your Account and following the instructions for terminating Accounts.

### 2. Termination of Your Account by Us

We may terminate your Account as follows:

- a. Violation of this Agreement We may suspend or terminate your Account without notice if we believe you have violated any of the terms of this Agreement.
  - b. Death of a User. We may close an Account upon evidence of the death of an Account holder, or if requested, make arrangements for its use by the legal representative of the deceased Account holder.
  - c. Inactivity. We reserve the right to close an Account if the Account has not been accessed or updated for a commercially reasonable period of time, which will not be less than 12 months. Before doing so, we will make commercially reasonable efforts to contact you.
  - d. Custodial Rights Disputed. If we are informed of a dispute regarding the rights of a person who is the subject of a custodial Account, we reserve the right to close the custodial Account without notice.
  - e. Discontinuation of Our Services. We may close your Account if we elect to discontinue all or part of our services. Before doing so, we will, if feasible, make commercially reasonable efforts to notify you.
  - f. Security Concerns. We may suspend or close your Account without notice if we believe doing so is reasonably needed to protect your Information or the Site.
3. When an Account is Terminated
- a. When an Account is terminated, the Information in it becomes immediately inaccessible. We will then destroy the Information in accordance with our [Privacy Statement](#) .
  - b. After an Account is terminated, we will have no further obligation to provide services to you, although our responsibilities for handling, protecting, and securely destroying your Information, as set forth in our [Privacy Statement](#), will continue.
  - c. After an Account is terminated, no entity that holds any Information concerning which your Privacy Preferences previously pertained will be able to verify your privacy wishes from Private Access. You should check the [Terms of Use](#) and [Privacy Policy](#) of any such entity to determine how they will treat your Information if they do not, or cannot, determine your Privacy Preferences.

## D. Agreements

1. We agree to use commercially reasonable precautions, including administrative, technical and physical measures, to safeguard any Information you provide us from unauthorized access, disclosure, alteration, misuse or destruction.

2. You agree to use the PrivacyLayer® service, your PrivateAccess® Account, and this Site in a manner consistent with all applicable laws, and solely for your own personal, non-commercial purposes.
3. If you assert that you are the parent, guardian, or other legal representative of another person, you acknowledge and affirm that the Information you provide to us in this regard is accurate.
4. You agree not to include in your Account any material that in the absence of express permission, would infringe on any third party's rights, including copyright, intellectual property, privacy and publicity rights, unless you have the appropriate legal authority to use such material and, by your action in doing so, you grant us all necessary rights, free of royalty and reporting requirements.
5. You agree that the contents of your Account will not include any unlawful, disparaging, libelous, or otherwise objectionable content as reasonably determined by us.
6. You agree not to use the Site, the PrivacyLayer® service, or your PrivateAccess® Account in any manner that could damage, disable or impair any of them.
7. You agree not to attempt to use the Site, the PrivacyLayer® service, or your PrivateAccess® Account to gain unauthorized access to any other website or service, accounts not registered to you, or computer systems or networks.
8. You agree not to engage in any unlawful activities in connection with your use of the Site, the PrivacyLayer® service, or your PrivateAccess® Account.
9. You agree not to modify, copy, distribute, transmit, display, perform, reproduce, publish, license, sublicense, rent, lease, frame, reverse engineer, de-compile, disassemble, modify, translate, make any attempt to discover the source code, algorithms, or processes of the Site, the PrivacyLayer® service, or your PrivateAccess® Account, or create derivative works from, transfer, or otherwise use in whole or in part information, software, products or services obtained from this Site, except for the purposes expressly provided therein, without our (and, if applicable, Related Parties') prior written approval. If you download any information or software from this Site, you agree that you will not remove or obscure any copyright or other notices or legends contained in any such information.
10. You agree to not use our Trademarks and Service Marks (as defined herein) for any purpose including, but not limited to, use as metatags on other pages or sites on the World Wide Web without our (and, if applicable, our Related Parties') express written consent.
11. To the best of our knowledge and belief, your use of PrivateAccess® in accordance with its intended purpose and the express terms of this Agreement does not infringe upon any third party's intellectual property rights including copyrights, trademarks, trade secrets or patents. Should your use of the PrivacyLayer® service or any other portion of the technology provided by Private Access become, or in our sole opinion be likely to become, the subject of a claim of infringement or trade secret misappropriation, we shall at our option and expense: (a) defend and hold you harmless with respect to any such action against you; (b) obtain for you the right to continue to use PrivateAccess®; (c) replace or modify PrivateAccess® so its use becomes non-infringing or otherwise lawful; or (d) discontinue the service in accordance with the terms of Section C.2.(e), above. THIS SHALL BE YOUR SOLE AND EXCLUSIVE REMEDY FOR INTELLECTUAL PROPERTY INFRINGEMENT.

## **E. WARRANTY, DISCLAIMER AND LIMITATION OF LIABILITY**

### WARRANTY AND DISCLAIMER

PRIVATE ACCESS, INC. WARRANTS THAT PrivacyLayer® AND RELATED FEATURES OF YOUR PrivateAccess® ACCOUNT WILL PERFORM SUBSTANTIALLY IN ACCORDANCE WITH THE SERVICE DESCRIBED IN THIS AGREEMENT AND ON OUR SITE. IN THE EVENT OF THE NON-AVAILABILITY OF THE SITE, OR AN INTERRUPTION OR DELAY IN OUR ABILITY TO SUPPORT ANY SERVICE APPLICATIONS FROM PrivacyLayer®, WE WILL USE COMMERCIALY REASONABLE EFFORTS TO RESUME SUCH SERVICES. IN ADDITION, IF YOU REPORT A DEFECT TO US, WE WILL USE COMMERCIALY REASONABLE EFFORTS TO REMEDY THE NON-CONFORMANCE.

THE FOREGOING SHALL BE YOUR SOLE AND EXCLUSIVE REMEDIES FOR ANY BREACH OF WARRANTY; AND OTHERWISE PrivacyLayer® IS PROVIDED ON AN AS-IS AND AS AVAILABLE BASIS. WE GIVE NO EXPRESS WARRANTIES, GUARANTEES OR CONDITIONS. WE EXCLUDE ANY IMPLIED WARRANTIES INCLUDING THOSE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND WORKMANLIKE EFFORT. YOU MAY HAVE ADDITIONAL CONSUMER RIGHTS UNDER YOUR LOCAL LAWS THAT THIS AGREEMENT CANNOT CHANGE.

### LIMITATION OF LIABILITY

WE AGREE TO (A) COMPENSATE YOU IN THE AMOUNT OF ANY DIRECT DAMAGES YOU HAVE ARISING FROM A BREACH OF SECTION D.1 ABOVE IF THE BREACH IS CAUSED BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF PRIVATE ACCESS, INC.; AND (B) INDEMNIFY YOU PURSUANT TO THE TERMS OF SECTION D.11, ABOVE. OTHER THAN THE FOREGOING LIABILITIES WE HAVE TO YOU, AND YOUR LIABILITY TO US FOR ANY AND ALL DAMAGES CAUSED BY YOUR BREACH OF ANY OTHER PROVISION OF SECTION D ABOVE, NEITHER YOU OR WE CAN RECOVER ANY OTHER DAMAGES, INCLUDING CONSEQUENTIAL, SPECIAL, INDIRECT, INCIDENTAL OR PUNITIVE DAMAGES.

WITHOUT LIMITING THE FOREGOING, PRIVATE ACCESS, INC. SHALL NOT BE LIABLE FOR THE CONSEQUENCES OF ANY ACTIONS TAKEN (OR NOT TAKEN) BY ANY THIRD PARTY(IES) WHO OBTAIN YOUR INFORMATION BASED UPON THE PRIVACY PREFERENCES YOU SET OR CHOICES YOU EXERCISE ON THE SITE TO ALLOW OTHERS TO ACCESS, ADD, MODIFY, USE, OR DISCLOSE YOUR INFORMATION.

THIS LIMITATION OF LIABILITY APPLIES EVEN IF THE REMEDY DOES NOT FULLY COMPENSATE FOR LOSSES, OR FAILS OF ITS ESSENTIAL PURPOSE, OR IF EITHER PARTY SHOULD HAVE KNOWN ABOUT THE POSSIBILITY OF DAMAGES.

**SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU.**

## **F. Intellectual Property Rights**

Subject to our [Privacy Statement](#) and applicable law, all right, title and interest in and to PrivacyLayer®, the PrivateAccess® technology and any related content contained on this Site (excluding your Information) is our exclusive property or, where applicable, that of our Related Parties and other third party users.

Private Access, Inc., the Private Access logo and other Private Access trademarks and service marks referenced herein, including but not limited to PrivateAccess®, PrivacyLayer®, Privacy Assured™, RecruitSource®, RecordsAgent®, RecordsValet, the phrase “Creating an environment of trust” and the Privacy Assured shield (collectively, the “Trademarks and Service Marks”) are our trademarks and service marks. Other trademarks and service marks used on the Site are the property of third parties.

You may use PrivacyLayer®, your PrivateAccess® Account and the other features of this Site owned by Private Access in accordance with the terms of this Agreement. Except as expressly provided herein or stated in writing by us and, if applicable, our licensors, no other license is granted expressly or impliedly by estoppel or otherwise under any patent or copyright or to use any trademark, service mark, trade secret or other intellectual property of Private Access, Inc. or any other party. Portions of this Site, PrivacyLayer® and the PrivateAccess® services utilized herein may be covered by one or more patents owned by Private Access regarding individual control over confidential information, and various clinical trials recruitment services. Without limitation, this includes United States Patent Numbers 7,028,049; 7,664,753; 8,131,764, US Patent Application Number 2010-0250285, and other patents pending.

## **G. Governing Law, Dispute Resolution, and Jurisdiction**

All matters relating to the PrivacyLayer® service or any other portion of the technology provided by Private Access through or with regard to the Site and our services will be governed by the laws of California, without regard to conflicts of laws provisions.

If you have a complaint, inquiry, or dispute (collectively, a “dispute”) regarding any aspect of the Site or our services, you are encouraged to bring it to our attention, using the procedures shown on the Site for contacting us. If we are unable to resolve the dispute ourselves (including through termination in accordance with this Agreement), either Party may submit the dispute to final and binding arbitration in Orange County, California, in accordance with the rules and procedures of the American Arbitration Association, with each Party being responsible for its own costs and fees, and the joint costs of arbitration to be shared equally by the Parties.

BY AGREEING TO ARBITRATION IN THIS AGREEMENT, YOU AND WE UNDERSTAND THAT BOTH PARTIES ARE RELINQUISHING ANY RIGHT TO PURSUE CLAIMS OR HAVE DISPUTES RESOLVED IN A COURT OF LAW, TO COMPULSORY DISCOVERY, OR TO THE APPEAL OF ANY ADVERSE ARBITRATION DECISION.

Any cause of action either Party may have must be commenced within one year after the claim or cause of action arises or is actually known or should have reasonably been known to the disputing party. To the fullest extent permitted by applicable law, no arbitration or claim under this Agreement may be joined to any other arbitration or claim, including any arbitration or other legal proceeding involving any other current or former user of the Site and/or our services, and no class action proceedings will be permitted. Notwithstanding any other provision in this Agreement, each of the Parties will be allowed to apply for injunctive relief. The Parties agree that the jurisdiction and venue for such action seeking injunctive relief will be the courts of the county in which our principal place of business is located, or federal district court for the district in which our principal place of business is located. The Parties further agree that a judgment in any such action may be enforced in other jurisdictions by suit on the judgment or ruling, or in any other manner provided by law.

## **H. Procedure for Making Claims of Copyright Infringement**

If you believe that your work has been copied and is accessible on this Site, through PrivacyLayer® or in any other component of our technology in a way that constitutes copyright infringement, please write to our Copyright Agent at our headquarters at the address shown [here](#) or email us at [LegalDept@PrivateAccess.com](mailto:LegalDept@PrivateAccess.com).

The requirements for what you must include in your notice are in the Digital Millennium Copyright Act, 17 U.S.C. § 512.

## **I. Other**

Any failure or delay by either Party to enforce any part of this Agreement will not constitute a waiver of that Party’s rights under this Agreement. You consent to receive communications from us at the email address you provide on the Site and in any other method you select in your Account settings. The Parties agree that all agreements, notices, disclosures and other communications provided by one Party to

another Party electronically satisfy any legal requirement that such communications be in writing. We have no responsibility for any third-party websites not operated by us to which this Site and our services may be linked. This Agreement constitutes the entire agreement and supersedes any prior agreement or communications between you and us regarding the Site, PrivacyLayer®, PrivateAccess® and our related technology. If you have any questions about this Agreement, please contact us at [LegalDept@PrivateAccess.com](mailto:LegalDept@PrivateAccess.com).

## **J. Right to Change Agreement**

We reserve the right to change this Agreement at any time, provided that we notify you at least seven (7) days in advance of the effective date of any changes that we determine to be material by (a) sending you an e-mail to the address in your Account, and (b) posting the revised Agreement on the Site, indicating the effective date of the revisions. Your continued access or use of the Site after the effective date of the revisions constitutes your acceptance of the new Agreement.

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<sup>i</sup> The current release of PrivacyLayer® only provides for creating Privacy Preferences in connection with disease advocacy groups, clinical research, and Information you may wish to be shared with certain third-party platforms. In subsequent releases, we anticipate adding other uses as part of our Basic Services.