

## ClinicOffice Hosted Edition Terms & Conditions

Please read these terms and conditions carefully, as they set out our and your legal rights and obligations in relation to our ClinicOffice Hosted platform and services. You will be asked to agree to these terms and conditions before becoming a customer.

You should print a copy of these terms and conditions for future reference. We will not file a copy specifically in relation to you, and they may not be accessible on our website in future.

These terms and conditions are available in the English language only.

If you have any questions or complaints about our services, please contact us by writing to : - Pioneer Software Ltd, 78 Pilleys Lane, Boston, Lincolnshire, PE21 9RB, United Kingdom or by email to: [info@pioneersoftware.co.uk](mailto:info@pioneersoftware.co.uk).

### AGREEMENT:

#### 1. Definitions and interpretation

##### 1.1 In the Agreement:

"Affiliate" means an entity that Controls, is Controlled by, or is under common Control with the relevant entity;

"Agreement" means the agreement between the Provider and the Customer for the provision of the Platform as a service, incorporating these terms and conditions (including the Schedules) and the Statement of Services, and any amendments to the Agreement from time to time;

"Business Day" means any week day, other than a bank or public holiday in England;

"Business Hours" means between 08:30 and 17:30 GMT on a Business Day;

"Charges" means the amounts payable by the Customer to the Provider under or in relation to the Agreement (as set out in Schedule 2);

"Control" means the legal power to control (directly or indirectly) the management of an entity (and "Controlled" will be construed accordingly);

"Customer" means the customer specified in the Statement of Services;

"Customer Confidential Information" means

- (a) any information disclosed (whether disclosed in writing, orally or otherwise) by the Customer to the Provider that is marked as "confidential", described as "confidential" or should have been understood by the Provider at the time of disclosure to be confidential;
- (b) the financial terms and conditions of the Agreement;
- (c) the Customer Materials;

"Customer Materials" all works and materials:

- (a) uploaded to, stored on, processed using or transmitted via the Platform by or on behalf of the Customer or by any person or application or automated system using the Customer's account; and
- (b) otherwise provided by the Customer to the Provider in connection with the Agreement;

"Defect" means a defect, error or bug having a materially adverse effect on the appearance, operation or functionality of the Platform, but excluding any defect, error or bug caused by or arising as a result of:

- (a) an act or omission of the Customer, or an act or omission of one of the Customer's

employees, officers, agents, suppliers or sub-contractors; or

- (b) an incompatibility between the Platform and any other system, application, program or software not specified as compatible in the Statement of Services;

"Documentation" means the documentation produced by the Provider and supplied / made available on the Platform to the Customer specifying how the Platform should be used;

"Effective Date" means the date of execution of the Agreement;

"Force Majeure Event" means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of or problems with the internet or a part of the internet, hacker attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

"Intellectual Property Rights" means all intellectual property rights wherever in the world, whether registered or unregistered, including any application or right of application for such rights (and the "intellectual property rights" referred to above include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trademarks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

"Minimum Term" means the period specified as such in the Statement of Services;

"Permitted Purpose" means the use of the ClinicOffice Hosted software for the purposes of assisting in the day-to-day management of running a healthcare practice;

"Personal Data" has the meaning given to it in the Data Protection Act 1998;

"Platform" means the software platform known as the ClinicOffice Hosted Edition that is owned and operated by the Provider, and that will be made available to the Client as a service via the internet under the Agreement;

"Provider" means Pioneer Software Limited, a company incorporated in England and Wales (registration number 3634312) having its registered office at 78 Pilleys Lane, Boston, Lincolnshire, PE21 9RB, United Kingdom;

"Schedule" means a schedule attached to the Agreement;

"Services" means all the services provided or to be provided by the Provider to the Customer under the Agreement, including the Support Services;

"Statement of Services" means the online document made available by the Provider to the Customer during the order process / agreed between the parties that specifies the identity of the Customer, and other matters relating to the Agreement;

"Support Services" means support and maintenance services provided or to be provided by the Provider to the Customer in accordance with Schedule 1;

"Term" means the term of the Agreement; and

"Upgrades" means new versions of, and updates to, the Platform, whether for the purpose of fixing an error, bug or other issue in the Platform or enhancing the functionality of the Platform.

1.2 In the Agreement, a reference to a statute or statutory provision includes a reference to:

- (a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
- (b) any subordinate legislation made under that statute or statutory provision.

1.3 The Clause headings do not affect the interpretation of the Agreement.

- 1.4 The ejusdem generis rule is not intended to be used in the interpretation of the Agreement.
2. Agreement and Term
  - 2.1 The advertising of the Platform and the Services on the Provider's website constitutes an "invitation to treat"; and the Customer's order for the Platform and the Services constitutes a contractual offer. No contract will come into force between the Provider and the Customer unless and until the Provider accepts the Customer's order in accordance with the procedure detailed in this Clause 2.
  - 2.2 In order to enter into the Agreement, the Customer must take the following steps: (i) place an order for the Platform via the Provider's website or communication with a sales representative; (ii) the Customer must then submit payment for any initial charges as set out in Schedule 2; (iii) the Provider will then create an account for the Customer and will send an order confirmation to the customer along with logon details for their account; (iv) the Customer may then login to their account, at which point the Agreement will come into force.
  - 2.3 Once in force, the Agreement will continue in force for the Minimum Term and indefinitely thereafter, unless terminated in accordance with Clause 12.
3. The Platform
  - 3.1 The Provider will make available the Platform to the Customer by setting up an account for the Customer on the Platform, and providing to the Customer login details for that account once the Customer has placed an order.
  - 3.2 Subject to the limitations set out in Clause 3.3 and the prohibitions set out in Clause 3.4, the Provider hereby grants to the Customer a non-exclusive licence to use the Platform for the Permitted Purpose via RemoteApp / a Remote Desktop connection / a standard web browser in accordance with the Documentation during the Term.
  - 3.3 The licence granted by the Provider to the Customer under Clause 3.2 is subject to the following limitations:
    - (a) the Platform must not be used at any point in time by more than the number of concurrent users specified in the Statement of Services, providing that the Customer may add or remove concurrent user licences in accordance with the procedure set out therein;
    - (b) the Platform may only be used by the employees, agents and sub-contractors of the Customer and:
      - (i) where the Customer is a company, the Customer's officers;
      - (ii) where the Customer is a partnership, the Customer's partners; and
      - (iii) where the Customer is a limited liability partnership, the Customer's members;
    - (c) the Customer must comply at all times with the terms of the acceptable use policy supplied with the Platform / set out in Schedule 3, and must ensure that all users of the Platform agree to and comply with the terms of that acceptable use policy;
  - 3.4 Except to the extent mandated by applicable law or expressly permitted in the Agreement, the licence granted by the Provider to the Customer under this Clause 3 is subject to the following prohibitions:
    - (a) the Customer must not sub-license its right to access and use the Platform or allow any unauthorised person to access or use the Platform;
    - (b) the Customer must not frame or otherwise re-publish or re-distribute the Platform;
    - (c) the Customer must not alter or adapt or edit the Platform save as expressly permitted by

the Documentation;

- 3.5 For the avoidance of doubt, the Customer has no right to access the object code or source code of the Platform, either during or after the Term.
- 3.6 All Intellectual Property Rights in the Platform shall, as between the parties, be the exclusive property of the Provider.
- 3.7 The Customer shall use all reasonable endeavours to ensure that no unauthorised person will or could access the Platform using the Customer's account.
- 3.8 The Customer must not use the Platform in any way that causes, or may cause, damage to the Platform or impairment of the availability or accessibility of the Platform, or any of the areas of, or services on, the Platform.
- 3.9 The Customer must not use the Platform:
  - (a) in any way that is unlawful, illegal, fraudulent or harmful; or
  - (b) in connection with any unlawful, illegal, fraudulent or harmful purpose or activity.
4. Support Services and Upgrades
  - 4.1 During the Term the Provider will provide the Support Services to the Customer, and may apply Upgrades to the Platform, in accordance with the service level agreement set out in Schedule 1.
  - 4.2 The Provider may sub-contract the provision of any of the Support Services without obtaining the consent of the Customer.
5. Customer Materials
  - 5.1 The Customer grants to the Provider during the Term a non-exclusive licence to store, copy and otherwise use the Customer Materials on the Platform for the purposes of operating the Platform, providing the Services, fulfilling its other obligations under the Agreement, and exercising its rights under the Agreement.
  - 5.2 Subject to Clause 5.1, all Intellectual Property Rights in the Customer Materials will remain, as between the parties, the property of the Customer.
  - 5.3 The Customer warrants and represents to the Provider that the Customer Materials, and their use by the Provider in accordance with the terms of the Agreement, will not:
    - (a) breach any laws, statutes, regulations or legally-binding codes;
    - (b) infringe any person's Intellectual Property Rights or other legal rights; or
    - (c) give rise to any cause of action against the Provider or the Customer or any third party,in each case in any jurisdiction and under any applicable law / in England and Wales and under English law.
  - 5.4 Where the Provider reasonably suspects that there has been a breach by the Customer of the provisions of this Clause 5, the Provider may:
    - (a) delete or amend the relevant Customer Materials; and/or
    - (b) suspend any or all of the Services and/or the Customer's access to the Platform while it investigates the matter.
  - 5.5 Any breach by the Customer of this Clause 5 will be deemed to be a material breach of the Agreement for the purposes of Clause 12.
  - 5.6 The Provider shall ensure that the Customer Materials stored and processed by the Platform are

stored separately from, and are not co-mingled with, the materials of other customers of the Provider.

## 6. Charges

- 6.1 The Provider will issue invoices for the Charges to the Customer in accordance with the provisions of Schedule 2.
- 6.2 The Customer will pay the Charges to the Provider on receipt of an invoice issued in accordance with Clause 6.1.
- 6.3 All Charges stated in or in relation to the Agreement are stated exclusive of VAT, unless the context requires otherwise. VAT will be payable by the Customer to the Provider in addition to the principal amounts.
- 6.4 Monthly payments for the Access Charges must be paid by direct debit which is collected on the 1<sup>st</sup> of each calendar month. Payment for other Services can be paid by direct debit, bank transfer or credit/debit card (using such payment details as are notified by the Provider to the Customer from time to time).
- 6.5 If the Customer does not pay any amount properly due to the Provider under or in connection with the Agreement, the Provider may:
- (a) charge the Customer interest on the overdue amount at the rate of 3% above the base rate of the Provider's bankers in the UK (which interest will accrue daily and be compounded quarterly); or
  - (b) claim interest and statutory compensation from the Customer pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.
- 6.6 The Provider may vary the Charges by giving to the Customer not less than 30 days' written notice of the variation.
- 6.7 The Provider may suspend access to the Platform and the provision of the Services if any amounts due to be paid by the Customer to the Provider under the Agreement are overdue by more than 15 days.

## 7. Warranties

- 7.1 The Customer warrants and represents to the Provider that it has the legal right and authority to enter into and perform its obligations under the Agreement.
- 7.2 The Provider warrants to the Customer:
- (a) that it has the legal right and authority to enter into and perform its obligations under the Agreement;
  - (b) that it will perform its obligations under the Agreement with reasonable care and skill;
  - (c) that the Platform will as far as reasonably possible operate without Defects and will perform substantially in accordance with the Documentation (subject to any Upgrades);
  - (d) that the Platform will be hosted in accordance with the requirements set out in the Statement of Services, and will be available to the Customer in accordance with the uptime commitments given in Schedule [1];
  - (e) the Platform (excluding for the avoidance of doubt the Customer Materials) will not:
    - (i) breach any laws, statutes, regulations or legally-binding codes;
    - (ii) infringe any person's Intellectual Property Rights or other legal rights; or
    - (iii) give rise to any cause of action against the Provider or the Customer or any third

party,

in each case in England and Wales and under English law;

7.3 The Customer acknowledges that:

- (a) complex software is never wholly free from defects, errors and bugs, and the Provider gives no warranty or representation that the Platform will be wholly free from such defects, errors and bugs;
- (b) the Provider does not warrant or represent that the Platform will be compatible with any application, program or software not specifically identified as compatible in the Platform's technical documentation; and
- (c) the Provider will not and does not purport to provide any legal, taxation or accountancy advice under the Agreement or in relation to the Platform and (except to the extent expressly provided otherwise) the Provider does not warrant or represent that the Platform will not give rise to any civil or criminal legal liability on the part of the Customer or any other person.

7.4 All of the parties' warranties and representations in respect of the subject matter of the Agreement are expressly set out in the terms of the Agreement. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of the Agreement will be implied into the Agreement.

8. Indemnities

8.1 The Customer will indemnify and will keep indemnified the Provider against all liabilities, damages, losses, costs and expenses (including legal expenses and amounts paid in settlement of any disputes) suffered or incurred by the Provider and arising as a result of any breach by the Customer of Clause 5.3.

8.2 The Provider will indemnify and will keep indemnified the Customer against all liabilities, damages, losses, costs and expenses (including legal expenses and amounts paid in settlement of any disputes) suffered or incurred by the Customer and arising as a result of any breach by the Provider of Clause 7.2(e).

9. Limitations and exclusions of liability

9.1 Nothing in the Agreement will:

- (a) limit or exclude the liability of a party for death or personal injury resulting from negligence;
- (b) limit or exclude the liability of a party for fraud or fraudulent misrepresentation by that party;
- (c) limit any liability of a party in any way that is not permitted under applicable law; or
- (d) exclude any liability of a party that may not be excluded under applicable law.

9.2 The limitations and exclusions of liability set out in this Clause [9] and elsewhere in the Agreement:

- (a) are subject to Clause [9.1];
- (b) govern all liabilities arising under the Agreement or any collateral contract or in relation to the subject matter of the Agreement or any collateral contract, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty; and
- (c) will not limit or exclude the liability of the parties under the express indemnities set out in the Agreement.

- 9.3 Neither party will be liable in respect of any loss of profits, income, revenue, use, production or anticipated savings.
- 9.4 Neither party will be liable for any loss of business, contracts or commercial opportunities.
- 9.5 Neither party will be liable for any loss of or damage to goodwill or reputation.
- 9.6 Neither party will be liable in respect of any loss or corruption of any data, database or software.
- 9.7 Neither party will be liable in respect of any special, indirect or consequential loss or damage.
- 9.8 Neither party will be liable for any losses arising out of a Force Majeure Event.
- 9.9 Neither party's liability in relation to any event or series of related events will exceed the total amount paid and payable by the Customer to the Provider under the Agreement during the 12 month period immediately preceding the event or events giving rise to the claim.
- 9.10 Neither party's aggregate liability under the Agreement and any collateral contracts will exceed the total amount paid and payable by the Customer to the Provider under the Agreement.
10. Data protection
- 10.1 The Customer warrants that it has the legal right to disclose all Personal Data that it does in fact disclose to the Provider under or in connection with the Agreement.
- 10.2 The Provider warrants that:
- (a) it will act only on instructions from the Customer in relation to the processing of any Personal Data performed by the Provider on behalf of the Customer; and
  - (b) it has in place appropriate security measures (both technical and organisational) against unlawful or unauthorised processing of Personal Data and against loss or corruption of Personal Data processed by the Provider on behalf of the Customer.
11. Confidentiality
- 11.1 The Provider will:
- (a) keep confidential and not disclose the Customer Confidential Information to any person save as expressly permitted by this Clause 11;
  - (b) protect the Customer Confidential Information against unauthorised disclosure by using the same degree of care as it takes to preserve and safeguard its own confidential information of a similar nature, being at least a reasonable degree of care; and
- 11.2 Customer Confidential Information may be disclosed by the Provider to its officers, employees, agents, insurers and professional advisers, provided that the recipient is bound in writing to maintain the confidentiality of the Customer Confidential Information disclosed.
- 11.3 The obligations set out in this Clause 11 shall not apply to:
- (a) Customer Confidential Information that is publicly known (other than through a breach of an obligation of confidence);
  - (b) Customer Confidential Information that is in possession of the Provider prior to disclosure by the Customer;
  - (c) Customer Confidential Information that is received by the Provider from an independent third party who has a right to disclose the relevant Confidential Information; or
  - (d) Customer Confidential Information that is required to be disclosed by law, or by a governmental authority, stock exchange or regulatory body.

## 12. Termination

- 12.1 Either party may terminate the Agreement immediately by giving written notice to the other party if the other party:
- (a) commits any material breach of any term of the Agreement, and:
    - (i) the breach is not remediable; or
    - (ii) the breach is remediable, but the other party fails to remedy the breach within 30 days of receipt of a written notice requiring it to do so; or
  - (b) persistently breaches the terms of the Agreement (irrespective of whether such breaches collectively constitute a material breach).
- 12.2 Either party may terminate the Agreement immediately by giving written notice to the other party if:
- (a) the other party:
    - (i) is dissolved or ceases to conduct all (or substantially all) of its business;
    - (ii) is or becomes unable to pay its debts as they fall due;
    - (iii) is or becomes insolvent or is declared insolvent; or
    - (iv) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
  - (b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;
  - (c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under the Agreement); or
  - (d) (where that other party is an individual) that other party dies, or as a result of illness or incapacity becomes incapable of managing his or her own affairs, or is the subject of a bankruptcy petition or order.
- 12.3 The Customer may terminate the Agreement by giving at least 10 days' written notice of termination to the Provider. The Agreement will then expire at the end of whichever calendar month it is on the 10<sup>th</sup> day following the notice being given.
- 12.4 If the Provider stops or makes a good faith decision to stop operating the Platform generally, then the Provider may terminate the Agreement by giving at least 90 days' written notice of termination to the Customer.
- 12.5 The Provider may terminate the Agreement immediately by giving written notice of termination to the Customer where the Customer fails to pay to the Provider any amount due to be paid under the Agreement by the due date.
- ## 13. Effects of termination
- 13.1 Upon termination of the Agreement, all the provisions of the Agreement will cease to have effect, save that the following provisions of the Agreement will survive and continue to have effect (in accordance with their terms or otherwise indefinitely): Clauses 1, 6.5, 8, 9, 11, 13 and 16.
- 13.2 Termination of the Agreement will not affect either party's accrued liabilities and rights as at the date of termination.

- 13.3 Subject to Clause 13.4, within 30 days following the termination of the Agreement, the Provider will irrevocably delete from the Platform all Customer Confidential Information.
- 13.4 The Provider may retain any document (including any electronic document) containing the Customer Confidential Information after the termination of the Agreement if:
- (a) the Provider is obliged to retain such document by any law or regulation or other rule enforceable against the Provider; or
  - (b) the document in question is a letter, fax, email, order confirmation, invoice, receipt or similar document addressed to the Provider.

#### 14. Notices

- 14.1 Any notice given under the Agreement must be in writing (whether or not described as "written notice" in the Agreement) and must be delivered personally, sent by recorded post, or sent by fax or email, for the attention of the relevant person, and to the relevant address or fax number or email address given below (or as notified by one party to the other in accordance with this Clause).

The Provider:

Pioneer Software Ltd, 78 Pilleys Lane, Boston, Lincolnshire, PE21 9RB, UK

Fax 0845 388 6706

Email [info@pioneersoftware.co.uk](mailto:info@pioneersoftware.co.uk)

The Customer:

The addressee, address, email and fax set out in the Statement of Services.

- 14.2 A notice will be deemed to have been received at the relevant time set out below (or where such time is not within Business Hours, when Business Hours next begin after the relevant time set out below):
- (a) where the notice is delivered personally, at the time of delivery;
  - (b) where the notice is sent by recorded post, 48 hours after posting; and
  - (c) where the notice is sent by fax or email, at the time of the transmission (providing the sending party retains written evidence of the transmission).

#### 15. Force Majeure Event

- 15.1 Where a Force Majeure Event gives rise to a failure or delay in either party performing its obligations under the Agreement (other than obligations to make payment), those obligations will be suspended for the duration of the Force Majeure Event.
- 15.2 A party who becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in performing its obligations under the Agreement, will:
- (a) forthwith notify the other; and
  - (b) will inform the other of the period for which it is estimated that such failure or delay will continue.

- 15.3 The affected party will take reasonable steps to mitigate the effects of the Force Majeure Event.

#### 16. General

- 16.1 No breach of any provision of the Agreement will be waived except with the express written consent of the party not in breach.
- 16.2 If a Clause of the Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other Clauses of the Agreement will continue in effect. If

any unlawful and/or unenforceable Clause would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the Clause will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant Clause will be deemed to be deleted).

- 16.3 The Agreement may not be varied except by a written document signed by or on behalf of each of the parties.
- 16.4 Each party hereby agrees that the other party may freely assign any or all of its contractual rights and/or obligations under the Agreement to any successor to all or a substantial part of the business of the assigning party from time to time. Save as expressly provided in this Clause or elsewhere in the Agreement, neither party may without the prior written consent of the other party assign, transfer, charge, license or otherwise dispose of or deal in the Agreement or any contractual rights or obligations under the Agreement.
- 16.5 The Agreement is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to the Agreement are not subject to the consent of any third party.
- 16.6 Subject to Clause 9.1:
  - (a) the Agreement and the acceptable use policy referred to in herein constitute the entire agreement between the parties in relation to the subject matter of the Agreement, and supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter; and
  - (b) neither party will have any remedy in respect of any misrepresentation (whether written or oral) made to it upon which it relied in entering into the Agreement.
- 16.7 The Agreement will be governed by and construed in accordance with the laws of England and Wales; and the courts of England will have exclusive jurisdiction to adjudicate any dispute arising under or in connection with the Agreement.

## Schedule 1 – Service Level Agreement

### 1. Introduction

#### 1.1 In this Schedule:

"New Functionality" means new functionality that is introduced to the Platform by an Upgrade

1.2 References in this Schedule to Paragraphs are to the paragraphs of this Schedule, unless otherwise stated.

### 2. Helpdesk

2.1 The Provider will make available, during Business Hours, a telephone and email helpdesk facility for the purposes of:

(a) assisting the Customer with the configuration of the Platform;

(b) assisting the Customer with the proper use of the Platform; and/or

(c) determining the causes of errors and fixing errors in the Platform.

2.2 The Customer must make all requests for Support Services by contacting the helpdesk by telephone, email or online chat session.

2.3 The Provider will use reasonable endeavours to provide support via email out of Business Hours in the case of an emergency.

### 3. Response and resolution times

3.1 The Provider will:

(a) use reasonable endeavours to respond to requests for Support Services made through the helpdesk; and

(b) use reasonable endeavours to resolve issues raised by the Customer as quickly as possible.

3.2 All Support Services will be provided remotely unless expressly agreed otherwise by the Provider.

### 4. Limits on Support Services

4.1 The Provider shall have no obligation under the Agreement to provide Support Services in respect of any fault or error caused by:

(a) the improper use of the Platform; or

(b) the use of the Platform otherwise than in accordance with the Documentation.

4.2 The Provider shall not be responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, except to the extent that such delays, delivery failures, or any other loss or damage is caused as a result of the fraud, negligence or wilful default of the Provider or the Provider's sub-contractor under this Agreement, and the Customer acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

### 5. Upgrades

5.1 The Customer acknowledges that from time to time during the Term the Provider may apply Upgrades to the Platform, and that such Upgrades may, subject to Paragraph 5.2, result in changes the appearance and/or functionality of the Platform.

- 5.2 No Upgrade shall disable, delete or significantly impair the core functionality of the Platform.
- 5.3 The Provider will publish on their website details of any significant Upgrade to the Platform. Such information shall include details of the specific changes to the functionality of the Platform resulting from the application of the Upgrade.

## 6. Uptime commitment

- 6.1 The Provider shall use reasonable endeavours to ensure that the Platform is available 99% of the time during each calendar month, subject to Paragraph 8.
- 6.2 In the event that, during a calendar month entirely within the Term, the Platform fails to meet the availability commitment set out in Paragraph 6.1 then the Provider shall issue service credits calculated in accordance with Paragraph 6.3 to the Customer, such service credits to be deducted by the Provider from future Charges.
- 6.3 Subject to Paragraph 6.4, the service credits referred to in Paragraph 6.2 and due in respect of a calendar month shall be calculated as follows:

$$\text{service credits} = ((100 - a) / 25) \times b$$

where:

a = the actual percentage availability of the Platform during the relevant calendar month; and  
b = the Charges payable in respect of access to the Platform during the relevant calendar month (exclusive of VAT and other taxes).

Example: if the Customer pays £100 per calendar month and the Platform is available 95% of that month, then the calculation would be :-

$$\text{Service credits} = ((100 - 95) / 25) \times £100 = £20$$

- 6.4 The maximum service credits available to the Customer in respect of any calendar month shall be the total Charges payable in respect of access to the Platform during the relevant calendar month (exclusive of VAT and other taxes).
- 6.5 Subject to Clause 9.1 of the Agreement, the award of service credits under this Paragraph 6 shall be the exclusive remedy of the Customer in the case of a failure of the provider to meet the uptime commitment in Paragraph 6.1 except in the case of a failure constituting a material breach of the Agreement.

## 7. Backup and restoration

- 7.1 The Provider will:
- (a) make backups of the Customer Materials stored on the Platform on a daily basis, storing the most recent 7 daily backups locally on the Platform; and
  - (b) at least once every 3 days, the Provider will additionally arrange for the off-site storage of the latest backup of the Customer Materials stored on the Platform (which will be over-written on the following off-site backup date).
- 7.2 In the event of the loss of, or corruption of, Customer Materials stored on the Platform being notified by the Customer to the Provider under Paragraph 2, the Provider shall if so directed by the Customer use reasonable endeavours to promptly restore the Customer Materials from the most recent available backup copy.
- 7.3 The Customer understands that, in addition to backups made by the Provider, the Customer can and should make regular backups of the Customer Materials themselves and that the Provider cannot be held responsible in the event of data loss as set out in Clause 9 of the Agreement.

## 8. Scheduled maintenance

- 8.1 The Provider may suspend access to the Platform in order to carry out scheduled maintenance,

such maintenance to be carried out outside Business Hours and such suspension to be for not more than 5 hours in each calendar month.

- 8.2 Platform downtime during scheduled maintenance carried out by the Provider in accordance with this Paragraph 8 shall not be counted as downtime for the purposes of Paragraph 6.

## Schedule 2 – Charges

### 1. Introduction

1.1 References in this Schedule to Paragraphs are to the paragraphs of this Schedule, unless otherwise stated.

1.2 The Charges under the Agreement will consist of the following elements:

- (a) Access Charges, in respect of access to and use of the Platform;
- (b) Support Charges, in respect of Helpdesk support with the use of the Platform;
- (c) Other Charges.

### 2. Access Charges

2.1 The Charges in respect of access to and use of the Platform are calculated based on the number of concurrent user licenses required by the Customer plus any additional modules that the Customer wishes to add to their package. The full and up-to-date pricelist is published and maintained on the Provider's website: -

[www.pioneersoftware.co.uk](http://www.pioneersoftware.co.uk)

2.2 The Access Charges set out in this paragraph 2 are to be paid monthly in advance on the 1<sup>st</sup> of each calendar month. To facilitate this, the Customer agrees:

- (a) to setup a Direct Debit instruction. In the event that it is impossible for the Customer to setup a Direct Debit, then:
- (b) the Customer may provide their credit/debit card details to the Provider, granting the Provider permission to process the card monthly to pay the Access Charges.

2.3 The Provider will raise invoices monthly for the Access Charges and can supply these to the Customer on request.

### 3. Support Charges

3.1 Support Charges for the use of the Platform are included in the Access Charges.

### 4. Other Charges

4.1 In addition to the Charges detailed in Paragraphs 2 and 3 above, the Provider will invoice in respect of, and the Customer shall pay to the Provider:

- (a) Charges for additional services requested by the Customer which fall outside the category of Helpdesk Support, such as (but not limited to) form/report designing, data conversion, telephone/on-site training or bespoke development; and
- (b) any other Charges that are agreed between the parties in writing from time to time.

## Schedule 3 – Acceptable Use Policy

### (1) This Policy

This Acceptable Use Policy (the “Policy”) sets out the rules governing the use of our web services (the “Service”) and any content that you may submit to the Service (“Content”).

By using the Service, you agree to the rules set out in this Policy.

### (2) General restrictions

You must not use the Service in any way that causes, or may cause, damage to the Service or impairment of the availability or accessibility of the Service, or any of the areas of, or services on, the Service.

You must not use the Service:

- (a) in any way that is unlawful, illegal, fraudulent or harmful; or
- (b) in connection with any unlawful, illegal, fraudulent or harmful purpose or activity.

### (3) Unlawful and illegal material

You must not use the Service to store, host, copy, distribute, display, publish, transmit or send Content that is illegal or unlawful, or that will or may infringe a third party’s legal rights, or that could give rise to legal action whether against you or us or a third party (in each case in any jurisdiction and under any applicable law).

Content (and its publication on the Service) must not:

- (a) be libellous or maliciously false;
- (b) be obscene or indecent;
- (c) infringe any copyright, moral rights, database rights, trade mark rights, design rights, rights in passing off, or other intellectual property rights;
- (d) infringe any rights of confidence, rights of privacy, or rights under data protection legislation;
- (e) constitute negligent advice or contain any negligent statement;
- (f) constitute an incitement to commit a crime;
- (g) be in contempt of any court, or in breach of any court order;
- (h) be in breach of racial or religious hatred or discrimination legislation;
- (i) be blasphemous;
- (j) be in breach of official secrets legislation; or
- (k) be in breach of any contractual obligation owed to any person.

You must not submit any Content that is or has ever been the subject of any threatened or actual legal proceedings or other similar complaint.

### (4) Graphic material

Content must not depict violence in an explicit, graphic or gratuitous manner.

Content must not be pornographic or sexually explicit, or consist of or include explicit, graphic or gratuitous material of a sexual nature.