

Pioneer Software Ltd – Data Processing Agreement

DATE

[DATE]

PARTIES

1. **Pioneer Software Ltd**, a company incorporated in England and Wales (registration number 03634312) having its registered office at 78 Pilleys Lane, Boston, Lincolnshire, PE21 9RB (the "**Processor**"); and
2. [CUSTOMER_FULL]

BACKGROUND

1. The **Processor** processes Personal Data on behalf of other businesses and organizations.
2. The **Controller** processes Personal Data in connection with its business activities.
3. The **Processor** and the **Controller** therefore wish to enter into a contract in accordance with the provisions of this Agreement.

AGREEMENT

1. Definitions

- 1.1 In this Agreement:

"**Agreement**" means this agreement including any Schedules, and any amendments to this Agreement from time to time;

"**Business Day**" means any weekday other than a bank or public holiday in England;

"**Business Hours**" means the hours of 08:30 to 17:30 GMT on a Business Day;

"**Controller Personal Data**" means any Personal Data that is processed by the Processor on behalf of the Controller under or in relation to this Agreement;

"**Data Protection Laws**" means all applicable laws relating to the processing of Personal Data including, while it is in force and applicable to Controller Personal Data, the General Data Protection Regulation (Regulation (EU) 2016/679);

"**Effective Date**" means the date upon which the date of execution of this Agreement;

"**Main Contract**" means the contract for the provision of SaaS between the parties, as it may be amended and updated from time to time;

"**Personal Data**" has the meaning given to it in the Data Protection Laws applicable in the United Kingdom from time to time;

"**Schedule**" means any schedule attached to the main body of this Agreement; and

"**Term**" means the term of this Agreement, commencing in accordance with Clause 3.1 and ending in accordance with Clause 3.2.

2. Supplemental

- 2.1 This Agreement supplements the Main Contract.

- 2.2 Any capitalized terms that are:

- (a) used in this Agreement;
- (b) defined in the Main Contract; and
- (c) not defined in this Agreement,

shall in this Agreement have the meanings given to them in the Main Contract.

2.3 This Agreement shall automatically terminate upon the termination of the Main Contract.

2.4 The Main Contract shall automatically terminate upon the termination of this Agreement.

3. Term

3.1 This Agreement shall come into force upon the Effective Date.

3.2 This Agreement shall continue in force indefinitely unless and until terminated, subject to termination in accordance with Clause 2.3, 2.4 or 7 or any other provision of this Agreement.

4. Consideration

4.1 In consideration of the Controller engaging with the services of the Processor to process personal data on its behalf, the Processor shall comply with the security, confidentiality and other obligations imposed on it under this agreement.

5. Data protection

5.1 Each party shall comply with the Data Protection Laws with respect to the processing of the Controller Personal Data.

5.2 The Controller warrants to the Processor that it has the legal right to disclose all Personal Data that it does in fact disclose to the Processor under or in connection with this Agreement.

5.3 The Controller shall only supply to the Processor, and the Processor shall only process, in each case under or in relation to this Agreement, the Personal Data of data subjects falling within the categories specified in Paragraph 1 of Schedule 1 (Data processing information) and of the types specified in Paragraph 2 of Schedule 1 (Data processing information); and the Processor shall only process the Controller Personal Data for the purposes specified in Paragraph 3 of Schedule 1 (Data processing information).

5.4 The Processor shall only process the Controller Personal Data during the Term and for not more than 30 days following the end of the Term, subject to the other provisions of this Clause 5.

5.5 The Processor shall only process the Controller Personal Data on the documented instructions of the Controller (including with regard to transfers of the Controller Personal Data).

5.6 The Processor shall promptly inform the Controller if, in the opinion of the Processor, an instruction of the Controller relating to the processing of the Controller Personal Data infringes the Data Protection Laws.

5.7 Notwithstanding any other provision of this Agreement, the Processor may process the Controller Personal Data if and to the extent that the Processor is required to do so by applicable law. In such a case, the Processor shall inform the Controller of the legal requirement before processing, unless that law prohibits such information on important grounds of public interest.

5.8 The Processor shall ensure that persons authorized to process the Controller Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.

5.9 The Processor and the Controller shall each implement appropriate technical and organizational measures to ensure an appropriate level of security for the Controller Personal Data.

5.10 The Processor must not engage any third party to process the Controller Personal Data without the prior specific or general written authorization of the Controller. In the case of a general written authorization, the Processor shall inform the Controller at least 14 days in advance of any intended changes concerning the addition or replacement of any third party processor, and if the Controller objects to any such changes before their implementation, then the Controller may terminate this Agreement on 30 days' written notice to the Processor, providing that such notice must be given within the period of 30 days following the date that the Processor informed the Controller of the intended changes. The Processor shall ensure that each third-party processor is subject to the same legal obligations as those imposed on the Processor by this Clause 5.

- 5.11 As at the Effective Date, the Processor is hereby authorized by the Controller to engage, as sub-processors with respect to Controller Personal Data, the third parties identified in Paragraph 4 of Schedule 1 (Data processing information).
- 5.12 The Processor shall, insofar as possible and taking into account the nature of the processing, take appropriate technical and organizational measures to assist the Controller with the fulfilment of the Controller's obligation to respond to requests exercising a data subject's rights under the Data Protection Laws.
- 5.13 The Processor shall assist the Controller in ensuring compliance with the obligations relating to the security of processing of personal data, the notification of personal data breaches to the supervisory authority, the communication of personal data breaches to the data subject, data protection impact assessments and prior consultation in relation to high-risk processing under the Data Protection Laws. The Processor shall report any Personal Data breach relating to the Controller Personal Data to the Controller within 24 hours following the Processor becoming aware of the breach.
- 5.14 The Processor shall make available to the Controller all information necessary to demonstrate the compliance of the Processor with its obligations under this Clause 5 and the Data Protection Laws.
- 5.15 The Processor shall, at the choice of the Controller, delete or return all of the Controller Personal Data to the Controller after the provision of services relating to the processing, and shall delete existing copies save to the extent that applicable law requires storage of the relevant Personal Data.
- 5.16 The Processor shall allow for and contribute to audits, including inspections, conducted by the Controller or another auditor mandated by the Controller in respect of the compliance of the Processor's processing of Controller Personal Data with the Data Protection Laws and this Clause 5. The Processor may charge the Controller at its standard time-based charging rates for any work performed by the Processor at the request of the Controller pursuant to this Clause 5.16.
- 5.17 If any changes or prospective changes to the Data Protection Laws result or will result in one or both parties not complying with the Data Protection Laws in relation to processing of Personal Data carried out under this Agreement, then the parties shall use their best endeavors promptly to agree such variations to this Agreement as may be necessary to remedy such non-compliance.

6. Limits upon exclusions of liability

- 6.1 Nothing in this Agreement will:
- (a) limit or exclude any liability for death or personal injury resulting from negligence;
 - (b) limit or exclude any liability for fraud or fraudulent misrepresentation;
 - (c) limit any liabilities in any way that is not permitted under applicable law; or
 - (d) exclude any liabilities that may not be excluded under applicable law.

7. Termination

- 7.1 Either party may terminate this Agreement by giving to the other party at least 30 days' written notice of termination.
- 7.2 Either party may terminate this Agreement immediately by giving written notice of termination to the other party if the other party commits a material breach of this Agreement.
- 7.3 Either party may terminate this Agreement immediately by giving written notice of termination to the other party if:
- (a) the other party:
 - (i) is dissolved;
 - (ii) ceases to conduct all (or substantially all) of its business;
 - (iii) is or becomes unable to pay its debts as they fall due;

- (iv) is or becomes insolvent or is declared insolvent; or
- (v) 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 reorganization where the resulting entity will assume all the obligations of the other party under this Agreement); or
- (d) if that other party is an individual:
 - (i) that other party dies;
 - (ii) as a result of illness or incapacity, that other party becomes incapable of managing his or her own affairs; or
 - (iii) that other party is the subject of a bankruptcy petition or order.

8. Effects of termination

- 8.1 Upon the termination of this Agreement, all of the provisions of this Agreement shall cease to have effect, save that the following provisions of this Agreement shall survive and continue to have effect (in accordance with their express terms or otherwise indefinitely): [Clauses 1, 2.2, 5.1, 5.3, 5.4, 5.5, 5.6, 5.7, 5.8, 5.9, 5.10, 5.11, 5.12, 5.13, 5.14, 5.15, 5.16, 5.17, 6, 8, 10 and 11].
- 8.2 Except to the extent that this Agreement expressly provides otherwise, the termination of this Agreement shall not affect the accrued rights of either party.

9. Notices

9.1 Any notice given under this Agreement must be in writing, whether or not described as "written notice" in this Agreement.

9.2 Any notice given by the Controller to the Processor under this Agreement must be:

- (a) delivered personally;
- (b) sent by courier;
- (c) sent by recorded signed-for post;
- (d) sent by fax;
- (e) sent by email; or

using the relevant contact details published by the Processor on their website.

9.3 Any notice given by the Processor to the Controller under this Agreement must be:

- (a) delivered personally;
- (b) sent by courier;
- (c) sent by recorded signed-for post;
- (d) sent by fax;
- (e) sent by email; or

using the relevant contact details as provided by the Controller to the Processor.

9.4 The addressee and contact details may be updated from time to time by a party giving written notice of the update to the other party in accordance with this Clause 9.

9.5 A party receiving from the other party a notice by email must acknowledge receipt by email promptly, and in any event within 2 Business Days following receipt of the notice.

9.6 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) in the case of notices delivered personally, upon delivery;
- (b) in the case of notices sent by courier, upon delivery;
- (c) in the case of notices sent by post, 48 hours after posting;
- (d) in the case of notices sent by fax, at the time of the transmission of the fax (providing the sending party retains written evidence of the transmission);
- (e) in the case of notices sent by email, at the time of the sending of the email (providing that the sending party retains written evidence that the email has been sent).

10. General

- 10.1 No breach of any provision of this Agreement shall be waived except with the express written consent of the party not in breach.
- 10.2 If any provision of this Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions of this Agreement will continue in effect. If any unlawful and/or unenforceable provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant provision will be deemed to be deleted).
- 10.3 This Agreement may not be varied except by a written document signed by or on behalf of each of the parties.
- 10.4 Neither party may without the prior written consent of the other party assign, transfer, charge, license or otherwise deal in or dispose of any contractual rights or obligations under this Agreement.
- 10.5 This 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 this Agreement are not subject to the consent of any third party.
- 10.6 Subject to Clause 6, this Agreement shall constitute the entire agreement between the parties in relation to the subject matter of this Agreement, and shall supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter.
- 10.7 This Agreement shall be governed by and construed in accordance with English law.
- 10.8 The courts of England shall have exclusive jurisdiction to adjudicate any dispute arising under or in connection with this Agreement.

11. Interpretation

- 11.1 In this 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.
- 11.2 The Clause headings do not affect the interpretation of this Agreement.
- 11.3 References in this Agreement to "calendar months" are to the 12 named periods (January, February and so on) into which a year is divided.
- 11.4 In this Agreement, general words shall not be given a restrictive interpretation by reason of being preceded or followed by words indicating a particular class of acts, matters or things.

EXECUTION

The parties have indicated their acceptance of this Agreement by executing it below.

SIGNED BY **Hedley Muscroft** on [DATE], duly authorized for and on behalf of the Provider:

A handwritten signature in black ink, appearing to read 'Hedley Muscroft', is written over a horizontal line. The signature is stylized and somewhat illegible.

SIGNED BY [CUSTOMER_NAME] on [DATE], duly authorized for and on behalf of the Customer:

SCHEDULE 1 (DATA PROCESSING INFORMATION)

1. Categories of Data Subject

Persons who are clients of the Controller.

2. Types of Personal Data

Personal data i.e. any information relating to an identifiable person who can be directly or indirectly identified in particular by reference to an identifier. Sensitive personal data – see article 9 of the General Data Protection Regulation.

3. Purposes of Processing

To offer a software platform for the storage of the Controller's client data and to provide technical assistance in the use of the software platform.

4. Sub-processors of Personal Data

Pioneer Software rent HOSTED SERVERS from IOMART plc and LiveDrive (UK based third-party hosting companies) for the purpose of providing the infrastructure and data storage for their software platform.