

Pioneer Software Ltd – Support Plan 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 "**Provider**"); and
2. [CUSTOMER_FULL]

AGREEMENT

1. Definitions

- 1.1 Except to the extent expressly provided otherwise, in this Agreement:

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

"**Backup Platform**" means the platform managed by the Provider and used by the Provider to provide the Backup Services, including the computer hardware on which the backed-up data is stored;

"**Backup Software**" means software which will be made available by the Provider to the Customer in accordance with this Agreement, for the purpose of backing up the Customer Data;

"**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/BST on a Business Day;

"**Charges**" means the following:

- (a) such amounts as may be agreed in writing by the parties from time to time for the provision of the Technical Support Services; and
- (b) amounts as may be agreed in writing by the parties from time to time for other services, such as (but not limited to) training services, data importing, customizations or additional services which fall outside the normal Support Services as defined in this Agreement;

"**Confidential Information**" means the Provider Confidential Information and the Customer Confidential Information;

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

"**Customer Confidential Information**" means:

- (a) any information disclosed by or on behalf of the Customer to the Provider during the Term (whether disclosed in writing, orally or otherwise) that at the time of disclosure:
 - (i) was marked or described as "confidential"; or
 - (ii) should have been reasonably understood by the Provider to be confidential; and
- (b) the Customer Data;

"**Customer Data**" means all data, works and materials: generated by the Software as a result of the use of the Software by the Customer; or stored as a backup set on the Customer Systems; or stored as a backup set on the Backup Platform.

"**Customer Personal Data**" means any Personal Data that is processed by the Provider on behalf of the Customer in relation to this Agreement;

"Customer Systems" means the hardware and software systems of the Customer that interact with, or may reasonably be expected to interact with, the Software or Backup Services;

"Customization" means a customization of the Software, whether made through the development, configuration or integration of software, or otherwise;

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

"Documentation" means the documentation for the Backup Services produced by the Provider and delivered or made available by the Provider to the Customer;

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

"Expenses" means the travel, accommodation and subsistence expenses that are reasonably necessary for, and incurred by the Provider exclusively in connection with, the performance of the Provider's obligations under this 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 the internet or any public telecommunications network, hacker attacks, denial of service 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 registrable or un-registrable, registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" 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, in respect of this Agreement, the period of 6 months beginning on the Effective Date;

"Personal Data" has the meaning given to it in the General Data Protection Regulation (Regulation (EU) 2016/679);

"Provider Confidential Information" means:

- (a) any information disclosed by or on behalf of the Provider to the Customer at any time before the termination of this Agreement (whether disclosed in writing, orally or otherwise) that at the time of disclosure was marked or described as "confidential" or should have been understood by the Customer (acting reasonably) to be confidential; and
- (b) the terms of this Agreement;

"Provider Representatives" means the Provider and any additional or replacement persons that may be appointed by the Provider;

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

"Services" means any services that the Provider provides to the Customer, or has an obligation to provide to the Customer, under this Agreement;

"Software" means software which has been purchased/licensed by the Provider to the Customer in accordance with a separate EULA (End User License Agreement);

"Support Services" means support in relation to the use of, and the identification and resolution of errors in the Software, but excluding the provision of training services;

"Term" means the term of this Agreement, commencing in accordance with Clause 2.1 and ending in accordance with Clause 2.2;

"Update" means a hotfix, patch or minor version update to the Software or Backup Software; and

"Upgrade" means a major version upgrade of the Software or Backup Software.

2. Term

- 2.1 This Agreement shall come into force upon the Effective Date.
- 2.2 This Agreement shall continue in force indefinitely, subject to termination in accordance with Clause 17 or any other provision of this Agreement.

3. Backup Services

- 3.1 At the Customer's request, the Provider can provide Backup Software which will be installed on the Customer Systems to backup the Customer Data. This is an 'opt-in' service and is not mandatory. This Clause 3 shall not apply if the Customer declines the Backup Services. The Customer may 'opt-in' at any time during the Term of this Agreement by making a request in writing to the Provider, after which this Clause 3 will apply.
- 3.2 The Backup Software is governed by the same EULA (End User License Agreement) as the software which has been purchased and/or licensed to the Customer.
- 3.3 The Customer hereby grants to the Provider a non-exclusive license to copy, reproduce, store, distribute, publish, export, adapt, edit and translate the Customer Data to the extent reasonably required for the performance of the Provider's obligations under this Clause 3 and the exercise of the Provider's rights under this Agreement. The Customer also grants to the Provider the right to sub-license these rights to its hosting, connectivity and telecommunications service providers to the extent reasonably required for the performance of the Provider's obligations under this Clause 3 and the exercise of the Provider's rights under this Agreement, subject always to any express restrictions elsewhere in this Agreement.
- 3.4 The Customer warrants to the Provider that the Customer Data will not infringe the Intellectual Property Rights or other legal rights of any person, and will not breach the provisions of any law, statute or regulation, in any jurisdiction and under any applicable law.
- 3.5 Within the period of 1 Business Day following receipt of a written request from the Customer, the Provider shall use all reasonable endeavors to provide to the Customer the latest available backup copy of the Customer Data which is stored on the Backup Platform.
- 3.6 The parties acknowledge and agree that Schedule 1 (Backup Service Particulars) shall govern the frequency and scope of the Backup Services.
- 3.7 For the avoidance of doubt, the Customer has no right to access the software code (including object code, intermediate code and source code) of the Backup Software, either during or after the Term.

4. Support Services

- 4.1 The Provider shall provide the Support Services to the Customer during the Term.
- 4.2 The Provider shall provide the Support Services with all reasonable skill and care.
- 4.3 The Provider shall provide the Support Services in accordance with Schedule 2 (Support SLA).
- 4.4 The Provider shall make available Updates to the Software which may be released from time to time. Updates are available free of charge and will be made available via download. It is the Customer's responsibility to download and apply Updates, however if assistance is required then it can be offered as part of the Support Services as outlined in this Agreement.
- 4.5 Upgrades are not inclusive in the Support Services and will need to be purchased separately if the Customer wishes to upgrade the Software.
- 4.6 The Provider may suspend the provision of the Support Services if any amount due to be paid by the Customer to the Provider under this Agreement is overdue.

5. Customizations

- 5.1 The Provider and the Customer may agree that the Provider shall design, develop and implement a Customization or Customizations in accordance with a specification and project plan agreed in writing by the parties.
- 5.2 All Intellectual Property Rights in the Customizations shall, as between the parties, be the exclusive property of the Provider (unless the parties agree otherwise in writing).
- 5.3 The Customer acknowledges that the Provider may make any Customization available to any of its other customers or any other third party.

6. Customer obligations

6.1 Save to the extent that the parties have agreed otherwise in writing, the Customer must provide to the Provider, or procure for the Provider, such:

- (a) co-operation, support and advice;
- (b) information and documentation; and
- (c) governmental, legal and regulatory licenses, consents and permits,

as are reasonably necessary to enable the Provider to perform its obligations under this Agreement.

6.2 The Customer must provide to the Provider, or procure for the Provider, such access to the Customer's computer hardware, software, networks and systems as may be reasonably required by the Provider to enable the Provider to perform its obligations under this Agreement.

7. Customer Systems

7.1 The Customer shall ensure that the Customer Systems comply, and continue to comply during the Term, with the minimum computer hardware specifications which are published on the Provider's website and which may be updated from time to time.

8. No assignment of Intellectual Property Rights

8.1 Nothing in this Agreement shall operate to assign or transfer any Intellectual Property Rights from the Provider to the Customer, or from the Customer to the Provider.

9. Charges

9.1 The Customer shall pay the Charges to the Provider in accordance with this Agreement.

9.2 If the Charges are based in whole or part upon the time spent by the Provider performing the Services, the Provider must obtain the Customer's written consent before performing Services that result in any estimate of time-based Charges given to the Customer being exceeded or any budget for time-based Charges agreed by the parties being exceeded; and unless the Customer agrees otherwise in writing, the Customer shall not be liable to pay to the Provider any Charges in respect of Services performed in breach of this Clause 9.2.

9.3 All amounts stated in or in relation to this Agreement are, unless the context requires otherwise, stated exclusive of any applicable value added taxes, which will be added to those amounts and payable by the Customer to the Provider.

9.4 The Provider may elect to vary any element of the Charges by giving to the Customer not less than 30 days' written notice of the variation.

10. Payments

10.1 The Customer must setup a direct debit (when possible) to pay the regular Charges which are due under this Agreement. If a direct debit is not possible (for example for customers outside of the UK), then the Customer must provide credit or debit card details and agree that such may be used for repeat transactions in order to pay the regular Charges which are due under this Agreement.

10.2 The Provider may issue invoices for other services offered to the Customer from time to time during the Term.

- 10.3 The Customer must pay the Charges to the Provider on receipt of the invoice, unless other payment terms have been agreed by the Provider in writing.
- 10.4 The Customer must pay the Charges by debit card, credit card, direct debit or bank transfer (using such payment details as are notified by the Provider to the Customer from time to time).
- 10.5 If the Customer does not pay any amount properly due to the Provider under this Agreement, the Provider may:
- (a) charge the Customer interest on the overdue amount at the rate of 8% per annum above the Bank of England base rate from time to time (which interest will accrue daily until the date of actual payment and be compounded at the end of each calendar month); or
 - (b) claim interest and statutory compensation from the Customer pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.

11. Confidentiality obligations

11.1 The Provider must:

- (a) keep the Customer Confidential Information strictly confidential;
- (b) not disclose the Customer Confidential Information to any person without the Customer's prior written consent, and then only under conditions of confidentiality approved in writing by the Customer;
- (c) use the same degree of care to protect the confidentiality of the Customer Confidential Information as the Provider uses to protect the Provider's own confidential information of a similar nature, being at least a reasonable degree of care;
- (d) act in good faith at all times in relation to the Customer Confidential Information.

11.2 The Customer must:

- (a) keep the Provider Confidential Information strictly confidential;
- (b) not disclose the Provider Confidential Information to any person without the Provider's prior written consent, and then only under conditions of confidentiality approved in writing by the Provider;
- (c) use the same degree of care to protect the confidentiality of the Provider Confidential Information as the Customer uses to protect the Customer's own confidential information of a similar nature, being at least a reasonable degree of care;
- (d) act in good faith at all times in relation to the Provider Confidential Information.

11.3 Notwithstanding Clauses 11.1 and 11.2, a party's Confidential Information may be disclosed by the other party to that other party's officers, employees, professional advisers, insurers, agents and subcontractors who have a need to access the Confidential Information that is disclosed for the performance of their work with respect to this Agreement and who are bound by a written agreement or professional obligation to protect the confidentiality of the Confidential Information that is disclosed.

11.4 No obligations are imposed by this Clause 11 with respect to a party's Confidential Information if that Confidential Information:

- (a) is known to the other party before disclosure under this Agreement and is not subject to any other obligation of confidentiality;
- (b) is or becomes publicly known through no act or default of the other party; or
- (c) is obtained by the other party from a third party in circumstances where the other party has no reason to believe that there has been a breach of an obligation of confidentiality.

11.5 The restrictions in this Clause 11 do not apply to the extent that any Confidential Information is required to be disclosed by any law or regulation, by any judicial or governmental order or request, or pursuant to disclosure requirements relating to the listing of the stock of either party on any recognized stock exchange.

- 11.6 Upon the termination of this Agreement, each party must immediately cease to use the other party's Confidential Information.
- 11.7 Following the termination of this Agreement, and within 5 Business Days following the date of receipt of a written request from the other party, the relevant party must destroy or return to the other party (at the other party's option) all media containing the other party's Confidential Information and must irrevocably delete the other party's Confidential Information from its computer systems.
- 11.8 The provisions of this Clause 11 shall continue in force indefinitely following the termination of this Agreement.

12. Data protection

- 12.1 Each party shall comply with the Data Protection Laws with respect to the processing of the Customer Personal Data.
- 12.2 The Customer warrants to the Provider 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 this Agreement.
- 12.3 The Customer shall only supply to the Provider, and the Provider 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 Part 1 of Schedule 3 (Data processing information) and of the types specified in Part 2 of Schedule 3 (Data processing information); and the Provider shall only process the Customer Personal Data for the purposes specified in Part 3 of Schedule 3 (Data processing information).
- 12.4 The Provider shall only process the Customer 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 12.
- 12.5 The Provider shall only process the Customer Personal Data on the documented instructions of the Customer, including with regard to transfers of the Customer Personal Data.
- 12.6 Notwithstanding any other provision of this Agreement, the Provider may process the Customer Personal Data if and to the extent that the Provider is required to do so by applicable law. In such a case, the Provider shall inform the Customer of the legal requirement before processing, unless that law prohibits such information on important grounds of public interest.
- 12.7 The Provider shall ensure that persons authorized to process the Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.
- 12.8 The Provider and the Customer shall each implement appropriate technical and organizational measures to ensure an appropriate level of security for the Customer Personal Data.
- 12.9 The Provider must not engage any third party to process the Customer Personal Data without the prior specific or general written authorization of the Customer. In the case of a general written authorization, the Provider shall inform the Customer at least 14 days in advance of any intended changes concerning the addition or replacement of any third party processor, and if the Customer objects to any such changes before their implementation, then the Customer may terminate this Agreement on 30 days' written notice to the Provider, providing that such notice must be given within the period of 30 days following the date that the Provider informed the Customer of the intended changes. The Provider shall ensure that each thirdparty processor is subject to the same legal obligations as those imposed on the Provider by this Clause 12.
- 12.10 The Provider shall, insofar as possible and taking into account the nature of the processing, take appropriate technical and organizational measures to assist the Customer with the fulfilment of the Customer's obligation to respond to requests exercising a data subject's rights under the Data Protection Laws.
- 12.11 The Provider shall assist the Customer 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.
- 12.12 The Provider shall make available to the Customer all information necessary to demonstrate the compliance of the Provider with its obligations under this Clause 12 and the Data Protection Laws.

- 12.13 The Provider shall, at the choice of the Customer, delete or return all of the Customer Personal Data to the Customer 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.
- 12.14 The Provider shall allow for and contribute to audits, including inspections, conducted by the Customer or another auditor mandated by the Customer in respect of the compliance of the Provider's processing of Customer Personal Data with the Data Protection Laws and this Clause 12. The Provider may charge the Customer at its standard time-based charging rates for any work performed by the Provider at the request of the Customer pursuant to this Clause 12.14.
- 12.15 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.

13. Warranties

- 13.1 The Provider warrants to the Customer that:
- (a) the Provider has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement;
 - (b) the Provider will comply with all applicable legal and regulatory requirements applying to the exercise of the Provider's rights and the fulfilment of the Provider's obligations under this Agreement; and
 - (c) the Provider has or has access to all necessary know-how, expertise and experience to perform its obligations under this Agreement.
- 13.2 The Provider warrants to the Customer that the Backup Services, when used by the Customer in accordance with this Agreement, will not breach any laws, statutes or regulations applicable under English law.
- 13.3 The Provider warrants to the Customer that the Backup Services, when used by the Customer in accordance with this Agreement, will not infringe the Intellectual Property Rights of any person in any jurisdiction and under any applicable law.
- 13.4 If the Provider reasonably determines, or any third party alleges, that the use of the Backup Services by the Customer in accordance with this Agreement infringes any person's Intellectual Property Rights, the Provider may at its own cost and expense:
- (a) modify the Backup Services in such a way that they no longer infringe the relevant Intellectual Property Rights; or
 - (b) procure for the Customer the right to use the Backup Services in accordance with this Agreement.
- 13.5 The Customer warrants to the Provider that it has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement.
- 13.6 All of the parties' warranties and representations in respect of the subject matter of this Agreement are expressly set out in this Agreement. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of this Agreement will be implied into this Agreement or any related contract.

14. Acknowledgements and warranty limitations

- 14.1 The Customer acknowledges that complex software is never wholly free from defects, errors and bugs; and subject to the other provisions of this Agreement, the Provider gives no warranty or representation that the Backup Software will be wholly free from defects, errors and bugs.
- 14.2 The Customer acknowledges that complex software is never entirely free from security vulnerabilities; and subject to the other provisions of this Agreement, the Provider gives no warranty or representation that the Backup Software will be entirely secure.
- 14.3 The Customer acknowledges that the Backup Software is designed to be compatible only with that software and those systems specified as compatible with the specifications published on the Provider's website; and

the Provider does not warrant or represent that the Backup Software will be compatible with any other software or systems.

14.4 The Customer acknowledges that no backup service can be 100% guaranteed to be without flaw and that it is the Customer's responsibility to implement at least one other additional backup strategy to operate concurrently with the Backup Software provided by the Provider.

15. Limitations and exclusions of liability

15.1 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.

15.2 The limitations and exclusions of liability set out in this Clause 15 and elsewhere in this Agreement:

- (a) are subject to Clause 15.1; and
- (b) govern all liabilities arising under this Agreement or relating to the subject matter of this Agreement, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in this Agreement.

15.3 The Provider shall not be liable to the Customer in respect of any losses arising out of a Force Majeure Event.

15.4 The Provider shall not be liable to the Customer in respect of any loss of profits or anticipated savings.

15.5 The Provider shall not be liable to the Customer in respect of any loss of revenue or income.

15.6 The Provider shall not be liable to the Customer in respect of any loss of use or production.

15.7 The Provider shall not be liable to the Customer in respect of any loss of business, contracts or opportunities.

15.8 The Provider shall not be liable to the Customer in respect of any loss or corruption of any data, database or software.

15.9 The Provider shall not be liable to the Customer in respect of any special, indirect or consequential loss or damage.

15.10 The liability of the Provider to the Customer under this Agreement in respect of any event or series of related events shall not exceed the total amount paid and payable by the Customer to the Provider under this Agreement in the 12 month period preceding the commencement of the event or events.

16. Force Majeure Event

16.1 If a Force Majeure Event gives rise to a failure or delay in either party performing any obligation under this Agreement (other than any obligation to make a payment), that obligation will be suspended for the duration of the Force Majeure Event.

16.2 A party that becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in that party performing any obligation under this Agreement, must:

- (a) promptly notify the other; and
- (b) inform the other of the period for which it is estimated that such failure or delay will continue.

16.3 A party whose performance of its obligations under this Agreement is affected by a Force Majeure Event must take reasonable steps to mitigate the effects of the Force Majeure Event.

17. Termination

17.1 The Provider may terminate this Agreement by giving to the Customer not less than 30 days' written notice of termination, expiring at the end of any calendar month.

17.2 The Customer may terminate this Agreement once the Minimum Term has expired, by giving to the Provider not less than 30 days' written notice of termination, expiring at the end of any calendar month.

If the Minimum Term has not yet expired, The Customer will be liable to pay for the Support Services for the remainder of the Minimum Term.

17.3 Either party may terminate this Agreement immediately by giving written notice of termination to the other party if:

- (a) the other party commits any material breach of this Agreement, and the breach is not remediable;
- (b) the other party commits a breach of this Agreement, and the breach is remediable but the other party fails to remedy the breach within the period of 30 days following the giving of a written notice to the other party requiring the breach to be remedied; or
- (c) the other party persistently breaches this Agreement (irrespective of whether such breaches collectively constitute a material breach).

17.4 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.

17.5 The Provider may terminate this Agreement immediately by giving written notice to the Customer if:

- (a) any amount due to be paid by the Customer to the Provider under this Agreement is unpaid by the due date and remains unpaid upon the date that that written notice of termination is given; and
- (b) the Provider has given to the Customer at least 30 days' written notice, following the failure to pay, of its intention to terminate this Agreement in accordance with this Clause 17.4.

18. Effects of termination

18.1 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, 3.7, 10.3, 10.5, 11, 12.1, 12.3, 12.4, 12.5,

12.6, 12.7, 12.8, 12.9, 12.10, 12.11, 12.12, 12.13, 12.14, 12.15, 15, 17, 18, 19, 22, 23, 24, 25, 26, 27, 28, 29).

18.2 Except to the extent that this Agreement expressly provides otherwise, the termination of this Agreement shall not affect the accrued rights of either party.

18.3 Within 30 days following the termination of this Agreement for any reason:

- (a) the Customer must pay to the Provider any Charges in respect of Services provided to the Customer before the termination of this Agreement; and
- (b) the Provider must refund to the Customer any Charges paid by the Customer to the Provider in respect of Services that were to be provided to the Customer after the termination of this Agreement,

without prejudice to the parties' other legal rights.

19. Non-solicitation of personnel

19.1 The Customer must not, without the prior written consent of the Provider, either during the Term or within the period of 6 months following the end of the Term, engage, employ or solicit for engagement or employment any employee or subcontractor of the Provider who has been involved in any way in the negotiation or performance of this Agreement.

19.2 The Provider must not, without the prior written consent of the Customer, either during the Term or within the period of 6 months following the end of the Term, engage, employ or solicit for engagement or employment any employee or subcontractor of the Customer who has been involved in any way in the negotiation or performance of this Agreement.

20. Notices

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

20.2 Any notice given by the Customer to the Provider 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 Provider on their website.

20.3 Any notice given by the Provider to the Customer 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 Customer to the Provider.

20.4 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 20.

20.5 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.

20.6 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).

21. Subcontracting

- 21.1 Subject to any express restrictions elsewhere in this Agreement, the Provider may subcontract any of its obligations under this Agreement.
- 21.2 The Provider shall remain responsible to the Customer for the performance of any subcontracted obligations.
- 21.3 Notwithstanding the provisions of this Clause 21 but subject to any other provision of this Agreement, the Customer acknowledges and agrees that the Provider may subcontract to any reputable third-party hosting business the hosting of the Platform and the provision of services in relation to the support and maintenance of elements of the Platform.

22. Assignment

- 22.1 The Customer hereby agrees that the Provider may assign, transfer or otherwise deal with the Provider's contractual rights and obligations under this Agreement.
- 22.2 The Provider hereby agrees that the Customer may assign, transfer or otherwise deal with the Customer's contractual rights and obligations under this Agreement.

23. No waivers

- 23.1 No breach of any provision of this Agreement will be waived except with the express written consent of the party not in breach.
- 23.2 No waiver of any breach of any provision of this Agreement shall be construed as a further or continuing waiver of any other breach of that provision or any breach of any other provision of this Agreement.

24. Severability

- 24.1 If a provision of this Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions will continue in effect.
- 24.2 If any unlawful and/or unenforceable provision of this Agreement 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.

25. Third party rights

- 25.1 This Agreement is for the benefit of the parties and is not intended to benefit or be enforceable by any third party.
- 25.2 The exercise of the parties' rights under this Agreement is not subject to the consent of any third party.

26. Variation

- 26.1 This Agreement may not be varied except by means of a written document signed by or on behalf of each party.

27. Entire agreement

- 27.1 The main body of this Agreement and the Schedules 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.
- 27.2 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 this Agreement.
- 27.3 The provisions of this Clause 27 are subject to Clause 15.1.

28. Law and jurisdiction

28.1 This Agreement shall be governed by and construed in accordance with English law.

28.2 Any disputes relating to this Agreement shall be subject to the exclusive jurisdiction of the courts of England.

29. Interpretation

29.1 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.

29.2 The Clause headings do not affect the interpretation of this Agreement.

29.3 References in this Agreement to "calendar months" are to the 12 named periods (January, February and so on) into which a year is divided.

29.4 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 _____ on [DATE], duly authorized for and on behalf of the Provider:

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

SCHEDULE 1 (BACKUP SERVICE PARTICULARS)

1. Backup Overview

The Backup Software is not designed to be a COMPLETE backup system, nor is any guarantee offered that is 100% fail-safe (see Clause 14). It is designed to be part of an overall backup strategy which is the responsibility of the Customer to implement.

A good backup regime should have multiple redundancies, that is, at least 2 different backup processes to backup critical data to minimize the potential of data-loss in the event of disaster recovery being required.

2. Backup Frequency

The Backup Software is designed to take ONE daily backup of the Customer's database (at a configurable time of day which can be specified by the Customer). The backup copy will be created locally on the Customer Systems and the Backup Software will then attempt to upload a copy of the backup to the Backup Platform.

For this process to work, the Customer Systems must be (a) switched on; (b) functioning correctly; and (c) connected to the internet with a reliable high-speed internet connection at the pre-determined time of day when the backup is scheduled to commence; and must remain so throughout the backup process.

3. Backup Scope and Exclusions

The Backup Software only takes backups of data which are created by the Software. Whenever a MANUAL backup is created from the Software, it always creates a complete backup set containing ALL data.

However, backup sets created by the Backup Software fall into one of two categories: FULL and BASIC.

A FULL Backup includes all records in the Customer Data with the exclusion of:

- AUDIT TRAIL records
- ARCHIVED EMAIL records

A BASIC Backup includes CORE data records, that is, all records in the Customer data with the exclusion of:

- AUDIT TRAIL records
- EMAIL records
- FILE/DOCUMENT/IMAGE records which are 'attached' to records in the system

The Backup Software endeavors to create FULL backups whenever possible, however when it determines that this is not possible or practical (for example due to low disk space, or poor upload bandwidth) then it will switch to BASIC backups instead as it is deemed more important to have an up-to-date backup which omits some data, rather than having no backup or an out-of-date backup.

FULL backups and BASIC backups can be merged by the Provider, so if (for example) the Customer has a BASIC backup from Tuesday and a FULL backup from Monday, then the two backup sets can be merged taking the latest data from each.

4. Storage Allowance on the Backup Platform

5 GB of storage space is allocated on the Backup Platform for each backup set. The system is configured to retain the TWO most recent backup sets on the Backup Platform, plus ONE backup from further back in time (typically a couple of weeks ago) thus a total of 15 GB of storage space per customer.

In the event the storage space required exceeds this allowance, then the Backup Software can continue to function in 'offline' mode where it stores backups locally on the Customer Systems. In any case, the Provider will contact the Customer to discuss the various options in such an event.

SCHEDULE 2 (SUPPORT SLA)

1. Introduction

1.1 This Schedule 2 sets out the service levels applicable to the Support Services.

2. Helpdesk

2.1 The Provider shall make available to the Customer a helpdesk in accordance with the provisions of this Schedule 2.

2.2 The Customer may use the helpdesk for the purposes of requesting and, where applicable, receiving the Support Services; and the Customer must not use the helpdesk for any other purpose.

2.3 The Provider shall ensure that the helpdesk is accessible by telephone, email and via the Provider's web-based chat system.

2.4 The Provider shall ensure that the helpdesk is operational and adequately staffed during Business Hours during the Term.

2.5 The Customer shall ensure that all requests for Support Services that it may make from time to time shall be made through the helpdesk.

3. Response and resolution

3.1 Issues raised through the Support Services shall be categorized as follows:

- (a) critical: the software system is inoperable or a core function of the software is unavailable;
- (b) serious: a core function of the software is significantly impaired;
- (c) moderate: a core function of the software is impaired, where the impairment does not constitute a serious issue; or a non-core function of the software is significantly impaired; and
- (d) minor: any impairment of the software not falling into the above categories; and any cosmetic issue affecting the software.

3.2 The Provider shall determine, acting reasonably, into which severity category an issue falls.

3.3 The Provider shall use reasonable endeavors to **respond** to requests for Support Services promptly, and in any case in accordance with the following time periods:

- (a) critical: 1 Business Hour;
- (b) serious: 4 Business Hours;
- (c) moderate: 1 Business Day; and
- (d) minor: 5 Business Days.

3.4 The Provider shall ensure that its response to a request for Support Services shall include the following information (to the extent such information is relevant to the request): an acknowledgement of receipt of the request, where practicable an initial diagnosis in relation to any reported error, and an anticipated timetable for action in relation to the request.

3.5 The Provider shall use reasonable endeavors to **resolve** issues raised through the Support Services promptly, and in any case in accordance with the following time periods:

- (a) critical: 2 Business Hours;
- (b) serious: 8 Business Hours;
- (c) moderate: 4 Business Days; and
- (d) minor: 10 Business Days.

4. Provision of Support Services

4.1 The Support Services shall be provided remotely, save to the extent that the parties agree otherwise in writing.

5. Limitations on Support Services

5.1 If the total hours spent by the personnel of the Provider performing the Support Services during any calendar month exceeds 8 hours then:

- (a) the Provider will cease to have an obligation to provide Support Services to the Customer during the remainder of that period; and
- (b) the Provider may agree to provide Support Services to the Customer during the remainder of that period, but the provision of those Support Services will be subject to additional Charges.

5.2 The Provider shall have no obligation to provide Support Services in respect of any issue caused by:

- (a) the improper use of the software by the Customer; or
- (b) any alteration to the software made without the prior consent of the Provider.

SCHEDULE 3 (DATA PROCESSING INFORMATION)

1. Categories of Data Subject

Persons who are clients of the Controller (aka the Customer).

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 Backup Platform for the storage of the Controller's backup datasets, and to provide technical assistance in the use of the Backup Software.

4. Sub-processors of Personal Data

Pioneer Software rent HOSTED SERVERS from IOMART plc (a UK-based third-party hosting company) for the purpose of providing the infrastructure and data storage for the Backup Platform.