

ClinicOffice Software as a Service (SaaS) 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 software as a service, and additional services. You will be required to agree to these terms and conditions before using the ClinicOffice Software. We recommend printing a copy of these terms and conditions for future reference. 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 E: info@pioneersoftware.co.uk

AGREEMENT

1. Definitions and Interpretation

1.1 In the Agreement:

“Access Credentials” means the usernames, passwords and other credentials enabling access to the Software, Hosted Services or Platform.

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

“Agreement” means a contract between the parties incorporating these Terms and Conditions, and any amendments to that contract from time to time;

“Business Day” means any weekday, other than a bank or public holiday in England;

“Business Hours” means between 08:30 and 17:30 GMT/BST 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 if you are representing an entity, that entity, otherwise, means you as an individual;

“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 reasonably understood by the Provider at the time of disclosure to be confidential;
- (b) the financial terms and conditions of the Agreement;
- (c) the Hosted Customer Data;
- (d) the Local Customer Data in the event that the Customer grants the Provider access to this;

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

“Data Protection Laws” means the EU GDPR and the UK GDPR and all other applicable laws relating to the processing of Personal Data;

“Defect” means a defect, error or bug in the Software or the Platform having a material adverse effect on the appearance, operation, functionality or performance of the Software or Platform, but excluding any defect, error or bug caused by or arising as a result of:

- (a) any act or omission of the Customer or any person authorised by the Customer to use the Software, Platform or Hosted Services;
- (b) any use of the Software, Platform or Hosted Services contrary to the Documentation, whether by the Customer or by any person authorised by the Customer; and/or
- (c) a failure of the Customer to perform or observe any of its obligations in the Agreement;

“Documentation” means the documentation produced by the Provider and supplied or made available to the Customer specifying how the Software 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);

“Hosted Customer Data” means all data, works and materials stored on the Platform by the Customer; transmitted by the Platform at the instigation of the Customer; supplied by the Customer to the Provider for uploading to, transmission by or storage on the Platform; or generated by the Platform as a result of the use of the Hosted Services by the Customer (but excluding analytics data relating to the use of the Platform and server log files);

“Hosted Customer” refers to a Customer who chooses to have the Software installed on the hosted Platform managed by the Provider;

“Hosted Services” refers to the Software, or any part thereof, which is installed on the Platform and made available by the Provider to the Customer via the internet in accordance with these Terms and Conditions;

“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 and rights in designs);

“Local Customer Data” means all data, works and materials either generated by the Software or stored in the Software by the Customer, which is stored locally on the Customer’s hardware;

“Local Install Customer” refers to a Customer who chooses to have the Software installed on their own computer hardware, managed by themselves;

“Minimum Term” means a period of 30 days from the Effective Date;

“Personal Data” has the meaning given to it in the Data Protection Act 2018;

“Platform” means the platform managed and used by the Provider to deliver the Hosted Services. This includes the Hosted Services, the server operating system and any other software involved in providing the Hosted Services. It also includes the computer hardware on which the Hosted Services are installed;

“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;

“Software” means the ClinicOffice application and database software being provided “as a service” by the Provider to the Customer in accordance with these Terms and Conditions. This includes any/all supporting software whether installed locally on the Customer’s hardware, or on the Platform as part of the Hosted Services.

“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 Software, whether for the purpose of fixing an error, bug or other issue or enhancing the functionality of the Software.

- 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 Software and the Services on the Provider's website constitutes an “invitation to treat”; and the Customer's order for the Software 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 Software via 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 installation and/or login 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. Grant of License

- 3.1 Once the Customer has placed an order, the Provider will make the Software available to the Customer by:
 - (a) providing a download link so that the Customer can install the Software on their own hardware; or
 - (b) setting up an account for the Customer on the Platform and providing the Customer with Access Credentials for that account.
- 3.2 The Provider hereby grants to the Customer a worldwide, non-exclusive licence to use the Software for the internal business purposes of the Customer 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) Unless the Software is installed locally, the User Interface may only be accessed via RemoteApp, a Remote Desktop connection or a Supported Web Browser;
 - (b) the User Interface may only be used by the officers, employees, agents and subcontractors of either the Customer or an Affiliate of the Customer;
 - (c) the User Interface must not be used at any point in time by more than the number of concurrent users procured by the Customer on their account, providing that the Customer may add or remove concurrent user licences by mutual agreement with the Provider;
- 3.4 Except to the extent expressly permitted in this Agreement or required by law on a non-excludable basis, the licence granted by the Provider to the Customer under Clause 3.2 is subject to the following prohibitions:
 - (a) the Customer must not sub-license its right to access and use the Software;
 - (b) the Customer must not permit any unauthorised person or application to access or use the Software;
 - (c) the Customer must not republish or redistribute any content or material from the Software;
 - (d) the Customer must not make any alteration to the Software, except as permitted by the Documentation;
 - (e) the Customer must not conduct or request that any other person conduct any load testing or penetration testing on the Platform without the prior written consent of the Provider.
- 3.5 The Customer shall implement and maintain reasonable security measures relating to the Access Credentials to ensure that no unauthorised person or application may gain access to the Software, Hosted Services or Platform by means of the Access Credentials.
- 3.6 The parties acknowledge and agree that Schedule 1 (Service Level Agreement) shall govern the availability of the Hosted Services.
- 3.7 The Customer must comply with Schedule 3 (Acceptable Use Policy) and must ensure that all persons using the Software with the authority of the Customer or by means of the Access Credentials comply with Schedule 3.
- 3.8 The Customer must not use the Software in any way that causes, or may cause, damage to the Hosted Services or Platform, or impairment of the availability or accessibility of the Hosted Services or Platform.
- 3.9 The Customer must not use the Software in any way that uses excessive Platform resources and as a result is liable to cause a material degradation in the services provided by the Provider to its other customers using the Platform; and the Customer acknowledges that the Provider may use reasonable technical measures to limit the use of Platform resources by the Customer for the purpose of assuring services to its customers generally.
- 3.10 The Customer must not use the Software:
 - (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.
- 3.11 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 Software, either during or after the Term.

3.12 The Provider may suspend the provision of the Software if any amount due to be paid by the Customer to the Provider under the Agreement is overdue by more than 7 days.

4. Support Services and Upgrades

- 4.1 Hosted Customers automatically receive the Support Services as standard. Local Install Customers have the option of opting-in to receive the Support Services, for which there is an additional monthly charge.
- 4.2 During the Term, the Provider will provide the Support Services to the Customer, providing the Customer has opted-in to receive them (see 4.1) and the Provider will apply Upgrades to the Software and/or the Platform in accordance with the service level agreement set out in Schedule 1.
- 4.3 The Provider may sub-contract the provision of any of the Support Services without obtaining the consent of the Customer.
- 4.4 The Provider may suspend the provision of the Support Services if any amount due to be paid by the Customer to the Provider under the Agreement is overdue by more than 7 days.

5. Hosted Customer Data

- 5.1 The Customer hereby grants to the Provider a non-exclusive licence to copy, reproduce, store and otherwise use the Hosted Customer Data to the extent reasonably required for the performance of the Provider's obligations and the exercise of the Provider's rights under the Agreement. The Customer also grants to the Provider the right to sub-license these rights to its hosting, connectivity, and telecommunications service providers, subject to any express restrictions elsewhere in the Agreement.
- 5.2 Subject to Clause 5.1, all Intellectual Property Rights in the Hosted Customer Data will remain, as between the parties, the property of the Customer.
- 5.3 The Customer warrants and represents to the Provider that the Hosted Customer Data, 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 Hosted Customer Data; and/or
 - (b) suspend any/or all Services and/or the Customer's access to the Platform while it investigates.
- 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 Hosted Customer Data stored and processed on 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 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 as per 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 The customer agrees to pay any regular monthly payments (as set out in Schedule 2) by direct debit or by recurring credit/debit card transaction. This will be processed on the first of each calendar month. Payment for other ad-hoc services can be made by bank transfer, credit/debit card or by other payment methods at the Provider's discretion.
- 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.

6.7 The Provider may suspend the provision of the Software if any amounts due to be paid by the Customer to the Provider under the Agreement are overdue by more than 7 days.

7. Warranties

7.1 The Provider warrants to the Customer that:

- (a) the Provider has the legal right and authority to enter into the Agreement and to perform its obligations under these Terms and Conditions;
- (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 these Terms and Conditions;
- (c) the Provider has or has access to all necessary know-how, expertise, and experience to perform its obligations under these Terms and Conditions.

7.2 The Provider warrants to the Customer that:

- (a) the Software and Platform will conform in all material respects to its design specifications so as to be fit for purpose;
- (b) the Software and Platform will be free from Defects as far as is reasonably possible, and will perform substantially in accordance with the Documentation;
- (c) the Software and Platform will be free from viruses, worms, Trojan horses, ransomware, spyware, adware and other malicious software programs; and
- (d) the Software and Platform will incorporate security features reflecting the requirements of good industry practice.

7.3 The Provider warrants to the Customer that the Software, when used by the Customer in accordance with these Terms and Conditions, will not breach any laws, statutes or regulations applicable under English law.

7.4 The Provider warrants to the Customer that the Software, when used by the Customer in accordance with these Terms and Conditions, will not infringe the Intellectual Property Rights of any person in any jurisdiction and under any applicable law.

7.5 If the Provider reasonably determines, or any third party alleges, that the use of the Software by the Customer in accordance with these Terms and Conditions infringes any person's Intellectual Property Rights, the Provider may at its own cost and expense:

- (a) modify the Software so there is no longer any infringement of the relevant Intellectual Property Rights; or
- (b) procure for the Customer the right to use the Software in accordance with these Terms and Conditions.

7.6 The Customer warrants to the Provider that it has the legal right and authority to enter into the Agreement and to perform its obligations under these Terms and Conditions.

7.7 All of the parties' warranties and representations in respect of the subject matter of the Agreement are expressly set out in these Terms and Conditions. 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 or any related contract.

7.8 The Customer acknowledges that complex software is never 100% free from defects, errors and bugs; and while the Provider will take every reasonable measure to remedy any such defects, subject to the other provisions of these Terms and Conditions the Provider gives no warranty or representation that the Software will be wholly free from defects, errors and bugs.

7.9 The Customer acknowledges that complex software is never 100% free from security vulnerabilities; and while the Provider will take every reasonable measure to ensure the utmost security following industry standard practices, subject to the other provisions of these Terms and Conditions the Provider gives no warranty or representation that the Software will be wholly secure.

7.10 The Customer acknowledges that the Provider will not provide any legal, financial, accountancy or taxation advice under these Terms and Conditions or in relation to the Software; and, except to the extent expressly provided otherwise in these Terms and Conditions, the Provider does not warrant or represent that the Software or the use of the Software by the Customer will not give rise to any legal liability on the part of the Customer or

any other person.

8. Indemnities

- 8.1 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 Clauses 7.3, 7.4.
- 8.2 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 Clauses 5.3, 7.6.

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 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 Each party shall comply with the Data Protection Laws with respect to the processing of Personal Data.
- 10.2 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 the Agreement.
- 10.3 The Customer shall only supply to the Provider, and the Provider shall only process, in each case under or in relation to the Agreement, the Personal Data of data subjects falling within the categories specified in Part 1 of Schedule 4 (Data Processing Information) and Personal Data of the types specified in Part 2 of Schedule 4.
- 10.4 The Provider shall only process the Customer Personal Data for the purposes specified in Part 3 of Schedule 4 (Data Processing Information).
- 10.5 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 10.
- 10.6 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 to a third country under the Data Protection

Laws, as set out in these Terms and Conditions or any other document agreed by the parties in writing.

- 10.7 The Customer hereby authorises the Provider to make the following transfers of Customer Personal Data:
 - (a) the Provider may transfer the Customer Personal Data internally to its own employees, offices and facilities, providing that such transfers must be protected by appropriate safeguards, namely data must be encrypted in transit via a VPN or SSL-secured HTTPS transmission;
 - (b) the Provider may transfer the Customer Personal Data to its third-party processors identified in Part 4 of Schedule 4 (Data Processing Information) and may permit its third-party processors to make such transfers, providing that such transfers are protected by any appropriate safeguards identified therein.
- 10.8 The Provider shall promptly inform the Customer if, in the opinion of the Provider, an instruction of the Customer relating to the processing of the Customer Personal Data infringes the Data Protection Laws.
- 10.9 Notwithstanding any other provision of the 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.
- 10.10 The Provider shall ensure that persons authorised to process the Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.
- 10.11 The Provider and the Customer shall each implement appropriate technical and organisational measures to ensure an appropriate level of security for the Customer Personal Data.
- 10.12 The Provider must not engage any third party to process the Customer Personal Data without the prior specific or general written authorisation of the Customer. In the case of a general written authorisation, the Provider shall inform the Customer 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 the Agreement on 7 days' written notice to the Provider, providing that such notice must be given within the period of 7 days following the date that the Provider informed the Customer of the intended changes. The Provider shall ensure that each third-party processor is subject to equivalent legal obligations as those imposed on the Provider by this Clause 10.
- 10.13 As at the Effective Date, the Provider is hereby authorised by the Customer to engage, as sub-processors with respect to Customer Personal Data, the third parties identified in Part 4 of Schedule 4 (Data Processing Information).
- 10.14 The Provider shall, insofar as possible and considering the nature of the processing, take appropriate technical and organisational 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.
- 10.15 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.
- 10.16 The Provider must notify the Customer of any Personal Data breach affecting the Customer Personal Data without undue delay and, in any case, not later than 24 hours after the Provider becomes aware of the breach.
- 10.17 The Provider shall make available to the Customer all information necessary to demonstrate the compliance of the Provider with its obligations under this Clause 10 and the Data Protection Laws.
- 10.18 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.
- 10.19 The Provider shall allow for 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 10. The Provider may charge the Customer for any work performed by the Provider at the request of the Customer pursuant to this Clause 10.19.
- 10.20 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 the Agreement, then the parties shall use their best endeavours promptly to agree such variations to the Agreement as may be necessary to remedy such non-compliance.

11. Confidentiality

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 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 Notwithstanding Clause 11.1, the Provider may disclose the Customer Confidential Information to the Provider's officers, employees, professional advisers, insurers, agents and subcontractors who have a need to access the Customer Confidential Information for the performance of their work with respect to the Agreement and who are bound by a written agreement or professional obligation to protect the confidentiality of the Customer Confidential Information.

11.3 This Clause 11 imposes no obligations upon the Provider respecting Customer Confidential Information that:

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

11.4 The restrictions in this Clause 11 do not apply to the extent that any Customer 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 the Provider on any recognised stock exchange.

11.5 The provisions of this Clause 11 shall continue in force indefinitely following the termination of the Agreement.

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 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 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 30 days' written notice of termination to the Provider. The Agreement will then expire on the 30th day following the notice being given.

12.4 If the Provider stops or makes a good faith decision to stop providing the Software 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, 10, 11, 13 and 17.

13.2 Except to the extent expressly provided otherwise in these Terms and Conditions, the termination of the Agreement shall not affect the accrued rights of either party.

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 sent by recorded post or by email and to the relevant address or email address given below (or as notified by one party to the other in accordance with this Clause 14).

Pioneer Software Ltd, 78 Pilleys Lane, Boston, Lincolnshire, PE21 9RB, UK / Email info@pioneersoftware.co.uk

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) promptly notify the other; and
- (b) 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. Variation

16.1 This Agreement may not be varied except in accordance with this Clause 16.

16.2 The Provider may vary this Agreement by providing the Customer with notice of the proposed variation. The Customer shall have the right to terminate this Agreement by giving written notice of termination to the Provider at any time during the period of 14 days following receipt of the Provider's notice.

17. General

17.1 No breach of any provision of the Agreement will be waived except with the express written consent of the party

not in breach.

- 17.2 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).
- 17.3 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.
- 17.4 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.
- 17.5 Subject to Clause 9.1:
- (a) the Agreement and Schedules 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;
 - (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.
- 17.6 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 This Schedule 1 sets out the service levels applicable to the Support Services, Hosted Services and backups, subject to the Customer having opted in to receive the Support Services (see 4.1 of the main agreement).
- 1.2 References in this Schedule to Clauses are to the clauses of this Schedule, unless otherwise stated.

2. “Helpdesk” Support Services

- 2.1 During Business Hours, the Provider will make available a “Helpdesk” facility which can be contacted by telephone, email or online chat, for the purpose of:
- (a) assisting the Customer with the configuration and proper use of the Software; and
 - (b) determining the causes of problems and fixing any defects in the Software.
- 2.2 Helpdesk Support Services do not include additional services, such as (but not limited to) form/report designing, data conversion, telephone/on-site training, or bespoke development. Such additional services are available but are subject to additional charges.
- 2.3 The Customer must make all requests for Support Services by contacting the helpdesk by telephone, email or online chat session.
- 2.4 In the case of an emergency, the Provider will use reasonable endeavours to provide Support Services via email outside of Business Hours.

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 of 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 Software or Platform; or
- (b) the use of the Software or Platform other 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. The Customer acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

5. Updates and Upgrades

5.1 The Customer acknowledges that from time to time during the Term the Provider may apply Upgrades to the Software and/or the Platform, and that such Upgrades may, subject to Clause 6.2, result in changes to the appearance and/or functionality of the Software.

5.2 No Upgrade shall disable, delete or significantly impair the core functionality of the Software.

5.3 The Provider will publish on their website details of any significant Upgrade to the Software. Such information shall include details of the specific changes to the functionality of the Software resulting from the Upgrade.

5.4 The Provider will install updates and Upgrades on the Platform on behalf of Hosted Customers. Local Install Customers will need to download and install updates and Upgrades on the Customer Systems themselves. The Provider can assist with this if the Local Install Customer has opted-in to the Support Services.

6. Hosted Services Storage Limitations

6.1 It is impossible for the Provider to offer unlimited data storage on the Platform. In the event that the Hosted Customer Data exceeds 10GB (or 50GB for dedicated servers) then additional Charges will be necessary to defray the storage costs incurred by the Provider. The additional costs are listed on the Provider's website.

7. Hosted Services Uptime Commitment

7.1 The Provider shall use reasonable endeavours to ensure that the Hosted Services are available 99% of the time during each calendar month, subject to Clause 10.

7.2 In the event that, during a calendar month entirely within the Term, the Hosted Services fail to meet the availability commitment (Clause 7.1) then the Provider shall issue service credits calculated in accordance with Clause 7.3 to the Customer, such service credits to be deducted by the Provider from future Charges.

7.3 Subject to Clause 7.4, the service credits referred to in Clause 7.2 and due in respect of a calendar month shall be calculated as follows:

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

where: *a* = the percentage availability of the Hosted Services during the relevant calendar month;
b = the Charges payable in respect of access to the Hosted Services during the relevant calendar month (exclusive of VAT and other taxes).

Example: Customer pays £100 per month and the Hosted Services were available 95% of that month:

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

7.4 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 Hosted Services during the relevant calendar month (ex VAT).

7.5 Subject to Clause 10.1 of the Agreement, the award of service credits under this Clause 7 shall be the exclusive remedy of the Customer in the case of a failure of the provider to meet the uptime commitment in Clause 7.1

except in the case of a failure constituting a material breach of the Agreement.

8. Hosted Customer Data Backup and Restoration (for Hosted Customers)

8.1 The Provider will:

- (a) make nightly backups of the Hosted Customer Data, ensuring that at least 2 separate, complete backups are stored on the Platform; and
- (b) transfer these backups off-site so that duplicate copies are stored at a different physical location, equating to a minimum of 4 backup sets being kept at all times.

8.2 In the event of the loss of, or corruption of, Hosted Customer Data stored on the Platform being notified by the Customer to the Provider under Clause 2, the Provider shall, if so directed by the Customer, use reasonable endeavours to promptly restore the Hosted Customer Data from the most recent available backup copy.

8.3 The Customer understands that in the event of a restore operation being necessary, some data will inevitably be lost as their Hosted Customer Data will be reverted back to the most recent snapshot available.

9. Local Customer Data (for Local Install Customers)

9.1 It is entirely the Customer's responsibility to backup all Local Customer Data and to ensure that a backup regime is implemented to protect their Local Customer Data, following industry standard practices.

9.2 For customers who have opted-in to receive Support Services, the Provider will offer their Backup Software to the Customer, which can store local backups of the Local Customer Data on the Customer Systems. It can also optionally upload and store backups on the Provider's Platform.

9.3 In the event the Customer wishes to upload data to be stored on the Provider's Platform, there is 10GB size limit for each backup set. If the backup of the Local Customer Data exceeds 10GB, then the Customer will need to pay for additional storage space on the Platform. Alternatively, the Backup Software can be used in 'offline' mode where it only stores backup sets locally on the Customer Systems. In any case, the Provider will contact the Customer to discuss their options in such an event.

9.4 Whether or not the Customer uses the Provider's Backup Software as part of their backup strategy, Clause 9.1 still applies in full. The Provider is in no way responsible for any loss or corruption of data stored on the Customer's hardware devices. The Backup Software offered by the Provider should only be part of an overall backup regime and the Customer should not solely rely on a single backup mechanism.

10. Scheduled Maintenance

10.1 The Provider may suspend access to the Hosted Services 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.

10.2 Downtime during scheduled maintenance carried out by the Provider in accordance with this Clause 9 shall not be counted as downtime for the purposes of Clause 7.

Schedule 2 – Charges

1. Introduction

1.1 References in this Schedule to Clauses are to the clauses 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 Software;
- (b) Support Charges, in respect of Helpdesk support with the use of the Software;
- (c) Other Charges.

2. Access Charges

- 2.1 The Charges in respect of access to and use of the Software are calculated based on the number of concurrent user licenses required by the Customer plus any additional services that the Customer may wish to add to their package. The full and up-to-date pricelist is published and maintained on the Provider's website.
- 2.2 The Access Charges set out in this Clause 2 are to be paid monthly in advance on the first of each calendar month. To facilitate this:
 - (a) the Customer agrees 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 will make these available to the Customer via their Client Portal website.

3. Support Service Charges

- 3.1 For Hosted Customers, the Support Service Charges are included in the Access Charges. Local Install Customers have the option of opting-in to receive the Support Services, for which there is an additional monthly charge.

4. Other Charges

- 4.1 In addition to the Charges detailed in Clause 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, training or bespoke development; and
 - (b) Charges for hosting the Customer Data on a dedicated server; and
 - (c) Charges for additional storage space if the Hosted Customer Data exceeds 10GB (or 50GB on a dedicated server); and
 - (d) 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, trademark 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 sexually explicit or pornographic, or consist of or include explicit, graphic or gratuitous material of a sexual nature.

Schedule 4 – Data Processing Information

1. Categories of Data Subject

Persons who are current or former clients, employees or contractors of the Controller. When a client of the Controller is a business, then this may include persons who are employees or nominees of the business.

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 lease HOSTED SERVERS from IOMART plc for the purpose of providing the infrastructure and data storage for their software platform.