

Subscription Agreement

Updated 21 March 2020

This subscription agreement (**Subscription Agreement**) is between Pigeonhole and the Customer. This Subscription Agreement (together with our EULA and Privacy Policy) governs access to and use of the Software. By clicking “I agree”, signing your contract for the provision of the Software or using the Software, you agree to this Subscription Agreement as a Customer. If you do not understand this Subscription Agreement, or do not accept any part of this Subscription Agreement, do not register or use the Software.

If you are using the Software for an organisation, you represent that you have the authority to bind that organisation and agree to this Subscription Agreement on behalf of that organisation.

You may not use or access the Software if you are our direct competitor, except without our prior written consent.

1. Definitions

- (a) **Account Data** means the account and contact information submitted to us via the Software (or by any other means) by the Customer or End Users.
- (b) **Administrator** means the Customer-designated technical End User who administers the Software to the End Users on the Customer’s behalf. Administrators are able to access, disclose, restrict or remove Customer Data in or from End User accounts. Administrators may also have the ability to monitor, restrict or terminate access to End User accounts.
- (c) **Admin Account** means the administrative account provided to the Customer by Pigeonhole for use by the Administrator for the purpose of administering the Software.
- (d) **Affiliate** means any entity that controls, is controlled by or is under common control with a Party, where “**control**” means the ability to direct the management and policies of an entity.
- (e) **Confidential Information** means any information disclosed by or on behalf of one party to another party in connection with this Subscription Agreement which has been designated as confidential by the party disclosing the information, or information which by its nature should reasonably be considered to be confidential.
- (f) **Customer** means the party identified as the customer in the Order Form. The terms “**you**”, “**your**” and “**yours**” when used in this Subscription Agreement are a reference to the Customer.
- (g) **Data** means Account Data, structured data, documents, files, photos and other content submitted or uploaded to the Software by the Customer or End Users.
- (h) **End User** means a user of the Customer’s account. End Users may include the Customer’s and its Affiliate’s employees and consultants.
- (i) **End User Account** means a user account established by the Customer through the Software for an End User.
- (j) **EULA** means the end user licence agreement between Pigeonhole and an End User, available here. <https://pigeonhole.space/EULA.pdf>

- (k) **Fees** means the amounts invoiced to the Customer by Pigeonhole for the licence of the Software as described on the Order Form. Fees are calculated with reference to the number of floors of the Customer's building or buildings, or the type of building or any other criteria determined by Pigeonhole from time to time.
- (l) **Government Agency** means any government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity whether foreign, federal, state, territorial or local.
- (m) **Initial Term** means the term for the provision of Software beginning on the date that Pigeonhole makes the Software available to the Customer and continuing for:
 - (i) one year; or
 - (ii) a term agreed directly

in accordance with the subscription option you have selected from our website or agreed directly.

- (n) **Intellectual Property Rights** means current and future worldwide rights under patent, copyright, trade secret, trademark, moral rights and other similar rights.
- (o) **Law** includes:
 - (i) any statute, regulation, rule, by-law, ordinance, proclamation, judgment, treaty, decree, convention, rule or principle of common law or equity, rule of any applicable stock exchange, or requirement or approval (including any Government Agency);
 - (ii) any regulation, rule, by-law, ordinance, proclamation or judgment made under that law; and
 - (iii) that law as amended, consolidated, supplemented, re-enacted or replaced.
- (p) **Order Form** means the ordering document, or ordering page, for the Software.
- (q) **Party** means a party to this Subscription Agreement.
- (r) **Pigeonhole** means Pigeonhole.space Pty Limited ACN 621 253 021. The terms "we", "us" and "our" when used in this Subscription Agreement are a reference to Pigeonhole.
- (s) **Privacy Policy** means the privacy policy of Pigeonhole.
- (t) **Renewal Term** means, unless otherwise agreed to in writing by the Parties, the renewal term of the same duration as either the Initial Term or a previous Renewal Term. Renewal Terms are included on the Order Form.
- (u) **Security Emergency** means:
 - (i) use of the Software that does or could disrupt the Software, other customer's use of the Software or the infrastructure used to provide the Software; or
 - (ii) unauthorised third-party access to the Software.
- (v) **Software** means the cloud-based building and facilities management documentation repository software that we have developed.
- (w) **Sub-contractor** means an entity to whom Pigeonhole sub-contracts any of its obligations under this Subscription Agreement.

- (x) **Sub-processor** means an entity who agrees to process Stored Data on Pigeonhole's behalf, or on behalf of another Pigeonhole sub-processor, in order to provide the Software.
- (y) **Taxes** means any sales, use, value-added, goods and services, consumption, excise, local stamp or other tax, duty or other charge of any kind or nature excluding tax that is based on Pigeonhole's net income associated with the Software, including any related penalties or interest.
- (z) **Third-Party Request** means a request from a third party for records relating to an End User's use of the Software, including information in or from an End User account or from the Customer's account. Third-Party Requests may include valid search warrants, court orders or subpoenas, or any other request for which there is written consent from End Users, or an End User's authorised representative, permitting a disclosure.
- (aa) **Your Account** means the account you are using in your capacity as a Customer.

2. Our Software

2.1 Provision

This Subscription Agreement governs access to and use of the Software. You and your End Users will be provided with access to and use of the Software for the Initial Term and for any Renewal Terms in accordance with this Subscription Agreement.

2.2 Security measures and data processing

We use industry standard technical and organisational security measures to transfer, store and process your Data. Further details about our security measures can be found in our Privacy Policy, available here https://pigeonhole.space/privacy_policy.pdf.

We will only process your Data in accordance with our Privacy Policy. By using our Software, you are agreeing to the terms of our Privacy Policy.

2.3 Modifications

We may update the Software from time to time. The Software will update automatically once a new version or feature is available. If we change the Software in a manner that materially reduces its functionality, we will notify you at the email address associated with Your Account and you may provide notice within 30 days of the change to terminate the Subscription Agreement.

2.4 Software

We grant you a limited, non-exclusive, non-transferable, revocable licence to use the Software.

To the extent that any component of the Software is offered under an open source licence, we will make that licence available to you and the provisions in the open source licence may expressly override some of this Subscription Agreement.

You may not copy, modify, distribute, sell or lease any part of the Software, nor may you reverse engineer or decompile the Software, attempt to do so, or assist anyone in doing so, unless an applicable Law prohibits those restrictions or you have our written permission.

3. Your obligations

3.1 Your administration of the Software

You may specify End Users as Administrators via Your Account. You are responsible for maintaining the confidentiality of passwords and Admin Accounts, and managing access to Admin

Accounts. We expressly exclude responsibility for the internal management or administration connected with your use of the Software or Your Account.

3.2 Unauthorised use or access

You must prevent unauthorised use of the Software by your End Users and terminate any unauthorised use of or access to the Software. End User Accounts may only be provisioned, registered and used by a single End User. The Software is not intended for End Users under the age of 13. You must not allow any person under the age of 13 to use the Software. You will notify us promptly of any unauthorised use of or access to the Software.

3.3 Restrictions

You will not:

- (a) undermine the security or integrity of our computing systems or networks or, where the Software is hosted by a third party, that third party's computing systems or networks;
- (b) use or access the Software for the purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes;
- (c) use, or misuse, the Software in any way which may impair the functionality of the Software, or impair the ability of any other use to use the Software;
- (d) use the Software for activities where use or failure of the Software could lead to physical damage, death or personal injury;
- (e) transmit, or input into the Software, any files or Data that may damage any other person's computing devices or software or any content or Data that may be offensive;
- (f) use any unauthorised means to modify or gain access to the Software;
- (g) interfere with any licence key mechanism in the Software or otherwise circumvent mechanisms in the Software intended to limit use;
- (h) sell, resell, redistribute or lease the Software;
- (i) reverse engineer, disassemble, decompile or translate the Software, or otherwise seek to obtain or derive the source code, underlying ideas, algorithms, file formats or non-public application programming interfaces to the Software, or attempt or assist anyone else to do so, unless this restriction is prohibited by Law; or
- (j) remove or obscure any proprietary or other notices contained in the Software.

3.4 Compliance

You and your End Users must use the Software in compliance with the EULA. You must ensure that all End Users comply with the EULA and the terms of this Subscription Agreement to the extent that such terms relate to the ownership or use of the Software, the Intellectual Property Rights and Confidential Information. You will comply with all Laws applicable to your use of the Software, if any. You will obtain and maintain from End Users any consents necessary to allow Administrators to engage in the activities described in this Subscription Agreement and to allow us to provide the Software.

3.5 Third-party requests

- (a) You are responsible for responding to Third-Party Requests via your own access to information. You must seek to obtain information required to respond to Third-Party

Requests from Your Account and will contact us only if you cannot obtain such information despite diligent efforts.

- (b) We will make commercially reasonable efforts, to the extent allowed by Law and by the terms of the Third-Party Request, to:
 - (i) promptly notify you of our receipt of a Third-Party Request;
 - (ii) comply with your commercially reasonable requests regarding your effort to oppose a Third-Party Request; and
 - (iii) provide you with information or tools required for you to respond to the Third-Party Request, if you are otherwise unable to obtain the information. If you fail to respond promptly to any Third-Party Requests, we may (but will not be obligated to) do so.

4. Payment

4.1 Fees

You must pay all applicable Fees for the Software. You authorize us to charge for all applicable Fees using your selected payment method. Fees are non-refundable except as required by Law or as otherwise specifically permitted in this Subscription Agreement. You must provide us with current, complete and accurate payment method information.

4.2 Building information

You will provide us with accurate information regarding the number of floors of the building(s). Failure to provide this building information accurately will be considered a material breach of this Subscription Agreement for the purposes of clause 8.1(a).

4.3 Payment by you

The Fees are payable prior to the start of the Initial Term or Renewal Term, as applicable. We may suspend or terminate your access to the Software if Fees are overdue.

4.4 Taxes

Fees are exclusive of taxes. We will charge Taxes when required to do so. We will issue you with a tax invoice upon request or if otherwise required to do so.

4.5 Auto-renewals and trials

If Your Account is set to auto-renew, we may charge automatically for the Renewal Term, unless you notify us that you want to cancel or disable auto-renewal. We may revise the rate of Fees by providing you with at least 30 days' notice prior to the next charge.

5. Suspension

5.1 End Users

If an End User:

- (a) violates this Subscription Agreement;
- (b) violates the EULA; or
- (c) uses the Software in a manner that we reasonably believe will cause us liability,

then we may request that you suspend or terminate the applicable End User account. If you fail to suspend or terminate the End User account promptly, then we may do so.

5.2 Security emergencies

Subject to the terms of this Subscription Agreement, if there is a Security Emergency we may suspend use of the Software automatically and without notice. We will make commercially reasonable efforts to reduce the effects of the Security Emergency.

6. Intellectual Property Rights

6.1 Reservation of rights

Except where expressly provided, this Subscription Agreement does not grant:

- (a) us any Intellectual Property Rights in your Data; or
- (b) you any Intellectual Property Rights in the Software or our trademarks and brand features.

6.2 Permission

When you use the Software, you grant us a limited licence to use all Intellectual Property Rights in the content you upload to the Software that are reasonably necessary for us to provide you with the Software. This permission also extends to Sub-processors and Sub-contractors to the extent necessary for the Software to be provided to you. This licence continues even if you stop using the Software unless you delete your content.

6.3 Suggestions

We may use, modify and incorporate into our Software any feedback, comments or suggestions on the Software that you or your End Users may send to us, without any obligation to you.

6.4 Reference

The Client hereby irrevocably licenses the Company to use and display the Client's name, figure, logo etc. as a reference on the Company's website, other marketing materials or types of media whilst they are a Client of the Company. The Client agrees to send the Company its most recent logo or figure as and when it is amended from time to time.

7. Term

This Subscription Agreement will remain in effect for the duration of the Initial Term and any Renewal Terms.

8. Termination

8.1 Generally

You are free to stop using the Software at any time. Your Account will remain in effect until the next billing period.

We reserve the right to suspend or terminate your access to the Software with notice to you if:

- (a) you are in material breach of the Subscription Agreement and fail to cure that breach within 14 days of receipt of written notice from us;
- (b) you cease your business operations or become subject to insolvency proceedings and the proceedings are not dismissed within 90 days;
- (c) you are using the Software in a manner that would cause a real risk of harm or loss to us or other users; or
- (d) you have not accessed the Software for 12 consecutive months.

8.2 Effects of termination

If this Subscription Agreement is terminated:

- (a) except as contained in this clause 8, the rights and licences granted by us to you will cease immediately;
- (b) we may, at your request, provide you with access to Your Account at then-current Fees so that you may export your Data; and
- (c) after a commercially reasonable period of time, we may delete any Data relating to Your Account.

8.3 Survival

The following sections will survive expiry or termination of this Subscription Agreement:

- (a) clause 3.5 (Third-Party Requests);
- (b) clause 4 (Payment);
- (c) clause 6 (Intellectual Property Rights);
- (d) clause 8.2 (Effects of Termination);
- (e) clause 9 (Indemnification);
- (f) clause 10 (Disclaimers);
- (g) clause 11 (Limitation of liability);
- (h) clause 12 (Disputes); and
- (i) clause 13 (Miscellaneous).

9. Indemnification

9.1 By the Customer

You will indemnify, defend and hold harmless Pigeonhole, Affiliates, Sub-contractors, Sub-processors and its officers, employees, agents and representatives, from and against all liabilities, damages and costs (including settlement costs and reasonable legal fees) arising out of any claim by a third party against Pigeonhole and its Affiliates regarding:

- (a) your Data; or
- (b) your use, and your End Users' use, of the Software in violation of this Subscription Agreement.

9.2 By Pigeonhole

Subject to clauses 11.1 and 11.2, we will indemnify, defend and hold harmless the Customer from and against all liabilities, damages and costs (including settlement costs and reasonable legal fees but excluding consequential or indirect loss) arising out of any claim by a third party against you pursuant to which our technology used to provide the Software is proven to have infringed or misappropriated any copyright, trade secret, patent or trademark right of the third party. In no event will we have any obligations or liability under this clause 9.2 arising from:

- (a) use of our Software in a modified form or in combination with materials not furnished by us; and
- (b) any content, information or Data provided by you, End Users or other third parties.

9.3 Possible infringement

If the Software infringes a third party's Intellectual Property Rights, we will (at our option):

- (a) obtain the right for you, at our expense, to continue using the Software;

- (b) provide a non-infringing functionally equivalent replacement; or
- (c) modify the Software so that it no longer infringes such rights.

If we do not believe the options described in this clause 9.3 are commercially reasonable, we may suspend or terminate your use of the affected Software, with a pro rata refund of prepaid Fees for the Software.

9.4 General

The Party seeking indemnification will notify the other Party promptly of the claim and cooperate with the other Party in defending the claim. The indemnifying Party will have full control and authority over the defence, except that:

- (a) any settlement requiring the Party seeking indemnification to admit liability requires prior written consent, not to be unreasonably withheld or delayed; and
- (b) the other Party may join in the defence with its own legal representation at its own expense.

The indemnities in this clause 9 are the only remedies under this Subscription Agreement available to either Party for violation by the other Party of a third party's Intellectual Property Rights.

10. Disclaimers

The Software is provided "as is", "with all faults" and "as available", to the fullest extent permitted by Law. Except as expressly stated in this Subscription Agreement, Pigeonhole and its Affiliates, suppliers and distributors make no warranty of any kind, whether express, implied, statutory or otherwise, including warranties of merchantability, fitness for a particular use or non-infringement. We do not guarantee that the Software will be uninterrupted, error-free or free of harmful components or that your content will be secure or not otherwise lost or damaged. You are responsible for using the Software in accordance with the terms of this Subscription Agreement and backing up any Stored Data on the Software.

11. Limitation of liability

11.1 General

To the fullest extent permitted by Law, except for the indemnification obligations in clause 9, neither Party nor its Affiliates, Suppliers or Distributors will be liable under this Subscription Agreement for:

- (a) indirect, special, incidental, consequential, exemplary or punitive damages; or
- (b) loss of use, data, business, revenues or profits (in each case whether direct or indirect),

even if the Party knew or should have known that such damages were possible and even if a remedy fails in its essential purpose.

11.2 Amount of liability

To the fullest extent permitted by Law, our aggregate liability under this Subscription Agreement will be limited to the total amount paid by you in accordance with this Subscription Agreement in respect of the 12 months prior to the event giving rise to liability.

12. Dispute resolution

- (a) If any dispute arises out of, or in connection with, this Subscription Agreement, subject to clause 12(b), each Party agrees to first attempt to resolve the dispute

informally by contacting the other Party through the notice procedures in clause 13.6.

- (b) Either Party may bring legal proceedings in the courts of Victoria solely for the injunctive relief to stop unauthorised use or abuse of the Software or infringement of Intellectual Property Rights without first engaging in the informal dispute process described in clause 12(a).
- (c) If a dispute is not resolved within 30 days of notice, then the Parties will mediate the dispute in accordance with the mediation rules of the Law Institute of Victoria and the parties must request the President of the Law Institute of Victoria or the President's nominee to select the mediator and determine the mediator's remuneration.
- (d) Each Party will bear its own costs in relation to the mediation and equally share the cost of the mediator (if any).
- (e) If the Parties do not resolve the dispute in the first three days of mediation, then either Party may issue proceedings.
- (f) Pending resolution of any dispute, the parties will continue to perform their respective obligations under this Subscription Agreement without prejudice to their respective rights and remedies.
- (g) You may only resolve disputes with us on an individual basis and will not bring a claim in a class, consolidated or representative action. Class arbitrations, class actions and consolidation with other arbitrations are not allowed.

13. Miscellaneous

13.1 Modification

We may revise this Subscription Agreement from time to time and the most current version will always be posted on our website. If a revision, in our sole discretion, is material, we will notify you. By continuing to access or use the Software after revisions become effective, you agree to be bound by the revised Subscription Agreement. If you do not agree to the terms of the revised Subscription Agreement, you may terminate this Subscription Agreement within 30 days of receiving notice of the change. If you choose to terminate the Subscription Agreement in accordance with this clause 13.1 you will not be entitled to a refund.

13.2 Entire agreement

This Subscription Agreement supersedes any prior agreements or understanding between the Parties, and constitutes the entire agreement between the Parties related to this subject matter. All attachments to the Subscription Agreement, EULA and Privacy Policy (as updated from time to time), Customer invoices and Order Forms executed by the Parties are incorporated into the Subscription Agreement by this reference.

13.3 Interpretation of conflicting terms

If there is a conflict between the documents that make up this Subscription Agreement, the documents will control in the following order: the invoice, the Order Form, the Subscription Agreement, the Privacy Policy. The terms of this Subscription Agreement will be considered the Confidential Information of Pigeonhole, and you will not disclose the information to any third parties. If End Users are required to click through the EULA in order to use the Software, those click-through terms are subordinate to this Subscription Agreement and this Subscription Agreement will prevail if there is a conflict.

13.4 Governing Law

The Subscription Agreement is governed by and must be construed in accordance with the laws of Victoria. The parties submit to the non-exclusive jurisdiction of the courts of Victoria and any courts that may hear appeals from those courts in respect of any proceedings in connection with the Subscription Agreement.

13.5 Severability

- (a) A word or provision must be read down if:
 - (i) the Subscription Agreement is void, voidable or unenforceable if it is not read down;
 - (ii) the Subscription Agreement will not be void, voidable or unenforceable if it is read down; and
 - (iii) the provision is capable of being read down.
- (b) A word or provision must be severed if:
 - (i) despite the operation of this clause 13.5, the provision is void, voidable or unenforceable if it is not severed; and
 - (ii) the Subscription Agreement will be void, voidable or unenforceable if it is not severed.
- (c) The remainder of the Subscription Agreement have full effect even if clause 13.5(b)(i) and (ii) applies.

13.6 Notice

Any Notice:

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) must be addressed or delivered to the addresses of the parties specified in the Order Form by hand, by prepaid post or by email; and
- (c) is taken to be given and made:
 - (i) in the case of hand delivery, when delivered;
 - (ii) in the case of delivery by post, three Business Days after the date of posting (if posted to an address in the same country) or seven Business Days (if posted to an address in another country); and
 - (iii) in the case of an email, on the day and at the time that the recipient confirms the email is received.

This clause 13.6 does not limit the way in which a notice can be deemed to be served under any Law.

13.7 Waiver

A waiver of any default is not a waiver of any subsequent default.

13.8 Assignment

You may not assign or transfer this Subscription Agreement or any rights or obligations under this Subscription Agreement without our written consent. We may assign this Subscription Agreement or any rights or obligations under this Subscription Agreement to an Affiliate or in connection with a merger, acquisition, corporate reorganisation or sale of all or substantially all of our assets.

13.9 No agency

The Parties are not legal partners or agents, but independent contractors.

13.10 Force majeure

Except for payment obligations, the Parties will not be liable for inadequate performance to the extent caused by a condition that was beyond the Party's reasonable control (for example natural disaster, act of war or terrorism, riot, labour condition, governmental action and Internet disturbance).

13.11 No third-party beneficiaries

There are no third-party beneficiaries to this Subscription Agreement. Without limiting this clause, your End Users are not third-party beneficiaries to your rights under this Subscription Agreement.