

# Pigeonhole End User Licence Agreement

**Effective Date: August 2019**

This End User Licence Agreement (**EULA**) covers your use of and access to Pigeonhole's Software. Our privacy policy (available here [https://pigeonhole.space/privacy\\_policy.pdf](https://pigeonhole.space/privacy_policy.pdf)) (**Privacy Policy**) explains how we collect and use your information. By using our Software, you are agreeing to be bound by the EULA and our Privacy Policy. If you are using our Software on behalf of an organisation, our Subscription Agreement (available here [https://pigeonhole.space/subscription\\_agreement.pdf](https://pigeonhole.space/subscription_agreement.pdf)) also applies and you are agreeing to the Subscription Agreement and EULA on behalf of that organisation.

## 1. Definitions

- (a) **Account Data** means the account and contact information submitted to us via the Software (or by any other means) by the User.
- (b) **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.
- (c) **Data** means Account Data, structured data, documents, files, photos and other content submitted or uploaded to the Software by the User.
- (d) **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.
- (e) **Intellectual Property Rights** means current and future worldwide rights under patent, copyright, trade secret, trademark, moral rights and other similar rights.
- (f) **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.
- (g) **Party** means a party to this EULA.
- (h) **Pigeonhole** means Pigeonhole.space Pty Limited ACN 621 253 021. The terms "**we**", "**us**" and "**our**" when used in this EULA are a reference to Pigeonhole.
- (i) **Software** means the cloud-based building and facilities management documentation repository software that we have developed.
- (j) **Sub-contractor** means an entity to whom Pigeonhole sub-contracts any of its obligations under this EULA.
- (k) **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.
- (l) **Subscription Agreement** means the agreement between Pigeonhole and the relevant customer related to the User.
- (m) **User** means an end user of our Software. The terms "**you**", "**your**" and "**yours**" when used in this EULA are a reference to the User.

## 2. Permissions

When you use the Software, you provide us with your Data. We need your permission to host, back up, share when you request and otherwise handle your Data. To provide you with certain features of the Software we may require our systems to access, store and scan your Data. You give us permission to do those things, and this permission extends to our Affiliates, Sub-contractors, Sub-processors and trusted third parties we work with.

We grant you a limited, non-exclusive, non-transferable, royalty-free, 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 terms of this EULA.

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 Laws prohibit those restrictions or you have our written permission.

### **3. Your obligations**

You represent and warrant to us as at the date of your acceptance of this EULA and each time you use the Software, that you:

- (a) will maintain the confidentiality of the password to your account and will not give others access to your account;
- (b) will not copy, upload, download or share Data via the Software unless you have the right to do so;
- (c) have all the power to enter into and perform these terms of the EULA and have obtained all necessary consents and corporate authorisations to enable you to do so;
- (d) will only use the Software for lawful purposes, and in accordance with this EULA, all applicable laws, any notice sent by us to you or any condition posted within the Software or on our website;
- (e) will comply in a timely, proper and efficient manner with your obligations under this EULA;
- (f) will provide to us, on request, any documents, information, instructions or directions reasonably required by us to enable us to perform our obligations, provide the Software or do any other thing in accordance with this EULA or as required by law; and
- (g) are 13 years of age or older.

We may review your conduct and content for compliance with this EULA, however, we have no obligation to do so. We are not responsible for the Data uploaded and shared via the Software.

### **4. Intellectual Property Rights**

Our Software is protected by Intellectual Property Rights. The EULA does not grant you any right, title or interest in the Software, others' Data submitted to the Software, our trademarks, logos and other brand features.

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

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

We reserve the right to delete or disable Data alleged to be infringing copyright, and to terminate accounts of repeat infringers. Our designated agent for notice of alleged copyright infringement on the Software is:

Copyright Agent

Pigeonhole.space Pty Ltd c/- Kindle Partners

Level 1, 418 High Street

Kew Victoria 3101

## **5. Termination**

You are free to stop using the Software at any time. We reserve the right to suspend or terminate your access to the Software with notice to you if:

- (a) you are in breach of this EULA;
- (b) you are using the Software in a manner that would cause a real risk of harm or loss to us or other users; or
- (c) we are prohibited by law from allowing you to access the Software.

We will provide you with reasonable advance notice via the email address associated with your account to remedy the activity that prompted us to contact you and give you the opportunity to export your Data from our Software. If after such notice you fail to take the steps requested, we will terminate or suspend your access to the Software.

We will not provide notice before termination where:

- (a) you are in material breach of this EULA;
- (b) doing so would cause us legal liability or compromise our ability to provide the Software to other users; or
- (c) we are prohibited from doing so by law.

## **6. Discontinuation**

We may decide to discontinue the Software in response to unforeseen circumstances beyond our control or to comply with a legal requirement. If we do so, we will give you reasonable prior notice so that you can export your Data from our Software.

## **7. Disclaimer**

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 EULA, 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 Data will be secure or not otherwise lost or damaged. You are responsible for using the Software in accordance with the terms of this EULA and Subscription Agreement (if applicable) and backing up any Data that is stored on the Software.

## **8. Limitation of liability**

Despite any other provision of this EULA, to the maximum extent permitted by law, we exclude all liability and responsibility to you (or any other person) in contract, tort (including negligence), or otherwise, for any loss (including loss of Data, profits and savings) or damage resulting, directly or indirectly, from the use of, or reliance on, the Software.

If you suffer loss or damage arising as a direct result of our negligence, our liability will be limited to the cost of supplying the Software again.

## **9. Dispute resolution**

Before filing a claim against us, you agree to first attempt to resolve the dispute informally by contacting us at [accounts@pigeonhole.space](mailto:accounts@pigeonhole.space).

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.

Each Party will bear its own costs in relation to the mediation and equally share the cost of the mediator (if any).

If the Parties do not resolve the dispute in the first three days of mediation, then either Party may issue proceedings.

Pending resolution of any dispute, the parties will continue to perform their respective obligations under this EULA without prejudice to their respective rights and remedies.

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.

We may not follow the informal dispute resolution process if we are seeking injunctive relief to stop unauthorised use or abuse of the Software or infringement of our Intellectual Property Rights.

## **10. Governing law**

This EULA 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 this EULA.

## **11. Entire agreement**

This EULA constitutes the entire agreement between you and us with respect to the subject matter of the EULA and supersedes any prior negotiations, representations, understandings or arrangements applicable to the subject matter of this EULA. This EULA creates no third-party beneficiary rights.

## **12. Waiver, severability and assignment**

Our failure to enforce a provision is not a waiver of our right to do so later. If a provision is found unenforceable, the remaining provisions of the EULA will remain in full effect and an enforceable term will be substituted reflecting our intent as closely as possible. You may not assign any of your rights under this EULA, and any such attempt to do so will be void. We may assign this EULA or any rights or obligations under this EULA to an Affiliate or subsidiary or in connection with a merger, acquisition, corporate reorganisation or sale of all or substantially all of our assets.

## **13. Modifications**

We may revise this EULA from time to time to better reflect changes to the law, new regulatory requirements or improvements or enhancements made to our Software.

If an update affects your use of the Software or your legal rights as a user of our Software, we will notify you prior the update's effective date by sending an email to the email address associated with

your account or via an in-product notification. The updated EULA will be effective no less than 30 days from when we notify you.

If you do not agree to the updates we make, you must cancel your account before they become effective. By continuing to use or access the Software after the updates come into effect, you agree to be bound by the revised EULA.