

## SHIREBURN DATA PROTECTION AGREEMENT

Agreement entered into on the \_\_\_\_\_, whose provisions come into effect fully on the date of signature by both Parties identified below, between:

### PARTIES

\_\_\_\_\_ (hereinafter referred to as the *Client*) bearing registration number \_\_\_\_\_,

with registered office at \_\_\_\_\_,

as duly represented hereon (hereinafter the "**Data Controller**", "**Controller**" or "**Client**")

and

**Shireburn Software Limited and Shireburn Company Ltd**, jointly and severally, (hereinafter referred to as Shireburn) both with registered office at SkyParks Business Centre, Level 3, Malta International Airport, Luqa, LQA 4000, Malta, company registration numbers C13238 and C4462 and VAT numbers MT10170818 and MT10170107 respectively as duly represented hereon; (hereinafter referred to as the "**Data Processor**", "**Processor**" or "**Shireburn**")

Shireburn and the Client are individually referred to as a "**Party**" and collectively referred to as the "**Parties**".

### BACKGROUND

Whereas:

- (A) Shireburn licenses its own developed software, sells licenses for Third-Party owned software, makes available other software as a subscription service and provides services related both to such software, including support and software maintenance services, consulting services and other general information technology, networking and security related services to the Client collectively known as the Services.
- (B) In providing the Services, Shireburn may collect, use or otherwise process Personal Data within the meaning of Data Protection Laws.
- (C) The Parties are aware of the EU legislation on data protection namely Regulation (EU) 2016/679 (General Data Protection Regulation) dated 27 April 2016, hereinafter referred to a GDPR, the standard in the European Union (EU) governing the privacy and data protection of EU residents.
- (D) The Parties agree to enter into this Data Protection Agreement, hereinafter referred to as the DPA, which regulates the data protection obligations of the Parties when processing the Client's Personal Data and governs the relationship between the Parties in respect of the processing of Personal Data.
- (E) The Parties have one or more separate agreements, written or verbal, (hereinafter referred to as the **Principal Agreement**) which currently govern their relationship including that related to the protection and management of data.
- (F) The conditions contained within this DPA supplements any Principal Agreement in respect of the aspects related to the processing of data and supersede any provisions of the Principal Agreement in the event of a conflict.
- (G) Any terms not defined in this DPA shall have the meaning set forth in the Principal Agreement.

NOW THEREFORE BOTH PARTIES AGREE AS FOLLOWS:

## 1. DEFINITIONS & INTERPRETATIONS

1.1. The following definitions and rules of interpretation apply within this agreement:

- a) "**Affiliate**" means an entity that owns or controls, is owned or controlled by or is or under common control or ownership of either Party, where control is defined as the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities, by contract or otherwise.
- b) "**Anonymous Data**" means Personal Data that has been processed in such a manner that it can no longer be attributed to an identified or identifiable natural person without additional information unavailable to any Third-Party other than Authorized Sub-Processors.
- c) "**Authorized Staff**" means an Authorized Employee or contractor of either Party who has a need to know or otherwise access Personal Data to enable them to perform their obligations under this DPA or the Principal Agreement.

- d) **“Authorized Sub-Processor”** means a Third-Party sub-contractor, supplier, service provider, agent, reseller, or auditor, or their employees, sub-contractors, or suppliers who has been appointed by or on behalf of Shireburn and has a need to know, access or Process Client Data, including Personal Data, so as to provide a service to Shireburn which enables Shireburn to perform its obligations under this DPA or the Principal Agreement, and who is listed at [www.shireburn.com/dataprotection/Sub-Contractors](http://www.shireburn.com/dataprotection/Sub-Contractors).
- e) **“Client Data”** means the data inputted into the Software for the purpose of using the Software or Services which data includes but is not limited to Personal Data.
- f) **“Data Breach”** any accidental, unauthorised, or unlawful destruction, loss, alteration, or disclosure of, or access to, Personal Data governed by this DPA.
- g) **“Data Controller”, “Data Subjects”, “Personal Data Breach”, “Processing”, “Supervisory Authority”, “Data Processor”, “Consent”, “Third-Party”** shall, from the 25<sup>th</sup> May 2018 onwards, have the same meaning given to these terms in the GDPR.
- h) **“Date Protection Law”** consists of the Maltese Data Protection Act (Chapter 586 of the Laws of Malta) as amended and, as of 25 May 2018, the General Data Protection Regulation and any other relevant legislation which is applicable during the term of this Agreement, in so far as the same relates to the provisions and obligations of this Agreement
- i) **“Data Protection Officer”** means the person nominated from time to time to hold the responsibility within Shireburn related to the protection of data.
- j) **“Data Subject”** means an identified or identifiable person to whom Personal Data relates.
- k) **“Effective Date”** of this Data Processing Agreement shall be the date at which this Agreement has been electronically signed by the Client and therefore accepted by both Parties, whichever is the earlier.
- l) **“General Data Protection Regulation”** (hereinafter referred to as the **GDPR**), means the Regulation (EU) 2016/679 of the European Parliament and of the Council of the 27<sup>th</sup> of April 2016 on the protection of natural persons with regard to the processing of Personal Data and on the free movement of such data, whose provisions came into effect on the 25<sup>th</sup> May 2018.
- m) **“Instruction”** means a direction or request for action, either in writing, in textual form (e.g. by e-mail) or by using a software or online tool, issued by the Client to Shireburn and directing Shireburn to perform an action with regard to Personal Data, including but not limited to the correction, blocking and deletion of Personal Data, which instruction may thereafter be amended, supplemented or replaced by the Client by separate written or text form instruction.
- n) **“Legitimate Business Interest”** means a reason that enables the Processing of Personal Data which is necessary for the performance of a contract or provision of an agreed Service.
- o) **“Personal Data”** means any information relating to a Data Subject which Processor Processes on behalf of Controller other than Anonymous Data, which is able to identify an individual and includes Sensitive Personal Information.
- p) **“Personal Data Breach”** means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, personal data transmitted, stored, or otherwise processed.
- q) **“Process”** or **“Processing”** means any operation or set of operations which is performed upon the Personal Data, whether or not by automatic means, such as collection, recording, organization, storage, adaptation or alteration, retrieval, consultation, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure, or destruction.
- r) **“Privacy Shield Framework and Principles”** means the Swiss-U.S. and EU-U.S. Privacy Shield Framework and Principles issued by the U.S. Department of Commerce, both available at <https://www.privacyshield.gov/EU-US-Framework>.
- s) **“SaaS Service”** the provision by Shireburn to the Client of a shared and hosted facility to use the Shireburn SaaS Software, on a shared, hosted environment and the provision of all other services necessary for productive use of such software “
- t) **“Sensitive Personal Information”** means a Data Subject’s:
- i. government-issued identification number (including identity card number, passport number, social security number, driver’s license number or email address;
  - ii. Client account number, credit card number, debit card number, credit report information that would permit access to an individual’s financial account;
  - iii. genetic and biometric data or data concerning health; or
  - iv. Personal Data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, sexual orientation or sexual activity, criminal convictions and offences (including commission of or proceedings for any offense committed or alleged to have been committed), or trade union membership.
- u) **“Services”** means the provision of software licenses, both of Shireburn owned software as well as Third-Party owned software, the provision of other software as a subscription service, the provision of associated services related both to such software, including support and software maintenance services, as well as other general information technology, consultancy, networking and security related services to the Client.
- v) **“Shireburn On-Premises Software”** means the software developed and owned by Shireburn which is licensed to the Client by Shireburn and deployed either on the Client’s premises or a Third-Party hosting provider controlled by a Third-Party.
- w) **“Shireburn SaaS Software”** means the software made available by Shireburn to the Client as a SaaS Service.
- x) **“Shireburn Software”** means both the Shireburn On-Premises Software as well as the Shireburn SaaS Software.

- y) **“Standard Contractual Clauses”** means the standard contractual clauses set forth in EU Commission Decision 2010/87/EU of the 5 February 2010 on standard contractual clauses for the transfer of personnel data to processors established in third countries under directive 94/46/EC as may be amended or superseded from time to time.
- z) **“Supervisory Authority”** shall mean the relevant supervisory authority with responsibility for privacy or data protection matters in the jurisdiction in which the Personal Data subject to this DPA agreement is held.
- aa) **“Technical and Organisational Measures”** means those measures implemented by Shireburn, further described at [www.shireburn.com/dataprotection/technical-organisational-measures](http://www.shireburn.com/dataprotection/technical-organisational-measures), aimed at protecting Personal Data.
- bb) **“Third-Party”** means an individual or corporate entity other than the Parties.
- cc) **“Third-Party Owned Software”** means software whose intellectual property is owned by a Third-Party, other than Shireburn.

- 1.2. This DPA covers all Affiliates of the respective Parties.
- 1.3. References to clauses and schedules are to the clauses and schedules of this Agreement; references to paragraphs are to paragraphs of the relevant schedule to this Agreement.
- 1.4. The headings given to any Clause, schedule or paragraph shall not affect the interpretation of this Agreement.
- 1.5. A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.
- 1.6. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.7. Words in the singular shall include the plural and vice versa.
- 1.8. A reference to one gender shall include a reference to the other genders.
- 1.1. The word "include" shall be construed to mean include without limitation.
- 1.9. A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.10. A reference to writing or written shall be in the form of either a letter or e-mail.
- 1.11. The language of this Agreement shall be the English language and for the purposes of interpretation, the provisions as they are stated in English shall be those which are considered binding.

**2. TERM**

- 2.1. This Agreement shall commence on the Effective Date and shall continue as long as:
  - a) In the case of Shireburn On-Premises Software: throughout the period of the provision of any services carried out by Shireburn to the Client
  - b) In the case of Shireburn SaaS Software: while an applicable and valid Subscription Agreement remains in force
  - c) In the case of the provision of Network Services, while these Network Services are still being provided.

**3. TYPE AND PURPOSE OF USE OF DATA**

- 3.1. Shireburn agrees to Process the Personal Data held by the Client only on the instructions of the Client as the Data Controller and on the basis of the following grounds:
  - a) Where the Client, as the Data Controller, needs to process this Personal Data for the performance of a contract with the Data Subject as per (Art 6(1)(b) of GDPR);
  - b) Where the processing is necessary for the performance of a contract between Shireburn and the Client;
  - c) Where it is necessary for Shireburn’s Legitimate Business Interests, (or those of a Third-Party), the Client’s legitimate interests or the legitimate interests of the Data Subjects concerned, provided that this processing does not override the Data Subject’s fundamental rights.
  - d) Where Shireburn needs to comply with a legal or regulatory obligation.
- 3.2. Shireburn may process the following type of Personal Data for the following purposes:

Data Type	Purpose
The contact data of the Client’s employees, advisors and contractors including but not limited to contact names, work addresses, phone numbers, e-mail addresses, credit card details and billing details.	To administer Shireburn’s relationship with the Client in the provision of the Services including administrative, financial, licensing, billing, consulting, communicating, marketing, prospecting, training and events including sign-up registration in pursuit of its contractual obligations in respect of its Legitimate Business Interests.
Standing and transaction data managed within the Shireburn Indigo Suite including related modules.	To enable the processing by the Client of the software application, including generation of outputs and reports, including data containing aggregated data.

Data Type	Purpose
Copies of Client Data such as accounting, payroll, HR and other types	Assisting the Client in the support, implementation and troubleshooting of their use of the Shireburn Software products.
Contact data related to events, activities news & marketing	To enable registration for Shireburn events and other activities.
Personal Data stored to enable the on-going relationship between Shireburn and the Client	Subject to a Legitimate Business Interest
Personal Data stored related to contracts, billing, procurement and similar administrative processes	To manage and operate the commercial business to enable the on-going relationship between Shireburn and the Client
Personal Data related to correspondence, proposals, actions and opportunities	To enable the on-going relationship between Shireburn and the Client

- 3.3. The Client agrees that Shireburn’s Authorised Staff shall be granted access by the Client to such Personal Data in the course of the provision of support and maintenance services and, in so doing take on the role of persons acting under the authority of the Data Processor.
- 3.4. It is recognised by the Parties that the Personal Data retained by Shireburn will vary according to the Shireburn Software or Service being used.
- 3.5. The Client authorises Shireburn to Process the Client Data so as to obtain aggregated, Anonymous Data, and to utilise and publish this Anonymous Data in a manner that is not able to identify any particular company or Data Subject, for instance, but not limited to, benchmarking, reporting etc.;

#### 4. RELATIONSHIP BETWEEN PARTIES

- 4.1. The Client is the Data Controller.
- 4.2. Shireburn is a Data Processor of the Client’s Personal Data in the following different situations:
  - a) When the Client processes their own Personal Data using the Shireburn SaaS Software
  - b) When the Client grants access to, either remotely or on-site, or sends copies of their Personal Data to an Authorised Employee so as to enable Shireburn to support the Client in their use, troubleshooting or implementation of information technology systems including Shireburn Software and Third-Party Owned Software.
  - c) When Shireburn uses the Client’s Personal Data to administer its relationship with the Client including administrative, financial, support and marketing activities.
- 4.3. It is recognised by the Parties that the Personal Data that may be accessible to Authorised Staff will vary according to the software or Service being used.
- 4.4. Sub-Contractors or Authorised Sub-Processors of Shireburn who have access to Personal Data take on the responsibility of sub-processors as defined by the GDPR.

#### 5. PROCESSING OF PERSONAL DATA

- 5.1. The Parties authorise the Processing of Personal Data when:
  - a) the Data Subject has given consent to the processing of his or her Personal Data for one or more specific purposes;
  - b) processing is necessary as a Legitimate Business Interest for the performance, by either Party or their respective Authorised Sub-Processors, of a contract or provision of a Service to which the Data Subject is party, either directly or as a result of their employment or relationship with that Party, or in order to take steps prior to entering into such a contract or Service;
  - c) processing is necessary for any other purpose defined within this Agreement; and
  - d) processing is necessary for compliance with a legal obligation to which one or all Parties are subject.
- 5.2. The Parties shall, irrespective of their role, at all times Process Personal Data, and provide Instructions for the Processing of Personal Data, in compliance with Data Protection Law as applicable in relation to the Personal Data and that the Processing of Personal Data in accordance with the Client’s Instructions will not cause Shireburn to be in breach of Data Protection Laws.
- 5.3. The Client consents to the processing of Client Data so as to enable the generation of reports, dashboards and outputs containing aggregated data in such a way that no Personal data is able to be identified.
- 5.4. Shireburn shall act only upon the Instructions of the Client and not Process any Personal Data that may be transferred to it by the Client except as may be necessary for the performance of any service or task requested by the Client unless required to do so by European Union or Maltese law. In such a case, Shireburn shall inform the Client of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest
- 5.5. By virtue of this DPA, the Parties agree that they consent to the processing of the Personal Data of their respective Authorised Staff, contractors or suppliers for the purposes of administering the relationship between the Parties in respect of financial, administrative and marketing functions including billing and reporting.
- 5.6. Personal Data shall only be processed for the purposes listed in this Agreement and shall not be further processed in a manner that is incompatible with those purposes.

- 5.7. The Data Processor shall implement appropriate Technical and Organisational Measures to protect any Personal Data that may be processed on behalf of the Client against accidental destruction or loss or unlawful forms of processing thereby providing the best possible level of security appropriate to the particular risks in question and take any other such measures as required by Shireburn's direct obligations as a Data Processor in terms of Data Protection Laws.
- 5.8. The Client is responsible for the accuracy, quality and legality of:
- the Personal Data provided to Shireburn by or on behalf of the Client,
  - the means by which the Client has acquired any such Personal Data, and
  - the Instructions it provides to Shireburn regarding the Processing of such Personal Data.
- 5.9. The Client shall not provide or make available to Processor any Personal Data in violation of the DPA or otherwise inappropriate for the nature of the Services and shall indemnify Processor from all claims and losses in connection therewith.

## 6. SHIREBURN'S OBLIGATIONS

- 6.1. Shireburn shall, when acting as a Data Processor:
- Ensure that persons authorised to Process the Personal Data (including but not limited to Shireburn's Authorised Staff) have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality and that the said confidentiality obligations are effectively implemented and enforced;
  - Not engage any other Data Processors (including Authorised Sub-Processors) to perform any processing of Personal Data, except for the Authorised Sub-Processors defined at [www.shireburn.com/dataprotection/Sub-Contractors](http://www.shireburn.com/dataprotection/Sub-Contractors), without informing the Client of any intended changes concerning the addition or replacement of other Sub-Processors, giving ten (10) days' notice, and giving the Client the opportunity to object and terminate their Service in accordance with clause 16.
  - Solely to the extent defined within this Agreement, Shireburn shall remain liable to the Client for the performance of its Authorised Sub-Processor's obligations and for any breach of this DPA.
  - Assist the Client, subject to Shireburn's standard hourly rate for such services being provided, by way of appropriate Technical and Organisational Measures, insofar as this is possible, for the fulfilment of the Client's obligation to respond to requests for exercising the data subject's rights laid down in Chapter III of the GDPR, taking into account the nature of the processing.
  - Inform the Client of any Personal Data Breach (including any suspected Personal Data Breach) that Shireburn becomes aware of, irrespective of whether or not the Personal Data Breach was caused directly or indirectly by Shireburn.
  - At the choice of the Client, delete or return all the Personal Data to the Client after the end of the provision of services relating to processing in terms of the DPA, and delete existing copies unless EU or Maltese law requires storage of the Personal Data.
  - Make available to the Client all reasonable information necessary to demonstrate compliance with the obligations laid down in this DPA.
  - Carry out regular tests and self-audits ensuring that the processing of the Client's Personal Data conforms with the provisions of this DPA
  - Subject to a charge at Shireburn's then current charge-out rates, allow for and contribute to reasonable audits, including inspections, conducted by the Client or another auditor mandated by the Client for the purpose of and to the extent required for verifying whether Shireburn complies with Data Protection Laws and the contractually agreed measures in this DPA
  - In case the Client intends to conduct (or mandate a Third-Party to conduct) an audit at Shireburn's working premises, the Client shall give reasonable notice of at least two (2) working days to Shireburn. The time and duration of the audit shall be agreed to by both Parties. The results of the audit shall be recorded by both Parties in writing.
  - Inform the Client, as soon as possible, in text form (including by e-mail) of any requests from any third parties (including the concerned data subjects or from a Data Protection Supervisory Authority) in any way relating to the Client's Personal Data. In case Shireburn receives any data subject access requests and/or any other claims on the basis of any rights under Data Protection Law in connection with the Personal Data covered by this DPA, Shireburn shall refer the concerned data subject directly to the Client.

## 7. Technical and Organisational Measures

- 7.1. Shireburn shall ensure that its processing of Client Data, including Personal Data, shall be undertaken in line with the Technical and Organisational Measures defined at [www.shireburn.com/dataprotection/technical-organisational-measures](http://www.shireburn.com/dataprotection/technical-organisational-measures), aimed at protecting Personal Data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, such measures being appropriate to the risks involved.
- 7.2. It is agreed that modifications to these Technical and Organisational Measures can be effected by Shireburn publishing the modified measures at [www.shireburn.com/dataprotection/technical-organisational-measures](http://www.shireburn.com/dataprotection/technical-organisational-measures) giving the client ten (10) days' notice in accordance with clause 16 of this Agreement.

## 8. AUTHORIZED SUB-PROCESSORS

- 8.1. The Client acknowledges, agrees and is hereby providing a general written authorisation allowing Shireburn to engage its Authorized Sub-Processors to access and Process Personal Data in connection with the Services and solely on the instructions of Shireburn in line with Article 28 GDPR.
- 8.2. A list of Shireburn's Authorized Sub-Processors is found at [www.shireburn.com/dataprotection/Sub-Contractors](http://www.shireburn.com/dataprotection/Sub-Contractors).
- 8.3. In line with the same Article 28, GDPR, at least ten (10) days before instructing any Third-Party, other than the current Authorized Sub-Processors, to access or participate in the Processing of Personal Data as Sub-Processors, Shireburn will notify the Client of such a change.
- 8.4. It is agreed that modifications to the list of Authorised Sub-Processors can be effected by Shireburn publishing the modified list of Authorised Sub-Processors at giving the client ten (10) days' notice in accordance with clause 16 of this Agreement.
- 8.5. Shireburn shall ensure that every Authorized Sub-Processor is subject to obligations regarding the Processing of Personal Data that are at least equal to, and no less onerous than, those to which Shireburn is subject under this DPA.
- 8.6. The Client agrees that, in order to provide the Services, Shireburn is authorised to share the necessary Personal Data, including but not limited to contact names, addresses, phone numbers, e-mail addresses, credit card details and billing details, with Authorised Sub-Processors that provide a service to Shireburn such as license management and billing.

## 9. TRANSFERRING DATA OUTSIDE THE EEA

- 9.1. Shireburn shall only store the Client's Personal Data either within the European Economic Area (EEA) unless with the explicit, prior written consent of the Client, or in a manner which is undertaken by Shireburn through one of the following mechanisms:
  - a) in accordance with the Privacy Shield Framework and Principles, or
  - b) the Standard Contractual Clauses.
- 9.2. Shireburn binds itself that this Personal Data will be stored and processed in conformity with Data Protection Laws and that the Technical and Organisational Measures defined within this Agreement are taken by Shireburn and its Authorised Sub-Processor(s), if any, to ensure that data protection obligations at least as onerous as those set out in this DPA shall be imposed on those Sub-Processors.
- 9.3. The Parties agree that certain Personal Data related to the administration, accounting and billing of the relationship between the Parties, including contact names, addresses, phone numbers, e-mail addresses and billing details, may be stored in Third-Party systems that provide a service to Shireburn such as license management and billing, always subject to the terms of this DPA.
- 9.4. The Client consents to the storage of Personal Data in locations as defined at [www.shireburn.com/dataprotection/dataretention](http://www.shireburn.com/dataprotection/dataretention)
- 9.5. It is agreed that modifications to this data retention policy can be effected by Shireburn publishing the new policy at [www.shireburn.com/dataprotection/dataretention](http://www.shireburn.com/dataprotection/dataretention), giving the client ten (10) days' notice in accordance with clause 16 of this Agreement.

## 10. DATA RETENTION

- 10.1. Personal Data will be retained by Shireburn in accordance with the Data Retention Policy of Shireburn as defined at [www.shireburn.com/dataprotection/dataretention](http://www.shireburn.com/dataprotection/dataretention) as it relates to the different data types listed:
- 10.2. Shireburn shall hold the Client's Personal Data only as long as is necessary to provide the Services, including administration, accounting, marketing and reporting in the context of a Legitimate Business Interest, and subject to:
  - a) the rights of a Data Subject in terms of the Data Protection Law, such as requests for data access or deletion;
  - b) any legal requirement for data retention as specified in any other law of the Republic of Malta, including laws including but not limited to Social Security, Income Tax, Value Added Tax, Employment and Industrial Relations etc.
  - c) a request by an authorised Governmental or regulatory authority for an additional retention period
- 10.3. It is agreed that modifications to this data retention policy can be effected by Shireburn publishing the new policy at <http://www.shireburn.com/dataprotection/dataretention>, giving the client ten (10) days' notice in accordance with clause 16 of this Agreement.

## 11. RIGHTS OF DATA SUBJECTS

- 11.1. The Parties recognise and acknowledge the rights of data subjects to their Personal Data as defined within Data Protection Law including rights of access, rectification, restriction of Processing, erasure, data portability, restriction or cessation of Processing, withdrawal of consent to Processing, and/or objection to being subject to Processing that constitutes automated decision-making (such requests individually and collectively known as "Data Subject Request(s)").
- 11.2. Shireburn shall, to the extent permitted by law, promptly notify the Client upon receipt of a request by a Data Subject to exercise any of these Data Subject's rights.
- 11.3. Subject to the charges applicable at that time for such services, Shireburn shall, at the request of the Client, and taking into account the nature of the Processing applicable to any Data Subject request, apply appropriate Technical and Organisational Measures to assist the Client in complying with the Client's obligation to respond to such Data Subject Request and/or in demonstrating such compliance, where possible, provided that:
  - a) The Client is itself unable to respond without Shireburn's assistance and

- b) Shireburn is able to do so in accordance with all applicable laws, rules, and regulations.

## **12. THIRD-PARTY REQUESTS FOR DISCLOSURE OF PERSONAL DATA**

12.1. Unless prohibited by applicable law, Shireburn shall promptly notify the Client of:

- a) Any request for the transfer of Personal Data covered by the Agreement, by any governmental, regulatory, Supervisory Authority;
- b) Any request for access received directly from a Data Subject or from a Third-Party.
- c) Any requirement by law, court order, warrant, subpoena, or other legal judicial process to disclose any Personal Data to any person or entity other than the Client.

12.2. Shireburn shall provide all reasonable assistance to the Client, subject to a charge based on its then current charge rates, to enable the Client to respond, object or challenge any such demands, inquiries, communications, requests or complaints and to meet applicable statutory or regulatory deadlines.

## **13. DELETION OR RETURN OF PERSONAL DATA**

13.1. On termination of the Services, Shireburn shall:

- a) Upon the Client's request, furnish the Client with any of the Client's Personal Data under its control in a format chosen by Shireburn which is appropriate to facilitate its use by the Client and subject to a charge based on Shireburn's then current charge rate for such a service.
- b) Subject to the then applicable data retention policy, securely delete any of the Client's Personal Data in its possession.

## **14. RELIABILITY OF PERSONNEL**

14.1. The Parties shall take all reasonable steps to ensure the reliability of any Authorized Staff who may have access to the Client's Personal Data, ensuring in each case that access is limited to those individuals who need to know and to access the relevant Personal Data, as necessary for the purposes of the Principal Agreement.

14.2. Shireburn shall ensure that all Authorized Employees and Authorised Contractors are made aware of the confidential nature of the Personal Data and have executed confidentiality agreements that prevent them from disclosing or otherwise Processing, both during and after their engagement with Shireburn, any Personal Data except in accordance with their obligations in connection with the Services and as may be enforced by relevant laws.

## **15. SECURITY**

15.1. Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, Shireburn shall maintain Technical and Organisational Measures as defined within this Agreement, so as to ensure a level of security appropriate to the risk of Processing the Personal Data.

15.2. Shireburn shall keep the Client's Personal Data logically separate to data Processed on behalf of any other Third-Party.

## **16. MODIFICATIONS & NOTICES**

16.1. Notices sent in pursuit of this DPA are to be affected in writing, sent to the official place of business of the Party concerned or to its then current registered office address, or via email addressed to the principle contact of record for the Client.

16.2. The Client undertakes to keep Shireburn informed of any change in the contact details of the person to whom notices are to be sent.

16.3. Shireburn may make, from time to time, reasonable amendments to the terms of this DPA or its policies referenced in this Agreement published on its web site, as Shireburn reasonably considers necessary to meet its operational requirements, giving the Client ten (10) days' notice of such change.

16.4. Should the Client have reasonable objections to any material amendments referred to in clause 16.3,

- a) Shireburn warrants to allow the Client to terminate its use of the Services without loss as long as this is done within ten (10) days of receipt by Client of the aforementioned notice.
- b) Termination shall not relieve Client of any fees previously owed to Shireburn under the Principal Agreement or any other Agreement signed between the Parties.

16.5. The changes to this Agreement or Shireburn's policies as published on its web site, shall take effect within ten (10) days of notification sent to the Client and shall automatically be deemed as forming an integral part of this Agreement.

## **17. PERSONAL DATA BREACH AND NOTIFICATION**

17.1. As stipulated in Article 33 of the GDPR, Shireburn, as Data Processor, shall, without undue delay, notify the Client in writing upon it becoming aware of any Personal Data Breach.

17.2. Such notification shall include:

- a) a detailed description of the Data Breach;
- b) the type of data that was the subject of the Data Breach;

- c) the identity of each affected person (or, where not possible, the approximate number of Data Subjects and of Personal Data records concerned);
  - d) the name and contact details of Shireburn's Data Protection Officer or other point of contact where more information can be obtained;
  - e) a description of the likely consequences of the Data Breach;
  - f) a description of the measures taken or proposed to be taken by Shireburn to address the Data Breach, including, where appropriate, measures to mitigate its possible adverse effects;
- 17.3. Shireburn agrees to co-operate with the Client or their representatives and take such reasonable commercial steps to assist in the investigation, mitigation and remediation of each such Data Breach.
- 17.4. The Parties shall not release or publish any filing, communication, notice, press release, or report concerning any Data Breach without the other Party's written approval.

## **18. PROPRIETARY RIGHTS**

- 18.1. This DPA does not grant the Client any additional rights to, or in, patents, copyright, database rights, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Software, Services or associated documentation.
- 18.2. The Client acknowledges and agrees that Shireburn and/or its licensors own all intellectual property rights in the Services and the Documentation.

## **19. FORCE MAJEURE**

- 19.1. The Parties shall have no liability to each other under this Agreement if they, their Suppliers, Authorised Sub-Processors or Authorised Sub-Contractors are prevented from or delayed in performing their obligations under this Agreement, or from carrying on their business, by acts, events, omissions or accidents beyond their reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes, failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, or storm, provided that the other Party is notified of such an event and its expected duration.

## **20. WAIVER**

- 20.1. A waiver of any right under this Agreement is only effective if it is in writing and it applies only to the Party to whom the waiver is addressed and to the circumstances for which it is given.
- 20.2. Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.

## **21. SEVERANCE**

- 21.1. If any provision (or part of a provision) of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 21.2. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the Parties.

## **22. ASSIGNMENT**

- 22.1. The Client shall not assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement without the prior written consent of Shireburn, which consent would not be unreasonably withheld.
- 22.2. Shireburn may at any time assign this agreement by a simple notice to that effect sent to the Client, ensuring that the assignee undertakes all the current obligations vested in Shireburn. Following such notification, the Client shall have the right, in addition to any other rights and remedies under this Agreement or at law, to immediately terminate this Agreement without any liability whatsoever.

## **23. GOVERNING LAW, JURISDICTION AND DISPUTE RESOLUTION**

- 23.1. This Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by, and construed in accordance with, the laws of the Republic of Malta.
- 23.2. Both Parties agree that any dispute, controversy or claim arising out of or relating to this Agreement, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the rules of the Malta Arbitration Centre in force at the time of the dispute. It is also agreed that:
- a) the appointing authority and administrator shall be the Malta Arbitration Centre
  - b) the number of arbitrators shall be one
  - c) the place of arbitration shall be Malta.
  - d) the applicable substantive law shall be the laws of Malta



<b>Name</b>
<b>Signature</b>

<b>Shireburn Software Limited Shireburn Company Ltd</b>
<b>Name</b>
<b>Signature</b>