

Information Processing Agreement

In relation to software development, customer service and marketing services between

Simba Hosting Ltd and XIBO Ltd

This document may be subject to an annual review by Simba Hosting Ltd

THIS AGREEMENT is dated 19th April 2018

Parties

Simba Hosting Ltd, UK company number 08570611 (**'The Data Controller'**); and.

XIBO Ltd, Caerphilly Business Park, Caerphilly, CF83 3GG, UK company number 06841995 (**'The Data Processor'**)

Background

The **Data Controller** agrees to share the Personal Data with the **Data Processor** in the European Economic Area (EEA) on terms set out in the Agreement.

The **Data Processor** agrees to use the Personal Data within the EEA on the terms set out in this Agreement and in accordance with the Contract.

Agreed terms

1 Interpretation

The following definitions and rules of interpretation apply in this agreement.

Definitions:

The Act: the Data Protection Act 1998, as amended from time to time.

Agreed Purpose: has the meaning given to it in *clause 2* of this Agreement.

The Agreement: this Agreement.

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Data Protection Authority: the relevant data protection authority is The Information Commissioner, established under section 6 of the Data Protection Act 1998.

The Directive: EU Data Protection Directive (95/46/EC), as amended from time to time.

Data Security Breach: a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Shared Personal Data.

Data Sharing Code: the Information Commissioner's Data Sharing Code of Practice of May 2011.

The Parties: means Simba Hosting Ltd and XIBO Ltd

Privacy and Data Protection Legislation: the Data Protection Act 1998, the Data Protection Directive (95/46/EC), the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) (as amended), the Human Rights Act 1998, the European Convention on Human Rights, as from 25 May 2018 the General Data Protection Regulation (EU 2016/679) and all applicable laws and regulations relating to the processing of the personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner, and the equivalent of any of the foregoing in any relevant jurisdiction. References to legislation include any amendments made to those laws from time to time.

The Personal Data: the personal data including names, emails addresses, addresses, order details, support queries, contents of communication to be shared between the parties under *clause 5* of this Agreement.

Subject Access Request: has the same meaning as "Right of access to personal data" in section 7 of the DPA.

Term: No fixed term

Data Controller, Data Processor, Data Subject, Personal Data, Sensitive Personal Data and Processing shall have the meanings given to them in the Act.

Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.

The schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the schedules.

Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

References to clauses and Schedules are to the clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.

Any words following the terms **including, include, in particular** or **for example** or any similar phrase shall be construed as illustrative and shall not limit the generality of the related general words.

In the case of any ambiguity between any provision contained in the body of this agreement and any provision contained in the Schedules or appendices, the provision in the body of this agreement shall take precedence.

A reference to **writing** or **written** includes letter, fax and email.

Unless the context otherwise requires, a reference to one sex shall include a reference to the other sex.

2 Compliance with data protection laws

The Parties acknowledge that under the Act, Simba Hosting Ltd is a Data Controller and XIBO Ltd is a Data Processor where processing personal data under the terms of the Agreement. Each Party must ensure compliance with the Privacy and Data Protection Legislation at all times during the Term of the Agreement.

3 USE, DISCLOSURE AND PUBLICATION

3.1 The **Data Processor** agrees to process the **Personal Data**, as described in clause 5, only for the purposes outlined in clause 4 of the **Agreement** and strictly for no other purpose without the written authority of the **Data Controller**.

3.2 The **Data Processor** will NOT disclose or share the **Personal Data** processed under the **Agreement**, with any third party without the written authority of the **Data Controller**.

3.3 The **Data Processor** is prohibited from publishing, copying, transferring or duplicating any information without the written authority of the **Data Controller**.

4 Purpose

4.1 The **Agreement** sets out the framework for the sharing of **Personal Data** between the **Data Controller**. It sets out the purposes for which the **Personal data** may be processed by

the **Parties**, the principles and procedures that the **Parties** shall adhere to, and the responsibilities the **Parties** owe to each other.

4.2 The **Parties** consider this data sharing initiative necessary in order for the Data Processor to deliver **the Contract Services**. Schedule 1 to the Agreement provides a detailed outline of the Contract Services and how the personal data will be processed to deliver those services.

4.3 The **Data Processor** agrees to only **process** the **Personal data** in accordance with the **Data Controller's** instructions, and only for the purposes of providing the **Contract Services** as described in Schedule 1. The **Parties** shall not process **Personal Data** in a way that is incompatible with the purposes described in this clause (the **Agreed Purpose**).

4.4 Each party shall appoint a single point of contact (SPoC) who will work together to reach an agreement with regards to any issues arising from the data sharing and to actively improve the effectiveness of the data sharing initiative. The points of contact for each of the parties are:

Data Controller's SPoC – David Anderson, Director, Simba Hosting Ltd

Data Processor's SPoC – Joseph Miles, Director, XIBO Ltd

5 Personal data

5.1 The Personal Data processed under the Agreement will comprise of marketing data, customer support, software development, service delivery and research services. Individual users are able to request full details of their Personal Data processed using the facility on the website on which they are a registered user (see section 7).

5.2 **The Parties** agree that the **Personal Data** processed under the **Agreement** must at all times be relevant or and proportionate with regard to the Agreed Purposes set out in Clause 4.

6 Fair and lawful processing

6.1 Each **Party** shall ensure that it processes the **Personal Data** fairly and lawfully in accordance **with the Privacy Legislation** during the **Term of the Agreement**. Further, the **Data Controller** shall ensure that the processing satisfies an appropriate condition under Schedule 2 and where relevant Schedule 3 of the Act.

7 Data Subjects' Rights

7.1 **Data Subjects** have the rights in relation to their personal data under the Privacy Legislation. Those rights include;

- (i) The right to be informed
- (ii) The right of access
- (iii) The right to rectification
- (iv) The right to erasure
- (v) The right to restrict processing
- (vi) The right to data portability
- (vii) The right to object
- (viii) Rights in relation to automated decision making and profiling

These rights are not infinite, and may be limited, for example, by other legislation (e.g. taxation and financial auditing requirements).

7.2 To facilitate the above rights, the **Data Processor** agrees to store or record the **Personal Data** processed under **the Agreement** in a structured, commonly used and machine readable form.

7.3 The **Data Processor** agrees to notify the **Data Controller** immediately and no later than 48 hours upon receipt by the **Data Processor** of a request from an individual seeking to exercise any of their rights under the **Privacy and Data Protection Legislation**, including those rights as described in clauses 8.1 above. The **Data Processor** agrees to notify the **Data Controller** immediately and no later than 48 hours upon receipt of any complaint from an individual regarding the processing of **Personal Data** under the **Agreement**. The **Data Processor** will provide the **Data Controller** with full co-operation and assistance in relation to any such complaint or request from an individual regarding the **Processing of Personal Data** under this **Agreement**.

7.4 The **Data Processor** agrees to act only under the **Data Controller's** instructions in relation to any activities undertaken to resolve any complaints or comply with any requests from individuals under clause 8.

7.5 The **Data Processor's** SPoC is required to maintain a record of requests or complaints from data subjects seeking to exercise their rights under the **Privacy and Data Protection Legislation**, including requests for **Personal Data** processed under this **Agreement**. The records described in this clause must include copies of the request for information or complaint, details of the data accessed and shared and where relevant, notes of any meeting, measures taken by the **Data Processor** to resolve the complaint, correspondence or phone calls relating to the request or complaint.

8 Record Keeping

8.1 In addition to the record keeping obligations under clause 7.4, the **Data Processor** agrees to maintain records of all **Personal Data** processed under the **Agreement** and its processing activities, for a length of time reasonable in respect of the type of data being processed. The **Data Controller** reserves the right to inspect the records maintained by the **Data Processor** under this clause and clause 7.4 at any time. Records kept by automated means, and recorded by the **Data Controller's** systems automatically, are fully acceptable.

9 Data retention and deletion

9.1 The **Data Processor** shall not retain or process **Personal Data** for longer than is necessary to carry out the Agreed Purposes or for longer than any period set by the Data Controller. For the avoidance of doubt, the **Data Controller** reserves the right to determine the periods for which the **Data Processor** may retain the **Personal Data** processed under this Agreement.

9.2 On the instructions of the **Data Controller**, the **Data Processor** shall ensure that the **Personal Data** processed under this Agreement are returned to the Data Controller or destroyed in accordance with the **Data Controller's** instructions. The **Data Controller** reserves the right to issue instructions to the **Data Processor** under this Clause at any time.

9.3 The **Data Controller** reserves the right to issue instructions to the **Data Processor** as to the methods by which **Personal Data** is destroyed under clauses 9.1 and 9.2.

9.4 Following the deletion of Personal Data under clause 9.1 and 9.2, the **Data Processor** shall notify the **Data Controller** that the **Personal Data** in question has been deleted. Where applicable, the **Data Processor** shall also provide confirmation that the **Personal Data** has been destroyed in accordance with any instructions issued by the **Data Controller** under clause 9.3.

10 Third Party access and International Transfers

10.1 For the purposes of this clause, international transfers of the **Personal Data** shall mean any sharing of **Personal Data** by the **Data Processor** with a third party, and shall include, but is not limited to, the following:

storing the **Personal Data** on servers outside the EEA.

subcontracting the processing of **Personal Data** to data processors located outside the EEA.

granting third parties located outside the EEA access rights to the **Personal Data**.

10.2 The **Data Processor** shall not disclose or transfer the **Personal Data** to a third party without the prior written authorisation of the **Data Controller**. If the **Data Controller** authorises the disclosure of the **Personal Data** to a third party, the **Data Processor** agrees to enter into an information sharing agreement with any relevant third party which reflects the terms of the **Agreement**. The **Data Processor** agrees to provide the **Data Controller** with copies of any such information sharing agreement with a third party. The **Data Controller** reserves the right of approval of any such information sharing agreement and may request the **Data Processor** to make any amendments deemed necessary to such an agreement to ensure compliance with the **Privacy and Data Protection Legislation**.

10.3 The **Data Processor** shall not disclose or transfer the **Personal Data** to a third party located outside the EEA without the prior written authorisation of the **Data Controller**.

10.4 It is understood that every third party or freelancer appointed by the Data Processor with the agreement of the Data Controller can have access to any of the data deemed necessary by the Data Processor to carry out the services commissioned by the Data Controller. This is whether or not they are within or outside the EEA.

11 Security and training

11.1 The **Data Processor** agrees to implement appropriate technological and organisational measures to prevent;

unauthorised or unlawful processing of the **Personal Data**; and

the accidental loss or destruction of, or damage to, **the Personal Data**

ensure a level of security appropriate to:

the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage; and

the nature of the **Personal Data** to be protected.

11.2 Specifically, the **Data Processor** agrees to implement the technological and organisational security measures, particularly transport encryption and two factor login security on all accounts containing personal data. The **Data Processor** agrees to notify the **Data Controller** of any material change to the such measures.

11.3 It is the responsibility of each **Party** to ensure that its staff members and freelancers are appropriately trained to handle and process the Personal Data in accordance with the technical and organisational security measures set out in Schedule 3 together with any other applicable national data protection laws and guidance.

11.4 The level, content and regularity of training referred to in clause 11.3 shall be proportionate to the staff members' role, responsibility and frequency with respect to their handling and processing of the **Personal Data**.

12 Freedom of information

12.1 The **Data Processor** recognises that the **Data Controller** is a public authority for the purposes of the Freedom of Information Act 2000 and may be required to disclose information about **the Agreement**, the services provided by the **Data Processor** under **the Agreement** and the processing carried out under **the Agreement**. The **Data Processor** agrees to provide

any reasonable assistance to the **Data Controller** as is necessary to enable the **Data Controller** to comply with its obligations under the Freedom of Information Act 2000.

13 Data security breaches and reporting procedures

13.1 The **Data Processor** is under a strict obligation to immediately notify the **Data Controller** of any **Data Security Breach** and no later than within 24 hours of the Data Processor becoming aware of the breach.

13.2 In the event of a **Data Security Breach**, the **Data Processor** is required to provide the **Data Controller** with the information detailed in Schedule 3.

13.3 The **Data Processor** agrees to provide any reasonable assistance as is required by the **Data Controller** or the **Data Protection Authority** to facilitate the handling of any **Data Security breach** in an expeditious and compliant manner.

14 Review and termination of agreement

14.1 **The Parties** shall review the effectiveness of the processing of **Personal Data** under this Agreement at appropriate intervals. The **Data Controller** may continue, amend or terminate the **Agreement** depending on the outcome of this review.

14.2 The review described in clause 14.1 may involve:

Assessing whether the purposes for which the Personal Data is being processed are still the ones listed in clause 4 of the **Agreement**;

Assessing whether the **Personal Data** is still as listed in clause 6 of the Agreement;

Assessing whether the legal framework governing data quality, retention, and data subjects' rights are being complied with; and

Assessing whether personal data breaches involving the **Personal Data** have been handled in accordance with **the Agreement** and the applicable legal framework.

Assessing whether the technical and organisational measures listed in Schedule 3 to **the Agreement** are still in place and are adequate to prevent unauthorised or unlawful processing and accidental loss or destruction of, or damage to, the **Personal Data**.

15 Third Party Rights

15.1 Except as expressly provided in clause 8 (data subjects rights), a person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

16 Severance

16.1 If any provision or part-provision of the **Agreement** is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.

16.2 If the **Data Controller** gives notice the **Data Processor** that any provision or part-provision of this agreement is invalid, illegal or unenforceable, the **Parties** shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

17 Changes to the applicable law

17.1 In case the applicable data protection and ancillary laws change in a way that the Agreement is no longer adequate for the purpose of governing lawful data sharing exercises, the Data Controller reserves the right to amend the Agreement. In such circumstances, the **Data Processor** agrees to implement any changes to its processing activities as are necessary to comply with the amended terms of the **Agreement**.

18 Entire agreement

18.1 The Agreement and the Contract to the extent it applies to this Agreement constitute the entire agreement between the **Parties** and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

18.2 Each **Party** acknowledges that in entering into the **Agreement it does not rely on, and shall have no remedies in respect** of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the **Agreement**.

18.3 Each **Party** agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in the **Agreement**.

19 Further assurance

19.1 At its own expense, the **Data Processor** shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may be required for the purpose of giving full effect to this **Agreement**.

20 Rights and remedies

20.1 The rights and remedies provided under the **Agreement** are in addition to, and not exclusive of, any rights or remedies provided by law.

21 Notice

21.1 Any notice or other communication given to a **Party** under or in connection with this agreement shall be in writing, addressed to the SPoCs and may be:

delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); and

sent by email to the SPOC.

21.2 Any notice or communication shall be deemed to have been received:

if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.

if sent by email, at 9.00 am on the next Business Day after transmission.

21.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution

22 Governing law

22.1 This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

22.2 This agreement has been entered into on the date stated at the beginning of it.

