Appendix 2 - PERSONAL DATA PROCESSOR AGREEMENT

This personal data processor agreement (the “**Personal Data Processor** **Agreement**”) is entered into on this day

BETWEEN:

1. **[Customer]**, reg. no. **[number]**, **[address]** (the “**Customer**”); and
2. Strikersoft AB, reg. no. 556661-1637, Isafjordsgatan 39B, 164 40 Kista (the “**Consultant**”).

The above parties are hereinafter each referred to as a “**Party**” and jointly as the “**Parties**”.

# Introduction and instructions for this appendix

The Parties have entered into an Agreement for IT Consultancy Services signed on the **[date]**, hereinafter the “**Agreement**”.

Definitions used herein shall have the meaning subscribed to them in the Agreement and in this Personal Data Processor Agreement. Please refer also to Section 2 in regard to definitions.

The Parties shall use this **Appendix 2** to fulfil the obligations according to the Agreement.

Pursuant to the undertakings which follow from the Agreement and the Statement of Work, the Consultant may process personal data as well as other information on behalf of the Customer.

As a result thereof, the Parties are entering into this Personal Data Processor Agreement in order to govern the conditions for the Consultant’s processing of, and access to, personal data belonging to the Customer. This Personal Data Processor Agreement shall remain in force for as long as the Consultant processes personal data on the Customer’s behalf in accordance with the Agreement and the Statement of Work.

The purpose of this Data Processor Agreement is to regulate the rights and obligations of the Parties with regards to the processing of personal data under the Agreement in order to ensure that the personal data is processed in accordance with the provisions in the EU General Data Protection Regulation (“**GDPR**”) and any subsequent legislation replacing or supplementing the above.

No supplements, modifications or reworking of this **Appendix 2**, in whole or part, shall be valid unless such supplement, modification, or reworking is in writing and signed by authorised representatives of the Parties.

# Definitions

Unless the circumstances clearly dictate otherwise, those definitions used in this Personal Data Processor Agreement which are not defined herein, or in the Agreement, shall correspond to those which follow from Section 3 of the Swedish Personal Data Act (1998:204).

# Processing of personal data

The Customer is the controller of personal data for the personal data which is processed within the scope of the Agreement, including the scope and purpose specified in the Statement of Work to which this **Appendix 2** pertain to. The scope, purpose and the categories of data subjects and personal data which may be covered by the processing according to this Personal Data Processor Agreement can be described in accordance with the following; **[Describe the scope in more detail including the degree of sensitivity of the personal data and the particular risks that exist. Please use an appendix should there be a lot of information to be inserted.]**.

The Consultant shall be regarded as the Customer’s personal data processor. In its capacity as personal data processor, the Consultant shall process the personal data on behalf of the Customer in accordance with this Personal Data Processor Agreement and in accordance with the written instructions provided by the Customer from time to time in respect of the processing of personal data.

The Consultant shall receive compensation for measures which it takes in respect of processing of personal data in accordance with this Personal Data Processor Agreement in regard to additional costs incurred by the Customer’s changed instructions.

The Consultant may not transfer, store, or in any other manner process personal data belonging to the Customer outside of the EU/EEA without having first obtained the Customer’s written approval. Such consent not to be unreasonable denied or withhold.

# the customer’s obligation

The Customer shall immediately in writing notify the Consultant of any and all circumstances that may arise which may involve the need to change the way in which the Consultant processes personal data under this Personal Data Processor Agreement.

# The Consultant’s obligation

**Security Measures**

The Consultant shall implement appropriate technical and organisational measures to ensure that personal data is processed in accordance with the requirements in the applicable data protection laws, the conditions in the Agreement and in this Personal Data Processor Agreement. The security measures must be at least equal to the level which the competent supervisory authority typically requires for equivalent processing activities. The measures shall also be adapted to a level which is suitable, taking into consideration the degree of sensitivity of the personal data, the particular risks which exist, existing technical possibilities, and the costs for carrying out the measures. The measures must be documented and submitted to the Customer upon written request without undue delay.

**Written instructions**

The Consultant must process the personal data on behalf of and for the benefit of the Customer in accordance with this Personal Data Processor Agreement. **[The Consultant must follow the written instructions given by the Customer according to Appendix a).] [Please delete this sentence should there not exist any instructions at the time of the signing of the specific Personal Data Processor Agreement.]**

The Consultant shall ensure that the Associates who have access to the personal data covered by this Personal Data Processor Agreement comply with the terms and conditions of this Personal Data Processor Agreement including specifically only processing the personal data in accordance with the instructions given by the Customer.

If the Consultant is of the opinion that the instructions given by the Customer are in conflict with the applicable data protection legislation, the Consultant must immediately inform the Customer of this.

**Transfer of personal data and use of sub-contractors**

The Consultant must not transfer or give access to the personal data covered by this Personal Data Processor Agreement to any third party (except for what follows from the below in regard to the use of sub-contractors) without the Customer’s explicit prior approval, unless there is a legal obligation for the Consultant to do so. If there is such a legal obligation, the Consultant must inform the Customer before such sharing or transfer of the personal data takes place, provided that the Consultant is not prohibited by law, and/or court order, to do so.

However, the Consultant shall be entitled to retain subcontractors to perform the work under this Personal Data Processor Agreement. The Consultant must enter into a written agreement with each of its subcontractors, binding the subcontractors to have at least the same obligations as the Consultant has under the Agreement and this Personal Data Processor Agreement. The Consultant is fully responsible towards the Customer in terms of how the subcontractors process personal data, including their security measures.

**Requirements with regards to localisation and transfer of personal data to third countries**

The Consultant undertakes to ensure that the personal data is stored and processed only within the EU/EEA, unless the Parties agree otherwise in writing.

**Incident reporting**

The Consultant must promptly notify the Customer of any security incidents where such incidents have resulted in or are likely to result in accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to the personal data covered by this Personal Data Processor Agreement.

Upon written request from the Customer, the Consultant must promptly provide the Customer with all requested information about the incident such as the facts relating to the incident, its immediate effects and the remedial action taken and cooperate with the Customer in communicating about the incident with the supervisory authority where necessary.

**Assistance with fulfilling obligations towards the data subjects**

The Consultant must assist the Customer in fulfilling its obligations towards data subjects and help the Customer facilitate the exercise of data subject’s rights such as the correction and removal of data, data portability etc. in accordance with the data protection legislation and the Customer’s written instruction. This assistance must be provided without undue delay and without any demands from the Consultant for additional financial compensation, unless agreed otherwise in writing between the Parties. Such financial compensation understanding not to be unreasonable denied or withhold by the Customer.

**Removal of personal data during the term of the Personal Data Processor Agreement**

During the current term of the Personal Data Processor Agreement, the Customer’s user indicates in writing if and when personal data is to be deleted. The personal data shall then be destroyed, overwritten or otherwise be deleted by the Consultant within **[insert time period agreed by the Parties]** business days. Please refer also to Section 7 in regard to removal of personal data connected to the termination of this Personal Data Processor Agreement.

**Audit and inspection**

The Consultant must allow for and contribute to audits, including inspections, conducted by the Customer or another auditor mandated by the Customer.

# Liability

The Consultant shall compensate the Customer for any direct loss incurred by the latter as result of the Consultant’s processing of personal data in contravention of the Personal Data Processor Agreement. However, in the absence of intent or gross negligence, a Party shall not be liable under any circumstances for loss of profit or any indirect damage or loss, including any obligation of the other Party’s duty to compensate any third party or any loss of information.

In no event will the Consultant be liable for any lost profits or business opportunities, loss of use, loss of revenue, loss of goodwill, business interruption, loss of data, or any other indirect, incidental, or consequential damages under any theory of liability, whether based in contract, negligence, product liability, or otherwise. The Consultant’s liability under this Personal Data Processor Agreement will not, regardless of whether the claim is based on contract, strict liability, or otherwise, exceed the fees paid by the Customer in regard to the Statement of Work. The foregoing limitations shall apply regardless of whether the Consultant has been advised of the possibility of such damages and regardless of whether any remedy fails of its essential purpose.

# Termination of this Personal Data Processor Agreement

Upon the Consultant’s cessation of processing of personal data on behalf of the Customer, either in regard to the Statement of Work and/or the termination of the Agreement, the Consultant shall return all personal data to the Customer in the manner designated by the Customer or, where so notified by the Customer in writing, destroy all data connected to the Personal Data Processor Agreement.

# Confidentiality

The Parties hereby undertake, during the term of the Personal Data Processor Agreement and thereafter, not to disclose to any third party information regarding the Personal Data Processor Agreement, nor any other information which the Parties have learned as a result of the Personal Data Processor Agreement, whether written or oral and irrespective of form (“**Confidential Information**”). The Parties agree and acknowledge that the Confidential Information may be used solely for the fulfilment of the obligations under the Personal Data Processor Agreement and the Agreement, and not for any other purpose. The receiving Party further agrees to use, and cause its directors, officers, employees, sub-contractors or other intermediaries to use, the same degree of care (but not less than reasonable care) to avoid disclosure or use of Confidential Information as it uses with respect to its own confidential and/or proprietary information.

This confidentiality undertaking does not apply to information which

* 1. at the date of its disclosure is in the public domain or at any time thereafter comes into the public domain (other than by breach of this Personal Data Processor Agreement); or
  2. the receiving Party can prove that it was in its possession or was independently developed at the time of disclosure and was not obtained, directly or indirectly, by or as a result of breach of a confidentiality obligation.
  3. Neither shall this confidentiality undertaking apply to the extent that any Party is required to make a disclosure of information by law or pursuant to any order of court or other competent authority or tribunal or by any applicable stock exchange regulations or the regulations of any other recognised market place. In the event that any Party would be required to make any such disclosure, each Party undertakes, to the extent possible, to give the other Party immediate notice prior to any such disclosure, in order to make it possible for the other Party to seek an appropriate protective order or other remedy. Each Party also agrees and undertakes to use its best efforts to ensure that any information disclosed under this Section, to the extent possible, shall be treated confidentially by anyone receiving such information.

# Assignment of the Personal Data Processor Agreement

Neither Party shall be entitled to assign its rights and/or obligations under the Personal Data Processor Agreement, in whole or in part, without the prior written consent of the other Party.

# the right to negotiate etc.

The Parties acknowledge that at the time of execution of this Personal Data Processor Agreement, they were aware that GDPR shall be applied as from 25 May 2018. The Parties are also aware that GDPR will impose new requirements in respect of the processing of personal data and, as a result thereof, both Parties have therefore the right to request renegotiating of this Personal Data Processor Agreement so that it satisfies the requirements of GDPR including possible other modification of the applicable legislation or interpretation thereof. The necessary measures which the Parties must agree upon include, but are not limited to, contractually agreeing on any costs for adaptation which follows from the Agreement (including the Statement of Work) and/or this Personal Data Processor Agreement, in respect of any service or product.

# Governing law and Jurisdiction

This Personal Data Processor Agreement shall be governed by and construed in accordance with the laws of Sweden without regard to its principles of conflict of laws.

Any dispute, controversy or claim arising out of or in connection with this Personal Data Processor Agreement, or the breach, termination or invalidity thereof, shall be finally settled by arbitration administered by the Arbitration Institute of the Stockholm Chamber of Commerce (the “**SCC**”). The Rules for Expedited Arbitrations shall apply, unless the SCC in its discretion determines, taking into account the complexity of the case, the amount in dispute and other circumstances, that the Arbitration Rules shall apply. In the latter case, the SCC shall also decide whether the Arbitral Tribunal shall be composed of one or three arbitrators.

The seat of arbitration shall be Stockholm, Sweden.

The language to be used in the arbitral proceedings shall be **[English]**.

The Parties undertake and agree that all arbitral proceedings conducted with reference to this arbitration clause will be kept strictly confidential. This confidentiality undertaking shall cover all information disclosed in the course of such arbitral proceedings, as well as any decision or award that is made or declared during the proceedings. Information covered by this confidentiality undertaking may not, in any form, be disclosed to a third party without the prior written approval by the other Party.

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This Personal Data Processor Agreement has been duly executed in two (2) original copies, of which each of the Parties has taken one copy.

**[Place, date]**

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| **[Customer]** | Strikersoft AB |
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