

## PROXXIMOS TERMS AND CONDITIONS

These current consolidated Terms and Conditions (**Terms**) were published on 08 August 2025.

For previous versions, see [www.proxximos.com/legal/previous\\_agreements](http://www.proxximos.com/legal/previous_agreements). For details of updated provisions, see [www.proxximos.com/legal/updates](http://www.proxximos.com/legal/updates).

### 1. INTERPRETATION AND CONFLICTS

#### 1.1 In these Terms:

- 1.1.1 each Order Form entered into by the parties shall form a separate agreement, incorporating these Terms together with the Schedules (the **Agreement**);
- 1.1.2 in the event of any conflict in respect of the provisions of these Terms and the Order Form, the Order Form shall take precedence;
- 1.1.3 in the event of any conflict in respect of the provisions of these Terms and the Schedules, the provisions in the main body of these Terms shall take precedence;
- 1.1.4 subject to the order of priority in clause 1.1.2 and 1.1.3, later versions of documents shall prevail over earlier ones if there is any conflict or inconsistency between them.

#### 1.2 The definitions and rules of interpretation set out in Schedule 1 shall apply to the Agreement.

### 2. ORDER FORMS

#### 2.1 Each Order Form shall be agreed and signed by the parties following the template set out at Schedule 3.

#### 2.2 Each Order Form shall set out as a minimum the following:

- (a) the Equipment to be provided and the associated Equipment Fees;
- (b) any Implementation Services to be provided and the associated Implementation Fees;
- (c) where the Customer is participating in a Pilot, the details of the Pilot including the Pilot Group, the Pilot Period, the Subscription Fees and any other provisions relevant to that Pilot;
- (d) where the Customer is subscribing to the Software Services following a Pilot, the details of the Software Services, Subscription Period, number of User Subscriptions, Subscription Fees and any other provisions relevant to the Software Services;
- (e) the Customer Dependencies;
- (f) the Key Success Criteria;
- (g) any Additional Support Services to be provided and the associated Additional Support Fees; and

- (h) any other terms to be agreed between the parties.

### 3. EQUIPMENT

- 3.1 In the event that the Supplier provides Equipment, then the Equipment to be supplied by the Supplier to the Customer shall be as set out in an Order Form.
- 3.2 The Supplier shall hire the Equipment to the Customer for use at the Site during the Term.
- 3.3 The Supplier shall deliver the Equipment to the Customer's premises set out in the Order Form or such other location as the parties may agree (the **Site**). The Supplier shall not be liable for any delay in delivery of the Equipment that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Equipment.

#### Warranty

- 3.4 The Supplier warrants that on delivery, and for a period of 36 months from the date of delivery (**Warranty Period**), the Equipment shall:
- (a) conform in all material respects with their description;
  - (b) be free from material defects in design, material and workmanship; and
  - (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and carry the UKCA mark; and
  - (d) be fit for any purpose held out by the Supplier.
- 3.5 Subject to clause 3.6, if:
- (a) the Customer gives notice in writing to the Supplier during the Warranty Period that some or all of the Equipment do not comply with the warranty set out in clause 3.4;
  - (b) the Supplier is given a reasonable opportunity of examining such Equipment; and
  - (c) the Customer (if asked to do so by the Supplier) returns such Equipment to the Supplier's place of business at the Supplier's cost,
- the Supplier shall, at its option, repair or replace the defective Equipment.
- 3.6 The Supplier shall not be liable for the Equipment's failure to comply with the warranty set out in clause 3.4 if:
- (a) the Customer makes any further use of such Equipment after giving a notice in accordance with clause 3.4;
  - (b) the defect arises because the Customer failed to follow the Supplier's verbal or written instructions as to the storage, installation, commissioning, use or maintenance of the Equipment or (if there are none) good trade practice regarding the same;
  - (c) the defect arises as a result of the Supplier following any drawing, design or specification supplied by the Customer;

- (d) the Customer alters or repairs such Equipment without the written consent of the Supplier;
  - (e) the defect arises as a result of wilful damage, negligence, or abnormal working conditions; or
  - (f) the Equipment differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 3.7 The Supplier agrees that the Customer shall not be liable for standard wear and tear in respect to the Equipment. However, the Supplier will not replace any Equipment where the Equipment has been lost, maliciously damaged or stolen, and in such case the Customer shall be liable for the full replacement costs of such Equipment.
- 3.8 Except as provided in this clause 3, the Supplier shall have no liability to the Customer in respect of the Equipment' failure to comply with the warranty set out in clause 3.4.
- 3.9 The provisions of this clause 3 shall apply to any repaired or replacement Equipment supplied by the Supplier.

#### **Risk and Title**

- 3.10 The Equipment shall at all times remain the property of the Supplier, and the Customer shall have no right, title or interest in or to the Equipment (save the right to possession and use of the Equipment subject to the terms and conditions of this Agreement).
- 3.11 The risk of loss, theft, damage or destruction of the Equipment shall pass to the Customer on delivery at the Site. The Equipment shall remain at the sole risk of the Customer during the Term and any further term during which the Equipment is in the possession, custody or control of the Customer (**Risk Period**) until such time as the Equipment is redelivered to the Supplier. During the Term and the Risk Period, the Customer shall, at its own expense, obtain and maintain the following insurances:
- (a) insurance of the Equipment to a value not less than its full replacement value comprehensively against all usual risks of loss, damage or destruction by fire, theft or accident, and such other risks as the Supplier may from time to time nominate in writing;
  - (b) insurance for such amounts as a prudent owner or operator of the Equipment would insure for, or such amount as the Supplier may from time to time reasonably require, to cover any third party or public liability risks of whatever nature and however arising in connection with the Equipment; and
  - (c) insurance against such other or further risks relating to the Equipment as may be required by law, together with such other insurance as the Supplier may from time to time consider reasonably necessary and advise to the Customer in writing.
- 3.12 The Customer shall, on demand, supply copies of the relevant insurance policies or other insurance confirmation acceptable to the Supplier and proof of premium payment to the Supplier to confirm the insurance arrangements.
- 3.13 The Customer shall give immediate written notice to the Supplier in the event of any loss, accident or damage to the Equipment arising out of or in connection with the Customer's possession or use of the Equipment.

3.14 The Customer shall in respect to the Equipment:

- (a) take all reasonable care of the Equipment and keep them in the condition in which they were delivered (fair wear and tear only excepted);
- (b) use the Equipment only for the purposes for which it is designed, and operate in a proper manner using trained competent staff and in accordance with any operating instructions provided by the Supplier;
- (c) ensure that the Equipment is clearly identifiable as belonging to the Supplier;
- (d) make no alteration to the Equipment and not remove any existing component (or components) from the Equipment or remove or alter any mark on or packaging of the Equipment;
- (e) keep the Supplier fully informed of all material matters relating to the Equipment;
- (f) on reasonable notice permit the Supplier or its duly authorised representative to inspect the Equipment during the Customer's Normal Business Hours and provide the Supplier with such information concerning the Equipment as the Supplier may request from time to time;
- (g) not, without the prior written consent of the Supplier, part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Equipment or allow the creation of any mortgage, charge, lien or other security interest in respect of it;
- (h) not without the prior written consent of the Supplier, attach the Equipment to any land or building so as to cause the Equipment to become a permanent or immovable fixture on such land or building. If the Equipment does become affixed to any land or building then the Equipment must be capable of being removed without material injury to such land or building and the Customer shall repair and make good any damage caused by the affixation or removal of the Equipment from any land or building and indemnify the Supplier against all losses, costs or expenses incurred as a result of such affixation or removal;
- (i) not do or permit to be done any act or thing which will or may jeopardise the right, title or interest of the Supplier in the Equipment and, where the Equipment has become affixed to any land or building, the Customer must take all necessary steps to ensure that the Supplier may enter such land or building and recover the Equipment both during the term of this agreement and for a reasonable period thereafter, including by procuring from any person having an interest in such land or building, a waiver in writing and in favour of the Supplier of any rights such person may have or acquire in the Equipment and a right for the Supplier to enter onto such land or building to remove the Equipment;
- (j) not suffer or permit the Equipment to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Equipment is so confiscated, seized or taken, the Customer shall notify the Supplier and the Customer shall at its sole expense use its best endeavours to procure an immediate release of the Equipment and shall indemnify the Supplier on demand against all losses, costs, charges, damages and expenses reasonably incurred as a result of such confiscation;
- (k) not use the Equipment for any unlawful purpose;

- (l) deliver up the Equipment at the end of the Term at such address as the Supplier requires, or if necessary allow the Supplier or its representatives access to the Site or any premises where the Equipment is located for the purpose of removing the Equipment; and
  - (m) not do or permit to be done anything which could invalidate the insurances referred to in clause 3.11.
- 3.15 The Customer acknowledges that the Supplier shall not be responsible for any loss of or damage to the Equipment arising out of or in connection with any negligence, misuse, mishandling of the Equipment or otherwise caused by the Customer or its officers, employees, agents and contractors, and the Customer shall indemnify the Supplier in full against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Supplier arising out of, or in connection with any failure by the Customer to comply with its obligations in this clause 3.

#### **4. IMPLEMENTATION AND SOFTWARE SERVICES**

- 4.1 The Supplier shall provide the Implementation Services as set out in an Order Form.
- 4.2 The Supplier shall, during the Subscription Term, provide the Software Services to the Customer on and subject to the terms of the Agreement.
- 4.3 The Supplier shall use commercially reasonable endeavours to make the Software Services available 24 hours a day, 7 days a week, except for:
  - (a) planned maintenance carried out during the maintenance window of 10.00pm to 2.00 am UK time; and
  - (b) unscheduled maintenance performed outside Normal Business Hours, provided that the Supplier has used reasonable endeavours to give the Customer at least 6 Normal Business Hours' notice in advance.
- 4.4 The Supplier will, as part of the Software Services, and at no additional cost to the Customer, provide the Customer with the Supplier's Standard Support Services during Normal Business Hours. The Supplier may amend the Standard Support Services in its sole and absolute discretion from time to time. The Customer may purchase Additional Support Services separately, which shall be set out in an applicable Order Form. The Supplier may provide out of hours infection outbreak support at its discretion and where this is to be provided will set this out as part of the Order Form.
- 4.5 From time to time the Supplier may:
  - (a) modify the Software Services by issuing updates; and
  - (b) make new features, functionality, applications or tools available in respect of the Services, whose use may be subject to the Customer's acceptance of further terms and conditions,and shall give the Customer prompt written notice of material modifications to the Services and any such new features, functionality, applications or tools.

## **5. PILOTS**

- 5.1 The Customer may identify Pilot Groups or Sites to undertake a Pilot for the Pilot Period.
- 5.2 The details relating to the Pilot will be set out in an Order Form.
- 5.3 Subject to clause 17, prior to the end of the Pilot Period the parties will discuss in good faith whether they deem that the Pilot has been successful.
- 5.4 In the case that the Pilot is deemed by the parties to be successful and the Pilot Group wishes to continue to use the Software Services following the end of the Pilot Period and the Customer:
  - (a) does not have an active subscription for Full Users, the Pilot Group will transfer to being Full Users of the Software Services and a Subscription Period will commence; or
  - (b) does have an active subscription for Full Users, the Pilot Group will transfer to being Full Users of the Software Services for the remaining duration of the Subscription Period already in place.
- 5.5 In the case that either party, acting reasonably, has deemed that the Pilot was not successful, the parties will discuss in good faith whether it wishes to participate in a further Pilot with another Pilot Group. In such case, the parties will agree an Order Form to set out the terms of that Pilot.
- 5.6 If either party decides that it does not wish to participate in a further Pilot, and there are not already any Full Users, then the applicable Order Form and the Agreement will terminate at the end of the Pilot Period.
- 5.7 If either party decides that it does not wish to participate in a further Pilot, and there are Full Users (who have been part of a successful Pilot) then the provisions of the Agreement and any Order Forms will continue only in respect of such Full Users.

## **6. USER SUBSCRIPTIONS**

- 6.1 Subject to the Customer paying the Fees, the restrictions set out in this clause 6 and the other terms and conditions of the Agreement, the Supplier hereby grants to the Customer a non-exclusive, non-transferable right and licence, without the right to grant sublicences, to permit the Authorised Users to use the Software Services during the Subscription Term solely for the Customer's internal business operations.
- 6.2 In relation to the Authorised Users, the Customer undertakes that:
  - (a) the maximum number of Authorised Users that it authorises to access and use the Software Services shall not exceed the number of User Subscriptions it has purchased from time to time;
  - (b) it will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Software Services;

- (c) each Authorised User shall keep a secure password for their use of the Software Services, that such password shall be changed no less frequently than every 6 months and that each Authorised User shall keep their password confidential;
- (d) it shall maintain a written, up to date list of current Authorised Users and provide such list to the Supplier within 5 Business Days of the Supplier's written request at any time or times;
- (e) it shall permit the Supplier or the Supplier's designated auditor to audit the Software Services in order to establish the number of Authorised Users to audit compliance with the Agreement. Each such audit may be conducted no more than once per quarter, at the Supplier's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business;
- (f) if any of the audits referred to in clause 6.2(e) reveal that the Customer has underpaid Subscription Fees to the Supplier, then without prejudice to the Supplier's other rights, the Supplier shall invoice the Customer in accordance with clause 10 with an amount equal to such underpayment as calculated in accordance with the prices set out in relevant Order Form and the Customer shall pay the invoice in accordance with clause 10.

6.3 The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Software Services that:

- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- (b) facilitates illegal activity;
- (c) depicts sexually explicit images;
- (d) promotes unlawful violence;
- (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
- (f) is otherwise illegal or causes damage or injury to any person or property;

and the Supplier reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.

6.4 The Customer shall not:

- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under the Agreement:
  - (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software Services in any form or media or by any means; or

- (ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software Services; or
  - (b) access all or any part of the Software Services in order to build a product or service which competes with the Software Services; or
  - (c) use the Software Services to provide services to third parties; or
  - (d) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Software Services available to any third party except the Authorised Users, or
  - (e) attempt to obtain, or assist third parties in obtaining, access to the Software Services, other than as provided under this clause 6; or
  - (f) introduce or permit the introduction of any Virus or Vulnerability into the Supplier's network and information systems.
- 6.5 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Software Services and, in the event of any such unauthorised access or use, promptly notify the Supplier.
- 6.6 The rights provided under this clause 6 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.

## 7. CHANGE ORDERS AND ADDITIONAL USER SUBSCRIPTIONS

- 7.1 Either party may propose changes to the scope of an Order Form but no proposed changes shall come into effect until a relevant **Change Order** has been signed by both parties. A Change Order shall be a document setting out the proposed changes and the effect that those changes will have on the Services and Fees.
- 7.2 If the Supplier wishes to make a change it shall provide a draft Change Order to the Customer.
- 7.3 If the Customer wishes to make a change:
- (a) it shall notify the Supplier and provide as much detail as the Supplier reasonably requires of the proposed changes, including the timing of the proposed change; and
  - (b) the Supplier shall, as soon as reasonably practicable after receiving the information at provide a draft Change Order to the Customer.
- 7.4 If the parties:
- (a) agree to a Change Order, they shall sign it and that Change Order shall amend the relevant Order Form; or
  - (b) are unable to agree a Change Order, either party may escalate the disagreement to the relevant senior stakeholders of each party for discussion and resolution.
- 7.5 Subject to clause 7.6 and 7.7, the Customer may, from time to time during the Subscription Term, purchase additional User Subscriptions in excess of the number set



out in the Order Form and the Supplier shall grant access to the Software Services to such additional Authorised Users in accordance with the provisions of the Agreement.

- 7.6 If the Customer wishes to purchase additional User Subscriptions, the Customer shall notify the Supplier in writing and the parties shall agree a Change Order in accordance with this clause 7. The additional User Subscriptions shall be active from the date set out in the Change Order.
- 7.7 Following signature of the Change Order, the Customer shall, within 30 days of the date of the Supplier's invoice, pay to the Supplier the relevant fees for such additional User Subscription as set out in the Change Order and, if such additional User Subscriptions are purchased by the Customer part way through the Pilot Period or Subscription Period or any Renewal Period (as applicable), such Fees shall be pro-rated from the date of activation by the Supplier for the remainder of the Pilot Period, Subscription Period or then current Renewal Period (as applicable).

## **8. SUPPLIER'S OBLIGATIONS**

- 8.1 The Supplier shall perform the Services with reasonable skill and care and in accordance with Good Industry Practice and provide the Software substantially in accordance with the Documentation.
- 8.2 The Supplier's obligations at clause 8.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to the Supplier's instructions, or modification or alteration of the Services by any party other than the Supplier or the Supplier's duly authorised contractors or agents.
- 8.3 If the Services do not conform with the foregoing undertaking, Supplier will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 8.1
- 8.4 The Supplier:
- (a) does not warrant that:
    - (i) the Customer's use of the Software Services will be uninterrupted or error-free;
    - (ii) that the Software Services and/or the information obtained by the Customer through the Software Services will meet the Customer's requirements; or
    - (iii) the Software or the Software Services will be free from Vulnerabilities or Viruses.
  - (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Software Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 8.5 Nothing in the Agreement shall prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or

licensing documentation, products and/or services which are similar to those provided under the Agreement.

- 8.6 The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under the Agreement.
- 8.7 The Supplier shall:
- (a) have in place a disaster recovery and business continuity plan;
  - (b) review, maintain and, where appropriate, update the disaster recovery and business continuity plan on a regular basis (not less than once in every 12 month period);
  - (c) test the disaster recovery and business continuity plan not less than once in every 12 month period; and
  - (d) provide the Customer on request with the most up to date version of the disaster recovery and business continuity plan.
- 8.8 The Supplier shall inform the Customer immediately upon becoming aware that a disaster or business continuity event has occurred or is likely to occur. Following the occurrence of a disaster or business continuity event, the Supplier shall immediately implement and comply with its obligations under the disaster recovery and business continuity plan and shall keep the Customer properly informed throughout its implementation.
- 8.9 The Customer acknowledges that where the Services enable or assist it to access the services of any third parties that it does so solely at its own risk. The Supplier makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party services. The Supplier does not endorse or approve any third-party services made available via the Services.

## **9. CUSTOMER'S OBLIGATIONS**

- 9.1 The Customer shall:
- (a) provide the Supplier its employees, agents, consultants and subcontractors with:
    - (i) all necessary co-operation in relation to the Agreement;
    - (ii) access to the Site and other facilities as reasonably required by the Supplier; and
    - (iii) all necessary access to such information (including to Customer Data, security access information and configuration services) as may be required by the Supplier and ensure that such information is complete and accurate in all material respects;
- in order to enable the Supplier to provide and install the Equipment and the Services in accordance with the Agreement;

- (b) without affecting its other obligations under the Agreement, comply with all applicable laws and regulations with respect to its activities under the Agreement;
- (c) prepare the Site for the supply of the Equipment and the Implementation Services;
- (d) comply with the provisions of clause 3.14 in respect of the Equipment;
- (e) keep all materials, documents and other property of the Supplier (the **Supplier Materials**) at the Site in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation;
- (f) comply with the Customer Dependencies and carry out all other Customer responsibilities set out in the Agreement in a timely and efficient manner;
- (g) ensure that the Authorised Users use the Software Services in accordance with the Agreement and be responsible for any Authorised User's breach of the Agreement;
- (h) obtain and shall maintain all necessary licences, consents, and permissions (including from any landlords of the Site(s) in respect of installation or removal of the Equipment at such Site(s)) necessary for the Supplier, its contractors and agents to perform their obligations under the Agreement, including without limitation the Services;
- (i) ensure that its network and systems comply with any relevant specifications provided by the Supplier from time to time; and
- (j) be, to the extent permitted by law and except as otherwise expressly provided in the Agreement, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to the Supplier's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

9.2 If the Supplier's performance of any of its obligations under the Agreement is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- (a) without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of any of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 9.2; and
- (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

## **10. CHARGES AND PAYMENT**

- 10.1 The Customer shall pay the Fees as set out in each Order Form in accordance with this clause 10.
- 10.2 Unless otherwise set out in the Order Form, the Supplier shall invoice the Customer for the Services quarterly in advance. The Customer shall pay all invoices within 30 days of the date on the invoice.
- 10.3 If the Supplier has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of the Supplier:
- (a) the Supplier may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Services and the Supplier shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
  - (b) interest shall accrue on a daily basis on such due amounts at an annual rate equal to 4% over the then current base lending rate of Bank of England from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 10.4 All amounts and fees stated or referred to in the Agreement:
- (a) shall be payable in pounds sterling;
  - (b) are non-cancellable and non-refundable;
  - (c) are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate; and
  - (d) shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 10.5 The Supplier reserves the right, to increase the Subscription Fees on 30 days' prior written notice to the Customer, by the higher of:
- (a) the annual UK RPI-X increase;
  - (b) the annual UK Consumer Price Index increase; and
  - (c) 3%.
- 10.6 The Supplier reserves the right to increase the price of replacement Equipment, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Equipment to the Supplier that is due to:
- (a) any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
  - (b) any request by the Customer to change the delivery date(s), quantities or types of Equipment ordered; or

- (c) any delay caused by any instructions of the Customer in respect of the Equipment or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Equipment.

10.7 Any costs of third parties contracted by the Supplier to provide services to the Customer for example with respect to the Implementation Services or the Support Services shall be passed on to the Customer at cost price.

## 11. CUSTOMER DATA AND DATA PROTECTION

11.1 The parties shall comply with the provisions of Schedule 2 (Data Protection).

## 12. DATA ANALYTICS AND FEEDBACK

12.1 Save for as set out in clause 12.3, the Customer acknowledges that the Supplier may monitor, collect and process anonymised data regarding the Customer's and Authorised User's use of the Software Services (including information relating to the performance, operation and use of, and requests for technical support in respect of, the Software Services) (**Performance Monitoring Data**). The Customer and the Supplier agree that the Supplier shall be the controller for this data and that as between the Supplier and the Customer, all right, title, and interest in Performance Monitoring Data, and all Intellectual Property Rights therein, belong to and are retained solely by the Supplier. The Customer agrees that the Supplier may use Performance Monitoring Data to the extent and in the manner permitted under applicable law provided that the Supplier complies with all obligations of Data Protection Legislation in relation to controllers and does not publicly identify the Customer or Customer's Confidential Information.

12.2 If the Customer provides suggestions, proposals, ideas, recommendations or other feedback including via surveys or user testing regarding improvements to the Software Services (collectively **Feedback**), the Customer grants to the Supplier a royalty-free, fully-paid, sub-licensable, transferable, worldwide, irrevocable, perpetual licence to use, licence and commercialise such Feedback (including by incorporation of such Feedback into the Software Services), provided, however, that the Supplier will under no circumstances identify Customer as the source of such Feedback without the Customer's prior written agreement, such approval not to be unreasonably withheld.

12.3 Without prejudice to clause 9.1 above, the Supplier shall be a controller of and shall have limited rights to process the email addresses of Authorised Users associated with a user account (**Authorised User Email Addresses**) for the sole purpose of monitoring and improving the Software Services. Except for this specific processing, the Customer shall be the controller of, and shall retain all right, title and interest in, Authorised User Email Addresses.

12.4 Where data collected by the Supplier in relation to the Software Services provided to the Customer under this Agreement may benefit the Customer in respect to responding to any Care Quality Commission inspections, the Supplier agrees to assist the Customer in collating such data to support such inspections.

## 13. PROPRIETARY RIGHTS

13.1 The Customer acknowledges and agrees that the Supplier and/or its licensors own all Intellectual Property Rights in or arising out of the Equipment or Services (other than Intellectual Property Rights in any materials provided by the Customer). Except as expressly stated herein, the Agreement does not grant the Customer any rights to, under

or in, any Intellectual Property Rights or any other rights or licences in respect of the Equipment or Services.

- 13.2 The Supplier also owns all Intellectual Property Rights in relation to any changes made to the Software Services at the request of the Customer or any Feedback (as defined in clause 12.2) provided by the Customer to the Supplier with respect to the Software Services.
- 13.3 The Supplier confirms that it has all the rights in relation to the Software Services that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of the Agreement.
- 13.4 The Customer shall own all right, title and interest in and to any materials provided by the Customer to the Supplier and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such materials.
- 13.5 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to the Supplier for the purpose of providing the Services to the Customer.

#### 14. CONFIDENTIALITY

- 14.1 **Confidential Information** means all information (however recorded or preserved) disclosed by a party or its Representatives (as defined below) to the other party and that party's Representatives whether before or after the date of the Agreement including in connection with the Order Form, including but not limited to:
  - (a) the existence and terms of the Agreement or any agreement entered into in connection with the Agreement;
  - (b) any information that would be regarded as confidential by a reasonable businessperson relating to:
    - (i) the business, assets, affairs, customers, clients, suppliers, plans, intentions, or market opportunities of the disclosing party (or of any member of the group of companies to which the disclosing party belongs); and
    - (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party (or of any member of the group of companies to which the disclosing party belongs);
  - (c) any information developed by the parties in the course of carrying out the Agreement and the parties agree that:
    - (i) details of the Services, and the results of any performance tests of the Services, shall constitute Supplier Confidential Information; and
    - (ii) Customer Data shall constitute Customer Confidential Information;
- 14.2 **Representatives** means, in relation to a party, its employees, officers, contractors, subcontractors, representatives and advisers.
- 14.3 The provisions of this clause shall not apply to any Confidential Information that:

- (a) is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its Representatives in breach of this clause);
  - (b) was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
  - (c) was, is or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party; and
  - (d) the parties agree in writing is not confidential or may be disclosed.
- 14.4 Each party shall keep the other party's Confidential Information secret and confidential and shall not:
- (a) use such Confidential Information except for the purpose of exercising or performing its rights and obligations under or in connection with the Agreement (**Permitted Purpose**); or
  - (b) disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause 14.
- 14.5 A party may disclose the other party's Confidential Information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that:
- (a) it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and
  - (b) at all times, it is responsible for such Representatives' compliance with the confidentiality obligations set out in this clause 14.
- 14.6 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 14.6, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 14.7 A party may, provided that it has reasonable grounds to believe that the other party is involved in activity that may constitute a criminal offence under the Bribery Act 2010, disclose Confidential Information to the Serious Fraud Office without first informing the other party of such disclosure.
- 14.8 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in the Agreement are granted to the other party, or to be implied from the Agreement.
- 14.9 On termination of the Agreement, each party shall:
- (a) destroy or return to the other party all documents and materials (and any copies) containing, reflecting, incorporating or based on the other party's Confidential Information;

- (b) erase all the other party's Confidential Information from computer and communications systems and devices used by it, including such systems and data storage Services provided by third parties (to the extent technically and legally practicable); and
  - (c) certify in writing to the other party that it has complied with the requirements of this clause, provided that a recipient party may retain documents and materials containing, reflecting, incorporating or based on the other party's Confidential Information to the extent required by law or any applicable governmental or regulatory authority. The provisions of this clause shall continue to apply to any such documents and materials retained by a recipient party.
- 14.10 Except as expressly stated in the Agreement, no party makes any express or implied warranty or representation concerning its Confidential Information.
- 14.11 The above provisions of this clause 14 shall continue to apply after termination of the Agreement.

## **15. INDEMNITY AND INSURANCE**

- 15.1 The Supplier shall have in place contracts of insurance with reputable insurers incorporated in the United Kingdom for Product and Public Liability up to the value of £5million. On request, the Supplier shall supply, so far as is reasonable, evidence of the maintenance of the insurance and all of its terms from time to time applicable.
- 15.2 The Supplier shall indemnify the Customer, against losses, damages, liability, costs and expenses (including reasonable professional fees) incurred by it as a result of any action, demand or claim that performance or benefit of the Services infringes the Intellectual Property Rights of any third party (**IPR Claim**) provided that the Supplier shall have no such liability if the Customer:
- (a) does not notify the Supplier in writing setting out full details of any IPR Claim of which it has notice as soon as is reasonably possible;
  - (b) makes any admission, or compromise or agrees any settlement of the relevant IPR Claim without the prior written consent of the Supplier and provides reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Supplier's expense; and
  - (c) does not let the Supplier at its request and own expense have the conduct of or settle all negotiations and litigation arising from the IPR Claim at its sole discretion;
  - (d) does not take all reasonable steps to minimise the losses that may be incurred by it or by any third party as a result of the IPR Claim;
  - (e) does not, at the Supplier's request, provide the Supplier with all reasonable assistance in relation to the IPR Claim (at the Customer's expense) including the provision of prompt access to any relevant premises, officers, employees, contractors or agents of the Customer;
  - (f) uses the Services in combination with any other goods or services, which without any such combination, no IPR Claim could or would have been made.



- 15.3 If any IPR Claim is made or is reasonably likely to be made, the Supplier may at its option procure the right for the Customer to continue receiving the benefit of the relevant Services, replace or modify the Services so as to avoid the infringement or the alleged infringement, provided the Software remains in material conformance to the Documentation or, if such remedies are not reasonably available, terminate the Agreement on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.
- 15.4 In no event shall the Supplier, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:
- (a) a modification of the Software Services by anyone other than the Supplier; or
  - (b) the Customer's use of the Software Services in a manner contrary to the instructions given to the Customer by the Supplier; or
  - (c) the Customer's use of the Software Services after notice of the alleged or actual infringement from the Supplier or any appropriate authority; or
  - (d) the Customer's breach of the Agreement,
- and the Customer shall indemnify and keep indemnified the Supplier against all losses, damages, liability, costs and expenses (including reasonable legal fees) incurred by the Supplier as a result of or in connection with any claim arising from any such use.
- 15.5 The Customer shall have in place contracts of insurance with reputable insurers incorporated in the United Kingdom to cover its obligations under the Agreement. On request, the Customer shall supply, so far as is reasonable, evidence of the maintenance of the insurance and all of its terms from time to time applicable. The Customer shall on request assign to the Supplier the benefit of such insurance.

## **16. LIMITATION OF LIABILITY**

- 16.1 The extent of the parties' liability under or in connection with the Agreement (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be set out in this clause 16.
- 16.2 The parties agree that the limitations in this clause 16 are reasonable given each party's respective commercial position and their ability to obtain insurance in respect of the risks arising under or in connection with the Agreement.
- 16.3 Subject to clause 16.5 and 16.6, the Supplier shall not be liable for any consequential, indirect or special loss.
- 16.4 Subject to clause 16.6, the Supplier's total liability shall not exceed the sum of the total Fees paid during the 12 months immediately preceding the date on which the claim arose.
- 16.5 Except as expressly and specifically provided in the Agreement:
- (a) the Customer assumes sole responsibility for results obtained from the use of the Software Services by the Customer, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Customer in connection with the Software Services, or any actions taken by the Supplier at the Customer's direction;

- (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from the Agreement; and
  - (c) the Services are provided to the Customer on an “as is” basis.
- 16.6 Nothing in the Agreement excludes the liability of the Supplier:
  - (a) for death or personal injury caused by the Supplier’s negligence;
  - (b) for fraud or fraudulent misrepresentation;
  - (c) breach of any obligation as to the title implied by section 12 of the Sale of Equipment Act 1979, section 2 of the Supply of Equipment and Services Act 1982 or section 8 of the Supply of Equipment (Implied Terms) Act 1973;
  - (d) liability for defective products under section 2 of the Consumer Protection Act 1987.
- 16.7 Subject to clause 16.1 and 16.2, the Supplier shall not be liable for any of the following (whether direct or indirect):
  - (a) loss of profit;
  - (b) loss of revenue;
  - (c) loss of corruption of data;
  - (d) loss or corruption of software or systems;
  - (e) loss or damage to equipment;
  - (f) loss of use;
  - (g) loss of production;
  - (h) loss of contract;
  - (i) loss of commercial opportunity;
  - (j) loss of business;
  - (k) loss of savings, discount or rebate (whether actual or anticipated);
  - (l) harm to reputation or loss of goodwill; and/or
  - (m) wasted expenditure.
- 16.8 Nothing in the Agreement excludes the liability of the Customer for any breach, infringement or misappropriation of the Supplier’s Intellectual Property Rights.

## **17. TERM AND TERMINATION**

- 17.1 The Agreement shall commence on the Effective Date and shall continue, unless otherwise terminated under the Agreement, until all Order Forms entered into under it have expired or are terminated.

- 17.2 Where the Customer is participating in a Pilot the provisions of clause 5.3 shall apply where either party notifies the other prior to the Acceptance Date that it does not wish to continue with the Services.
- 17.3 The Subscription Period starts either at the end of the Pilot Period (subject to clause 5.3) or where there is no Pilot. At the end of the Subscription Period, unless notice of termination is given in accordance with this clause, a Renewal Period automatically starts. Either party may notify the other party in writing of termination of any or all Order Forms at least 90 days before the end of the relevant Subscription Period or Renewal Period, in which case the relevant Order Form(s) shall terminate upon the expiry of the applicable Subscription Period or Renewal Period. Where all Order Forms are terminated, the Agreement shall automatically terminate upon the expiry of the last applicable Subscription Period or Renewal Period.
- 17.4 Without affecting any other right or remedy available to it, the Supplier may terminate the Agreement with immediate effect by giving written notice to the Customer if:
- (a) the Customer fails to pay any amount due under on the due date for payment; or
  - (b) there is a change of Control of the Customer.
- 17.5 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services if the Customer fails to pay any amount due under on the due date for payment, the Customer becomes subject to any an Insolvency Event, or the Supplier reasonably believes that the Customer is about to become subject to any of them.
- 17.6 Without affecting any other right or remedy available to it, either party may terminate the Agreement with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of any other term of the Agreement and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
  - (b) either party suffers an Insolvency Event;
  - (c) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
  - (d) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Agreement is in jeopardy.
- 17.7 On termination of the Agreement for any reason:
- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services and Equipment supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
  - (b) all licences granted under the Agreement shall immediately terminate and the Customer shall immediately cease all use of the Services;
  - (c) the Supplier's consent to the Customer's possession of the Equipment shall terminate;

- (d) the Supplier may, by its authorised representatives, without notice and at the Customer's expense, retake possession of the Equipment and for this purpose may enter the Site or any premises at which the Equipment is located;
- (e) the Customer shall ensure the safe and proper storage of the Equipment until it has been collected by the Supplier;
- (f) comply with the provisions of clause 14.9 relating to Confidential Information;
- (g) the Supplier shall destroy or otherwise dispose of any of the Protected Data in its possession unless the Supplier receives, no later than 10 days after the effective date of the termination of the Agreement, a written request for the delivery to the Customer of the then most recent back-up of the Protected Data. The Supplier shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by the Supplier in returning or disposing of Protected Data; and
- (h) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

## **18. PUBLICITY**

- 18.1 Where set out in the Order Form the parties agree to support and promote each other's business and work together to quantify a business case for the Software Services. The Customer agrees that the Supplier may disclose such business cases in discussions with potential future customers.
- 18.2 Each party agrees that the other party may refer to the other party in any promotional materials.
- 18.3 Except as otherwise provided in this clause 18, neither party shall make, or permit any person to make, any public announcement concerning the Agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 18.4 The Customer agrees to respond to any qualified enquiries from potential future customers of the Supplier and act as a reference customer for the Supplier.

## **19. FORCE MAJEURE**

Neither party shall be in breach of the Agreement or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control (**Force Majeure Event**). The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for 3 months the party not affected may terminate the Agreement by giving 30 days written notice to the affected party.

## **20. VARIATION**

No variation of the Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

## **21. WAIVER**

21.1 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

21.2 A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

## **22. RIGHTS AND REMEDIES**

Except as expressly provided in the Agreement, the rights and remedies provided under the Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

## **23. SEVERANCE**

23.1 If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Agreement.

23.2 If any provision or part-provision of the Agreement is deemed deleted under clause 23.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

## **24. ENTIRE AGREEMENT**

24.1 These Terms constitutes the entire agreement between the parties and supersedes and extinguishes all previous and contemporaneous agreements, promises, assurances and understandings between them, whether written or oral, relating to its subject matter.

24.2 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.

24.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Agreement.

24.4 Nothing in the Agreement purports to limit or exclude any liability for fraud.

## **25. ASSIGNMENT**

25.1 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Agreement.

- 25.2 The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Agreement, provided that it gives prior written notice of such dealing to the Customer.

**26. NO PARTNERSHIP OR AGENCY**

Nothing in the Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

**27. THIRD PARTY RIGHTS**

- 27.1 Unless it expressly states otherwise, the Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement.
- 27.2 The rights of the parties to rescind or vary the Agreement are not subject to the consent of any other person.

**28. NOTICES**

- 28.1 Any notice given to a party under or in connection with the Agreement shall be in writing and shall be:
- (a) 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); or
  - (b) sent by email to a registered company email address and having received confirmation of receipt:
- 28.2 Any notice shall be deemed to have been received:
- (a) if delivered by hand, at the time the notice is left at the proper address;
  - (b) 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
  - (c) if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.
- 28.3 Any change to the contact details of a party as set out in the Agreement shall be notified to the other party in accordance with clause 28.1.
- 28.4 All references to time are to the local time at the place of deemed receipt.
- 28.5 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.

**29. GOVERNING LAW**

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

**30. JURISDICTION**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Agreement or its subject matter or formation (including non-contractual disputes or claims).

## SCHEDULE 1

### DEFINITIONS AND INTERPRETATION

1. In the Agreement defined terms have the following meanings:

<b>Acceptance Date</b>	the date falling 6 calendar months from the Pilot Commencement Date, unless either Party notifies the other prior to this date that it would not like to continue with the Services in accordance with clause 17.2.
<b>Additional Support Fees</b>	the fees payable by the Customer to the Supplier for the Additional Support Services, as set out in the applicable Order Form.
<b>Additional Support Services</b>	any support services provided by the Supplier to the Customer beyond the Standard Support Services, as set out in the applicable Order Form or as otherwise agreed in writing by the parties.
<b>Authorised Users</b>	those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Software Services.
<b>Business Day</b>	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
<b>Control</b>	shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression <b>Change of Control</b> shall be interpreted accordingly.
<b>Confidential Information</b>	has the meaning given in clause 14.1.
<b>Controller, processor, data subject, personal data, personal data breach, processing, supervisory authority and appropriate technical and organisational measures</b>	shall have the meaning given to them in the relevant Data Protection Legislation with personal data including Special Categories of Data.
<b>Customer</b>	the person or firm identified on the Order Form who purchases the Equipment and Services from the Supplier.
<b>Customer Data</b>	the data inputted by the Customer, Authorised User, or the Supplier on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services.
<b>Data Protection Legislation</b>	means all applicable laws and regulations relating to the processing of personal data and privacy including:  (a) the UK GDPR; (b) the GDPR; (c) Directive 2002/58/EC (ePrivacy Directive);



- (d) The Privacy and Electronic Communications (EC Directive) Regulations 2003;
- (e) the UK Data Protection Act 2018;
- (f) any laws which implement or supplement any such laws; and
- (g) (g) any laws which replace, extend, re-enact, consolidate or amend any of the foregoing.

<b>Data Subject Requests</b>	means a request made by a data subject to exercise any data subject rights under the Data Protection Legislation.
<b>DPIA</b>	means a Data Protection Impact Assessment as described in the Data Protection Legislation.
<b>Documentation</b>	the documentation made available to the Customer by the Supplier which sets out a description of the Software and the user instructions for the Software Services.
<b>Effective Date</b>	the date the Order Form is signed by both parties.
<b>Equipment</b>	the equipment supplied by the Supplier to the Customer as set out in an Order Form including all substitutions, replacements or renewals of such equipment and all related accessories, manuals and instructions provide for such equipment.
<b>Equipment Fees</b>	the rental fees for the Equipment as set out in an Order Form.
<b>Fees</b>	the Equipment Fees, the Implementation Fees, the Subscription Fees and any Additional Support Fees.
<b>Force Majeure Event</b>	has the meaning in clause 19.
<b>Full Users</b>	Authorised Users who have carried out a Pilot and continue to use the Software Services following the end of the Pilot Period, or, in the absence of a Pilot Period, Authorised Users from the beginning of the Subscription Period and for the duration of the Subscription Period and any Renewal Period.
<b>GDPR</b>	means, as applicable to either Party or the Services from time to time the General Data Protection Regulation (Regulation (EU) 2016/679).
<b>Good Industry Practice</b>	in relation to any undertaking and circumstances, the exercise of the degree of skill, care, prudence, efficiency, timeliness and foresight which would be expected from a skilled and experience person engaged in the same type of undertaking under the same or similar circumstances, which provides services and supplies which are best in class.
<b>Implementation Fees:</b>	the one-off fees payable by the Customer to the Supplier for the Implementation Services as set out in the applicable Order Form.

<b>Implementation Services</b>	the services provided by the Supplier to the Customer as set out in the Order Form.
<b>Insolvency Event</b>	<p>an event in which a party:</p> <ul style="list-style-type: none"> <li>(a) is unable to pay its debts or becomes insolvent or bankrupt or ceases to trade;</li> <li>(b) is the subject of an order made or a resolution passed for the administration, winding-up or dissolution (otherwise than for the purpose of a solvent amalgamation or reconstruction, which does not materially reduce that entity's assets);</li> <li>(c) has an administrative or other receiver, manager, trustee, liquidator, administrator, or similar office appointed over all or any substantial part of its assets;</li> <li>(d) enters into or proposes any composition or arrangement with its creditors generally (otherwise than for the purpose of a financing or solvent amalgamation or reconstruction which does not materially reduce the entities' assets); or</li> <li>(e) is the subject of any events or circumstances analogous to any of the foregoing in any applicable jurisdiction.</li> </ul>
<b>Intellectual Property Rights</b>	<p>means copyright, patents, know-how, trade secrets, trade marks, trade names, design rights, rights in get-up, rights in goodwill, rights in software, rights in Confidential Information, rights to invention, rights to sue for passing off, domain names and all other intellectual property rights and similar rights and, in each case:</p> <ul style="list-style-type: none"> <li>(a) whether registered or not;</li> <li>(b) including any applications to protect or register such rights;</li> <li>(c) including all renewals and extensions of such rights or applications;</li> <li>(d) whether vested, contingent or future;</li> <li>(e) to which the relevant party is or may be entitled, and</li> <li>(f) in whichever part of the world existing.</li> </ul>
<b>KSCs</b>	the key success criteria used to measure the success of the Pilot and / or Software Services, which shall be discussed between the parties and set out in the Order Form or otherwise in writing by the parties.
<b>Normal Business Hours</b>	8.00 am to 6.00 pm local UK time, each Business Day.
<b>Order Form</b>	an order form to be agreed and signed by the parties in accordance with clause 2.

<b>Personal Data Breach</b>	means any breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure or processing of or access to Protected Data.
<b>Pilot</b>	a trial of the Software Services to be carried out by one or more Pilot Groups during one or more Pilot Periods.
<b>Pilot Commencement Date</b>	the start date of the Pilot Period as set out in the applicable Order Form.
<b>Pilot Group</b>	a group of Authorised Users specified by the Customer to participate in a Pilot during a Pilot Period as set out in the applicable Order Form.
<b>Pilot Period</b>	the period of 6 months, or as otherwise agreed by the parties in an Order Form, during which a Pilot Group participates in a Pilot.
<b>Protected Data</b>	means personal data received from or on behalf of Customer, or otherwise obtained or created in connection with the performance of the Supplier's obligations under the Agreement other than any personal data described under clause 12 (Data Analytics and Feedback) which the parties anticipate the Supplier shall be the controller for.
<b>Regulations</b>	means any law, enactment, regulation, regulatory policy, guidelines, and requirement of any Regulatory Authority (including good practice codes) applicable to a Party and/or to any of the activities of a Party, including: finance and accounting regulations and rules; tax regulations and rules; employment, trade union, discrimination, recruitment-related regulations and rules; money laundering regulations, and Bribery Laws, Modern Slavery Laws and competition laws, together with any judgements of a relevant court of law.
<b>Regulatory Authority</b>	means any governmental, regulatory or other competent authority that regulates and/or supervises any of the Customer, the Supplier and/or either of their activities including any tax authority.
<b>Renewal Period</b>	subsequent periods of 12 months which automatically start at the end of a Subscription Period unless either party notifies the other that it does not wish to continue to provide or receive the Software Services.
<b>Site</b>	has the meaning given in clause 3.3.
<b>Services</b>	the Implementation Services, Software Services, Standard Support Services, and Additional Support Services.
<b>Software</b>	the online software applications provided by the Supplier as part of the Software Services.
<b>Software Services</b>	the subscription services provided by the Supplier to the Customer under the Agreement as set out in the Order Form and as more particularly described in the Documentation. References in the Agreement to the

Software Services include the Software and the Documentation as applicable.

<b>Standard Contractual Clauses</b>	the current form of Information Commissioner's Office Standard Contractual Clauses (including the Addendum) or the Information Commissioner's Office International Data Transfer Terms and/or as applicable, any alternate appropriate safeguard which complies with Data Protection Legislation issued by the Information Commissioner's Office, the European Commission, a supervisory authority or other Regulatory Authority, as may be amended, updated or replaced from time to time.
<b>Standard Support Services</b>	the support services provided by the Supplier to the Customer, in relation to the Services [as made available at <a href="http://www.proximos.com">www.proximos.com</a> or such other website address as may be notified to the Customer from time to time].
<b>Supplier</b>	Proximos Ltd incorporated and registered in England and Wales with company number 13516077 whose registered office is at 7 Bligh's Walk, Sevenoaks, TN13 1DB.
<b>Sub-Processor</b>	means another data processor engaged by the Supplier to carry out processing of Protected Data.
<b>Subscription Fees</b>	the fees payable by the Customer to the Supplier for the User Subscriptions, as set out in the Order Form
<b>Subscription Period</b>	unless otherwise set out in the applicable Order Form, the 12 month period starting, where there is a Pilot at the end of the Pilot Period, or otherwise from the date specified in the relevant Order Form.
<b>Subscription Term</b>	the Pilot Period (if any), the Subscription Period together with any subsequent Renewal Periods.
<b>UK GDPR</b>	means Regulation (EU) 2016/679 (General Data Protection Regulation), as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018, (including as further amended or modified by the laws of the United Kingdom or a part of the United Kingdom from time to time).
<b>User Subscriptions</b>	the user subscriptions purchased by the Customer as set out in the Order Form which entitles Authorised Users to access and use the Software Services in accordance with the Agreement.
<b>Valid Adequacy Mechanism</b>	means a mechanism to protect personal data that is recognised by the UK government and/or European Commission (as applicable) as providing adequate safeguards for Protected Data transferred outside the UK and/or EEA.
<b>Virus</b>	any thing or device (including any software, code, file or programme) which may prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent,

impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

**Vulnerability**

a weakness in the computational logic (for example, code) found in software and hardware components that when exploited, results in a negative impact to the confidentiality, integrity, or availability, and the term **Vulnerabilities** shall be interpreted accordingly.

**Warranty Period**

has the meaning given in clause 3.4.

2. Clause, schedule and paragraph headings shall not affect the interpretation of the Agreement.
3. 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.
4. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
5. Unless the context otherwise requires, words in the singular shall include the plural and, in the plural, shall include the singular.
6. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
7. A reference to a statute or statutory provision is a reference to it as it is in force as at the date of the Agreement.
8. A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of the Agreement under that statute or statutory provision.
9. A reference to writing or written includes email but does not include fax.
10. References to clauses and schedules are to the clauses and schedules of the Agreement; references to paragraphs are to paragraphs of the relevant schedule to the Agreement.

## SCHEDULE 2

### DATA PROTECTION

1. The Customer shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of Customer Data.
2. The Customer shall be responsible for obtaining all appropriate consents from employees, contractors, clients of the Customer (and any next of kin or other third parties acting in the interests of such clients of the Customer) required to enable the Supplier to obtain and use the Customer Data for the provision of the Services.
3. The Supplier shall follow its standard archiving procedures for Customer Data, as may be notified to, or requested by, the Customer from time to time. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy against the Supplier shall be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by the Supplier. The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by the Supplier to perform services related to Customer Data maintenance and back-up for which it shall remain fully liable under paragraph 8).
4. Each Party shall comply at all times with the Data Protection Legislation in respect of any personal data processed by it pursuant to the Agreement and the Supplier shall ensure that any Sub-Processor that has access to or otherwise processes Protected Data shall comply with the Supplier's obligations under the Agreement.
5. The Supplier agrees that for Protected Data the Customer shall be the Data Controller.
6. The parties agree:
  - (a) the description of processing including the subject matter, duration, nature and purpose of processing, the types of personal data and categories of data subjects shall be as set out in this Schedule and in Annex 1 - Data Processing Activities; and
  - (b) subject to paragraph 8(b), the personal data may be transferred or stored outside the EEA or the country where the Customer and the Authorised Users are located in order to carry out the Services and the Supplier's other obligations under the Agreement.
7. Without prejudice to the generality of paragraph 4, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to the Supplier for the duration and purposes of the Agreement so that the Supplier may lawfully use, process and transfer the personal data in accordance with the Agreement on the Customer's behalf.
8. The Supplier as Data Processor shall, in relation to any Protected Data:
  - (a) process that Protected Data only on the documented written instructions of the Customer, including as set out in the Agreement, unless the Supplier is required by the laws of any member state of the European Union or by the laws of the European Union applicable to the Supplier (or in relation to processing which is only subject to Domestic UK Law (where Domestic UK Law means the UK Data Protection Legislation and any other law that applies in the UK), as required by those laws) to process personal data (**Applicable Laws**). Where the Supplier is relying on

Applicable Laws as the basis for processing Protected Data, the Supplier shall promptly notify the Customer of this in writing before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Customer on important grounds of public interest;

- (b) not transfer any Protected Data outside of the European Economic Area and/or the United Kingdom unless a Valid Adequacy Mechanism or appropriate safeguards for compliance with Data Protection Legislation are in place prior to the transfer. The Standard Contractual Clauses shall apply to any transfer where they are required by Data Protection Legislation. Where the Standard Contractual Clauses are amended, updated or replaced, the new version shall be deemed to apply to the extent necessary for compliance with Data Protection Legislation.
- (c) take appropriate steps to ensure that anyone authorised by Supplier to process the Protected Data has committed themselves to appropriate obligations of confidentiality or is under an appropriate statutory obligation of confidentiality;
- (d) assist the Customer, at the Customer's cost, in responding to any Data Subject Request and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, Personal Data Breach notifications, DPIAs and consultations with supervisory authorities or any Regulatory Authority;
- (e) notify the Customer without undue delay on becoming aware of a Personal Data Breach;
- (f) at the written direction of the Customer, delete or return Protected Data and copies thereof to the Customer on termination of the Agreement unless required by Applicable Laws to store the Protected Data (and for these purposes the term "delete" shall mean to put such data beyond use); and
- (g) maintain complete and accurate records and information to demonstrate its compliance with this Schedule 2 and allow for and contribute to audits, including inspections, conducted by Customer or a third-party auditor acting under the Customer's direction. Any audit, including an inspection, concerning Supplier's compliance will be carried out with reasonable prior notice from Customer and shall not be carried out more frequently than once in any 12-month period, save for in the event of a Personal Data Breach. Supplier shall immediately inform the Company if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.

- 9. Each party shall ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it).
- 10. The Customer consents to the Supplier appointing third-party Sub-Processors, subject to providing reasonable prior notice in advance of each appointment. In the event that Customer objects to the

appointment of a Sub-Processor, they shall have the right to object in writing to the Supplier no later than 21 days after being informed of the appointment of the Sub-Processor. The Supplier has the Customer's consent to use of any of the Sub-Processors listed in Annex 1 - Data Processing Activities. The Supplier confirms that it has entered or (as the case may be) will enter with any Sub-Processor into a written agreement and which the Supplier will use reasonable commercial endeavours to ensure imposes the same or equivalent data protection obligations as are contained in the Agreement. As between the Customer and the Supplier, the Supplier shall remain fully liable for all acts or omissions of Sub-Processor appointed by it pursuant to this Schedule 2.

11. Either party may, at any time on not less than 30 days' notice, revise this Schedule 2 by amending or replacing it with any applicable controller to processor standard clauses or similar terms forming part of standard clauses approved by the Information Commissioner's Office, a supervisory authority or other appropriate authority, or an applicable certification scheme (which shall apply when replaced by attachment to the Agreement).

## **Annex 1**

### **Data Processing Activities**

#### **Controller – The Customer**

#### **Processor – The Supplier**

Particulars stated by the Customer and acknowledged by Supplier:

Duration of processing	The Subscription Term
The purpose of the processing	The provision of the Equipment and Services
The types and categories of data subjects	Employees of Customer (current and former) including (as appropriate) contractors, consultants, agents, and other representatives of Customer and its affiliates.  Clients of Customer and individuals related to such clients.
The types and categories of personal data	Employee personal data, such as the following: name, job role, department, work email address, work telephone number, location.  Clients personal data such as the following: name, age, home address, medical information including medications, next of kin name and contact details.
Special categories of personal data	Diversity data, including gender, race or ethnicity, sexual orientation, religious affiliation or beliefs.
Specific processing instructions	[insert as applicable]
List of Sub-Processors	liwari



## SCHEDULE 3

### TEMPLATE ORDER FORM

#### PROXXIMOS LTD - ORDER FORM

**Please read this Order Form and the Agreement carefully before proceeding.** By executing this Order Form you accept the Agreement on behalf of the Customer indicated in this Order Form as a legally binding contract with the Supplier (as defined in this Order Form).

#### 1 DEFINITIONS AND INTERPRETATION

1.1 Defined terms in this Order Form shall have the meaning given in the Terms and the rules of interpretation set out in the Terms apply to this Order Form unless otherwise agreed. References to this Order Form include its schedules, annexes and appendices (if any).

1.2 In this Order Form:

**Customer** has the meaning given in paragraph 2 of this Order Form.

**Terms** means the latest version of the document available at [www.proxximos.com/legal/agreements](http://www.proxximos.com/legal/agreements), as updated from time to time.

**Special Terms** means any terms set out in paragraph 3 of this Order Form.

**Supplier** Proxximos Ltd incorporated and registered in England and Wales with company number 13516077 whose registered office is at 7 Bligh's Walk, Sevenoaks, TN13 1DB.

1.3 The Special Terms shall vary and prevail over any conflicting terms in any other part of the Agreement, including any other part of this Order Form.

#### 2 CUSTOMER DETAILS

<b>Customer:</b>	<i>[Insert full legal name]</i> , a company incorporated in <i>[insert]</i> , with registered number <i>[insert]</i> and whose registered office is at <i>[insert registered office]</i>
<b>Customer details for notices:</b>	Notices to the Customer should be sent for the attention of: <i>[Insert]</i>  Physical address for notices to the Customer: <i>[Insert]</i>  Email address for notices to the Customer: <i>[Insert]</i>  Such contact details may be updated from time to time by the Customer in accordance with the process set out in the Terms.

#### 3 EQUIPMENT AND SERVICES

<b>Purpose of Order Form</b>	[e.g. to agree to Pilot, to add users, to carry out further implementation or support services etc.]
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<b>Pilot Commencement Date or Subscription Period</b>	
<b>Pilot Group / User Subscriptions</b>	
<b>Customer Dependencies</b>	<p>Customer shall:</p> <ul style="list-style-type: none"> <li>- provide AutoCAD (or equivalent) floor plans with the name of each room/location;</li> <li>- provide names and contact details for 'key contacts' including management and nursing/infection control lead;</li> <li>- advise in due course the level of authority of the key contacts (and potentially other roles) in order to set up the appropriate (role-defined) access and security settings;</li> <li>- provide access to the Site(s) to enable Supplier to work with Customer's facilities team installing the Equipment and ensuring the solution has been set up correctly;</li> <li>- provide access to its team in order to train on the use of the platform and to select the infection mitigation strategies Customer wishes to deploy;</li> <li>- ensure support of the Customer's leadership and management teams with the effective rollout and management of the solution. This includes: <ul style="list-style-type: none"> <li>○ communications with staff and residents on the system, why it has been chosen and the benefits it will bring;</li> <li>○ encouraging and reminding staff about the importance of wearing the wearables;</li> <li>○ reporting symptoms and following the mitigating actions highlighted;</li> <li>○ reassuring staff and residents about the privacy and confidentiality safeguards built into the platform;</li> <li>○ the ongoing registration, hand-out and hand-in of the wearables to staff and visitors;</li> </ul> </li> </ul>



<b>Additional Support Services</b>	[include details of any Additional Support Services to be offered]
<b>Additional Support Fees</b>	[insert fees for Additional Support Services]
<b>Subcontractors used in the provision of the Services</b>	[e.g. Amazon Web Services (cloud services) as a processor on Customer's behalf, Supplier's Sub-processor is AWS and servers are in London.]
<b>Special Terms</b>	[Add any special terms, which will prevail over all other terms in this Order Form and other parts of the Agreement or leave blank.]

#### 4 EXECUTION

This Order Form may be signed in any number of separate counterparts, each of which when signed and dated shall be an original, and such counterparts taken together shall constitute one and the same agreement. The parties acknowledge and agree that this Order Form may be signed and/or transmitted by e-mail or a .pdf document or using electronically delivered signatures (including, without limitation, DocuSign and AdobeSign) and that such signed electronic record of the parties shall be deemed to constitute original signatures, and electronic copies hereof shall be deemed to constitute duplicate originals.

Agreed by the parties:

Signed by *[insert full name]* .....

for and on behalf of [Director OR Authorised signatory]

*[Customer]*

Date of signature: *[Insert date]*

Signed by *[insert full name]* .....

for and on behalf of: Director

**PROXXIMOS LTD**

Date of signature: *[Insert date]*

