

AoFrio Group Services Terms and Conditions

Version 30 October 2025

[Note: with effect from 30 October 2025 this document replaces the AoFrio Group Services Terms and Conditions, Version 30 November 2023]

1. Contract Scope

1.1 This Contract:

- (a) governs the Service User's and any of its End User's use of any Services and the use and licensing of Software provided or made available by AoFrio; and
- (b) comprises:
 - (i) these Terms and Conditions; and
 - (ii) the Commercial Terms, which take precedence over these Terms and Conditions. except where explicitly stated otherwise in these Terms and Conditions.

1.2 No proposals, negotiations, and representations, if any, made prior to this Contract, and no agreement or understanding, oral or written, purporting to amend these Terms and Conditions, or any general or printed conditions referred to or contained in a Purchase Order shall form part of the Contract unless and to the extent expressly agreed by AoFrio in writing in the Commercial Terms. Fulfillment of Service User's Purchase Order does not constitute acceptance of any of Service User's terms and conditions and does not modify or amend this Contract.

1.3 Any Hardware shall be supplied on AoFrio's Terms and Conditions of Sale for Hardware which are available at www.aofrio.com/legal (or such other URL AoFrio may provide from time to time) and not under this Contract.

1.4 By contracting based on these Terms and Conditions, Service User agrees to the applicability of these Terms and Conditions in respect of future Contracts, even if this is not expressly stated by AoFrio in Supplier's Quotation, Purchase Order acknowledgement or invoice and even if Service User's Purchase Order contains specific, general or printed conditions that are inconsistent with this Contract.

1.5 Where the AoFrio provides or makes available Third Party Services to Service User, the applicable Third Party Terms and Conditions shall apply regarding those Third Party Services and shall replace the deviating provisions in these Terms and Conditions, provided that the Third Party Terms and Conditions were made available to Service User, including by publication on AoFrio's nominated website www.aofrio.com/legal (or such other URL AoFrio may provide from time to time) or by AoFrio notifying Service User in writing of the existence of the Third Party Terms and Conditions. If and insofar as the Third Party Terms and Conditions are determined by AoFrio to be inapplicable to the relationship between Service User



and AoFrio for any reason, the provisions of these Terms and Conditions shall, as determined by AoFrio, apply.

- 1.6 This Contract constitutes a legally binding agreement between AoFrio and Service User and Service User's End Users. By confirming acceptance or agreement to these terms (where this option is provided to Service User and/or End User), or by purchasing or otherwise accessing or using any of the Services, Software or Third Party Services in any way, or by authorising any End User to do any of the foregoing, Service User and End User acknowledge that they have read and understood these Terms and Conditions and agree to be bound by them.
- 1.7 By agreeing to this Contract, Service User warrants that neither it or its End users are prohibited by the laws of any applicable jurisdiction from purchasing or using any of the Services, Software, or Third Party Services or from complying with their respective obligations under this Contract.
- 1.8 If Service User does not agree to this Contract either before or after its commencement including following changes made by AoFrio to these Terms and Conditions pursuant to clause 2.1:
 - (a) Service User is not permitted to use the Services, download Software or use or retain the Software or related Third Party Services and must ensure that none of its End Users do the same. As a consequence of the foregoing, Service User may not be able to use Hardware, or its use may be interrupted or limited. AoFrio shall have no liability to Service User or have any obligation to pay Service User any money by way of a repayment of any amounts that may have been paid or prepaid for Services, Software, Third Party Services or Hardware; and
 - (b) Service User may, as its exclusive remedy, end the Contract under Section 17 (Suspending or Ending the Services and this Contract).
- 1.9 Any advice, recommendation, information, assistance or service relating to the Services, Software and their use or application including in conjunction with Hardware or other equipment, such as in relation to performance, savings and other benefits and other data contained in catalogues, brochures, circulars, advertisements, illustrations, pricelists and other technical and marketing material of AoFrio shall not take effect as terms of this Contract unless and to the extent expressly agreed by AoFrio in the Commercial Terms.
- 1.10 AoFrio may provide other services and software pursuant to other terms and conditions of supply ("**Other AoFrio Terms and Conditions**"). AoFrio will advise Service User if and when Other AoFrio Terms and Conditions are applicable to services and/or software provided or made available to Service User by AoFrio, in which case those Other AoFrio Terms and Conditions will apply in lieu of these Terms and Conditions.

2. **Changes to these Terms and Conditions, Services and Software**

- 2.1 From time to time, AoFrio may make changes to these Terms and Conditions. Any such changes take effect on the date that the changes are posted on AoFrio's website, and it



is Service User's responsibility to ensure that Service User is familiar with the most recent version of these Terms and Conditions. Please refer to the version date in the heading on the first page of these Terms and Conditions for when these terms were last updated. Without limiting the foregoing, AoFrio may notify Service User of any changes to these Terms and Conditions by either emailing such Service Users with notice of the changed terms or by displaying a notice as part of the Services or Software. Service Users may be required by AoFrio to read and accept any updated version of these Terms and Conditions to continue their use of the Services and Software.

- 2.2 AoFrio's policy is one of continuous development and consequently the specification for a Service or Software may vary from time to time. Supplier reserves the right to change specifications for Services or Software without prior notification, except reasonable prior written notice will be provided in the case of any Service or Software with specifications specific to Service User.

3. Interpretation

- 3.1 **Defined terms:** Defined terms are set out in Clause 22 below.
- 3.2 **Headings:** The headings contained in these Terms and Conditions are included for convenience of reference and shall not affect the construction or interpretation of these Terms and Conditions.

4. Limits on Supply

- 4.1 AoFrio may, in its sole discretion, and without terminating this Contract, at any time and without prior notice limit, modify, suspend or discontinue the provision of or access to any Services, Software and Third Party Services (or any part or content thereof including the description and specifications thereof) to or by Service User and/or its End Users, or in any jurisdiction or geographic region, and AoFrio shall not be liable to Service User, End User or any third party for any such action. AoFrio may exercise this right on a case-by-case basis or generally.
- 4.2 AoFrio may, in its sole discretion, subject to any applicable Commercial terms, refuse, limit or cancel any Purchase Order Service User places with AoFrio for Services or require payment terms different to those previously applicable, such as requiring payment in advance. These restrictions may include orders placed by or under the same Service User account, the same credit card and/or orders that use the same billing address. If AoFrio makes a change to or cancels an order, AoFrio may attempt to notify Service User by contacting the email and/or billing address/phone number provided at the time the order was made.
- 4.3 AoFrio may limit or prohibit orders that, in its sole judgement, appear to be placed by dealers, resellers or distributors that are not authorized by AoFrio.

5. Service User's right to use the Services and Software

- 5.1 So long as Service User complies with this Contract, AoFrio grants Service User a non-exclusive and non-transferable licence to:



- (a) access and use the Services AoFrio makes available to Service User;
- (b) install and use the Software AoFrio makes available to Service User; and
- (c) expressly or impliedly authorize Service User's End Users to download and use Software made available by AoFrio for the purpose of the End Users accessing the Service User's Account.

5.2 The licence in Clause 5.1 is subject to this Contract and to any applicable Third Party Terms for Third Party Services. For example, Service User's Commercial Terms may only permit a certain number of End Users to access and use the Services and may limit the Software and/or features that Service User and Service User's End Users are permitted to use.

6. End User relies on Service User's right to use the Services and Software

6.1 Each End User agrees that with regard to the access to the Services and/or Software, End User's relationship is solely with the End User's Service User and not with AoFrio (except that AoFrio hereby provides the End User with a limited license to access and use any Software downloaded by the End User in order that the End User can access and use the Services and/or Software provided to the End User's Service User), and that AoFrio has no obligations or liabilities to the End User with regard to the Services and Software. For the avoidance of doubt, any Commercial Terms (and any related Services and/or Software) are for the benefit of the relevant Service User only and are not for the benefit of nor enforceable against AoFrio by any End User.

6.2 End Users who access and/or use any Services and/or Software thereby confirm their agreement to this Contract. End Users may also be required to agree to this Contract and/or to an end user license agreement ("**EULA**") with AoFrio when downloading a Software application from a AoFrio website or its agent's website or from the Service User's system or a third party website (such as the App Store) in order to access the Services or Software provided or made available by AoFrio to Service User. Where an End User has agreed to a EULA in these circumstances then that EULA shall apply in substitution for this Contract, as between the relevant End User and AoFrio. If End User does not agree to this Contract or, if applicable, the EULA, End User must cease to use the relevant Services and Software and must delete or remove the relevant Software from devices within End User's possession or control and, if requested by AoFrio in writing, certify to AoFrio that it has done so.

7. Provision of Software and Services to Service Users

7.1 AoFrio is not required to provide or make available any Services and/or Software to Service User or its End Users and Service User is not permitted to use, or authorise its End Users to use, any Services and/or Software other than those that are specified in the Service User's Commercial Terms (and subject to compliance with those Commercial Terms) and, if there are no applicable Commercial Terms, as AoFrio may determine in its sole discretion.



7.2 Where the Services and/or Software have been bundled by AoFrio with Hardware that has been supplied by AoFrio to a supplier to Service User (for example a manufacturer of equipment supplied to Service User by that supplier that incorporates Hardware supplied by AoFrio to that manufacturer) and which Services and/or Software were intended by AoFrio to apply to Service User's use of the relevant Hardware:

- (a) these Terms and Conditions shall be applicable to Service User's access and use of the Services and/or Software;
- (b) Service User is responsible for determining whether any Commercial Terms have been established by Service User's supplier with AoFrio for the Services and/or Software which are intended to be bundled with the Hardware (and which are intended by AoFrio to apply to Service User's use of the relevant Hardware) and, if Commercial Terms have been established, the content of those Commercial Terms that are applicable to the Services and/or Software;
- (c) if Commercial Terms have been established, those Commercial Terms shall be applicable to the Services and/or Software provided by AoFrio in respect of the relevant Hardware only, and not to any other Hardware (for example the other Hardware may have been supplied by a different supplier to Service User, or by the same supplier but bundled with different Commercial Terms);
- (d) by accessing or using any of the Services and/or Software that has been bundled by AoFrio with Hardware that has been supplied to a supplier to Service User, Service User agrees to those Commercial Terms and this Contract; and
- (e) AoFrio shall, in the event of any disagreement as to the existence or content of any Commercial Terms that have been established by Service User's supplier with AoFrio for the Services and/or Software which were intended to be bundled with the Hardware acquired by Service User from that supplier, have the sole right to determine the issue.

7.3 Any Services and/or Software that are bundled by AoFrio with Hardware at the time of sale of the Hardware to Service User or any supplier to Service User are limited in duration by the terms of the applicable Commercial Terms and in any event, notwithstanding that a longer term may have been agreed in the applicable Commercial Terms, the provision of the Services and/or Software applicable to an item of Hardware shall terminate at the end of the service life of that Hardware or when the Hardware is withdrawn from service. In these circumstances AoFrio shall have no liability to Service User or anyone else or have any obligation to pay Service User or anyone else any money by way of a repayment of any amounts that may have been paid or prepaid for Services, Software, Third Party Services or Hardware.

7.4 Service User is responsible for:

- (a) where applicable, providing at Service User's sole cost adequate communications network services to allow Services to reliably connect and remain connected with the applicable cloud-based software hosting services and data warehousing services provided or made available by AoFrio or a Third Party Services Provider;



- (b) ensuring that Service User's End Users comply with this Contract;
- (c) addressing any queries, problems, or other issues that Service User's End Users may have in connection with the Services, Software or Hardware;
- (d) all activity that occurs under or in connection with Service User's Account;
- (e) the acts and omissions of its End Users and any of Service User's employees, contractors, or personnel in relation to the Services, Software and Hardware as fully as if they were Service User's own acts or omissions;
- (f) solely managing the relationships with and requirements of Service User's End Users;
- (g) meeting any legal obligations Service User has to its End Users in connection with their use of the Services and Software, including in relation to data privacy;
- (h) advising AoFrio of any requirements of relevant privacy laws relating to Service User's End User's identifiable personal data, including any collection, storage, processing, and use of such data by AoFrio; and
- (i) meeting any payment obligations Service User has to AoFrio in respect of the provision of Services and Software to Service User and its End Users.

7.5 Except as may be agreed in the Commercial Terms, Service User acknowledges that AoFrio is not legally obligated to provide any support, helpdesk or other remedial services including Updates. Service User may also, from time to time, not be able to use the Services until Service User has acquired the relevant Hardware directly or indirectly from AoFrio or downloaded and installed the latest Update if this is available to Service User.

7.6 Where AoFrio agrees in the Commercial Terms to provide Updates to Service User, then AoFrio will endeavour, but without accepting any legal liability therefor, to:

- (a) provide to Service User such **Updates** for the Software as AoFrio makes generally available to all Service Users. AoFrio may develop and provide Updates in its sole discretion. Where components of the Software have been developed specifically for Service User, AoFrio shall be under no obligation to provide Updates or any other modifications or additions to the Software unless explicitly agreed by AoFrio as part of a written development agreement entered into by AoFrio with Service User. All Updates and other modifications and additions to the Software that AoFrio may provide to Service User will be deemed to be Software. Updates may be provided via download from a website designated by AoFrio or may automatically be applied to the Software. It is possible that an Update may interfere with, cause faults or problems with the Services or make Hardware or Software inoperable, and such Updates are provided on an "as is" basis, without warranty. AoFrio does not have to make available to Service User any new version or new release of the Software that AoFrio may issue as a separate or new product, and



AoFrio will decide whether any issuance qualifies as a new version, new release or as an Update in its sole discretion. New versions or releases may be provided at an additional charge;

- (b) respond in a timely manner to any email requests from Service User for information in relation to Updates for the Software; and
- (c) provide reasonable notice to Service User before AoFrio makes any material change to the Services that AoFrio considers is likely to have significant impact on the use of the Services by all users who are Service Users.

7.7 AoFrio will use its reasonable endeavours to provide the Services by the times and dates specified in the Commercial Terms or, if no dates have been specified, by the times and dates agreed in writing with the Service User. Any dates or timeframes (including start times and dates) for the Services are estimates only and are not binding.

7.8 In performing the Services, AoFrio shall only be obliged to follow timely and sensible instructions of the Service User if this has been expressly agreed in writing. AoFrio shall not be required to follow instructions which change or supplement the substance or scope of the agreed Services.

7.9 If, at the request of or with prior consent from Service User, AoFrio has performed work or rendered other performance which goes beyond the substance or scope set out in the Commercial Terms for the Services, Service User shall pay for that work or performance at AoFrio's usual rates.

8. Service User's Environment

8.1 Service User acknowledges and agrees that AoFrio does not have complete information about the Service User's Environment. The provision of Services and operation of the Software is dependent on the Service User's Environment supporting the Services and Software, including any Updates. Where cellular network connectivity is provided as part of the Service, the ability to access such connectivity shall also form part of the Service User's Environment and be the responsibility of the Service User to ensure the relevant cellular network is able to transmit and receive data at a given location and installation. AoFrio is not responsible for the Service User's Environment (including its maintenance) or for ensuring that it remains compatible with the Services and Software, including Updates. This also applies to End Users' environments.

8.2 AoFrio is not responsible for compatibility issues of Services or Software with, or for compatibility issues or faults in, the Service User's Environment or for fixing faults that have been caused by Service User, its End Users, the Service User's Environment, End Users' environments or any third party. AoFrio is also not responsible for any problems experienced by any equipment or hardware caused by the Software, including by or to Hardware, End User equipment and hardware used by third parties, such as but not limited to configuration or misconfiguration of the equipment or hardware or the failure to install a Firmware upgrade made available by AoFrio, and for any problems caused by Updates. AoFrio does not provide any warranty or guarantee that Service User's, its End User's, or any third party's equipment or hardware, including Hardware, will perform



to any particular level or standard as a result of the use of the Services or Software or that they will be error free.

- 8.3 If Service User requests AoFrio to provide any consulting, integration or implementation services or investigate or work on any issues involving the Service User's Environment and AoFrio agrees (in its sole discretion) to do so, AoFrio may charge Service User at its then standard hourly rates for such work.
- 8.4 AoFrio and its suppliers are free to choose and change the way, and the technologies by which, Software is developed, or a Service is provided and by whom.
- 8.5 The provision of the Services and the performance of the Software are subject to Service User complying with its obligations in any applicable Commercial Terms and these Terms and Conditions including the performance of any assumption or dependency which may be detailed in any applicable Commercial Terms. If any assumption or dependency proves to be invalid or inaccurate or Service User otherwise fails to perform its responsibilities (each a "**Dependency Failure**") then, without limiting the other limits and protections available to AoFrio in this Contract:
 - (a) AoFrio will not be liable for any delay or failure to perform its obligations that is a result of or is caused or contributed to by the Dependency Failure; and
 - (b) AoFrio will be entitled to a variation to the relevant Commercial Terms to the extent reasonably required to reflect the impact of the Dependency Failure (including to increase any charges and extend timeframes).

9. User Data

- 9.1 Service User acknowledges that User Data may be inaccurate, incomplete, corrupted or outdated. Service User's use and interpretation of User Data is its responsibility (not AoFrio's) and is at Service User's own risk. It is also Service User's responsibility to make sure that all the necessary rights and permissions for AoFrio or Service User to receive, process, store or use User Data (for example, if Service User wants to use User Data uploaded by an End User or asks AoFrio to process User Data uploaded by an End User) have been properly obtained.
- 9.2 AoFrio does not endorse, approve or pre-screen User Data and, to the fullest extent permitted by law, AoFrio provides no promises, warranties or guarantees in relation to User Data, including as to its adequacy, accuracy or completeness or its freedom from anything harmful or inappropriate. Service User and its End Users agree that AoFrio is not responsible or liable in any way for User Data or the consequences of Service User providing, using, or relying on User Data and AoFrio's processing of User Data.

10. Use by AoFrio of User Data

- 10.1 Service User grants to AoFrio a worldwide, non-exclusive and sub-licensable right (including to arrange for providers of Third Party Services to provide Services on AoFrio's behalf) to store, use, process, modify, adapt, prepare derivative works from, reproduce, publish, display, distribute and communicate User Data for the purpose of



providing, operating, supporting and improving the Software and Services, verifying Service User and End User compliance with the terms of this Contract and enforcing AoFrio's or its licensor's rights, including all intellectual property rights in and to the Services and Software and, subject to Section 12 (Confidentiality and Privacy), marketing the Services and Software. It is also acknowledged and agreed that User Data may be available to and used by, as applicable: (a) in the case of an End User, the End User's Service User, any third party to whom the End User's Service User may pass User Data (or authorise AoFrio to pass User Data), or any other End Users that have the same Service User as the End User; (b) any of Service User's End Users; or (c) if the user of Software and/or Services is neither a Service User or End User, to any third party to whom AoFrio may, subject to Section 12 (Confidentiality and Privacy), pass User Data. Each of the foregoing represent and warrant to AoFrio that they have the right and authority to grant the rights in this Clause 10.1, that User Data will not violate this Contract and that AoFrio is not obliged to retain User Data beyond the period AoFrio considers necessary for AoFrio to provide the Services.

- 10.2 As between AoFrio and Service User, Service User owns all User Data relating to that Service User's Services. Each End User agrees that AoFrio may treat End User's User Data for all purposes as if it were owned by the End User's Service User and AoFrio shall only have to deal with that Service User in relation to User Data.
- 10.3 Service User and any End User must make sure that User Data is free of anything illegal or that may be offensive, any viruses or other harmful content, and anything else that infringes a third party's rights or Third Party Terms or that could have a detrimental effect on the Services, Software, or AoFrio (including AoFrio's reputation). AoFrio may (but shall have no obligation to) remove or edit any of User Data that AoFrio considers, in its sole discretion, is contrary to this Contract and may disclose User Data if AoFrio in good faith considers that such disclosure is required to comply with a legal process or requirement, enforce this Contract or respond to any claims by a third party.

11. Third Party Services and Links

- 11.1 The Services or Software may use, incorporate and/or link to Third Party Services. Third Party Services may also include third party tools which AoFrio neither monitors, controls or has any input into. Service User acknowledges and agrees that AoFrio is not responsible for examining or evaluating the effectiveness, content or accuracy of Third Party Services and is not liable for any loss or damage which may be incurred by Service User, End Users, or anyone else as a result of the availability, performance or content of Third Party Services, including as a result of any loss, damage or corruption to User Data.
- 11.2 Third Party Services which require access to User Data, such as third party cloud-based hosting services, may have additional requirements which will apply to the Services, such as security procedures and policies and other requirements, over which AoFrio has no control. Service User agrees that its use of any Third Party Services is at its own risk and is governed by any separate terms (including privacy policies) that AoFrio has notified Service User of (including at www.aofrio.com/legal) (or such other URL AoFrio may provide from time to time) as those terms may be updated from time to time ("**Third Party Terms**"). Complaints, claims, concerns, or questions regarding a Third Party



Service should be addressed to the relevant third party and not to AoFrio. AoFrio assumes no liability or responsibility whatsoever for any Third Party Services. Some Third Party Terms may apply to open source software, and where those Third Party Terms are expressly stated to supersede this Contract, they will do so to the limited extent necessary, and then only in relation to the applicable open source software.

12. Confidentiality and Privacy

- 12.1 Subject to the following Clauses 12.2-12.4, AoFrio will use all reasonable endeavors to not disclose to any third party any of Service User's confidential data provided by Service User to AoFrio and will maintain safeguards intended to protect the confidential data from unauthorised use, access or disclosure using at least the degree of care AoFrio uses to protect its own sensitive information and in no event using less than a reasonable degree of care.
- 12.2 Each End User acknowledges that User Data may include identifiable personal data of the End User, including location information. By downloading the Software and accessing the Service User's Services, the End User consents to the Service User accessing, via the Services, User Data that constitutes identifiable personal data and to the processing and use of such data by AoFrio in accordance with this Contract.
- 12.3 Service User acknowledges and agrees that for the purpose of the Services:
- (a) Service User is the collector of User Data comprising identifiable personal data of an End User for the purposes of relevant data privacy laws and AoFrio acts only as the Service User's data processor of User Data;
 - (b) Service User is responsible for all decisions relating to the purposes and means of the processing of an End User's identifiable personal data, including the processing and use of such data by AoFrio, for the maintaining of its privacy and for ensuring compliance with all relevant data privacy laws;
 - (c) any request by an End User in relation to the continued collection, storage, processing, and use of User Data must be addressed to the Service User, and not to AoFrio;
 - (d) AoFrio will act only as "data processor" for the purposes of the Regulation;
 - (e) Service User will treat User Data in compliance with the obligations deriving from applicable data protection legislation, including the Regulation, and that it will implement appropriate technical and organizational measures to protect User Data from any unlawful or unauthorized collection, storage, and processing by AoFrio; and
 - (f) Service User will indemnify AoFrio for any liability and costs incurred because of Service User failing to meet its obligations under this Clause 12.3.
- 12.4 In performing the Services, AoFrio will comply with its **Services Privacy Policy**, which is available at www.afrio.com/legal (or such other URL AoFrio may provide from time to



time) and incorporated herein by reference. The Services Privacy Policy is subject to change at AoFrio's discretion; provided however, any policy changes will not result in a material reduction in the level of protection provided to Service User for User Data relating to that Service User during the term of the Service User's Commercial Terms with AoFrio.

13. Service User responsibilities

13.1 Service User and Service User's End Users must, in addition to their other obligations set out in this Contract:

- (a) use the Services and Software solely for lawful purposes;
- (b) comply with all Third Party Terms in respect of any Third Party Services that are used within the Services and Software;
- (c) not access or use Services or Software that they are not permitted to access or use under the applicable Commercial Terms;
- (d) not access (or attempt to access) the administrative interface of the Services by any means other than through the interface that is provided by AoFrio in connection with the Services;
- (e) never misuse the Services or Software. This shall include trying to access the Services or Software in a way that AoFrio has not expressly permitted or doing anything that adversely affects the Services or Software or their use by anyone else;
- (f) access and use the Services and Software in a reasonable and proper manner and never in a way that infringes AoFrio's or anyone else's rights and never access any data or information which they are not authorised to access, and notify AoFrio immediately upon becoming aware of any noncompliance;
- (g) never resell, transfer, distribute, sub-licence or otherwise make available to any third party all or any part of the Services or Software, except as agreed with AoFrio in the Commercial Terms;
- (h) never copy or modify, or create derivative works from, all or any part of the Services or Software;
- (i) comply with all laws and regulations (including any privacy laws in the relevant jurisdiction) applicable to the use of the Services and Software;
- (j) never reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code of all or any portion of the Software;
- (k) provide accurate, current, and complete information as part of the subscription process, in connection with the Services or whenever otherwise required as part of the use of the Services or Software;



- (l) comply with all AoFrio's directions and restrictions regarding the use of the Services and Software;
- (m) never undermine, or attempt to undermine, the security or integrity of the Services or Software, circumvent any restrictions AoFrio places on the use of the Services or Software, or obtain access to any part of the Services or Software that AoFrio has not expressly given Service User or End User permission to access;
- (n) notify AoFrio or, in the case of an End User, its Service User, immediately upon becoming aware of any actual or potential breach of security or unauthorised access to or use of any part of the Services or Software, including unauthorised access to theirs or anyone else's information;
- (o) use confidential information which AoFrio has provided about its business, the Services and the Software, only for the purpose AoFrio provided it and for no other purpose, and maintain its confidentiality;
- (p) make sure all user ID, codes and passwords for the Services are kept confidential and secure and are properly used by Service User and its End Users. End Users must immediately tell their Service User whenever the End User has reason to believe that this hasn't happened;
- (q) never access or use the Services or Software for the purpose of building a product or service which competes with or is derivative of the Services or Software or which has similar features or functionality;
- (r) never copy or create derivative versions of any documentation provided in relation to the Services or Software other than in respect of the use of the Services or Software by Service User and its End Users; and
- (s) obtain all necessary permissions to use any device Service User or End User downloads Software to.

13.2 Service User and End User also acknowledge and agree that Software, if downloaded to their device, is done so at their own discretion and risk and that they will be solely responsible for any damage to or interference with that device, or loss of data, that results from the download or use of the Software. Service User, End User, or the owner of the device, may also be charged internet access and other fees by the applicable third-party service provider(s). AoFrio is not responsible for those fees.

13.3 If AoFrio makes AoFrio-owned Hardware available to Service User on a leased, rental, licence, loan or other similar basis:

- (a) Service User must:
 - (i) not challenge, or allow to be challenged, AoFrio's continued ownership of the Hardware;
 - (ii) assume all risk of loss, damage or deterioration of, or to, the Hardware from the time of delivery of the Hardware to Service User or to the relevant site;



- (iii) only use the Hardware in connection with the provision of the Services and for no other purpose and only for the term of use agreed by AoFrio;
- (iv) take reasonable care of the Hardware and keep the Hardware in a safe secure location to prevent damage, loss or theft;
- (v) notify AoFrio of the location of the Hardware and obtain AoFrio's prior consent before moving the Hardware from its current location or to a new site;
- (vi) not perform or allow any unauthorized (AoFrio must provide any authorization) modifications, maintenance or repairs to, or dismantling or opening of, the Hardware, including, without limitation, the removal of any component of Hardware, such as a sim card;
- (vii) not dispose of or encumber the Hardware without AoFrio's consent;
- (viii) permit AoFrio or its agents to inspect the Hardware on reasonable notice and at a reasonable time; and
- (ix) promptly advise AoFrio in writing in the event of the breach of any of Clauses 13.3(a)(i) – (viii) above;
- (x) after the term of the relevant Service or the agreed term of use of the AoFrio-owned Hardware ends, at Service User's cost, safely return the Hardware to AoFrio as directed by AoFrio in the condition it was in when made available to Service User less reasonable wear and tear, and if Service User defaults in this regard, make the Hardware available for collection by AoFrio and pay AoFrio's reasonable costs of collection, and if Service User defaults in this regard AoFrio may invoice Service User for the new replacement cost of the relevant Hardware; and
- (xi) AoFrio does not provide any Hardware warranty to Service User in relation to such AoFrio-owned Hardware.

14. Pricing, payment, and changes to the fees and prices

- 14.1 Service User must pay all relevant subscription, licence, and other fees, including minimum fees, applicable to the relevant Commercial Terms at the times and in the way specified by AoFrio in the Commercial Terms. Service User must pay the applicable fees for the Services, and any applicable fees for the Software, no matter who uses them. The parties recognise that subscription, licence, and other fees may have been bundled with the price of Hardware purchased from AoFrio by Service User or a supplier to Service User of equipment incorporating such Hardware.
- 14.2 Subject to the relevant Commercial Terms, AoFrio may introduce or increase at any time the fees AoFrio charges for the Services and will endeavour to provide advance notice of such increases. If Service User does not agree to the new fees Service User can, as its exclusive remedy, choose to end this Contract by taking the steps set out in Section



17 (Suspending or Ending the Services and this Contract). In these circumstances Service User is not entitled to any refund for any payments or prepayments for Services or Software or for payments for Hardware purchased from AoFrio in relation to the Services.

- 14.3 Subject to the relevant Commercial Terms, AoFrio may introduce or increase at any time a licence fee for Software which will be payable by the Service User or the Service User's End Users. AoFrio will endeavour to provide advance notice of any change. If Service User does not agree to the licence fee Service User may, as its exclusive remedy, choose to end the licence by immediately ceasing to use the licence and deleting the Software from its equipment or device and ensuring that its End Users do the same. Service User acknowledges that ending the licence may result in Services not being able to be provided by AoFrio or an adverse impact on the Service User's Environment, and Service User agrees it is not entitled to any refund for any payments or prepayments for Services or Software or for payments for Hardware purchased from AoFrio in relation to the Services.
- 14.4 All amounts due to AoFrio shall be transferred, unless otherwise agreed by AoFrio, by direct payment into AoFrio's nominated bank account and the payment obligations shall be deemed to have been performed when the sums due have been received by AoFrio's bank in immediately available funds.
- 14.5 If any invoiced amount is not received by AoFrio by the due date, then without limiting AoFrio's rights or remedies, those amounts shall accrue late interest from the due date at the rate of 2% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower. Service User will pay on demand such interest together with all AoFrio's expenses and costs (including legal costs as between lawyer and client) in connection with AoFrio recovering or attempting to recover any overdue amount. This is without prejudice to AoFrio's other rights or remedies in respect of the default.
- 14.6 If any amount owing by Service User under this Contract is overdue, AoFrio may, without limiting its other rights and remedies, suspend the Services to Service User and to Service User's End Users until such amounts are paid in full. AoFrio will give Service User at least ten (10) days' prior notice that Service User's account is overdue before suspending Services. AoFrio will not exercise its rights to suspend for non-payment if Service User is disputing the applicable charges reasonably and in good faith and is cooperating diligently to resolve the dispute and has paid to AoFrio any amounts not in dispute.
- 14.7 AoFrio's charges do not include, and are exclusive of, any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "**Taxes**"). Service User is responsible for paying all Taxes associated with Service User's purchases hereunder. If AoFrio has the legal obligation to pay or collect Taxes for which Service User is responsible as aforesaid, AoFrio will invoice Service User and Service User will pay that amount on demand. For clarity, AoFrio is solely responsible for taxes assessable against AoFrio based on its income, property, and employees.



14.8 Service User is not entitled to withhold payment or make any deduction or set-off or counterclaim or otherwise from any amount payable to AoFrio, without AoFrio's prior written consent.

14.9 AoFrio's fees or other payment policies may be posted on AoFrio's website www.aofrio.com (or such other URL AoFrio may provide from time to time) or notified to Service User in writing.

15. **Service User is a Business User**

15.1 Service User represents to AoFrio that its access and use of the Services and Software is for the purposes of a business.

15.2 To the maximum extent permitted by law, the provisions of any legislation or other law intended to protect non-business consumers in any jurisdiction (including, without limitation, from "unfair" contractual provisions, such as limits of liability) do not apply to the Services and Software and their purchase or supply.

16. **Ownership of Services, Software, Third Party Services and Suggestions**

16.1 AoFrio or its licensors own all rights, title and interest, including all intellectual property rights (whether or not registered and anywhere in the world), in and to the AoFrio Intellectual Property and Third Party Services (including in any underlying software, ideas or know how), any documentation provided with the Services and Software and Third Party Services (whether on-line or in hardcopy form) and any changes or improvements to the AoFrio Intellectual Property, Services, Software, Third Party Services or such documentation. Except to the extent that AoFrio specifically grants a licence to Service User pursuant to Clause 5.1 or to End User pursuant to Clause 6.1, AoFrio does not grant to any person any rights, title, or interest in relation to any of the foregoing. In particular, Service User is not granted any rights or interests in any of AoFrio's trademarks, logos and business, product, service and domain names or those of AoFrio's licensors and third-party service providers.

16.2 Service User acknowledges that it has no right to have access to Software in source-code form.

16.3 Service User may, with or without a request from AoFrio, choose to submit ideas, feedback, submissions, comments, feedback, or suggestions to AoFrio in relation to the Services or Software ("**Suggestions**"). Service User warrants, acknowledges, and agrees that any Suggestions do not violate any third party's confidential or proprietary information and will not contain defamatory or otherwise unlawful, abusive, or obscene material, or contain any computer virus or other malware that could in any way affect the operation of the Services, Software or any website. Service User may not use a false email address or identity or otherwise mislead AoFrio or third parties as to the origin of any Suggestions. AoFrio may, but has no obligation to, monitor, edit or remove content that AoFrio determines in its sole discretion to be in breach of the foregoing. Service User grants, and warrants that it has the right to grant, to AoFrio a perpetual, irrevocable, worldwide, transferable, sub-licensable and non-exclusive right to use, share,



commercialise and otherwise exploit Suggestions in any way for any purpose, at no charge and free of any obligation to Service User or anyone else.

17. Suspending or Ending the Services and this Contract

17.1 **By Service User:** Subject to the terms of any Commercial Terms Service User has with AoFrio, Service User may at its discretion immediately end this Contract or a Service at any time by notifying AoFrio in writing or by ceasing to use the relevant Services and Software and by deleting or removing the relevant Software from all equipment and devices within Service User's possession or control and, if requested by AoFrio in writing, certifying to AoFrio that it has done so.

17.2 **By AoFrio:** Subject to any Commercial Terms Service User has with AoFrio, AoFrio may at its discretion end, suspend or restrict this Contract or all or any part of the Services for any reason without notice. Notwithstanding any Commercial Terms AoFrio has with Service User, AoFrio may also end, suspend or restrict this Contract at any time in any of the following circumstances:

- (a) if Service User or any of its End Users has breached this Contract; or
- (b) AoFrio (in its sole discretion) considers it is necessary or reasonable to do so (for example, if required by law, to protect the Software or Services and the use of them by anyone else or where AoFrio's ability or right to provide any part of the Software or Services has been stopped or restricted, such as where required Third Party Services have been suspended or terminated); and
- (c) AoFrio will endeavour to notify Service User if AoFrio suspends or ends the Contract in the circumstances noted above.

17.3 Where AoFrio is entitled to end, suspend or restrict this Contract, AoFrio may choose to end, suspend or restrict Service User's and Service User's End Users' access and use of the Services or Software (or both of them), and AoFrio can do so without notifying Service User. To avoid any doubt, the exercise of those rights to end, suspend or restrict (or the failure by AoFrio to do so) will never prevent AoFrio from exercising its rights to end the Contract, and AoFrio can exercise the rights to suspend or restrict more than once for the same or different reasons. If Service User ends this Contract pursuant to Clause 17.1, or if AoFrio ends, suspends or restricts this Contract pursuant to Clause 17.2, AoFrio shall have no obligation to pay Service User any money by way of a repayment of any amounts that may have been paid or prepaid in respect of Services or Software or for payments for Hardware purchased from AoFrio in relation to the Services and/or Software.

17.4 When this Contract ends for any reason:

- (a) all rights AoFrio has granted to Service User under this Contract shall cease;
- (b) Service User and its End Users must immediately cease using the Services and Software, delete or remove the Software from all equipment and devices within



Service User's and End User's possession or control and, if requested by AoFrio in writing, certify to AoFrio that Service User has done so; and

- (c) AoFrio shall have no obligation to retain User Data except AoFrio will, for at least one (1) month from the termination date, endeavour to provide a facility for the Service User to download User Data from the Services (in a format that AoFrio determines). AoFrio may however retain some or all of User Data (other than User Data that comprises personal information) for the purposes of system improvement as described in Clause 10.1 unless instructed by Service User to delete it.

17.5 Ending this Contract or any of the Services does not affect clauses that are intended to survive termination (including Clauses 1, 3, 7, 10 – 19 and 21-22 which will continue to operate) or any rights or remedies that have accrued beforehand.

18. Liability and indemnity

18.1 NOTHING IN THIS CONTRACT, INCLUDING THIS SECTION 18 (LIABILITY AND INDEMNITY), SHALL EXCLUDE OR LIMIT AOFRIO'S LIABILITY FOR CLAIMS WHICH MAY NOT BE LAWFULLY EXCLUDED OR LIMITED BY APPLICABLE LAW.

18.2 EXCEPT AS EXPRESSLY SET OUT IN THIS CONTRACT:

- (a) SERVICE USER EXPRESSLY UNDERSTANDS AND AGREES THAT SERVICE USER'S USE OF THE SERVICES, SOFTWARE AND THIRD PARTY SERVICES IS AT SERVICE USER'S SOLE RISK AND THAT THE SERVICES, SOFTWARE AND THIRD PARTY SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE";
- (b) AOFRIO AND AOFRIO'S AFFILIATES, AND THEIR RESPECTIVE AGENTS, EMPLOYEES, LICENSORS AND SERVICE SUPPLIERS ("**RELATED PARTIES**") MAKE NO EXPRESS WARRANTIES AND DISCLAIM ALL IMPLIED WARRANTIES REGARDING THE SERVICES, SOFTWARE AND THIRD PARTY SERVICES, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, AOFRIO AND ITS RELATED PARTIES DO NOT REPRESENT OR WARRANT TO SERVICE USER THAT: (A) SERVICE USER'S USE OF THE SERVICES, SOFTWARE AND THIRD PARTY SERVICES WILL MEET SERVICE USER'S REQUIREMENTS, (B) SERVICE USER'S USE OF THE SERVICES, SOFTWARE AND THIRD PARTY SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE OR FREE FROM ERROR, AND (C) USER DATA WILL BE COMPLETE AND ACCURATE AND ERROR FREE;
- (c) ALL LIABILITY OF AOFRIO NOT EXPRESSLY SET OUT IN THE CONTRACT, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), WARRANTY, STRICT LIABILITY, INTELLECTUAL PROPERTY OR OTHERWISE, IS EXPRESSLY EXCLUDED;



- (d) IN THE EVENT, NOTWITHSTANDING THE ABOVE, OR IN THE EVENT BY LAW AOFRIO'S LIABILITY CANNOT BE AVOIDED OR LIMITED, AOFRIO IS LIABLE TO SERVICE USER OR ANY OTHER PERSON IN EXCESS OF THE EXPRESS LIMITS IN THIS CONTRACT, THE TOTAL AGGREGATE LIABILITY OF AOFRIO AND ITS RELATED PARTIES (TOGETHER) TO SERVICE USER AND ITS AFFILIATES AND ANY END USERS OR ANY OTHER PERSON (TOGETHER) FOR ALL CLAIMS, INCLUDING WARRANTY CLAIMS UNDER OR IN CONNECTION WITH THIS CONTRACT AND ANY OTHER CONTRACTS OR ITS OR THEIR SUBJECT MATTER IS LIMITED TO (A) IN THE CASE OF ANY CLAIM BY SERVICE USER, US\$10,000 AND (B) IN THE CASE OF ANY CLAIM (EVEN IF IN RELATION TO SERVICES OR SOFTWARE) BY AN END USER OR ANY OTHER PERSON, US\$10;
- (e) SERVICE USER EXPRESSLY UNDERSTANDS AND AGREES THAT AOFRIO, AND ITS RELATED PARTIES SHALL NOT BE LIABLE TO SERVICE USER FOR ANY CONSEQUENTIAL LOSS SUFFERED BY SERVICE USER, END USER OR ANY OTHER PERSON IN CONNECTION WITH THE CONTRACT WHICH MAY BE INCURRED BY SERVICE USER, END USER OR ANY OTHER PERSON INCLUDING, WITHOUT LIMITATION, SERVICE USER'S CUSTOMERS AND ANY USERS OF THE SERVICES, SOFTWARE AND THIRD PARTY SERVICES, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY; AND
- (f) THE LIMITATIONS ON LIABILITY TO SERVICE USER IN THIS CLAUSE 18.2 SHALL APPLY WHETHER OR NOT AOFRIO OR ITS RELATED PARTIES HAD BEEN ADVISED OF OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF ANY SUCH LOSSES ARISING.

18.3 Service User agrees to hold harmless, defend and indemnify AoFrio and its Related Parties from and against any liability or expense arising from all claims, losses, damages (actual and consequential), suits, judgments, litigation costs and attorneys' fees, of every kind and nature arising from or in any way related to (a) Service User's breach of this Contract or any Third Party Terms (b) Service User's use of the Services, Software and Third Party Services, (c) Service User's violation of applicable laws, rules or regulations in connection with the Services, Software and Third Party Services, (d) User Data (or any other information or data), or (e) any actions in relation to User Data which AoFrio has taken with Service User's express or implied instruction or consent, such as, without limitation, passing User Data to third parties) including, in relation to each of the foregoing (a) – (e). In such a case, AoFrio will provide Service User with written notice of such claim, suit or action.

18.4 By entering into this Contract, Service User accepts the exclusions from and the limitations on AoFrio's liability contained in the Contract as being fair and reasonable in the circumstances.

19. Choice of Law and Disputes

19.1 This Contract is governed by the laws of New Zealand without giving effect to any choice or conflict of law provision or rule. Any disputes arising out of, under or in connection with this Contract, including any questions regarding its existence, validity or



interpretation, including non-contractual disputes or claims, shall be referred to and shall be finally resolved by the Courts of New Zealand. The United Nations Convention on the International Sale of Goods shall not apply to the Contract. Nothing in this Clause 19.1 shall limit the right of the AoFrio to apply to any other court of competent jurisdiction for a temporary restraining order, preliminary or permanent injunction or other relief.

19.2 Without limiting any of AoFrio's rights or remedies, Service User and End User agree:

- (a) not to involve, or attempt to involve, AoFrio or any of its Related Parties in any dispute, or in the resolution of disputes, that arise between Service User and, as applicable: (a) Service User's customers or users of Service User's products and services; or (b) any of Service User's End Users; or (c) any other user of the Services, Software or Third Party Services; or (d) any other person; and
- (b) to release, and procure the release of, AoFrio and its Related Parties from, and to indemnify Services Provider and its Related Parties in respect of all its costs in respect of, any and all claims or demands arising out of or in any way connected with such disputes.

20. Export Rules

20.1 Service User agrees that the Services, Software and Third Party Services will not be shipped, transferred, or exported into any country or used in any manner prohibited by the United States Export Administration Act or any other relevant export laws, restrictions or regulations (collectively the "**Export Laws**"). In addition, if any of the Services, Software and Third Party Service is identified as an export-controlled item under the Export Laws, Service User represents and warrants that Service User is not located within an embargoed nation (including without limitation Iran, Syria, Sudan, Cuba, and North Korea) and that Service User is not otherwise prohibited under the Export Laws from receiving the Services, Software and Third Party Services. All rights to use the Services, Software and Third Party Services are granted on condition that such rights are forfeited if Service User fails to comply with the terms of this Clause 20.1. In addition, Service User is responsible for complying with any local laws in Service User's jurisdiction which may impact Service User's right to import, export or use the Services, Software and Third Party Services.

21. General

21.1 **High risk applications:** THE SERVICES, SOFTWARE AND THIRD PARTY SERVICES ARE NOT INTENDED FOR USE IN CONNECTION WITH ANY HIGH RISK APPLICATIONS. AOFRIO DOES NOT PERMIT OTHERS TO USE THE SERVICES, SOFTWARE AND THIRD PARTY SERVICES FOR SUCH HIGH RISK APPLICATIONS WITHOUT ITS PRIOR WRITTEN CONSENT. IF USED WITHOUT AOFRIO'S PRIOR WRITTEN CONSENT, AOFRIO DISCLAIMS ALL LIABILITY FOR ANY DAMAGE, INJURY OR CONTAMINATION, AND SERVICE USER SHALL INDEMNIFY AND HOLD AOFRIO HARMLESS FROM AND AGAINST ANY SUCH LIABILITY.

21.2 **Assignment:** Service User may only transfer or assign any of Service User's rights or obligations under this Contract with AoFrio's prior written consent. AoFrio may



subcontract, transfer or assign all or any part of its rights or obligations under this Contract without Service User's consent.

21.3 Entire agreement: This Contract constitutes the entire agreement and understanding between Service User and AoFrio in respect to its subject matter and replaces all previous agreements, understandings and representations relating to that subject matter.

21.4 Notices: Notices shall be sent as follows:

- (a) anything AoFrio needs to notify Service User of under this Contract may be sent to Service User: (i) by email to Service User's e-mail address on record in AoFrio's account information; (ii) in the case of an End User, by email to Service User; (iii) by means of a general notice on AoFrio's portal for the Services; or (iv) to Service User by written communication sent by first class mail or pre-paid post to Service User's address on record in AoFrio's account information;
- (b) anything Service User needs to notify AoFrio of under this Contract must be in writing and sent to AoFrio in the manner and to the address specified by AoFrio in the Commercial Terms for this purpose; and
- (c) an email will be deemed to have been received by the recipient when emailed on the business day in the jurisdiction of the recipient party, or, if emailed on a non-business day or outside normal office hours in that jurisdiction, on the next business day after the date of dispatch unless the sender has been notified to the contrary (for example, by receiving notice of failure or delay in the delivery of an email).

21.5 Force Majeure: AoFrio shall not be deemed in breach of the Contract or be liable to the Service User in any way (whether for any ordinary, incidental, or Consequential Loss or damage or otherwise) as a result of AoFrio's delay in or failure of delivery or performance of Services due to an event of Force Majeure. Should a Force Majeure event occur, AoFrio, at its option, may either terminate the Services or Software or suspend the provision of Services or Software for a period equal to the time lost because of delay. Notice of such termination or suspension shall be given promptly to Service User. AoFrio shall be released of and from all liability for such termination or suspension and for failure to perform or deliver the Services, Software or Third Party Services, including, but not limited to, any and all claims on behalf of Service User for Consequential Loss, or any other claim of any nature which Service User might have. If AoFrio determines that its ability to meet the demand for Services, Software or Third Party Services is hindered, limited or made impracticable due to an event of Force Majeure, AoFrio may allocate its available supply of Services, Software or Third Party Services (without obligation to acquire additional or other supplies of any such), among itself and its customers on such basis as AoFrio determines to be equitable without liability for any failure of performance which may result therefrom. AoFrio is not required to address any such failure or delay by incurring material additional expenditure or by departing from AoFrio's normal practices.



- 21.6 **AoFrio Affiliates:** AoFrio may provide the Services or Software to Service User by one or more AoFrio Affiliates. For this reason, the rights, warranties, covenants, acknowledgments, and undertakings set out in the Contract are given for the benefit of AoFrio and for any and all Affiliates of AoFrio and accordingly are enforceable by AoFrio or any such Affiliate on behalf of itself and on behalf of each other. Service User agrees that an Affiliate of AoFrio may invoice Service User for the Services, Software or Third Party Services supplied under the Contract.
- 21.7 **Credit Enquiries:** Service User authorizes AoFrio to make credit and other enquiries about Service User and to obtain and disclose information about Service User provided that any such information obtained, used and disclosed is confined to that reasonably required by AoFrio for the purpose of establishing and maintaining the relationship between Service User and AoFrio. Service User authorizes any person to provide AoFrio with such information as AoFrio may require in response to its credit or other enquiries and the execution of the Contract or any other agreement now or in the future by Service User shall be sufficient authority to such person to provide the information to AoFrio.
- 21.8 **Anti-corruption:** Service User agrees that it will not engage in any activity that would expose AoFrio to a risk of penalties under the laws and regulations of any relevant jurisdiction prohibiting improper payments, including but not limited to bribes, to officials of any government or of any agency, instrumentality or political subdivision thereof, to political parties or political party officials or candidates for public office, or to any employee of any Service User or AoFrio. Service User agrees to comply with all appropriate legal, ethical and compliance requirements.
- 21.9 **Agency:** No agency, partnership or joint venture relationship is intended or created by this Contract.
- 21.10 **Waiver:** Any waiver by AoFrio of any part of this Contract must be in writing and signed by one of AoFrio's authorised representatives. Any delay or failure by AoFrio to exercise any right does not prevent AoFrio from exercising that right, or any other right, on that or any other occasion.
- 21.11 **Invalidity of Contract terms:** If any provision of this Contract is found to be invalid or unenforceable, the remaining provisions will be valid and enforceable to the fullest extent possible, and the remaining provisions will remain in full force and effect.
- 21.12 **Beneficiaries of Contract:** Subject to Clause 21.6, only Service User and AoFrio have any benefit under this Contract and any right to enforce this Contract. Specifically, End Users have no rights or benefits under this Contract.
- 21.13 **Language of Contract:** In the event this Contract is translated into a different language, the English version shall be the official, governing, version.

22. Defined Terms:

- 22.1 Unless the context otherwise requires:



“Account” means a unique database or environment within the Software which may contain information about assets or services associated with Service User to which Service User is able to control access privilege levels for users of the Services and End Users, together with any apps and services associated with that environment.

“Affiliate” means, with respect to a specified person, another person that directly or indirectly controls or is controlled by or is under common control with the person specified.

“AoFrio” means the AoFrio entity (whether AoFrio Limited or an Affiliate thereof) providing Services and/or supplying Software under this Contract.

“AoFrio Intellectual Property” means all drawings, know-how, designs, specifications, inventions, devices, developments, processes, engineering instructions, software, copyrights, trademarks, patents and applications therefore, Services, Software and hardware demonstrations and samples, written data, information or intellectual property used, made, conceived, developed or acquired by AoFrio whether or not in connection with this Contract (and whether or not disclosed or otherwise provided to Service User by AoFrio and whether or not paid for by Service User) and all rights therein.

“Commercial Terms” means the description and terms and conditions of the Services and Software AoFrio provides or makes available to Service User, and which is:

- (a) set out in the relevant documentation (if any) AoFrio provides to Service User where the Services and/or Software are bundled with Hardware that is supplied by AoFrio to Service User; or
- (b) where the Services and/or Software are bundled with Hardware that has been supplied by AoFrio to a supplier to Service User, set out in the relevant documentation (if any) AoFrio provided to Service User's supplier or as otherwise agreed in writing with Service User's supplier in respect of that Hardware; or
- (c) as otherwise agreed in writing with Service User in a separate document, and includes the contents of a Quotation (if one has been issued by AoFrio), any Purchase Order acknowledgement (if one has been issued by AoFrio), and Service User's Purchase Order (except to the extent that Service User's Purchase Order conflicts with these Terms and Conditions, the Quotation, the Purchase Order acknowledgement or any previously agreed terms and conditions),

provided that and if none of (a), (b) or (c) above apply, or the relevant matter has not been addressed in accordance with (a), (b) or (c) above, the scope and content of the Commercial Terms (or the relevant matter) shall be determined by AoFrio at AoFrio's sole discretion.

“Consequential Loss” means lost profits or revenues or savings, loss of use of the Services, Software or Hardware or any equipment or systems, cost of capital, cost of substitute products and services, cost or loss of facilities or services, loss or



corruption of data or interference with the operation of equipment, unauthorised access to or disclosure of User Data and breach of security, claims against Service User by third parties including End Users and other users of or third parties affected by the Services or Software or Hardware, business interruption, downtime, shutdown, or slowdown costs, reputational damages, special or punitive damages, penalties and fines and any other types of economic loss.

“Contract” has the meaning in Clause 1.1.

“End User” means a person who downloads any Software from AoFrio’s or its agent’s website, from Service User’s system or from a third party website (such as the App Store), with the Service User’s actual or implied consent in order that the person can access any Services and/or Software provided or made available by AoFrio to the Service User.

“Firmware” means software embedded in Hardware by AoFrio in order to make it run properly.

“Force Majeure Event” means all circumstances beyond the reasonable control of AoFrio, including acts of God, earthquake, flood, storm, lightning, fire, explosion, war (whether declared or not), terrorism, riot, civil disturbance, sabotage, strike, lockout, slowdown, labour disturbances, accident, pandemic, epidemic, difficulties to obtain required materials or labour, lack of or failing transportation, breakdown of plant or essential machinery, emergency repair or maintenance, cyber-attack, breakdown of public utilities, changes of law, statutes, regulations or any other legislative measures, acts of governments, supranational organizations or other administrative or public agencies, orders or decrees of any court, acts of third parties, delay in delivery or an inability to obtain or retain necessary authorizations or permits and includes any of the foregoing affecting third parties providing services or software to AoFrio.

“Hardware” means hardware, equipment, parts, materials, supplies and other goods that AoFrio has agreed to supply to Service User or to a supplier to Service User for use in connection with Services and/or Software.

“High Risk Application” means any nuclear facility or activity, critical safety or storage system, medical device and equipment used in medical applications, military device or other high-risk applications.

“Other AoFrio Terms and Conditions” has the meaning in Clause 3.2.

“Purchase Order” means a written order from Service User to AoFrio for the supply of Services and Software (which may be combined with Hardware) by AoFrio to Service User and includes the acceptance of a Quotation.

“Quotation” means AoFrio's statement identifying the Services and Software (which may be combined with Hardware), together with any description, quantity, price, delivery schedule, and/or other terms and conditions (in addition to or different from these Terms and Conditions), offered by AoFrio for supply to Service User. A Quotation, Purchase Order acknowledgement or invoice that incorporates these



Terms and Conditions by reference shall be deemed to include these Terms and Conditions in full, whether or not AoFrio provides a complete copy of these Terms and Conditions to Service User with the Quotation, Purchase Order acknowledgement or invoice.

"Regulation" means the General Data Protection Regulation of the European Union.

"Services" means the services that AoFrio has agreed to provide or make available under the Contract to Service User and Service User's End Users including Third Party Services and any Software and its components and any Hardware owned by AoFrio that is provided to Service User for use in connection with Services and/or Software, and including data schemes, data models, databases and the like and including any services that allow Service User and/or its End Users to access and use the Software, such as hosting services provided by AoFrio or by third parties on AoFrio's behalf and, by way of example and not limitation, the provision of Updates, trialing Services for Service User, helpdesk support, consultancy, technical support, testing, integration, and maintenance services. Without limiting the foregoing, by visiting AoFrio's or third party websites (such as the App Store) and/or purchasing or downloading something from AoFrio online from one of AoFrio's or third party websites, including Software or Third Party Services, Service User and End Users also engage in AoFrio's "Service".

"Service User" means any person that has:

- (a) acquired Services and/or Software directly or indirectly from AoFrio (including from a AoFrio website or from a third party website) or its agents other than in the capacity of an End User; and/or
- (b) acquired Services and/or Software bundled with Hardware supplied by AoFrio to Service User; and/or
- (c) acquired Services and/or Software bundled with Hardware supplied by AoFrio to a supplier to Service User where AoFrio has agreed in writing with Service User's supplier for the Services and/or Software to be made available to Service User bundled with that Hardware; and/or
- (d) an Account for Service User's use which has been created within the Software by AoFrio; and/or
- (e) agreed Commercial Terms with AoFrio.

"Service User's Environment" means Service User's hardware, facilities, equipment, infrastructure and information technology and telecommunications environment (including software, hardware, systems, networks and cellular network access) and the end user equipment and hardware on or from which User Data may be collected, processed, stored, or obtained.



"Software" means software provided with the Services, including Third Party Software, and includes software bundled with Hardware supplied by AoFrio to Service User or to a supplier to Service User as described in Clause 1.3.

"Terms and Conditions" means these Terms and Conditions.

"Third Party Services" means materials, data, websites or other products or services that are licensed, sold, provided, or otherwise made available by third parties, including Third Party Software and third-party cloud-based software hosting services and data warehousing services.

"Third Party Software" means third-party owned or licensed software provided or made available by AoFrio to Service User and/or End Users.

"Third Party Terms" has the meaning in Clause 11.2.

"Updates" means updates, bug fixes, patches, and other error corrections for Software but does not include any new version or new release of the Software that AoFrio may issue as a separate or new product, as determined by AoFrio in its sole judgement.

"User Data" means information, data (including equipment operation, configuration, and location data), files, and other content collected by Service User or Service User's End Users via the Services or Software and delivered to AoFrio.