

PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY:

This agreement is a legal agreement between you (“**Customer**” or “**You**”) and AUXO Holdings Limited, trading as Note Dr a company registered in England with Company No: 13751703 and having its registered address at Unit 7 Wheatcroft Business Park Landmere Lane, Edwalton, Nottingham, England, NG12 4DG (“**Note Dr**”) and governs Your access to and use of the Note Dr Software and the Documentation (“**Agreement**”). Each of Note Dr and You are a “**party**” and together Note Dr and You are the “**parties**”.

By ticking the checkbox that indicates you accept the terms and conditions on the sign-on page, You agree to be bound by the terms of this Agreement.

1. DEFINITIONS AND INTERPRETATION

- 1.1. The definitions and rules of interpretation set out in Schedule 1 (Definitions and Interpretation) shall apply to this Agreement.

2. RIGHTS OF USE

- 2.1. Subject to the terms of this Agreement, Note Dr hereby grants to You a non-exclusive, non-transferable right (without the right to grant sub-licences) to permit the Authorised Users to use the Note Dr Software and the Documentation (and any Updates and Upgrades) for Your internal business purposes during the Term.

3. OPERATING SYSTEM REQUIREMENTS

- 3.1. In order to access and use the Note Dr Software, You will require:
 - 3.1.1. Google Chrome, Mozilla Firefox, Microsoft Edge as Your web browser application; and
- 3.2. One of the following operating systems:
 - 3.2.1. Windows 7 or a later version; or
 - 3.2.2. macOS version 10 or a later version.

4. AUTHORISED USERS

- 4.1. The Customer shall, and shall procure all Authorised Users shall, at all times, comply with all provisions of this Agreement.
- 4.2. The Customer is entitled to remove an individual as an Authorised User and replace them with another individual in accordance with the terms of this Agreement, but accounts created for Authorised Users can only be used by that Authorised User and cannot be shared and/or used by any other person.
- 4.3. The Customer shall not knowingly access, store, distribute or transmit any viruses, or any material during the course of its use of Note Dr Software that:
 - 4.3.1. is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
 - 4.3.2. infringes any rights of third parties;
 - 4.3.3. facilitates illegal activity;
 - 4.3.4. depicts sexually explicit images;
 - 4.3.5. promotes unlawful violence;
 - 4.3.6. is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
 - 4.3.7. is otherwise illegal or causes damage or injury to any person or property.
- 4.4. The Customer shall not:

- 4.4.1. 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 this Agreement:
 - 4.4.1.1. attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Note Dr Software and/or Documentation (as applicable) in any form or media or by any means; or
 - 4.4.1.2. attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Note Dr Software; or
 - 4.4.1.3. access all or any part of the Note Dr Software and/or Documentation in order to build a product or service which competes with the Note Dr Software and/or the Documentation; or
 - 4.4.1.4. use the Note Dr Software and/or Documentation to provide services to third parties; or
 - 4.4.1.5. licence, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Note Dr Software and/or Documentation available to any third party except the Authorised Users; or
 - 4.4.1.6. attempt to obtain, or assist third parties in obtaining, access to the Note Dr Software and/or Documentation, other than as provided under this Agreement.
- 4.4.2. The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Note Dr Software and/or the Documentation and, in the event of any such unauthorised access or use, shall promptly notify Note Dr.

5. NOTE DR OBLIGATIONS

- 5.1. In consideration of either: (i) the Customer undertaking an Evaluation; or (ii) the payment of the Subscription Charges, Note Dr shall, during the Term, make available the Note Dr Software and the Documentation to the Customer on and subject to the terms of this Agreement.
- 5.2. Note Dr may suspend access to the Note Dr Software to all or some of the Authorised Users if:
 - 5.2.1. Note Dr suspects that there has been any misuse of the Note Dr Software or breach of this Agreement; or
 - 5.2.2. in accordance with clause 7.5.1 of this Agreement.
- 5.3. Where the reason for the suspension is suspected misuse of the Note Dr Software or breach of this Agreement, without prejudice to its rights under this Agreement, Note Dr will take steps to investigate the issue and may restore or continue to suspend access at its discretion.
- 5.4. Note Dr shall make available support services to the Customer in relation to the Note Dr Software and the Customer may contact Note Dr to receive such support services through:
 - 5.4.1. Note Dr's live web chat facility made available on the Note Dr website; or
 - 5.4.2. by sending an email to Note Dr at support@notedr.co.uk.

- 5.5. Note Dr may, on request by Customer and at its sole discretion, freeze the account of the Customer and/or any Authorised User for a specific period of time and during such time no Subscription Charges will be payable in respect of the account which is frozen pursuant to this clause 5.5.

6. UPDATES AND UPGRADES

- 6.1. The Customer acknowledges that Note Dr shall be entitled to modify the features and functionality of the Note Dr Software by means of an Update or Upgrade.
- 6.2. Note Dr shall use its reasonable endeavours to ensure that such Updates or Upgrades do not adversely affect the use of the Note Dr Software by the Customer or the Authorised Users.

7. SUBSCRIPTION CHARGES

- 7.1. The Subscription Charges and any other charges expressly agreed between the parties in writing shall be paid by the Customer at the rates and in the manner described on <https://notedr.co.uk/> or as agreed in writing.
- 7.2. No Subscription Charges shall be payable during an Evaluation.
- 7.3. All undisputed invoices shall be paid by the Customer:
- 7.3.1. in respect of a Monthly Subscription, on the Effective Subscription Date and thereafter on each monthly anniversary of the Effective Subscription Date in each calendar month;
 - 7.3.2. in respect of an Annual Subscription, annually in advance on the Effective Subscription Date and thereafter on each anniversary of the Effective Subscription Date; or
 - 7.3.3. in respect of a subscription which is not a Monthly Subscription or an Annual Subscription, on recurring dates to be agreed by Note Dr and the Customer in writing ("**Ad-Hoc Subscription**"), (each (as applicable) the "**Due Date**")
- 7.4. The currency of this Agreement is GBP, AUD or USD depending on IP address.
- 7.5. If Note Dr has not received payment within ten (10) days of the applicable Due Date, and without prejudice to any other rights and remedies of Note Dr:
- 7.5.1. Note Dr may, without liability to the Customer, disable the Authorised User's password, account and access to all or part of the Note Dr Software and Note Dr shall be under no obligation to provide the Customer with access to the Note Dr Software while the invoice(s) concerned remain unpaid; and
 - 7.5.2. 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 the Bank of England from time to time, commencing on the due date and continuing until fully paid, whether before or after judgement.
- 7.6. Note Dr shall be entitled to increase the Subscription Charges at any time during the Term upon ninety (90) days' prior notice to the Customer and the Subscription Charges shall be deemed to have been amended accordingly on expiry of such notice.

8. WARRANTIES

- 8.1. Although we make reasonable efforts to keep the information on our site up to date, we do not guarantee that the content on our site is accurate, complete or up to date. The Customer shall evaluate the accuracy of any information provided by the Note Dr Software as appropriate for the Customer.

9. CUSTOMER'S RESPONSIBILITIES

9.1. The Customer shall (and shall ensure all its Authorised Users shall):

- 9.1.1. at all times comply with all applicable laws relating to:
 - 9.1.1.1. the use or receipt of the Note Dr Software; and
 - 9.1.1.2. its obligations under this Agreement;
- 9.1.2. provide Note Dr with all necessary cooperation in relation to this Agreement and access to such information as may be required by Note Dr in order to meet its obligations under this Agreement;
- 9.1.3. carry out all other Customer responsibilities set out in this Agreement in a timely and efficient manner;
- 9.1.4. ensure that the Authorised Users use the Note Dr Software and the Documentation in accordance with the terms of this Agreement;
- 9.1.5. ensure that its network and systems comply with the relevant specifications provided by Note Dr from time to time; and
- 9.1.6. be, to the extent permitted by applicable law and except as otherwise expressly provided in this Agreement, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to Note Dr'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.

10. INTELLECTUAL PROPERTY

- 10.1. All Intellectual Property Rights in and to the Note Dr Software (including any source code) belong to and shall remain vested in Note Dr or the relevant third-party owner.
- 10.2. Note Dr may use Customer Data to provide and maintain the Note Dr Software, comply with applicable law, and enforce our policies. The Customer is responsible for Customer Data, including for ensuring that it does not violate any applicable law or these Terms.
- 10.3. The Customer grants unrestricted Note Dr may use Customer Data and Documentation from Note Dr Software to help develop and improve the Note Dr Software
- 10.4. This clause 10 shall survive the termination or expiry of this Agreement.

11. INDEMNITY

- 11.1. Subject to this remainder of this clause 11 and clause 14.3, Note Dr shall indemnify and keep the Customer indemnified at all times for all costs and damages awarded or agreed in settlement or final judgement of a Third Party Claim, provided that:
 - 11.1.1. Note Dr is given prompt notice of any such claim;
 - 11.1.2. the Customer provides reasonable co-operation to Note Dr in the defence and settlement of such claim, at Note Dr's expense; and
 - 11.1.3. Note Dr is given sole authority to defend or settle the claim.
- 11.2. If Note Dr reasonably determines, or any third party alleges, that the use of the Note Dr Software or the Documentation by the Customer in accordance with this Agreement infringes any person's Intellectual Property Rights, Note Dr shall at its option:
 - 11.2.1. modify the Note Dr Software or the Documentation in such a way that they no longer infringe the relevant Intellectual Property Rights; or

- 11.2.2. procure for the Customer the right to use the Note Dr Software or the Documentation in accordance with this Agreement.
- 11.3. Note Dr shall have no liability or obligation under this clause 11 in respect of (and shall not be obliged to defend) any Third Party Claim which arises from:
- 11.3.1. any breach of this Agreement by the Customer; or
- 11.3.2. use of the Note Dr Software or the Documentation (or any part) otherwise than in accordance with this Agreement; or
- 11.3.3. a modification of the Note Dr Software or Documentation by anyone other than Note Dr; or
- 11.3.4. the Customer's use of the Note Dr Software or the Documentation in a manner contrary to the instructions given to the Customer by Note Dr; or
- 11.3.5. the Customer's use of the Note Dr Software or the Documentation after notice of the alleged or actual infringement from Note Dr or any appropriate authority.
- 11.4. The indemnity under this clause 11 shall not apply during an Evaluation.
12. **DATA PROTECTION**
- 12.1. Each party shall comply with its respective obligations under Schedule 2 (Data Protection) of this Agreement.
13. **CONFIDENTIAL INFORMATION**
- 13.1. Each party shall maintain the confidentiality of the other party's Confidential Information and shall not without the prior written consent of the other party, disclose, copy or modify the other party's Confidential Information (or permit others to do so) other than as necessary for the performance of its express rights and obligations under this Agreement.
- 13.2. Each party undertakes to:
- 13.2.1. disclose the other party's Confidential Information only to those of its officers, employees, agents and contractors to whom, and to the extent to which, such disclosure is necessary for the purposes contemplated under this Agreement and:
- 13.2.1.1. shall procure that such persons are made aware of and agree in writing to observe the obligations in this clause 13; and
- 13.2.1.2. shall be responsible for the acts and omissions of such third parties as if they were that party's own acts or omissions.
- 13.3. The provisions of this clause 13 shall not apply to information which:
- 13.3.1. is or comes into the public domain through no fault of the receiving party, its officers, employees, agents or contractors;
- 13.3.2. is lawfully received by the receiving party from a third party free of any obligation of confidence at the time of its disclosure;
- 13.3.3. is independently developed by the receiving party, without access to or use of the disclosing party's Confidential Information; or
- 13.3.4. is required by law, by court or governmental or regulatory order to be disclosed provided that the receiving party, where possible, notifies the disclosing party at the earliest opportunity before making any disclosure.
- 13.4. This clause 13 shall survive the termination or expiry of this Agreement.
14. **LIMITATION OF LIABILITY**

- 14.1. Notwithstanding any other provision of this Agreement, neither party's liability shall be limited in any way in respect of the following:
 - 14.1.1. death or personal injury caused by negligence;
 - 14.1.2. fraud or fraudulent misrepresentation; or
 - 14.1.3. any other liability which cannot be excluded or limited by applicable law.
 - 14.2. Neither party shall be liable to the other party whether in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, for any:
 - 14.2.1. loss of profit;
 - 14.2.2. loss of goodwill;
 - 14.2.3. loss of business;
 - 14.2.4. loss of anticipated savings; and/or
 - 14.2.5. special, indirect or consequential loss.
 - 14.3. Subject to clauses 14.1 and 14.2, Note Dr's total aggregate liability howsoever arising under or in connection with this Agreement in each Contract Year shall not exceed of an amount equal to the Subscription Charges paid and/or payable to Note Dr in the Contract Year in which the event giving rise to the claim arose.
 - 14.4. Except as expressly and specifically provided in this Agreement:
 - 14.4.1. the Customer assumes sole responsibility for results obtained from the use of the Note Dr Software by the Customer, and for conclusions drawn from such use. Note Dr shall have no liability for any loss or damage caused by the use of any content posted, emailed, transmitted, or otherwise made available through the Note Dr Software; and/or
 - 14.4.2. 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 this Agreement; and
 - 14.4.3. the Note Dr Software and the Documentation are provided to the Customer on an "as is" basis.
- 15. TERM AND TERMINATION**
- 15.1. This Agreement shall come into force on the Effective Date and, shall continue for the Evaluation Period unless the Customer purchases a Subscription in which case the Agreement shall continue beyond the Evaluation Period until:
 - 15.1.1. either party provides the other party with at least ten (10) days prior written notice of its intention to terminate this Agreement; or
 - 15.1.2. otherwise terminated earlier in accordance with this Agreement, (the "**Term**").
 - 15.2. Either party may terminate this Agreement immediately at any time by giving notice in writing to the other party if:
 - 15.2.1. the other party commits a material breach of this Agreement and such breach is not remediable;
 - 15.2.2. the other party commits a material breach of this Agreement which is not remedied within thirty (30) days of receiving written notice of such breach;
 - 15.2.3. the other party is subject to an Insolvency Event; or
 - 15.2.4. any Force Majeure Event prevents the other party from performing its obligations under this Agreement for any continuous period of three (3) months.

- 15.3. If the Customer does not purchase a Subscription by the end of the Evaluation Period, the Customer's access to the Note Dr Software shall terminate and the Customer shall, and shall procure that each Authorised User shall, stop using the Note Dr Software and Documentation.

16. CONSEQUENCES OF TERMINATION

- 16.1. On termination or expiry of this Agreement (for any reason):
- 16.1.1. the Customer shall, and shall procure that each Authorised User shall stop using the Note Dr Software and Documentation;
 - 16.1.2. the Customer shall make payment of all Subscription Charges properly due and payable up to the date of termination;
 - 16.1.3. subject to paragraph 2.11.1 of Schedule 2 (Data Protection), Note Dr shall delete all Customer Data held on the Note Dr Software within fourteen (14) days following the date of termination or expiry; and
 - 16.1.4. each party shall destroy and delete any copies of the other party's Confidential Information in its possession or control (or in the possession or control of any person acting on its behalf).
- 16.2. In the event that: (i) the Customer has terminated this Agreement pursuant to clause 15.1.1; or (ii) Note Dr terminates this Agreement pursuant to clause 15.2, the Customer shall not be entitled to any refund of prepaid Subscription Charges covering the period beyond the date of termination;
- 16.3. Termination or expiry of this Agreement shall not affect any accrued rights and liabilities of either party at any time up to the date of termination or expiry and shall not affect any provision of this Agreement that is expressly or by implication intended to continue beyond termination.

17. FORCE MAJEURE

- 17.1. Provided that it has complied with clause 17.2, if a party is prevented, hindered or delayed in or from performing any of its obligations under this Agreement by a Force Majeure Event (the "**Affected Party**"), the Affected Party shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations.
- 17.2. The Affected Party shall:
- 17.2.1. as soon as reasonably practicable after the start of the Force Majeure Event, notify the other party in writing of such Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of such Force Majeure Event on its ability to perform any of its obligations under this Agreement; and
 - 17.2.2. use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

18. ANTI-BRIBERY AND CORRUPTION

- 18.1. Note Dr shall:
- 18.1.1. comply with all applicable laws, statutes, regulations, relating to anti-bribery and anti-corruption including the Bribery Act 2010 ("**Relevant Requirements**");
 - 18.1.2. not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK; and

- 18.1.3. have and shall maintain in place throughout the Term its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements.

19. ENTIRE AGREEMENT

- 19.1. This Agreement constitutes the entire agreement between the parties and supersedes all previous agreements, understandings and arrangements between them in respect of its subject matter, whether in writing or oral.
- 19.2. Each party acknowledges that it has not entered into this Agreement in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in this Agreement.

20. NOTICES

- 20.1. Any notice given by a party under this Agreement shall be:
- 20.1.1. in writing and in English; and
- 20.1.2. sent to the relevant party at its registered company address either:
- 20.1.2.1. by hand; or
- 20.1.2.2. by pre-paid first-class post or other next working day delivery service; or
- 20.1.2.3. by email to (i) Note Dr at: support@notedr.co.uk; or (ii) the Customer at the email address provided by the Customer at the point of acceptance of this Agreement.
- 20.2. Any notice shall be deemed to have been delivered:
- 20.2.1. if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the registered address of the other party; or
- 20.2.2. if sent by pre-paid first-class post or other next working day delivery service, at 9.00am on the third Business Day after posting or at the time recorded by the delivery service; or
- 20.2.3. if sent by email, at the point of delivery provided confirmation of receipt has been provided by the other party
- 20.3. Any change to the contact details of a party shall be effective:
- 20.3.1. on the date specified in the notice as being the date of such change; or
- 20.3.2. if no date is so specified five (5) Business Days after the notice is deemed to be received.

21. VARIATION

- 21.1. No variation of this Agreement shall be valid or effective unless it is made in writing, refers to this Agreement and is duly signed or executed by, or on behalf of, each party.

22. ASSIGNMENT AND SUBCONTRACTING

- 22.1. The Customer shall not assign, transfer, sub-contract, sub-licence, mortgage, charge, declare a trust of or deal in any other manner with any or all of its rights or obligations under this Agreement (including the licence rights granted), in whole or in part, without Note Dr's prior written consent.
- 22.2. Note Dr may at any time assign, transfer, sub-contract, sub-licence, mortgage, charge, declare a trust of or deal in any other manner with any or all of its rights or obligations under this Agreement (including the licence rights granted), in whole or in part under this Agreement without the consent of the Customer.

23. NO PARTNERSHIP OR AGENCY

23.1. The parties are independent and are not partners or principal and agent and this Agreement does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. Neither party shall have, nor shall represent that it has, any authority to make any commitments on the other party's behalf.

24. SEVERANCE

24.1. If any provision of this Agreement (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of this Agreement shall not be affected.

24.2. If any provision of this Agreement (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.

25. WAIVER

25.1. No failure, delay or omission by either party in exercising any right, power or remedy provided by law or under this Agreement shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.

25.2. No single or partial exercise of any right, power or remedy provided by law or under this Agreement shall prevent any future exercise of it or the exercise of any other right, power or remedy.

25.3. A waiver of any term, provision, condition or breach of this Agreement shall only be effective if given in writing and signed by the waiving party, and then only in the instance and for the purpose for which it is given.

26. THIRD PARTY RIGHTS

26.1. This Agreement does not confer any rights on any person or party (other than the parties to this agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

27. DISPUTE RESOLUTION

27.1. Any dispute between the parties that is not resolved informally between the parties must be referred in writing by either party to a representative of the other party. If upon expiry of thirty (30) Business Days following referral to the representative, the dispute remains unresolved, the dispute may be referred to a director of each party to attempt to resolve.

27.2. Either party may issue formal legal proceedings at any time whether or not the steps referred to in clause 27.1 have been completed.

28. GOVERNING LAW AND JURISDICTION

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

SCHEDULE 1 - DEFINITIONS AND INTERPRETATION

1. In this Agreement:

“**Ad-Hoc Subscription**” has the meaning given in clause 7.3.3;

“**Authorised Users**” means the employees and contractors of the Customer who are authorised by the Customer to use Note Dr Software and Documentation;

“**Annual Subscription**” means the Customer’s annual subscription to access and use the Note Dr Software and Documentation subject to the payment of the Subscription Charges;

“**Business Day**” means a day other than a Saturday, Sunday or bank or public holiday in England;

“**Confidential Information**” means information that is either clearly labelled as confidential, is of a confidential nature or would appear to a reasonable person to be confidential, and shall include all (i) know-how, trade secrets, financial, commercial, technical, tactical or strategic information of any kind, (ii) all information produced or developed in the performance of this Agreement; (iii) Customer Data; and (iv) the Note Dr Software and the results of any performance tests in relation to the Note Dr Software;

“**Contract Year**” means the period of twelve (12) months from the Effective Date and each subsequent period of twelve (12) months commencing on the anniversary of the Effective Date;

“**Customer Data**” means all data in any form (including Customer Personal Data (as defined in Schedule 2 (Data Protection) that is provided to Note Dr or uploaded or hosted on any part of the Note Dr Software by the Customer, or by any Authorised User, or generated for the Customer by Note Dr in providing the Note Dr Software;

“**Documentation**” means the documentation relevant to Note Dr Software provided by Note Dr to the Customer from time to time;

“**Due Date**” has the meaning given in clause 7.3;

“**Effective Date**” means the date the Customer ticks the checkbox on the sign-on page to indicate that they accept the terms of this Agreement, and enters in to this Agreement;

“**Effective Subscription Date**” means the date on which the Customer purchases a subscription of the Note Dr Software following the expiry of the Evaluation Period;

“**Evaluation**” means the provision by Note Dr of access to the Note Dr Software and Documentation to the Customer on a free of charge basis for the Evaluation Period;

“**Evaluation Period**” means the length of trial offer as defined on the Note Dr website (which may change periodically);

“**Force Majeure Event**” means any circumstance not within a party's reasonable control including, without limitation (a) acts of God, flood, drought, earthquake or other natural disasters;

(b) epidemic or pandemic; (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; (d) nuclear, chemical or biological contamination or sonic boom; (e) any

law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent; (f) collapse of buildings, fire, explosion or accident; and (h) interruption or failure of utility service;

“Good Industry Practice” means the degree of skill and diligence which would reasonably be expected from a skilled and experienced person engaged in the same type of undertaking under the same or similar circumstances;

“Insolvency Event” means, where (i) a party becomes insolvent or unable to pay its debts as and when they become due; (ii) an order is made or a resolution is passed for the winding up of a party (other than voluntarily for the purpose of solvent amalgamation or reconstruction); (iii) a liquidator, administrator, administrative receiver, receiver, or trustee is appointed in respect of the whole or any part of a party’s assets or business; (iv) a party makes any composition with its creditors; (v) a party ceases to continue its business; or (vi) as a result of debt or maladministration a party takes or suffers any similar or analogous action in any jurisdiction;

“Intellectual Property Rights” means any and all copyright, rights in inventions, patents, know-how, trade secrets, trademarks and trade names, service marks, design rights, rights in get-up, database rights and rights in data, semiconductor chip topography rights, utility models, domain names and all similar rights and, in each case:

- a. whether registered or not;
- b. including any applications to protect or register such rights;
- c. including all renewals and extensions of such rights or applications;
- d. whether vested, contingent or future; and
- e. wherever existing;

“Note Dr Software” means the software provided to automate clinical admin workflows and shall include any Upgrade and/or Update;

“Monthly Subscription” means the Customer’s monthly subscription to access and use the Note Dr Software and Documentation subject to the payment of the Subscription Charges;

“Schedule” means a schedule to this Agreement;

“Subscription” means (as applicable) either: (i) an Annual Subscription; or (ii) a Monthly Subscription; or (iii) an Ad-Hoc Subscription.

“Subscription Charges” means the charges payable by the Customer for a Subscription to the Note Dr Software;

“Term” has the meaning given in clause 15.1;

“Third Party Claim” means any claim brought by a third party against the Customer, which arises in connection with the Customer’s use of the Note Dr Software or the Documentation;

“Update” means a hotfix, patch or minor version update to the Note Dr Software; **“Upgrade”** means a major version upgrade to the Note Dr Software; and

“VAT” means United Kingdom value added tax, any other tax imposed in substitution for it and any equivalent or similar tax imposed outside the United Kingdom.

2. In this Agreement, unless otherwise stated:
 - 2.1. words in the singular include the plural and vice versa;
 - 2.2. any words that follow “**include**”, “**includes**”, “**including**”, “**in particular**” or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words; and
 - 2.3. a reference to specific legislation is a reference to that legislation as amended, extended, re-enacted or consolidated from time to time.

SCHEDULE 2 - DATA PROTECTION

1. DEFINITIONS

1.1. In this Schedule 2, the following definitions shall apply:

- 1.1.1. **“Controller”**, **“Data Subject”**, **“International Organisation”**, **“Personal Data”**, **“Personal Data Breach”**, **“Processor”** and **“processing”** shall have the respective meanings given to them in applicable Data Protection Laws from time-to-time (and related expressions, including **“process”**, **“processed”** and **“processes”** shall be construed accordingly);
- 1.1.2. **“Customer Personal Data”** means Personal Data received from or on behalf of the Customer in connection with the performance of Note Dr’s obligations under this Agreement;
- 1.1.3. **“Data Protection Laws”** means, as binding on either party:
 - 1.1.3.1. the GDPR;
 - 1.1.3.2. the Data Protection Act 2018;
 - 1.1.3.3. any laws which implement any such laws; and
 - 1.1.3.4. any laws that replace, extend, re-enact, consolidate or amend any of the foregoing;
- 1.1.4. **“GDPR”** means the General Data Protection Regulation, Regulation (EU) 2016/679; and
- 1.1.5. **“Sub-Processor”** means any agent, subcontractor or other third party (excluding its employees) engaged by Note Dr for carrying out any processing activities on behalf of the Customer in respect of the Customer Personal Data.

2. DATA PROCESSING TERMS

- 2.1. The parties agree that the Customer is a Controller and that Note Dr is a Processor for the purposes of processing Customer Personal Data pursuant to this Agreement. The Customer shall at all times comply with all Data Protection Laws in connection with the processing of Customer Personal Data. The Customer shall ensure all instructions given by it to Note Dr in respect of Customer Personal Data shall at all times be in accordance with Data Protection Laws.
- 2.2. The Customer warrants, represents and undertakes, that all Customer Personal Data shall comply in all respects, including in terms of its collection, storage and processing (which shall include the Customer providing all of the required fair processing information to, and obtaining all necessary consents from, Data Subjects), with Data Protection Laws.
- 2.3. Note Dr shall process Customer Personal Data in compliance with the obligations placed on it under Data Protection Laws and the terms of this Agreement.
- 2.4. **Instructions**
 - 2.4.1. Note Dr shall:
 - 2.4.1.1. only process (and shall ensure Note Dr personnel only process) the Customer Personal Data in accordance with this clause 2 and Annex A (Processing Particulars) to this Schedule 2 except to the extent:
 - 2.4.1.1.1. that alternative processing instructions are agreed between the parties in writing; or

- 2.4.1.1.2. otherwise required by applicable law (and shall inform the Customer of that legal requirement before processing, unless applicable law prevents it doing so on important grounds of public interest); and
- 2.4.1.1.3. without prejudice to clause 2.1 of this Schedule, if Note Dr believes that any instruction received by it from the Customer is likely to infringe the Data Protection Laws, it shall promptly inform the Customer.

2.5. Security and Personnel

- 2.5.1. Taking into account the state of technical development and the nature of processing, Note Dr shall implement and maintain appropriate technical and organisational measures to protect the Customer Personal Data against accidental, unauthorised or unlawful destruction, loss, alteration, disclosure or access.
- 2.5.2. Note Dr shall ensure that all persons authorised by it to process Customer Personal Data are subject to a binding written contractual obligation to keep the Customer Personal Data confidential (except where disclosure is required in accordance with applicable, in which case Note Dr shall, where practicable and not prohibited by applicable law, notify the Customer of any such requirement before such disclosure)

2.6. Assistance

- 2.6.1. Note Dr shall (at the Customer's cost):
 - 2.6.1.1. assist the Customer in ensuring compliance with the Customer's obligations pursuant to Articles 32 to 36 of the GDPR (and any similar obligations under applicable Data Protection Laws) taking into account the nature of the processing and the information available to Note Dr; and
 - 2.6.1.2. taking into account the nature of the processing, assist the Customer (by appropriate technical and organisational measures), insofar as this is possible, for the fulfilment of the Customer's obligations to respond to requests by Data Subjects exercising the rights of Data Subjects under Chapter III of the GDPR (and any similar obligations under applicable Data Protection Laws) in respect of any Customer Personal Data.

2.7. International Transfers

- 2.7.1. The Customer hereby consents to Note Dr having the right to process and/or transfer, or otherwise directly or indirectly disclose, any Customer Personal Data in or to countries outside the United Kingdom and the European Economic Area or to any International Organisation without the prior written consent of the Customer for the purposes of providing the Note Dr Software (including any support services) to the Customer under this Agreement provided that:
 - 2.7.1.1. Note Dr and/or the Customer has provided appropriate safeguards in relation to the transfer;
 - 2.7.1.2. Note Dr complies with Data Protection Laws in respect of any transfer; and

- 2.7.1.3. Note Dr complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Customer Personal Data.

2.8. Audits and Processing

- 2.8.1. Note Dr shall, in accordance with Data Protection Laws, make available to the Customer such information that is in its possession or control as is necessary to demonstrate Note Dr's compliance with the obligations placed on it under this Schedule, and allow for and contribute to audits, including inspections, by the Customer (or another auditor mandated by the Customer) for this purpose (subject to a maximum of one audit request in any twelve (12) month period under this clause 2.8.1 of this Schedule).

2.9. Subcontracting

- 2.9.1. Note Dr may engage any Sub-Processor for carrying out any processing activities in respect of the Customer Personal Data without Your prior consent. Before appointing any new Sub-Processor, Note Dr shall inform You of the appointment (including the name and location of such Sub-Processor and the activities it will perform) by electronic mail. You may object to the appointment of the Sub-processor by giving written notice to Note Dr within ten (10) days of being informed by Note Dr of such appointment.

- 2.9.2. Note Dr shall:

- 2.9.2.1. prior to the relevant Sub-Processor carrying out any processing activities in respect of the Customer Personal Data, appoint each Sub-Processor under a written contract containing materially the same obligations as under this Schedule 2; and

- 2.9.2.2. remain fully liable to the Customer under this Agreement for all acts and/or omissions of its Sub-Processor as if they were its own.

2.10. Personal Data Breach

- 2.10.1. Note Dr shall notify the Customer without undue delay and in writing on becoming aware of any Personal Data Breach in respect of any Customer Personal Data.

2.11. Deletion and Return of Customer Personal Data

- 2.11.1. On termination or expiry of this Agreement, at the Customer's cost and the Customer's option, Note Dr shall either return all of the Customer Personal Data to the Customer or securely dispose of the Customer Personal Data (and thereafter promptly delete all existing copies of it) except to the extent that any applicable law requires Note Dr to store such Customer Personal Data.

ANNEX A - PROCESSING PARTICULARS

Processing of the Customer Personal Data by Note Dr under this Agreement shall be for the subject-matter, duration, nature and purposes and involve the types of personal data and categories of Data Subjects set out below:

1. SUBJECT-MATTER OF PROCESSING:

The subject matter of the processing is to allow Note Dr to make available the Note Dr Software to the Customer for use within its business and provide medical services to its end customers.

2. DURATION OF THE PROCESSING:

The duration of the processing shall be for the Term of the Agreement unless Note Dr is required to process Customer Personal Data beyond the date of termination of this Agreement in order to comply with applicable laws and/or regulations.

3. NATURE AND PURPOSE OF THE PROCESSING:

Note Dr shall provide the Note Dr Software to allow the Customer to input, access and store Customer Personal Data in the Note Dr Software which will be provided to the Customer as a software as a service solution. The purpose of the processing is to allow Note Dr to make the Note Dr Software available to the Customer in accordance with the terms of this Agreement.

4. TYPE OF PERSONAL DATA:

The following types of Personal Data shall be processed by Note Dr:

- name;
- date of birth;
- contact information (including telephone numbers and email addresses);
- home address and postcode;
- gender; and
- patient name, email and health information (including, but not limited to appointment audio recordings, medical concerns and observations, appointment notes, medical conditions, diagnosis of conditions and proposed/actual treatments) of Customer patients.

5. CATEGORIES OF DATA SUBJECTS:

The following categories of Data Subjects shall be captured under this Agreement:

- employees and contractors of the Customer; and
- patients of the Customer