

Aire Innovate

Standard Terms and Conditions

Issue 0.1

xx Month yyyy



Date

[Date]

Parties

1. **Aire Innovate Limited**, a company incorporated in England and Wales (registration number 13942096) having its registered office at Aireside House, 24 - 26 Aire Street, Leeds, LS1 4HT (the "**Aire Innovate**"); and
2. **[a Customer]**, a company incorporated in [England and Wales] (registration number [registration number]) having its registered office at [address] OR [[PARTNERSHIP NAME], a partnership established under the laws of [England and Wales] having its principal place of business at [address]] (the "**Customer**").

Background

Aire Innovate Limited offers a low code platform and suite of products. The Customer wishes to purchase the products specified in the Schedule to this Agreement. Aire Innovate offers initial setup of the chosen product, maintenance and additional development to meet the Customer's requirements.

1. Term

- 1.1. This Agreement shall come into force upon the Effective Date.
- 1.2. This Agreement shall continue in force [for x months] OR [until dd/mm/yyyy], at the beginning of which this Agreement shall terminate automatically subject to termination.

2. Hosted Services

- 2.1. Aire Innovate grants to the Customer a worldwide, non-exclusive licence to use the Hosted Services by means of a Supported Web Browser for the internal business purposes of the Customer in accordance with the Documentation during the Term and as further detailed in the Schedule.
- 2.2. Except to the extent expressly permitted in this Agreement or required by law on a non-excludable basis, the licence granted by Aire Innovate to the Customer is subject to the following prohibitions:

- 2.2.1. the Customer must not sub-license its right to access and use the Hosted Services;
 - 2.2.2. the Customer must not permit any unauthorised person to access or use the Hosted Services;
 - 2.2.3. the Customer must not use the Hosted Services to provide services to paying third parties;
 - 2.2.4. the Customer must not republish or redistribute any content or material from the Hosted Services; and
 - 2.2.5. the Customer must not make any alteration to the Platform.
- 2.3. The Customer shall use reasonable endeavours, including reasonable security measures relating to administrator Account access details, to ensure that no unauthorised person may gain access to the Hosted Services using an administrator Account.
- 2.3.1. Aire Innovate shall use all reasonable endeavours to maintain the availability of the Hosted Services to the Customer, but does not guarantee 100% availability.
 - 2.3.2. For the avoidance of doubt, downtime caused directly or indirectly by any of the following shall not be considered a breach of this Agreement:
 - (a) a force majeure event;
 - (b) a fault or failure of the internet or any public telecommunications network;
 - (c) a fault or failure of the Customer's computer systems or networks;
 - (d) any breach by the Customer of this Agreement; or
 - (e) scheduled maintenance carried out in accordance with this Agreement.
- 2.4. For the avoidance of doubt, the Customer has no right to access the software code (including object code, intermediate code and source code) of the Platform, either during or after the Term.
- 2.5. Aire Innovate may suspend the provision of the Hosted Services if any amount due to be paid by the Customer to Aire Innovate under this Agreement is overdue, and Aire Innovate has given to

the Customer written notice, following the amount becoming overdue, of its intention to suspend the Hosted Services on this basis.

3. Maintenance Services

- 3.1. Aire Innovate shall provide the Maintenance Services to the Customer during the Term as set out in the Schedule.
- 3.2. Aire Innovate shall where practicable give to the Customer prior written notice of scheduled Maintenance Services that are likely to affect the availability of the Hosted Services or are likely to have a material negative impact upon the Hosted Services, without prejudice to Aire Innovate's other notice obligations under this main body of this Agreement.
- 3.3. Aire Innovate shall give to the Customer prior written notice of the application of an Upgrade to the Platform.
- 3.4. Aire Innovate shall provide the Maintenance Services with reasonable skill and care.
- 3.5. Aire Innovate may suspend the provision of the Maintenance Services if any amount due to be paid by the Customer to Aire Innovate under this Agreement is overdue, and Aire Innovate has given to the Customer written notice, following the amount becoming overdue, of its intention to suspend the Maintenance Services on this basis.

4. Support Services

- 4.1. Aire Innovate shall provide the Support Services to the Customer during the Term as set out in the Schedule.
- 4.2. Aire Innovate shall provide the Support Services with reasonable skill and care.
- 4.3. Aire Innovate may suspend the provision of the Support Services if any amount due to be paid by the Customer to Aire Innovate under this Agreement is overdue, and Aire Innovate has given to the Customer written notice, following the amount becoming overdue, of its intention to suspend the Support Services on this basis.

5. Development Services

- 5.1. Aire Innovate shall provide Development Services to the Customer as set out in the Schedule.
- 5.2. Aire Innovate shall provide the Development Services with reasonable skill and care.
- 5.3. Aire Innovate may suspend the provision of the Development Services if any amount due to be paid by the Customer to Aire Innovate under this Agreement is overdue, and Aire Innovate has given to the Customer written notice, following the amount becoming overdue, of its intention to suspend the Development Services on this basis.

6. Customer Data

- 6.1. The Customer hereby grants to Aire Innovate a non-exclusive licence to the Customer Data to the extent reasonably required for the performance of Aire Innovate's obligations and the exercise of Aire Innovate's rights under this Agreement.
- 6.2. The Customer warrants to Aire Innovate that the Customer Data will not infringe the Intellectual Property Rights or other legal rights of any person, and will not breach the provisions of any law, statute or regulation, in any jurisdiction and under any applicable law.

7. No assignment of Intellectual Property Rights

Nothing in this Agreement shall operate to assign or transfer any Intellectual Property Rights from Aire Innovate to the Customer, or from the Customer to Aire Innovate.

8. Charges

- 8.1. The Customer shall pay the Charges to Aire Innovate in accordance with this Agreement.
- 8.2. If the Charges are based in whole or part upon the time spent by Aire Innovate performing the Services, Aire Innovate must obtain the Customer's written consent before performing Services that result in any estimate of time-based Charges given to the Customer being exceeded or any budget for time-based Charges agreed by the parties being exceeded; and unless the Customer agrees otherwise in writing, the Customer shall not be liable to pay to Aire Innovate any Charges in respect of Services performed in breach of this clause..

8.3. All amounts stated in or in relation to this Agreement are, unless the context requires otherwise, stated exclusive of any applicable value added taxes, which will be added to those amounts and payable by the Customer to Aire Innovate.

8.4. Aire Innovate may elect to vary any element of the Charges by giving to the Customer not less than 30 days' written notice of the variation, providing that no such variation shall result in an aggregate percentage increase in the relevant

element of the Charges during the Term that exceeds 5% over the percentage increase, during the same period, in the Retail Prices Index (all items) published by the UK Office for National Statistics.

9. Payments

9.1. Aire Innovate shall issue invoices for the Charges to the Customer from time to time during the Term.

9.2. The Customer must pay the Charges to Aire Innovate within the period of 30 days following the issue of an invoice in accordance with this Clause 10.

9.3. The Customer must pay the Charges by bank transfer (using such payment details as are notified by Aire Innovate to the Customer from time to time).

9.4. If the Customer does not pay any amount properly due to Aire Innovate under this Agreement, Aire Innovate may:

(a) charge the Customer interest on the overdue amount at the rate of 8% per annum above the Bank of England base rate from time to time (which interest will accrue daily until the date of actual payment and be compounded at the end of each named calendar month); or

(b) claim interest and statutory compensation from the Customer pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.

10. Provider's confidentiality obligations

10.1. Aire Innovate must:

(a) keep the Customer Confidential Information strictly confidential;

- (b) not disclose the Customer Confidential Information to any person without the Customer's prior written consent;
 - (c) use the same degree of care to protect the confidentiality of the Customer Confidential Information as Aire Innovate uses to protect Aire Innovate's own confidential information of a similar nature, being at least a reasonable degree of care;
- 10.2. Notwithstanding the above clause, Aire Innovate may disclose the Customer Confidential Information to Aire Innovate's officers, employees, professional advisers, insurers, agents and subcontractors who have a need to access the Customer Confidential Information for the performance of their work with respect to the

Permitted Purpose and who are bound by a written agreement or professional obligation to protect the confidentiality of the Customer Confidential Information.

11. Data protection and GDPR

- 11.1. The Customer warrants to Aire Innovate that it has the legal right to disclose all Personal Data that it does in fact disclose to Aire Innovate under or in connection with this Agreement, and that the processing of that Personal Data by Aire Innovate for the Permitted Purpose in accordance with this Agreement will not breach any applicable data protection or data privacy laws (including the Data Protection Act 1998).
- 11.2. To the extent that Aire Innovate processes Personal Data disclosed by the Customer, Aire Innovate warrants that:
 - (a) it will act only on instructions from the Customer in relation to the processing of that Personal Data;
 - (b) it has in place appropriate security measures (both technical and organisational) against unlawful or unauthorised processing of that Personal Data and against loss or corruption of that Personal Data;
- 11.3. Both parties will comply with all applicable requirements of the Data Protection Legislation, including the Data Protection Act 2018.

- 11.4. The parties acknowledge that for the purposes of the Data Protection, the Customer is the data controller and Aire Innovate is the data processor.
- 11.5. Aire Innovate shall, in relation to any Personal Data processed in connection with this agreement:
- (a) process that Personal Data only on the written instructions of the Customer, unless Aire Innovate is required by the laws on any member of the European Union or by the laws of the European Union applicable to Aire Innovate to process Personal Data (Applicable Laws).
 - (b) where Aire Innovate is relying on laws of a member of the European Union or European Union Law as the basis for processing Personal Data, Aire Innovate shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit Aire Innovate from so notifying the Customer.
 - (c) ensure that it has in place appropriate technical and organisational measures inline with Data Protection to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data;
 - (d) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
 - (e) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
 - (i) The Customer or Aire Innovate has provided appropriate safeguards in relation to the transfer;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) Aire Innovate complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (iv) Aire Innovate complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of personal data;

- (f) assist the Customer in responding to any requests from a Data Subject and in ensuring compliance with its obligations under the Data Protection and GDPR Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (g) notify the Customer without undue delay on becoming aware of a Personal Data breach;
- (h) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the agreement unless required by Applicable law to store the Personal Data; and
- (i) maintain complete and accurate records and information to demonstrate its compliance with this clause and allow for audits by the Customer or the Customer's designated auditor.

12. Acknowledgements and warranty limitations

- 12.1. The Customer acknowledges that complex software is never wholly free from defects, errors and bugs; and subject to the other provisions of this Agreement, Aire Innovate gives no warranty or representation that the Hosted Services will be wholly free from defects, errors and bugs.
- 12.2. The Customer acknowledges that complex software is never entirely free from security vulnerabilities; and subject to the other provisions of this Agreement, Aire Innovate gives no warranty or representation that the Hosted Services will be entirely secure.
- 12.3. The Customer acknowledges that the Hosted Services are designed to be compatible only with that software and those systems; and Aire Innovate does not warrant or represent that the Hosted Services will be compatible with any other software or systems.

13. Limitations and exclusions of liability

- 13.1. Nothing in this Agreement will:
 - (a) limit or exclude any liability for death or personal injury resulting from negligence;
 - (b) limit or exclude any liability for fraud or fraudulent misrepresentation;

- (c) limit any liabilities in any way that is not permitted under applicable law; or
- (d) exclude any liabilities that may not be excluded under applicable law.

- 13.2. Neither party shall be liable to the other party in respect of any loss of profits or anticipated savings.
- 13.3. Neither party shall be liable to the other party in respect of any loss of revenue or income.
- 13.4. Neither party shall be liable to the other party in respect of any loss of business, contracts or opportunities.
- 13.5. Neither party shall be liable to the other party in respect of any loss or corruption of any data, database or software.
- 13.6. Neither party shall be liable to the other party in respect of any special, indirect or consequential loss or damage.
- 13.7. The liability of each party to the other party under this Agreement in respect of any event or series of related events shall not exceed the total amount paid and payable by the Customer to Aire Innovate under this Agreement in the 12 month period preceding the commencement of the event or events.

14. Indemnity and Insurance

- 14.1. The Customer will indemnify and keep indemnified Aire Innovate against any and all loss, damage or liability suffered and legal fees and costs incurred as a result from a breach of this agreement by The Customer
- 14.2. The Customer will maintain a comprehensive policy of insurance to cover liability in respect of any act or default for which The Customer may become liable to indemnify Aire Innovate under the terms of this agreement.
- 14.3. Aire Innovate similarly indemnifies and holds The Customer harmless from and against the same and/or similar losses that the Client may suffer arising out of, or as a result of, Aire Innovate's misuse or mismanagement of Aire Innovate's data.

15. Termination

- 15.1. Either party may terminate this Agreement by giving to the other party at least 60 days' written notice of termination.
- 15.2. Either party may terminate this Agreement immediately by giving written notice of termination to the other party if the other party commits a material breach of this Agreement.
- 15.3. Either party may terminate this Agreement immediately by giving written notice of termination to the other party if:
- (a) the other party:
 - (i) is dissolved;
 - (ii) ceases to conduct all (or substantially all) of its business;
 - (iii) is or becomes unable to pay its debts as they fall due;
 - (iv) is or becomes insolvent or is declared insolvent; or
 - (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
 - (b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;
 - (c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up.

16. Effects of termination

- 16.1. Except to the extent that this Agreement expressly provides otherwise, the termination of this Agreement shall not affect the accrued rights of either party.
- 16.2. Within 30 days following the termination of this Agreement for any reason:

- (a) the Customer must pay to Aire Innovate any Charges in respect of Services provided to the Customer before the termination of this Agreement; and
- (b) Aire Innovate must refund to the Customer any Charges paid by the Customer to Aire Innovate in respect of Services that were to be provided to the Customer after the termination of this Agreement,

17. Subcontracting

- 17.1. Aire Innovate may subcontract any of its obligations under this Agreement.
- 17.2. Aire Innovate shall remain responsible to the Customer for the performance of any subcontracted obligations.
- 17.3. Notwithstanding any other provision of this Agreement, the Customer acknowledges and agrees that Aire Innovate may subcontract to any reputable third party hosting business the hosting of the Platform and the provision of services in relation to the support and maintenance of elements of the Platform.

18. Service interruption

- 18.1. From time to time there will be need for the platform to be upgraded through planned maintenance. Aire Innovate will use its customer listing to inform all customers of planned maintenance timings. Planned maintenance will normally take place out of hours.
- 18.2. Should planned maintenance fall into a time when the customer critically requires the service, they should notify the Service Desk and the options can be discussed to move the time to another slot, or to support the customer during the planned maintenance time slot.
- 18.3. Service outage or severe incidents with the Aire Innovate infrastructure will be communicated to all customers as soon as Aire Innovate is notified by our service provider of such an incident. During the period of outage we will keep all customers informed of the expected resolution timescales and determine if there are routes to support the customer during this period.
- 18.4. Service outages will be recorded in the Aire Innovate call management system, and resolution meetings and reviews will be held with the Supplier

19. General

- 19.1. No breach of any provision of this Agreement shall be waived except with the express written consent of the party not in breach.
- 19.2. This Agreement may not be varied except by a written document signed by or on behalf of each of the parties.
- 19.3. This Agreement is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to this Agreement are not subject to the consent of any third party.
- 19.4. This Agreement shall constitute the entire agreement between the parties in relation to the subject matter of this Agreement, and shall supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter.
- 19.5. This Agreement shall be governed by and construed in accordance with English law and the English courts shall have jurisdiction.

20. Definitions and Interpretation

Except to the extent expressly provided otherwise, in this Agreement:

"Account" means an account enabling a person to access and use the Hosted Services, including both administrator accounts and user accounts;

"Agreement" means this agreement including any Schedules, and any amendments to this Agreement from time to time;

"Business Day" means any weekday other than a bank or public holiday in England;

"Business Hours" means the hours of 09:00 to 17:00 GMT/BST on a Business Day;

"Charges" means the following amounts:

- (a) the amounts specified in Part 2 of Schedule 1 (Hosted Services particulars);

- (b) such amounts as may be agreed in writing by the parties from time to time; and
- (c) amounts calculated by multiplying Aire Innovate's standard time-based charging rates (as notified by Aire Innovate to the Customer before the date of this Agreement) by the time spent by Aire Innovate's personnel performing the relevant services;

"Customer Data" means all data, works and materials: uploaded to or stored on the Platform by the Customer; transmitted by the Platform at the instigation of the Customer; supplied by the Customer to Aire Innovate for uploading to, transmission by or storage on the Platform; or generated by the Platform as a result of the use of the Hosted Services by the Customer;

"Development Services" means those development services commissioned by the Customer as part of this agreement and as detailed in the Schedule;

"Documentation" means the documentation for the Hosted Services produced by Aire Innovate and delivered or made available by Aire Innovate to the Customer;

"Effective Date" means the date of execution of this Agreement;

"Hosted Services" means the software and services detailed in Schedule 1, which will be made available by Aire Innovate to the Customer as a service via the internet in accordance with this Agreement;

"Hosted Services Defect" means a defect, error or bug in the Platform having an adverse effect on the appearance, operation, functionality or performance of the Hosted Services, but excluding any defect, error or bug caused by or arising as a result of:

- (a) any act or omission of the Customer or any person authorised by the Customer to use the Platform or Hosted Services;
- (b) any use of the Platform or Hosted Services contrary to the Documentation, whether by the Customer or by any person authorised by the Customer;
- (c) a failure of the Customer to perform or observe any of its obligations in this Agreement; and/or
- (d) an incompatibility between the Platform or Hosted Services and any other system, network, application, program, hardware or software not specified as compatible in the Hosted Services Specification;

"Hosted Services Specification" means the specification for the Platform and Hosted

Services set out in Part 1 of Schedule 1 (Hosted Services particulars) and in the Documentation;

"Intellectual Property Rights" means all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trade marks, service marks, passing of rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

"Maintenance Services" means the general maintenance of the Platform and Hosted Services, and the application of Updates and Upgrades;

"Permitted Purpose" means the use of the hosted services to support the collection and display of user entered data;

"Personal Data" has the meaning given to it in the Data Protection Act 1998;

"Platform" means the platform managed by Aire Innovate and used by Aire Innovate to provide the Hosted Services, including the application and database software for the Hosted Services, the system and server software used to provide the Hosted Services, and the computer hardware on which that application, database, system and server software is installed; **"Schedule"** means any schedule attached to the main body of this Agreement;

"Services" means any services that Aire Innovate provides to the Customer, or has an obligation to provide to the Customer, under this Agreement;

"Support Services" means support in relation to the use of, and the identification and resolution of errors in, the Hosted Services, but shall not include the provision of training services;

"Supported Web Browser" means the current release from time to time of Microsoft Internet Explorer 11, Edge, Mozilla Firefox, Google Chrome or Apple Safari;

"Term" means the term of this Agreement, commencing in accordance with Clause 3.1 and ending in accordance with Clause 3.2;

"Update" means a hotfix, patch or minor version update to any Platform software; and **"Upgrade"** means a major version upgrade of any Platform software.

Execution

The parties have indicated their acceptance of this Agreement by executing it below.

SIGNED BY

Director, Aire Innovate Limited

on [], the Aire Innovate:

.....

SIGNED BY

[[individual name]]

on [.....], the Customer:

.....

Schedule

1. Specification of Hosted Services

The service delivered by Aire Innovate is based on an annual charge for the licences, system management and maintenance and ongoing support.

Licence

[Product/service name] is a product of Aire Innovate Limited which Aire Innovate has authority to resell.

Aire Innovate hereby grants <Customer> an **xxxxx Licence** for the use of [Product/service name].

[Details of all products and forms which are licenced]

- (a) [the Hosted Services may only be used by [xxxxxx];
- (b) [the Hosted Services may only be used by the named users identified in [Schedule 1 (Hosted Services particulars)] OR [[identify document]], providing that the Customer may change, add or remove a designated named user in accordance with [the procedure set out therein]]; and
- (c) [the Hosted Services must not be used at any point in time by more than the [number] concurrent users] OR [[identify document]], providing that the Customer may add or remove concurrent user licences in accordance with [the procedure set out in there]].

IP and responsibility

- a) Aire Innovate owns these forms and they will be used in other health environments outside of <Customer>
- b) the organisational responsibility as to the fitness for purpose of the forms lies with <Customer>.
- c) The responsibility for the business processes relating to the use of the forms by patients is also the responsibility of <Customer>. For example when a completed form is submitted, <Customer> will follow up with the patient.

[Or]

<Customer> [and its partners] is creating and managing the publication of one or more forms to support their business.

IP and responsibility

- a) <Customer> [and its partners] owns these forms and they will be used in other health environments outside of <Customer>
- b) the organisational responsibility as to the fitness for purpose of the forms lies with <Customer>.
- c) The responsibility for the business processes relating to the use of the forms by patients is also the responsibility of <Customer>. For example when a completed form is submitted, <Customer> will follow up with the patient.

System Management and Maintenance

Aire Innovate will host all the software required to run the solution and the data will be held at our partner data centre. The Aire Innovate solution is a fully hosted Software as a Service.

Any maintenance required to deliver the service, product updates and upgrades will be carried out by Aire Innovate.

Details to be agreed and inserted here

Development Services

Details of any development services be agreed and inserted here

Ongoing Support and Maintenance

Support and SLAs to be agreed and inserted here

Account Management

<Customer> will be allocated an account manager for the duration of the contract. The account manager will be responsible for ensuring customer satisfaction with the product and service delivery.

2. Financial provisions

This Agreement will be for [12 months] from the Effective Date.

Item	
Enterprise Licence for [product name] using forms	
<Details>	
System Management and Maintenance	
Ongoing Maintenance and Support	
Total Cost	<Total Cost>

