

# FUTR AI LIMITED TERMS & CONDITIONS

UPDATED – 23<sup>rd</sup> MAY 2018

## 1. DEFINITIONS AND INTERPRETATIONS

- 1.1. The definitions and rules of interpretation in this clause apply in this Contract.

**Authorised Users** means those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services and the Documentation and are named as such in the Order or subsequently agreed in writing pursuant to clause 4;

**Business Day** means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;

**Conditions** means these terms and conditions, or any updated version that may be in force at the relevant Effective Date;

**Confidential Information** has the meaning given in clause 14.1;

**Contract** means the contract between Futr AI Limited and the Customer for the supply of the Services, incorporating the Conditions;

**Controller** or **Data Controller** shall have the meaning set out in the Data Protection Legislation;

**Customer** means the person or firm who purchases Services;

**Customer Data** means the data inputted by the Customer, Authorised Users, or Futr AI on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services;

**Customer Materials** means all data, documents, information, items and materials

in any form, including any Customer Data whether owned by the Customer or a third party, which are provided by the Customer to Futr AI in connection with the Services or posted onto the Services by an Authorised User or the Customer;

**Data Protection Law** means:

- (a) prior to its repeal, the Data Protection Act 1998; and
- (b) from 25 May 2018, the GDPR and any UK statute which implements any provisions of the same;

**Data Protection Legislation** means all applicable data protection and privacy legislation, regulations, guidance and codes of practice, including:

- (a) the Data Protection Law and the Privacy and Electronic Communications (EC Directive) Regulations;
- (b) any secondary legislation pursuant to the Data Protection Law;
- (c) any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK in respect of any of the foregoing; and
- (d) any guidance or codes of practice issued by Working Party 29, the European Data Protection Board or the Information Commissioner from time to time (all as amended, updated or re-enacted from time to time);

**Data Subject** shall have the meaning set out in the Data Protection Law;

**Documentation** means the document(s) made available to the Customer by Futr AI from time to time, which sets out a description of the Services and user instructions for the Services;

**Effective Date** means the date described in clause 2.2;

**Fees** means the fees payable by the Customer to Futr AI for the Services, as set out in the Order Confirmation or on the pricing pages located on the relevant Futr AI and Chatamo websites;

**Futr AI** means Futr AI Limited, a company registered in England and Wales with company number 10673540, whose registered office is at 71-75 Shelton Street, Covent Garden, London, United Kingdom, WC2H 9JQ;

**GDPR** means Regulation (EU) 2016/679 (or the General Data Protection Regulation);

**Initial Subscription Term** means the initial term of the Contract stated in the relevant order confirmation and starting on the Effective Date;

**Intellectual Property Rights** means patents, rights to inventions, copyright and related rights, trademarks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Live Date** means the date the Set Up Services have been completed, usually 30 days from the Effective Date unless otherwise agreed in writing between Futr AI and the Customer or, if no Set Up Services are to be provided, it shall have the same meaning as the Effective Date;

**Normal Business Hours** means 8.00am to 6.00pm local UK time, each Business Day;

**Order** means the Customer's order for Services as set out in the order form issued by Futr AI and completed by the Customer;

**Order Confirmation** means the form issued by Futr AI to a Customer by email or otherwise in writing, confirming its acceptance of an Order;

**Personal Data** shall have the meaning set out in the Data Protection Law;

**Processing** shall have the meaning set out in the Data Protection Law (and Process and Processed shall be construed accordingly);

**Processor** or **Data Processor** shall have the meaning set out in the Data Protection Law;

**Renewal Period** means the period described in clause 17.1;

**Services** means the services (including any Set Up Services) as detailed in the order confirmation, or otherwise agreed in writing, and provided by Futr AI to the Customer, including but not limited services via the Chatamo platform or any other notified to the Customer by Futr AI from time to time;

**Set Up Fees** means the fees for providing the Set Up Services;

**Set Up Services** means the design, configuration and testing services to ensure the customer's systems are suitable for Futr AI's services;

**Software** means the online software platform and/or applications provided by Futr AI as part of the Services;

**Subscription Term** has the meaning given in clause 17.1 (being the Initial Subscription Term together with any subsequent Renewal Periods);

**Supervisory Authority** means the Information Commissioner's Office in the United Kingdom and/or such other supervisory body as may be appropriate to the Processing and/or Data Subjects in question;

**Virus** means any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by rearranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

- 1.2. References to clauses are to the clauses of these Conditions. Clause headings shall not affect the interpretation of these Conditions.
- 1.3. A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality). A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.4. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular and a reference to one gender shall include a reference to the other genders.
- 1.5. A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made under it from time to time.
- 1.6. Any phrase introduced by the terms including, include, in particular, for example or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

- 1.7. A reference to writing or written includes email but not faxes.

## **2. BASIS OF CONTRACT**

- 2.1. The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.
- 2.2. An Order shall only be deemed to be legally binding on Futr AI and the Customer once Futr AI accepts the Order by either:
- 2.2.1. providing the Customer with an order confirmation; or
  - 2.2.2. by starting to provide the Services,
- whichever happens first (**Effective Date**).
- 2.3. Any samples, drawings, descriptive matter or advertising issued by Futr AI, and any descriptions or illustrations contained in Futr AI 's brochures or on its website, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.4. These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.5. If Futr AI provides the Customer with a quotation or proposal, it shall not constitute an offer until an Order Form has been placed and accepted in accordance with these Conditions. Any quotation or proposal is only valid for a period of 20 Business Days from its date of issue.

## **3. SERVICES**

- 3.1. Subject to the Customer purchasing the Services in accordance with clause 12.1, and the Customer's compliance with the remaining Conditions, Futr AI hereby grants to the Customer a non-exclusive, non-transferable right to permit the Authorised Users to use the Services and the Documentation during the Subscription Term solely for the Customer's internal business operations.
- 3.2. In relation to the Authorised Users, the Customer undertakes that:
- 3.2.1. the Authorised Users meet any eligibility requirements advised by Futr AI to use the Services;
  - 3.2.2. the maximum number of Authorised Users that it authorises to access and use the Services and/or the Documentation shall not exceed the number of Services it has purchased at the relevant time;
  - 3.2.3. it will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Services and/or Documentation;
  - 3.2.4. each Authorised User shall keep a secure password for his use of the Services and Documentation, that such password shall be changed no less frequently than monthly and that each Authorised User shall keep his password confidential;
  - 3.2.5. it shall maintain a written, up-to-date list of current Authorised Users and provide such list to Futr AI within 5 Business Days of Futr AI 's written request at any time;
  - 3.2.6. it shall permit Futr AI, or Futr AI 's designated auditor, to audit usage of the Services at reasonable times and on reasonable notice, in such a manner as not substantially to interfere with the Customer's normal conduct of

business;

3.2.7. if any of the audits referred to in clause 3.2.6 reveal that any password has been provided to any individual who is not an Authorised User then, without prejudice to Futr AI's other rights, the Customer shall promptly disable such passwords and Futr AI shall not issue any new passwords to any such individual; and

3.2.8. if any of the audits referred to in clause 3.2.6 reveal that the Customer has underpaid Fees to Futr AI then, without prejudice to Futr AI's other rights, the Customer shall pay to Futr AI an amount equal to such underpayment (as calculated in accordance with Futr AI's standard price list from time to time) within 10 Business Days of the date of the relevant audit.

3.3. The Customer shall not during the course of its use of the Services access, store, distribute or transmit any:

3.3.1. Viruses; or

3.3.2. material that:

3.3.2.1. is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;

3.3.2.2. facilitates illegal activity;

3.3.2.3. depicts sexually explicit images;

3.3.2.4. promotes unlawful violence;

3.3.2.5. is discriminatory based on race, gender, colour, religious belief, sexual orientation or disability; or



3.3.2.6. is otherwise illegal or causes damage or injury to any person or property.

3.4. The Customer shall not:

3.4.1. except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:

3.4.1.1. attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means (except to the extent expressly permitted under these Conditions); or

3.4.1.2. attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software;

3.4.2. access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation;

3.4.3. use the Services and/or Documentation to provide services to third parties;

3.4.4. subject to clause 19.7, license, sell, rent, lease, transfer, assign, distribute, display, disclose or otherwise commercially exploit or make the Services and/or Documentation available to any third party except the Authorised Users;

3.4.5. attempt to gain access to Futr AI's servers or other equipment in order to disrupt, impair, overload or otherwise hinder or compromise the safety, security or privacy of any of the services Futr AI provides to its other customers and users;

- 3.4.6. send unsolicited messages, junk or spam email or emails or posts promoting pyramid schemes, chain letters or any other activity that invites users and others to participate in wasting their time and/or money;
  - 3.4.7. use any robot, spider, scraper or other technical means to access the Services or any content on the Services; or
  - 3.4.8. attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 3.
- 3.5. Futr AI reserves the right to update the provisions of clauses 3.3 and 3.4 at its sole discretion to address emerging threats to the Services or Software.
- 3.6. In the event of any breach of clause 3.3 or 3.4, Futr AI reserves the right, without liability or prejudice to its other rights, to disable the Customer's access to the Services (in whole or in respect of any Authorised User(s)) and, if the matter cannot be resolved to Futr AI's satisfaction, it may treat the breach(es) as irremediable and terminate the Contract pursuant to clause 16.
- 3.7. The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, shall promptly notify Futr AI.
- 3.8. The rights provided under this clause 3 are granted to the Customer only and shall not be considered granted to any subsidiary or holding company of the Customer or other associated persons.

#### **4. ADDITIONAL USER SUBSCRIPTIONS**

- 4.1. The Customer may, from time to time during the Subscription Term, purchase additional Services and Futr AI shall grant access to the Services and the Documentation to such additional Authorised Users in accordance with the

provisions of the Contract.

- 4.2. If the Customer wishes to purchase additional Services, the Customer shall notify Futr AI in writing. Futr AI shall evaluate such request for additional Services and respond to the Customer with approval or rejection of the request.
- 4.3. If Futr AI approves the Customer's request to purchase additional User Subscriptions, the Customer shall, within 14 days of the date of Futr AI's invoice, pay to Futr AI the relevant fees for such additional Services as advised by Futr AI and, if such additional Services are purchased by the Customer part-way through the Initial Subscription Term or any Renewal Period (as applicable), such fees shall be prorated for the remainder of the Initial Subscription Term or then current Renewal Period (as applicable).

## **5. SET UP AND MINIMUM REQUIREMENT**

- 5.1. If applicable, and in consideration of the Customer paying the Set Up Fees, Futr AI will provide the Customer with an estimated Live Date for the Services and will use reasonable endeavours to complete the Set Up Services by the Live Date but, given the nature of technology platforms, there is always the possibility of unforeseen complexities with completing the Set Up Services, therefore Futr AI cannot guarantee this estimated Live Date. Futr AI will notify the Customer if there is likely to be any significant delay in providing the Set Up Services.
- 5.2. If the Customer delays in providing any information or assistance reasonably requested by Futr AI this may result in a delay to the Live Date, for which the Customer shall be solely liable.
- 5.3. If the Customer fails to comply, or delays in complying, with any of its obligations under the Contract, then Futr AI may not be able to provide the Customer with the Services or it may impact upon or delay Futr AI's ability to do so (and in some situations Futr AI may need to suspend the Services on written notice pending rectification of such non-compliance). In the event of any delays in provision of such

assistance, Futr AI may adjust any Live Date, timetable or delivery schedule as reasonably necessary and Futr AI shall not be liable for any costs or losses incurred as a result of such delays (and the Customer shall promptly following written demand reimburse Futr AI in respect of any costs or losses incurred as a direct result).

## **6. SERVICES**

- 6.1. Futr AI shall, in consideration of the Customer paying the Subscription Fees, provide the Services during the Subscription Term.
- 6.2. Futr AI will, as part of the Services and at no additional cost to the Customer, provide the Customer with Futr AI's standard customer support services during Normal Business Hours. The Customer may purchase enhanced support services separately at Futr AI's then current rates.
- 6.3. Futr AI shall have the right to make any changes to the Services which are necessary to comply with any applicable law, or which do not materially affect the nature or quality of the Services.
- 6.4. Futr AI will endeavour to provide the Customer with help and support for all defects and issues with the Services, but certain issues are outside of Futr AI's influence or control, or may not be covered within the standard customer support services. In particular, help and support will not be provided, and Futr AI will not otherwise have any liability, if: (i) the Customer is in breach of the Contract; or (ii) any defect or issue arises directly or indirectly from:
  - 6.4.1. the Customer's failure, error, negligence or breach of the Contract;
  - 6.4.2. the Customer's introduction of any Viruses or any cookies, web-tags, code or script which have not been provided by Futr AI;
  - 6.4.3. any defect or issue with any Customer websites, databases, equipment or systems;

6.4.4. any Customer Materials; or

6.4.5. any changes, modifications or repairs to the Services which are not undertaken or authorised by Futr AI, or any damage which the Customer causes to the Services.

Futr AI may still provide help and support in relation to such issues for an additional fee.

6.5. Futr AI may at its sole discretion offer trial periods for use of the Services, which shall be agreed with the Customer in writing from time to time but in no circumstances shall such period last for more than 14 days (Trial Services).

6.6. The Trial Services shall:

6.6.1. be subject to withdrawal at any time and without notice at Futr AI's sole discretion;

6.6.2. only be available to one Authorised User; and

6.6.3. be subject to these Conditions for their duration.

6.7. Futr AI reserves the right not to provide customer support services to customers of Trial Services.

6.8. If the Customer wishes to upgrade the Trial Services to purchase a full subscription for the Services it may do so by submitting an Order in accordance with clause 2 and making the applicable payment in accordance with clause 12.

## **7. Scope of Services**

7.1. The Customer may request to upgrade or downgrade the Services that are provided

at any time and shall notify Futr AI of such request in writing.

- 7.2. Futr AI shall consider and endeavour to accommodate any such requests, in which case it will issue to the Customer written confirmation of any amended charges and other conditions. If the Customer wishes to proceed with the change, it will confirm this in writing to Futr AI who will issue an amended Order Confirmation.
- 7.3. If the Customer purchases the Services on the basis of an annual subscription and requests a downgrade or upgrade to the Services part-way through the Initial Subscription Term or any Renewal Period (as applicable), such fees shall be prorated for the remainder of the Initial Subscription Term or then current Renewal Period (as applicable) unless stated otherwise in the relevant Order Confirmation.
- 7.4. If the Customer purchases the Services on the basis of a monthly subscription and requests an upgrade to the Services, the new fees shall be payable with effect from the following month after the upgrade request is received unless stated otherwise in the relevant Order Confirmation. For the avoidance of doubt, no refund will be available to Customers who wish to downgrade the scope of Services.

## **8. CUSTOMER DATA**

### **8.1. Duration and application**

- 8.1.1. The terms of this clause 8 shall apply to all Personal Data comprised within the Customer Data or otherwise Processed on behalf of the Customer.
- 8.1.2. Unless otherwise agreed in writing, Futr AI shall be the Data Processor and the Customer shall be the Data Controller in respect of all Personal Data.
- 8.1.3. Without prejudice to this clause 8, both Futr AI and the Customer shall comply with the Data Protection Legislation.

### **8.2. Data processing obligations**

- 8.2.1. Futr AI shall process the Personal Data solely for the purpose agreed with the Customer, being the provision of software as a service to assist the Customer in delivering its core services and related marketing to its customers and managing such customer relationships or such other ancillary service(s) as the parties may agree from time to time. The parties envisage that such Processing will comprise web tracking, customer identification, data analysis and analytics, profiling, research, email and SMS, targeting and/or marketing communications and any reasonably necessary related uses and will relate to the Customer's clients and potential clients. Futr AI shall only Process Personal Data for the duration of delivery of the Services. Futr AI shall not process any Personal Data for any other purpose except with the express written consent of the Customer.
- 8.2.2. Futr AI shall, taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk to the rights and freedoms of natural persons, implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk of unauthorised or unlawful processing or accidental loss, destruction or damage of Personal Data.
- 8.2.3. Futr AI shall ensure that any individuals Processing Personal Data on its behalf are made aware of their obligations with regard to the security and protection of the Personal Data and shall require that they enter into binding obligations with Futr AI in order to maintain the levels of security, protection and confidentiality provided for in this clause 8.
- 8.2.4. Subject to the provisions of clause 8.2.5, Futr AI shall not divulge the Personal Data whether directly or indirectly to any person, firm or company without the express consent of the Customer.

From the Effective Date, Futr AI uses the entities listed in Appendix A as

agent or subcontractor to Process Personal Data on its behalf (each a Sub-processor).

8.2.5. In appointing any Sub-processor, Futr AI::

8.2.5.1. has engaged any Sub-processor by way of written contract, incorporating terms no less onerous than this clause 8;

8.2.5.2. has ensured by written contract that such Sub-processor adopts sufficient technical and organisational means to prevent the risk of unauthorised or unlawful processing or accidental loss or destruction of the Personal Data;

8.2.5.3. has ensured that the Sub-processor's access to Personal Data terminates automatically on termination of this Contract; and

8.2.5.4. shall remain liable for the acts or omissions of any such Sub-processor,

and Futr AI shall equally comply with such requirements in respect of any future appointment of a Sub-processor.

Should Futr AI appoint any other Sub-processor Futr AI will give the Customer not less than 28 days' written notice before such Sub-processor commences work and the Customer shall be entitled, within 14 days of the date of such notice, to inform Futr AI in writing of the Customer's objection to the proposed Sub-processor. If the Customer informs Futr AI of any such objection Futr AI will make reasonable endeavours to ensure that Personal Data can be otherwise Processed but if Futr AI is not able to arrange alternative Processing the Customer shall be entitled to terminate the Contract by providing no less than 7 Business Days' written notice.

8.2.6. Futr AI will without undue delay inform the Customer if an incident involving



Futr AI or any Sub-processor has resulted, or may reasonably result, in unauthorised access to or disclosure of the Personal Data (Data Breach).

8.2.7. Futr AI will assist the Customer:

8.2.7.1. in complying with its security obligations, including with informing Data Subjects, where required, if they are affected by a Data Breach; and

8.2.7.2. in undertaking any necessary data privacy impact assessments.

8.2.8. Futr AI will assist the Customer in informing the relevant Supervisory Authority of any Data Breach.

8.2.9. Futr AI will assist the Customer in providing the information or services required to allow Data Subjects to exercise their rights pursuant to the Data Protection Legislation.

8.2.10. Futr AI will without undue delay pass on to the Customer any notices, requests or other communications from a Data Subject. Futr AI will not act on any request from a Data Subject without the prior written authority of the Customer.

8.2.11. Futr AI shall not transfer any Personal Data outside the European Economic Area without the Customer's prior written consent.

8.2.12. Futr AI shall keep records of all Processing of Personal Data.

8.2.13. Futr AI will appoint a data protection officer if required in accordance with the Data Protection Legislation.

8.3. Customer Obligations

- 8.3.1. The Customer shall provide all reasonable assistance and cooperation as Futr AI may request in connection with the Personal Data, including making available representatives to provide prompt and accurate instructions.
- 8.3.2. The Customer warrants that it has complied with all Data Protection Legislation in acquiring the Personal Data. Without prejudice to the foregoing, the Customer represents that all Personal Data has been lawfully and fairly processed at the point of its delivery to Futr AI and that it has verifiable records of Data Subjects' consent to Processing, where applicable, or any other applicable conditions or bases of processing. The Customer shall be solely responsible for bring Futr AI's privacy policy to the attention of Data Subjects as part of its obligation to inform.
- 8.3.3. The Customer shall not knowingly or recklessly do anything to put Futr AI in breach of Data Protection Legislation.
- 8.3.4. The Customer will advise the Futr AI without delay should it become aware of any security breach or unlawful processing relating to any Personal Data provided to the Futr AI.
- 8.3.5. The Customer will indemnify (and keep indemnified) Futr AI against all liabilities, costs, expenses, losses and damages (including full legal costs) incurred by Futr AI arising out of or in connection with any proceedings, claims, demands or actions in consequence of any breach or alleged breach of this clause 8 by the Customer.

#### 8.4. Other

- 8.4.1. Futr AI shall allow the Customer and/or its auditors or their representatives to have access to relevant processes, procedures, documentation and/or premises of Futr AI for the purposes of inspection and audit, such access to take place on reasonable advance notice and during normal working hours. Futr AI reserves the right to charge a reasonable amount in respect

of time spent on such audits and inspections.

- 8.4.2. If the Customer reasonably believes that Futr AI is in breach of any of its obligations under this clause 8, Futr AI shall endeavour to provide prompt co-operation and assistance to the Customer and/or its representatives at no additional charge.
- 8.4.3. Futr AI shall immediately inform the Customer if it believes that any instruction from the Customer infringes Data Protection Legislation.
- 8.4.4. Futr AI will promptly investigate any Data Breach, provide status updates, cooperate with reasonable Customer requests during the management of the Data Breach (or, at its option, permit the Customer to support the management of the Data Breach) and send a written report to the Customer describing the nature of the Data Breach and any remedial actions taken and/or planned.
- 8.4.5. On termination of this Contract, save to the extent retention is required in order to meet legal or regulatory requirements, Futr AI shall, upon receipt of written notice from the Customer, return or securely destroy any Customer Data.
- 8.4.6. In the event that the Customer incurs any fine from a Supervisory Authority as a direct result of Futr AI's breach of this clause 8, Futr AI shall reimburse the Customer the amount paid to the Supervisory Authority.
- 8.4.7. Futr AI may, at any time on not less than 30 days' written notice, revise this clause 8 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme.
- 8.4.8. Given the importance of this clause 8, the parties agree that breach of this clause will be considered a material breach of the Contract.

## **9. THIRD PARTY PROVIDERS**

The Customer acknowledges that the Services may enable or assist it to access the website content of, correspond with and purchase products and services from third parties via third party websites and that it does so solely at its own risk. Futr AI makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third party website, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction completed via any third party website is between the Customer and the relevant third party, and not Futr AI. Futr AI recommends that the Customer refers to the third party's website terms and conditions and privacy policy prior to using the relevant third party website. Futr AI does not endorse or approve any third party website nor the content of any third party website made available via the Services.

## **10. FUTR AI'S OBLIGATIONS**

- 10.1. Futr AI undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.
- 10.2. The undertaking at clause 10.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to Futr AI's instructions, or modification or alteration of the Services by any party other than Futr AI or Futr AI's duly authorised contractors or agents. If the Services do not conform to the foregoing undertaking, Futr AI will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or to provide the Customer with an alternative means of accomplishing the performance in question. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 10.1. Notwithstanding the foregoing, Futr AI:
  - 10.2.1. does not warrant that the Customer's use of the Services will be uninterrupted or error-free; or that the Services, Documentation and/or the

information obtained by the Customer through the Services will meet the Customer's requirements; and

- 10.2.2. is not responsible for any delays, delivery failures or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 10.3. The Contract shall not prevent Futr AI from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under the Contract.

## **11. CUSTOMER'S OBLIGATIONS**

- 11.1. The Customer shall:
  - 11.1.1. provide Futr AI with:
    - 11.1.1.1. all necessary cooperation in relation to the Contract; and
    - 11.1.1.2. all necessary access to such systems or information as may be required by Futr AI, in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;
  - 11.1.2. without affecting its other obligations under these Conditions, comply with all applicable laws and regulations with respect to its activities under the Contract;
  - 11.1.3. comply, and ensure the Authorised Users comply, with all instructions or

guidance provided by way of the Documentation and with any other lawful instructions given by Futr AI;

- 11.1.4. comply, and ensure the Authorised Users comply, with industry best practice and all applicable laws and regulations with respect to the Customer's obligations under the Contract;
- 11.1.5. carry out all other Customer responsibilities set out in the Contract in a timely and efficient manner. In the event of any delays in the Customer's provision of assistance, Futr AI may adjust any agreed timetable or delivery schedule as reasonably necessary;
- 11.1.6. ensure that the Authorised Users use the Services and the Documentation in accordance with the Contract, and shall be responsible for any Authorised User's breach of the Contract;
- 11.1.7. obtain and shall maintain any licences, consents, permissions, software and equipment necessary to use the Services;
- 11.1.8. ensure that its network and systems comply with any relevant specifications provided by Futr AI from time to time;
- 11.1.9. have appropriate access and security policies and procedures, to prevent any unauthorised access to or use of the Services;
- 11.1.10. be solely responsible for the placing and management of any cookies or web-tags on the Customer's website(s);
- 11.1.11. be solely responsible for backing up any Customer Materials; and
- 11.1.12. be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to Futr AI'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).

## **12. CHARGES AND PAYMENT**

12.1. Unless otherwise agreed in writing between Futr AI and the Customer, Futr AI shall invoice the Customer for:

12.1.1. Set Up Fees, if applicable and agreed in advance, at the end of the month in which Futr AI begin providing the Set Up Services;

12.1.2. Fees in arrears, at the start of each subsequent month or year (as applicable) covering the previous month's service, starting on the Live Date; and

12.1.3. any additional fees payable in connection with the Contract in arrears, at the start of the month following the month in which they were incurred.

12.2. The Customer shall on or before the Effective Date provide to Futr AI valid, up-to-date and complete credit card details or approved purchase order information acceptable to Futr AI and any other relevant valid, up-to-date and complete contact and billing details and the Customer shall pay each invoice within 14 days after the date of such invoice.

12.3. If Futr AI has not received payment within 14 days after the due date (subject to a right for the Customer to withhold any portion of an invoice under genuine dispute), and without prejudice to any other rights and remedies of Futr AI:

12.3.1. Futr AI may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Services and Futr AI shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid;

- 12.3.2. 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 National Westminster Bank Plc from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment; and
  - 12.3.3. should Futr AI feel it reasonably necessary to instruct a debt collection agency it reserves the right to add such costs, including any legal fees, to the outstanding debt.
- 12.4. Futr AI reserves the right to withdraw any credit granted should it have reasonable grounds for concern about the Customer's solvency or ability to pay promptly, in which case Services may be suspended until such time as any amounts payable have been received in full and in cleared funds.
- 12.5. All amounts and fees stated or referred to in the Contract:
  - 12.5.1. shall be payable in pounds sterling;
  - 12.5.2. shall be payable in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law);
  - 12.5.3. are, subject to clauses 7 and 16.3, non-cancellable and non-refundable; and
  - 12.5.4. are exclusive of value added tax, which shall be added to Futr AI's invoice(s) at the appropriate rate.
- 12.6. If, at any time whilst using the Services, the Customer exceeds the amount of disk storage space specified in the Documentation, Futr AI may charge the Customer, and the Customer shall pay in accordance with clause 12.1.3, Futr AI's then current excess data storage fees.
- 12.7. Futr AI shall be entitled to increase the Subscription Fees, the fees payable in respect



of additional User Subscriptions, any support fees payable and/or the excess storage fees at the start of each Renewal Period upon 90 days' prior written notice to the Customer.

- 12.8. Without prejudice to clause 12.7, Futr AI may by written notice to the Customer increase the Fees on an annual basis with effect from each anniversary of the Live Date in accordance with the percentage increase in the Retail Prices Index in the preceding 12-month period.

### **13. PROPRIETARY RIGHTS**

- 13.1. The Customer acknowledges and agrees that Futr AI and/or its licensors own all Intellectual Property Rights in the Services, Software and the Documentation. Except as expressly stated herein, the Contract does not grant the Customer any rights to, or in, such Intellectual Property Rights or any other rights or licences in respect of the Services, Software or the Documentation.
- 13.2. The Customer shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Materials.
- 13.3. In relation to the Customer Materials, the Customer:
- 13.3.1. and its licensors shall retain ownership of all Intellectual Property Rights in the Customer Materials; and
  - 13.3.2. grants Futr AI a fully paid-up, non-exclusive, royalty-free licence, with a right to grant sub-licences, to use, copy and modify the Customer Materials for the Subscription Term for the purpose of providing the Services to the Customer.
- 13.4. The Customer warrants that the receipt and use of the Customer Materials in the performance of the Contract by Futr AI, its agents, subcontractors or consultants shall not infringe the rights, including any Intellectual Property Rights, of any third

party.

- 13.5. If there is a suggestion that receipt or use of the Customer Materials by Futr AI or anyone acting on its behalf infringes the rights of a third party, Futr AI reserves the right to remove the offending content from the Service as soon as practicable and suspend the Services, in whole or in part, until the Customer can evidence to Futr AI's satisfaction that no such infringement is taking place.

## **14. CONFIDENTIALITY**

- 14.1. Each party undertakes that it shall not at any time during the Contract, and for a period of two years after its termination, disclose to any person any confidential information concerning the business, affairs, employees, customers, clients or suppliers of the other party ("Confidential Information"), except as permitted by clause 14.2.

- 14.2. Each party may disclose the other party's Confidential Information:

14.2.1. to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall procure that its employees, officers, representatives or advisers to whom it discloses the other party's Confidential Information comply with this clause 14;

14.2.2. to the extent such information is public knowledge or subsequently becomes public knowledge other than by breach of the Contract;

14.2.3. to the extent such information is already known to or subsequently comes lawfully into the possession of such party without restriction as to its use; and

14.2.4. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority provided that, to the extent it is legally

permitted to do so, it gives the other party as much notice of such disclosure as possible and takes into account the reasonable requests of the other party in relation to the content of such disclosure.

- 14.3. Neither party shall use the other's Confidential Information for any purpose other than to perform its obligations or enforce its rights in relation to the Contract.
- 14.4. Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of the Contract.
- 14.5. The Customer acknowledges that details of the Services, and the results of any performance tests relating to the Services, constitute Futr AI's Confidential Information.
- 14.6. Futr AI acknowledges that the Customer Data is the Confidential Information of the Customer.
- 14.7. The Customer acknowledges and agrees that Futr AI may advertise the fact that the Customer is one of its clients.

## **15. INDEMNITY**

- 15.1. The Customer shall indemnify Futr AI against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with:
  - 15.1.1. the Customer's use of the Services and/or Documentation other than in accordance with the terms of the Contract; and/or
  - 15.1.2. any Customer Materials including Customer Data, used by Futr AI in accordance with the Contract and/or as instructed by the Customer or anyone acting on its behalf.

- 15.2. Futr AI shall, subject to the provisions of clause 16.3, indemnify the Customer in respect of any compensation or legal fees awarded against or paid by the Customer arising directly from a third party claim that the Customer's use of the Services in accordance with the Contract infringes the rights of such third party, to the extent that such amounts cannot reasonably be mitigated and provided that:
- 15.2.1. Futr AI is given prompt notice of any such claim;
- 15.2.2. the Customer provides reasonable co-operation to Futr AI in the defence and settlement of such claim, at Futr AI's expense; and
- 15.2.3. Futr AI is given sole authority to defend or settle the claim.
- 15.3. In the defence or settlement of any claim referenced at clause 15.2, Futr AI may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate the Contract on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other compensation to the Customer.
- 15.4. In no event shall Futr AI, its employees, agents or subcontractors be liable to the Customer to the extent that any alleged infringement of third party rights arises in connection with:
- 15.4.1. any Customer Materials;
- 15.4.2. modification of the Services or Documentation by anyone other than Futr AI or its authorised agents;
- 15.4.3. the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by Futr AI; or

- 15.4.4. the Customer's use of the Services or Documentation after notice of alleged infringement from Futr AI or any appropriate authority, and Futr AI reserves the right to recover any losses, costs or liabilities it incurs in relation to such matters pursuant to clause 15.1.
- 15.5. The foregoing states the Customer's sole rights and remedies, and Futr AI's entire obligations and liability, in respect of infringement of any third party Intellectual Property Rights.

## **16. LIMITATION OF LIABILITY**

- 16.1. Except as expressly and specifically provided in the Contract:
  - 16.1.1. the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Customer, and for conclusions drawn from such use. Futr AI shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Futr AI by the Customer in connection with the Services, or any actions taken by Futr AI at the Customer's direction; and
  - 16.1.2. 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 the Contract; and
  - 16.1.3. any Trial Services are provided to the Customer on an "as is" basis.
- 16.2. Nothing in the Contract limits or excludes the liability of Futr AI:
  - 16.2.1. for death or personal injury caused by Futr AI's negligence; or
  - 16.2.2. for fraud or fraudulent misrepresentation or any other liability to the extent it may not be limited or excluded by law.

16.3. Subject to clauses 8.4.6, 16.1 and 16.2:

16.3.1. Futr AI shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any: (i) depletion of goodwill; (ii) loss or corruption of data or information; (iii) pure economic loss; or (iv) special, indirect or consequential loss, costs, damages, charges or expenses, in each case however arising under or in relation to the Contract; and

16.3.2. Futr AI's liability per claim or series of related claims in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the Contract shall be limited to the lesser of: (i) £50,000; or (ii) the total Set Up Fees (if applicable) and Fees payable for the Services in respect of the 12 months immediately preceding the date on which Futr AI received notification of the claim.

## **17. TERM AND TERMINATION**

17.1. The Contract shall, unless terminated as permitted by these Conditions or otherwise agreed in writing, commence on the Effective Date and continue for the Initial Subscription Term and, thereafter, be automatically renewed for successive monthly or yearly periods as stated in the Order Confirmation (each a Renewal Period) and the Initial Subscription Term together with any subsequent Renewal Period(s) shall constitute the Subscription Term.

17.2. Either party may terminate the Contract by giving written notice at least 28 days before the end of the Initial Subscription Term or Renewal Term, as applicable, in which case the Contract shall terminate upon the expiry of the Initial Subscription Term or relevant Renewal Period.

17.3. Without affecting any other right or remedy available to it, Futr AI may terminate the Contract with immediate effect by giving written notice to the Customer if:

- 17.3.1. the Customer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
- 17.3.2. the Customer commits a material or persistent breach of any other term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 5 days after being notified in writing to do so;
- 17.3.3. the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- 17.3.4. the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- 17.3.5. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- 17.3.6. an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Customer;
- 17.3.7. the holder of a qualifying floating charge over the assets of the Customer has become entitled to appoint or has appointed an administrative receiver;

- 17.3.8. a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer;
  - 17.3.9. a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Customer's assets and such attachment or process is not discharged within 14 days;
  - 17.3.10. any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent to any of the events mentioned in clause 17.3.3 to 17.3.9 (inclusive); or
  - 17.3.11. the Customer suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 17.4. On termination of the Contract for any reason:
- 17.4.1. all licences granted under the Contract shall immediately terminate and the Customer shall immediately cease (and ensure that all Authorised Users cease) all use of the Services and/or the Documentation;
  - 17.4.2. each party shall return and make no further use of any equipment, property, documentation and other items (and all copies of them) belonging to the other party;
  - 17.4.3. subject always to clause 8.4.5, Futr AI will not return any Customer Data unless Futr AI receives, no later than 10 days after the effective date of termination, a written request from the Customer to do so. Instead, Futr AI will endeavour to ensure all Customer Data is securely destroyed. If Customer Data is required then Futr AI shall use reasonable commercial endeavours to deliver the most recent backup of the Customer Data to the Customer within 30 days of receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding



(whether or not due at the date of termination) and the Customer shall pay all reasonable expenses incurred by Futr AI in returning or disposing of any such back-up;

- 17.4.4. any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect, including clauses 8 (Customer Data), 13 (Proprietary Rights), 14 (Confidentiality), 15 (Indemnity), 16 (Limitation of liability), 17.4 (Consequences of Termination) and 19 (General); and
- 17.4.5. any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination shall not be affected or prejudiced.

## **18. FORCE MAJEURE**

Futr AI shall have no liability to the Customer under the Contract if it is prevented from or delayed in performing its obligations by circumstances or events beyond its reasonable control, including strikes, lock-outs or other industrial disputes (whether involving the workforce of Futr AI or any other party); failure of a utility service or transport or telecommunications network; act of God; war, riot, civil commotion; malicious damage; compliance with any law or governmental order, rule, regulation or direction; accident; breakdown of plant or machinery; fire; flood; storm; or default of suppliers or subcontractors, provided that the Customer is notified of such an event and its expected duration.

## **19. GENERAL**

- 19.1. To the extent of any inconsistency between any of the provisions in these Conditions and the Order Confirmation, the provisions in the Order Confirmation shall prevail, followed by these Conditions.

- 19.2. The Contract may only be varied on written agreement of the parties.
- 19.3. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 19.4. Except as expressly provided in the Contract, the rights and remedies provided under the Contract are in addition to, and not exclusive of, any rights or remedies provided by law.
- 19.5. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable it shall be deemed deleted to the minimum extent necessary but that shall not affect the validity and enforceability of the rest of the Contract.
- 19.6. The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract. Nothing in this clause shall limit or exclude any liability for fraud.
- 19.7. The Customer shall not, without the prior written consent of Futr AI, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract. Futr AI may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

- 19.8. Nothing in the Contract is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 19.9. The Contract does not confer any rights on any person or party (other than the parties to the Contract and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 19.10. Notices
- 19.10.1. Any notice required to be given under the Contract shall be in writing and shall be delivered by hand or sent by prepaid first-class post or recorded delivery post to the other party at its address set out in the Contract, or such other address as may have been notified by that party for such purposes, or sent by email to the other party's email address as set out in the Order Confirmation.
- 19.10.2. A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not during Normal Business Hours, at 9.00am on the first Business Day following delivery). A correctly-addressed notice sent by prepaid first-class post or recorded delivery post shall be deemed to have been received on the second Business Day after posting subject to evidence of earlier receipt. A notice sent by email shall be deemed to have been received at the time of successful transmission, as shown by the absence of any 'bounceback' message (or if successful transmission is not during Normal Business Hours, at 9.00am on the first Business Day following successful transmission).
- 19.11. The Contract 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. Each party submits to the exclusive jurisdiction of the courts of England.

## **APPENDIX A**

### **SUB-PROCESSORS WE ENGAGE**

We use certain sub-processors (including third parties), subcontractors and content delivery networks to assist us in providing our services to you.

#### **What is a Sub-processor:**

A sub-processor is a third party data processor engaged by us, who has or potentially will have access to or process our service data (which may contain personal data). We engage different types of sub-processors to perform various functions. Third parties that do not have access to or process service data but who are otherwise used to provide the our services are referred to as “subcontractors” and not sub-processors.

#### **Due Diligence:**

We undertake to use a commercially reasonable selection process by which we evaluate the security, privacy and confidentiality practices of proposed sub-processors that will or may have access to or process service data.

#### **Security by Design:**

We design our service applying a “Secure by Design” philosophy. In the case of partnering with third party contractors or sub-processors, our solution is designed to eliminate or minimise to the greatest possible extent exposure of customer data to subcontractor/sub-processor personnel.

#### **Contractual Safeguards:**

We require all of our sub-processors to satisfy equivalent obligations as those obligations delivered under our Terms of Service, including, but not limited to:

- must process any personal data in accordance with our obligations under our Terms of Service.
- In relation to any activity that constitutes sub-processing activity, they will only use personnel who are reliable and subject to a contractually binding obligation to observe data privacy and security, to the extent applicable, pursuant to applicable data protection laws;
- They will ensure they provide regular training in security and data protection to personnel to whom they grant access to any personal data;
- They will implement and maintain good technical and organisational measures (including measures aligned with those to which we are contractually obliged to deliver insofar as they are equally relevant to the sub-processor's processing of personal data on our behalf) and provide evidence of compliance with this obligation.
- They will promptly notify us about any actual or potential security breach; and
- They will cooperate with us in order to deal with requests from data controllers, data subjects or data protection authorities, as applicable.

**List:**

For an up-to-date list of our sub-processors, please email [info@futr.ai](mailto:info@futr.ai).