

FlowForma Agreement

IMPORTANT: PLEASE READ CAREFULLY BEFORE ORDERING OR DOWNLOADING THE SOFTWARE SOLUTION:

This contract (this "**Agreement**") is a legal agreement made between the Customer (as set out in the Order details) and FlowForma Limited whose registered office is at 1st Floor, Block E, Eastpoint Business Park, Dublin 3, Ireland ("**FlowForma**") for the Software Solution.

FlowForma licenses use of the Software Solution to the Customer on the basis of this Agreement. FlowForma does not sell the Software Solution to the Customer. FlowForma remains the owner of the Software Solution at all times.

OPERATING SYSTEM REQUIREMENTS: THE OPERATING SYSTEM REQUIREMENTS SET OUT AT <https://products.office.com/en-us/office-system-requirements/#Office365forBEG> SPECIFY THE WEB BROWSERS SUPPORTED BY THE SUBSCRIPTION VERSIONS AND THE MINIMUM OPERATING REQUIREMENTS FOR THE PREMIUM DOWNLOAD VERSION. THESE OPERATING SYSTEM REQUIREMENTS MAY BE AMENDED OR UPDATED BY FLOWFORMA FROM TIME TO TIME.

IMPORTANT NOTICE:

- BY ORDERING, DOWNLOADING OR OTHERWISE ACCESSING THE SOFTWARE SOLUTION OR BY CONFIRMING THE ORDER AS PART OF THE DOWNLOADING OR ORDERING PROCESS, THE CUSTOMER AGREES TO THE TERMS OF THIS AGREEMENT WHICH WILL BIND IT AND ITS EMPLOYEES. THE TERMS OF THIS AGREEMENT INCLUDE, IN PARTICULAR, LIMITATIONS ON FLOWFORMA'S LIABILITY IN CLAUSE 11.4 (FREE SUBSCRIPTION VERSION) AND CLAUSES 11.5 AND 11.6 (PREMIUM VERSIONS).
- IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERM "CUSTOMER" SHALL REFER TO SUCH ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT, YOU MAY NOT USE OR COPY THE SOFTWARE SOLUTION. IF YOU DO NOT INTEND TO BE LEGALLY BOUND TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, DO NOT ACCESS OR OTHERWISE USE THE SOFTWARE SOLUTION AND DO NOT CLICK "ACCEPT" OR OTHERWISE ASSENT TO THIS AGREEMENT.
- IF THE CUSTOMER DOES NOT AGREE TO THE TERMS OF THIS AGREEMENT, FLOWFORMA WILL NOT LICENCE THE SOFTWARE SOLUTION TO THE CUSTOMER AND THE CUSTOMER MUST DISCONTINUE THE DOWNLOADING OR ORDERING PROCESS NOW BY CANCELLING THE

DOWNLOADING OR ORDERING PROCESS. IN THIS CASE, THE DOWNLOADING OR ORDERING PROCESS WILL TERMINATE OR THE CUSTOMER MAY NOT DOWNLOAD OR ORDER THE SOFTWARE SOLUTION.

The Customer should print a copy of this Agreement for future reference.

STRUCTURE OF THIS AGREEMENT:

- *Subscription:* Part A of this Agreement is applicable both to users of the free version of the Software (the “**Free Subscription Version**”) and users of the paid subscription service version of the Software (the “**Premium Subscription Version**”), relevant product descriptions of which are set out in the Order Details or Renewal Details (as applicable).
- *Installation:* Part B of this Agreement is applicable to users of the paid download version of the Software (the “**Premium Download Version**”), product descriptions of which are set out in the Order Details or Renewal Details (as applicable).
- *Charges:* Part C of this Agreement is applicable both to users of the Premium Subscription Version and users of the Premium Download Version.
- *General:* Part D of this Agreement is applicable to all users except where otherwise stated.

PART A – SUBSCRIPTION VERSIONS (FREE & PREMIUM)

1. Subscription

Subject to the restrictions set out in this Part A and the other terms and conditions of this Agreement (in particular, Clause 5 (Restricted Acts)), and in consideration of the payment of the Charges by the Customer to FlowForma, FlowForma hereby grants to the Customer a non-exclusive, non-transferable right to permit the Authorised Users to use the relevant Subscription Version in respect of the number of Authorised Users, flows, steps, questions and/or other applicable restrictions set out in the Order Details during the Term solely for the Customer's internal business operations or as otherwise agreed by the parties from time to time in writing.

1.2 In relation to the Authorised Users and the Customer's Access, the Customer undertakes that:

1.2.1 each Authorised User shall keep details of its Access secure and confidential;

1.2.2 it shall maintain a written, up to date list of current Authorised Users and provide such list to FlowForma within 5 Business Days of FlowForma's written request at any time;

1.2.3 it shall permit FlowForma to audit (including on site and/or remotely through FlowForma's capture of IP and/or MAC addresses and other login/logout activity data

to which it has access) the relevant Subscription Version in order to establish the name and relevant details of Access of each Authorised User, to verify use of the Software Solution and/or to ensure compliance with the terms of this Agreement. Such audit may be conducted no more than once per quarter, at FlowForma's expense, and this right shall, in the case of on-site audits, be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business;

1.2.4 if any of the audits referred to in Clause 1.2.3 reveal that Access has been provided to any individual who is not an Authorised User, then without prejudice to FlowForma's other rights, the Customer shall promptly disable the Customer's Access and FlowForma shall not provide Access to any such individual; and

1.2.5 if any of the audits referred to in Clause 1.2.3 reveal that the Customer has underpaid any of the Charges to FlowForma, the Customer shall pay to FlowForma an amount equal to such underpayment as calculated in accordance with the relevant prices set out in the Order Details or the Renewal Details (as applicable) within 10 Business Days of the date of the relevant audit.

1.3 In the event that the Customer's use of the Free Subscription Version is reasonably deemed by FlowForma to constitute unfair use of the Software Solution, FlowForma reserves the right to, in its sole discretion and without limiting its other rights or remedies, permanently or temporarily, discontinue provision of or Access to the Free Subscription Version to the Customer. For the avoidance of doubt, unfair use of the Free Subscription Version includes excessive decoupling of Authorised Users. For more information in this regard, please contact FlowForma at sales@flowforma.com

1.4 FlowForma shall, during the Term, provide the relevant Subscription Version to the Customer on and subject to the terms of this Agreement.

1.5 FlowForma shall use commercially reasonable endeavours to make the Premium Subscription Version available 24 hours a day, seven days a week, except for:

1.5.1 planned or unscheduled maintenance which may be carried out during or outside of Standard Business Hours of which FlowForma will endeavour to provide advance notice; and

1.5.2 unavailability due to matters detailed in Clause 17 (Force Majeure).

1.6 Clause 1 applies to the Subscription Versions only.

PART B – PREMIUM DOWNLOAD VERSION

2. Software Installation

2.1 Subject to the restrictions set out in this Part B and the other terms and conditions of this Agreement (in particular, Clause 5 (Restricted Acts)), and in consideration of the payment of the Charges by the Customer to FlowForma, FlowForma grants to the Customer with effect from the Start Date a non-exclusive, non-assignable, non-

transferable, non-sublicenceable, revocable, limited licence to download and use the Premium Download Version for the Term in respect of the number of Authorised Users, flows, steps, questions and/or other applicable restrictions set out in the Order Details. The Customer shall use the Premium Download Version for processing its own data for its own internal business purposes only on one SharePoint farm (except where otherwise agreed in writing by FlowForma).

2.2 The Customer acknowledges that the Premium Download Version will be made available by FlowForma for download electronically. The Customer will be responsible for the actual download and installation of the Premium Download Version, and for the installation and ongoing maintenance of any communication line between its computing environment and the environment from which the Premium Download Version is accessed.

2.3 FlowForma may from time to time revise or update the Premium Download Version and, in so doing, incurs no obligation to furnish such revisions or updates to the Customer. If FlowForma elects to licence updates to the Customer, updates may be licensed by FlowForma with additional or different terms than those set out in this Agreement.

2.4 The Customer hereby acknowledges and agrees that the restrictions referred to in Clause 5 in relation to the Software Solution shall apply after the expiry of the Term and shall survive the expiry or termination of this Agreement howsoever this may arise.

2.5 Clause 2 applies to the Premium Download Version only.

PART C – CHARGES & SUPPORT SERVICES

PREMIUM VERSIONS ONLY

3. Payment

3.1 In respect of the Premium Versions, the Customer shall pay the Charges to FlowForma in accordance with the payment terms set out in the Order Details or the Renewal Details (as applicable). Unless otherwise specified, all invoices must be paid within 30 days of their being submitted for payment to the Customer by FlowForma. If any payment is not made on the due date, the whole amount or balance outstanding under this Agreement shall immediately become due and payable by the Customer to FlowForma.

3.2 On the Start Date and on or around 60 days before each Renewal Date, FlowForma shall issue to the Customer invoices for the Charges as set out in the Order Details or the Renewal Details (as applicable) as payable by the Customer to FlowForma for the Premium Versions.

3.3 The Customer shall, no later than the Start Date, provide to FlowForma valid, signed and executed standing order details, or approved purchase order information acceptable to FlowForma and any other relevant valid, up-to-date and complete contact and billing details and, if the Customer provides its approved purchase order

information to FlowForma, FlowForma shall invoice the Customer:

3.3.1 on the Start Date for the Charges payable in respect of the Initial Term; and

3.3.2 subject to Clause 13.1, at least 15 days prior to each Renewal Date for the Charges payable in respect of the next Renewal Term, and the Customer shall pay each invoice within 30 days of their being submitted for payment to the Customer by FlowForma, unless otherwise set out in the Order Details or the Renewal Details (as applicable).

3.4 If FlowForma has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of FlowForma:

3.4.1 FlowForma may, without liability to the Customer, disable the Customer's Access and FlowForma shall be under no obligation to provide any or all of the Software Solution while the invoice(s) concerned remain unpaid; and

3.4.2 interest shall accrue on such due amounts at an annual rate equal to 5% over EURIBOR at the date the relevant invoice was issued, commencing on the due date and continuing until fully paid, whether before or after judgment.

3.5 All Charges and any other amounts or fees stated or referred to in this Agreement:

3.5.1 shall be payable in euro unless otherwise agreed in writing;

3.5.2 are non-cancellable and non-refundable; and

3.5.3 are exclusive of value added tax, which shall be added to FlowForma's invoice(s) at the appropriate rate.

3.6 If, at any time whilst using the Premium Subscription Version, the Customer exceeds the 1 Terabyte (1,000 GB) FlowForma Data Service data storage capacity limit or any other limits as are specified in the Order Details or the Renewal Details (as applicable) (or as otherwise notified by FlowForma to the Customer from time to time), FlowForma reserves the right to charge the Customer, and the Customer shall pay, if charged by FlowForma, an excess data fee of €500 per Terabyte or part thereof (which may be revised by FlowForma from time to time).

3.7 FlowForma shall be entitled to increase the Charges and/or the excess storage or data transmission fees payable pursuant to Clause 3.6 at the start of each Renewal Term upon 30 days' prior notice to the Customer, such Charges to be set out in the Renewal Details.

3.8 Customer shall not be entitled to withhold payment in whole or in part on the grounds that it has a claim, counterclaim or set-off against FlowForma.

3.9 Clause 3 applies to Premium Versions only.

4. SUPPORT SERVICES

4.1 FlowForma will use commercially reasonable efforts to provide the Support Services, details of which are set out in FlowForma's Support Policy.

4.2 If the Customer requires Support Services outside the Standard Business Hours or any other support services other than the Support Services, such Additional Support Services will be provided at FlowForma's discretion and at the charges agreed by the Customer with FlowForma. Customer expressly acknowledges and agrees that FlowForma has no obligation to provide Support Services outside the Standard Business Hours or support services other than the Support Services identified.

4.3 FlowForma shall use reasonable efforts to ensure that the Support Services are provided with the minimum of disruption to the Customer's business.

4.4 Clause 4 applies to Premium Versions only.

PART D – GENERAL TERMS

5. Restricted Acts

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

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

5.1.2 facilitates illegal activity;

5.1.3 depicts sexually explicit images;

5.1.4 promotes violence;

5.1.5 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activity; or

5.1.6 causes damage or injury to any person or property, and FlowForma reserves the right, without liability to the Customer, to disable the Customer's access to any material that breaches the provisions of this Clause.

5.2 The Customer shall not, except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:

5.2.1 and except to the extent expressly permitted under this Agreement, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, reuse, download, display, transmit, or distribute all or any portion of the Software Solution (as applicable) in any form or media or by any means including any part of the data models or screens, and any data that has been entered by FlowForma or one of its agents;

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

5.2.3 access all or any part of the Software Solution in order to build a product or service which competes with the Software Solution;

5.2.4 except as provided for in this Agreement, use the Software Solution to provide services to third parties;

5.2.5 incorporate the Software Solution into the information technology system(s) of the Customer so that the Software Solution becomes indistinguishable from any such information technology system(s);

5.2.6 subject to Clause 23, license, sell, rent, loan, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Software Solution available to any third party except the Authorised Users; or

5.2.7 attempt to obtain, or assist third parties in obtaining, access to the Software Solution, other than as provided under this Clause 5.

5.3 The Customer must not attempt to gain unauthorised access to the Software Solution, in particular non-public areas, the server on which the Software Solution is stored or any server, computer or database connected to the Software Solution. The Customer must not attack the Software Solution via a denial-of-service attack or a distributed denial-of service attack.

5.4 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Software Solution and, in the event of any such unauthorised access or use, promptly notify FlowForma.

5.5 The Customer shall comply with FlowForma's instructions regarding its Access and its use of the Software Solution.

5.6 The rights provided under this Agreement are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.

5.7 The Customer may use the Documentation to assist in its use of the Software Solution but the Customer may not make the Documentation available to anyone other than the Authorised Users.

6. Proprietary Rights

6.1 The Customer acknowledges and agrees that FlowForma and/or its licensors own all Intellectual Property Rights in the Software Solution. Except as expressly stated herein, this Agreement does not grant the Customer any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Software Solution.

6.2 FlowForma confirms that it has all the rights in relation to the Software Solution that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement.

6.3 The Customer shall ensure that all titles, logos, trade marks, copyright and other notices applied by FlowForma to the Software Solution or any materials provided or produced by FlowForma or the Software Solution in connection with this Agreement shall be reproduced and not deleted or removed.

6.4 The Customer acknowledges that FlowForma may apply and use advertising in the Software Solution which will be accessible by and to the Customer and Authorised Users.

7. Third Party Providers

The Customer acknowledges that the Software Solution may enable or assist it to access third party software and/or application programming interfaces and the website content of, correspond with, and purchase products and services from, third parties via third party websites, software and application programming interfaces, and that it does so solely at its own risk. FlowForma makes no representation 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 application programming interfaces, 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 or application programming interfaces is between the Customer and the relevant third party, and not FlowForma. FlowForma recommends that the Customer refers to the third party's website or application programming interface terms and conditions and privacy policy prior to using the relevant third party website or application programming interface. FlowForma does not endorse or approve any third party website or application programming interface nor the content of any of the third party websites made available via the Software Solution.

8. FlowForma's Obligations

8.1 FlowForma warrants that the Premium Versions will conform in all material respects with the Documentation.

8.2 The warranty at Clause 8.1 shall not apply to the extent of any non-conformance which is caused by use of the Software Solution contrary to FlowForma's instructions, or modification or alteration of the Software Solution by any party other than FlowForma or FlowForma's duly authorised contractors or agents. If the Customer believes there has been a breach of this warranty, the Customer must notify FlowForma in writing promptly stating in reasonable detail the nature of the alleged breach. If the Software Solution does not conform with the foregoing warranty, FlowForma will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the warranty set out in Clause 8.1. Notwithstanding the foregoing, FlowForma:

8.2.1 does not warrant that the Customer's use of the Software Solution will be uninterrupted or error-free; nor that the Software Solution and/or the information obtained by the Customer through the Software Solution will meet the Customer's requirements; and

8.2.2 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 Software Solution may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

8.3 This Agreement shall not prevent FlowForma 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 this Agreement.

9. Customer's Obligations

9.1 The Customer shall:

9.1.1 provide FlowForma with:

- (a) all necessary co-operation in relation to this Agreement; and
- (b) all necessary access to such information as may be required by FlowForma, in order to render the Software Solution and other FlowForma services as may be required from time to time and in relation to security and configuration services;

9.1.2 comply with all applicable laws and regulations with respect to its activities under this Agreement;

9.1.3 carry out all other Customer responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, FlowForma may adjust any agreed timetable or delivery schedule as reasonably necessary;

9.1.4 ensure that the Authorised Users use the Software Solution in accordance with the terms and conditions of this Agreement and shall be responsible for any Authorised User's breach of this Agreement;

9.1.5 obtain and shall maintain all necessary licences, consents, and permissions necessary for FlowForma, its contractors and agents to perform their obligations under this Agreement, including without limitation the Software Solution;

9.1.6 ensure that its network and systems comply with the relevant specifications provided by FlowForma from time to time; and

9.1.7 be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to FlowForma'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. Warranties

10.1 Each party represents, warrants and undertakes that it has full capacity and authority and all necessary consents to enter into and to perform this Agreement and to grant the rights and licences referred to in this Agreement and that this Agreement is executed by its duly authorised representative and represents a binding commitment on it.

10.2 Except as expressly and specifically provided in this Agreement:

10.2.1 the Customer assumes sole responsibility for results obtained from the use of the Software Solution by the Customer, and for conclusions drawn from such use. FlowForma shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to FlowForma by the Customer in connection with the Software Solution, or any actions taken by FlowForma at the Customer's direction;

10.2.2 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;

10.2.3 the Software Solution are provided to the Customer on an "as is" basis; and

10.2.4 the Customer acknowledges that FlowForma shall have no liability for the Customer Data, or content on or in the Software Solution, and the Customer shall defend, indemnify and hold harmless FlowForma against any claims, actions, proceedings, losses, damages, expenses and costs (including without limitation, court costs and reasonable legal fees) arising from any claims by third parties due in whole or in part to Customer Data or the Customer's use of the Software Solution or the Documentation.

11. Limitation of liability – IMPORTANT NOTICE

11.1 The following provisions set out the entire financial liability of each party (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the other party in respect of:

11.1.1 any breach of this Agreement howsoever arising; and

11.1.2 any representation, misrepresentation (whether innocent or negligent) statement or tortious act or omission (including without limitation negligence) arising under or in connection with this Agreement.

11.2 Nothing in this Agreement limits or excludes the liability of either party: (i) for death or personal injury caused by negligence; (ii) for fraud or fraudulent misrepresentation; or (iii) for any other liability to the extent that it cannot be lawfully excluded.

11.3 This Clause 11 shall survive expiry or termination of this Agreement for any

reason.

FREE SUBSCRIPTION VERSION ONLY

11.4 Subject to Clause 11.2, FlowForma shall have no liability of any kind in any circumstances whatsoever to the Customer in respect of the Free Subscription Version. In no event shall FlowForma have any liability in any circumstances whatever for any data loss or corruption relating to the Customer data or otherwise and the Customer agrees that it has sole responsibility for protecting the Customer data during the Term.

11.5 The Customer agrees and acknowledges that, in the event and to the extent that Clause 11.4 above is found to be invalid, illegal or unenforceable then:

11.5.1 FlowForma shall not in any circumstances be liable whether in tort (including for negligence or breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent) or otherwise for: (i) loss of profits; (ii) loss of business; (iii) depletion of goodwill or similar losses; (iv) loss of anticipated savings; (v) loss or corruption of data or information; or (vi) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses; and

11.5.2 FlowForma's total aggregate liability in contract, tort (including without limitation negligence or breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall in all circumstances be limited to €200.

11.6 Clauses 11.4 and 11.5 apply to the Free Subscription Version only.

PREMIUM VERSIONS ONLY

11.7 Subject to Clause 11.2, FlowForma shall not in any circumstances be liable whether in tort (including for negligence or breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent) or otherwise for: (i) loss of profits; (ii) loss of business; (iii) depletion of goodwill or similar losses; (iv) loss of anticipated savings; (v) loss or corruption of data or information; or (vi) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.

11.8 In respect of the Premium Versions only, FlowForma's total aggregate liability in contract, tort (including without limitation negligence or breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall in all circumstances be limited to the amount of the Charges paid by the Customer to FlowForma during the 12-month period immediately before the date on which the cause of action first arose (or, in the event that no Charges have been paid by the Customer to FlowForma before the date on which the cause of action first arose, the annualised amount of Charges payable for the 12-month period commencing on the Start Date).

11.9 Clauses 11.7 and 11.8 apply to the Premium Versions only.

12. Indemnity

PREMIUM VERSIONS ONLY

12.1 FlowForma shall, subject to Clause 12.3, defend the Customer, its officers, directors and employees against any claim that the Premium Versions only infringes any third party Intellectual Property Rights, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:

12.1.1 FlowForma is given prompt notice of any such claim;

12.1.2 the Customer provides reasonable co-operation to FlowForma in the defence and settlement of such claim, at FlowForma's expense; and

12.1.3 FlowForma is given sole authority to defend or settle the claim.

12.2 In the defence or settlement of any claim, FlowForma may procure the right for the Customer to continue using the Premium Versions, replace or modify the Premium Versions so that it becomes non-infringing or, if such remedies are not reasonably available, terminate this Agreement on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.

12.3 In no event shall FlowForma, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:

12.3.1 a modification of the Premium Versions by anyone other than FlowForma; or

12.3.2 the Customer's use of the Premium Versions in a manner contrary to this Agreement or the instructions given to the Customer by FlowForma; or

12.3.3 the Customer's use of the Premium Versions after notice of the alleged or actual infringement from FlowForma or any appropriate authority.

12.4 The foregoing states the Customer's sole and exclusive rights and remedies, and FlowForma's (including FlowForma's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any Intellectual Property Rights.

12.5 This Clause 12 applies to the Premium Versions only.

13. Term and termination

13.1 This Agreement shall commence on the Start Date. Unless terminated earlier in accordance with its terms, this Agreement shall continue for the Initial Term or the Trial Term (as applicable). In respect of the Premium Versions only, on or around 60 days before each Renewal Date, FlowForma shall issue the Renewal Details to the Customer in accordance with Clause 3.2 and, unless the Customer provides written

notice to FlowForma within 30 days of receipt of the Renewal Details of its intention for the Agreement to terminate on the next Renewal Date, this Agreement shall renew automatically on the relevant Renewal Date on FlowForma's then current terms and for the specified period ("Renewal Term"), such details to be set out in the relevant Renewal Details.

13.2 In respect of the Free Subscription Version only, either party may, at any time during the Trial Term, give 14 days' written notice to the other party to terminate this Agreement. For the avoidance of doubt, the Customer shall not use or avail of the Free Subscription Version by any means following expiry or termination of the relevant Trial Term.

13.3 Without affecting any other right or remedy available to it, FlowForma may terminate this Agreement with immediate effect by giving written notice to the Customer if:

13.3.1 the Customer commits a material breach of any term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;

13.3.2 the Customer becomes insolvent or has a liquidator, examiner, receiver, manager, administrative receiver or administrator (or other similar officer) appointed of it or over any part of its undertaking or assets or passes a resolution for winding up (otherwise than for the purpose of a good faith scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction makes an order to that effect or if the Customer enters into any voluntary arrangement with its creditors or becomes subject to an administration order or suffers or undergoes any analogous or similar process to any of the above anywhere in the world; or

13.3.3 the Customer suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

14. Effects of termination

14.1 Upon termination or expiry of this Agreement for any reason:

14.1.1 the Customer's Access and all licences and permissions granted under this Agreement shall immediately terminate;

14.1.2 notwithstanding that the Customer will retain access to the Customer Data, FlowForma will disable the relevant system functions, including the FlowForma Data Service. Provided that the Customer has, at that time, paid all Charges outstanding at and resulting from termination (whether or not due at the date of termination), the parties may agree for FlowForma to provide services to the Customer to extract the Customer Data on the Customer's behalf for a fee to be agreed by the parties;

14.1.3 the Customer shall (at its sole cost) return (or at FlowForma's option, destroy) all media (subject to Clause 14.1.2) on which the Software Solution is held;

14.1.4 the Customer shall promptly return to FlowForma, or otherwise dispose of as

FlowForma may instruct, all equipment, property, Documentation, confidential information and other items (and all copies of them) belonging to FlowForma which the Customer may have in its possession or under its control; and

14.1.5 the accrued rights of the parties as at termination or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination shall not be affected or prejudiced.

14.2 The termination of this Agreement shall not of itself give rise to any liability on the part of FlowForma to pay any compensation to the Customer for loss of profits or goodwill, to reimburse the Customer for any costs relating to or resulting from such termination, or for any other loss or damage.

15. Confidentiality

15.1 Each party may have access to Confidential Information of the other party under this Agreement. A party's Confidential Information shall not include information that:

15.1.1 is or becomes publicly known through no act or omission of the receiving party; or

15.1.2 was in the other party's lawful possession prior to the disclosure; or

15.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or

15.1.4 is independently developed by the receiving party, which independent development can be shown by written evidence; or

15.1.5 is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

15.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party or use the other's Confidential Information for any purpose other than the implementation of this Agreement.

15.3 Each party agrees to 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 this Agreement.

15.4 This Clause 15 shall survive expiry or termination of this Agreement for any reason.

16. Customer Data

16.1 The Customer shall own all rights, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data used in conjunction with and/or entered into the Software Solution. FlowForma shall not be responsible for any loss, destruction,

alteration or disclosure of any Customer Data.

16.2 The Customer shall and does hereby:

16.2.1 agree and confirm that all relevant third parties whose data are contained in the Customer Data agree that FlowForma may store the Customer Data in jurisdictions outside the European Economic Area;

16.2.2 agree that FlowForma may access and disclose Customer Data as required by applicable law, as permitted by the Customer and as is required to provide the Software Solution; and

16.2.3 agree to comply with the terms of FlowForma's third party providers as is required to use the Software Solution.

16.3 If FlowForma processes any personal data on the Customer's behalf when performing its obligations under this Agreement, the parties record their intention that the Customer shall be the data controller and FlowForma shall be a data processor and in any such case:

16.3.1 the Customer acknowledges and agrees that the personal data may be transferred or stored outside the European Economic Area or the country where the Customer and the Authorised Users are located in order to provide/make available the Software Solution and FlowForma's other obligations under this Agreement;

16.3.2 the Customer shall ensure that the Customer is entitled to transfer the relevant personal data to FlowForma so that FlowForma may lawfully use, process and transfer the personal data in accordance with this Agreement on the Customer's behalf;

16.3.3 the Customer shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation;

16.3.4 FlowForma shall process the personal data only in accordance with the terms of this Agreement and any lawful instructions reasonably given by the Customer from time to time;

16.3.5 FlowForma may disclose such information:

(a) to its affiliates and its/their employees, officers, representatives, advisers, agents and/or subcontractors who need to know such information for the purposes of carrying out FlowForma's obligations under this Agreement; and

(b) as may be required by law, court order or any governmental or regulatory authority; and

16.3.6 each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage.

16.3 The Customer acknowledges and agrees that FlowForma may use the Customer Data, IP and/or MAC addresses and other login/logout activity data to which it has access for analytical purposes in order to monitor and facilitate the provision of the Software Solution and to improve the features and functionality of the Software Solution.

17. Force majeure

Neither party shall in any circumstances be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure results from events, circumstances or causes beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Customer 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 sub-contractors. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations, provided that if the period of delay or non-performance continues for 6 months, the party not affected may terminate this Agreement by giving 30 days' written notice to the other party.

18. Waiver

No failure or delay by a party to exercise any right or remedy provided under this Agreement 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. Severance

If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Clause 19 shall not affect the validity and enforceability of the rest of this Agreement.

20. Export laws

The Customer acknowledges that the Software Solution may be subject to export and import control laws (including United States export and import laws), and agrees to fully comply with any such laws in connection with the Software Solution.

21. Entire agreement

This Agreement 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 this Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based

on any statement in this Agreement. Nothing in this Clause 21 shall limit or exclude any liability for fraud.

22. Variation

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

23. Assignment

The Customer shall not, without the prior written consent of FlowForma, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement. FlowForma 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 this Agreement.

24. No partnership or agency

Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party except as expressly provided herein. Each party confirms it is acting on its own behalf and not for the benefit of any other person.

25. Third party rights

No one other than a party to this Agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.

26. Rights and remedies

The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

27. Notices

All notices to or by the respective parties shall be in writing in the English language and shall be deemed to have been duly given when (a) delivered by hand, (b) posted by recorded delivery post (postage prepaid), (c) sent by reputable overnight courier, (d) sent by fax, or (e) sent by email to the party to which such notice is required to be given under this Agreement addressed to the parties as provided for in this Agreement; or to such other address, fax number or email address as either party may subsequently notify to the other in writing. Notices delivered by hand, sent by fax or by overnight courier shall be deemed received the first Business Day following such delivery or sending. Notices, which have been posted as above, shall be deemed received on the third Business Day following posting. Notices sent by email shall be deemed delivered at 9.00 am on the next Business Day after transmission. The Customer shall ensure that all contact details (including address, fax number and email address) provided to FlowForma are at all times complete, accurate and up-to-date.

28. Governing law & jurisdiction

This Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the laws of Ireland and are subject to the exclusive jurisdiction of the courts of Ireland.

PART D – DEFINITIONS & INTERPRETATION

29. Definitions

29.1 The following definitions and rules of interpretation in this Part D shall, as the context so requires, apply in this Agreement:

“Access”, the Customer’s own passwords, accounts and/or access and the licence key(s) and any other access codes issued by FlowForma that together enable access to and use of all or part of the relevant Software Solution (as applicable);

“Authorised Users”, those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the relevant Subscription Service, the limit in respect of which (subject to reasonable decoupling) is set out in the Order Details or Renewal Details (as applicable);

“Business Day”, any day which is not a Saturday, Sunday or public holiday in Ireland;

“Change of Control”, the direct or indirect acquisition of either the majority of the voting stock, or of all, or substantially all, of the assets, of a party by another entity in a single transaction or a series of transactions;

“Charges”, the fees payable by the Customer to FlowForma in respect of the relevant Premium Version;

“Confidential Information”, information that is proprietary or confidential and is either clearly labelled as such or otherwise identified as Confidential Information;

“Customer Data”, the data inputted by the Customer, Authorised Users, or FlowForma on the Customer's behalf for the purpose of using the Software Solution or facilitating the Customer's use of the Software Solution;

“Documentation”, the documents accessible via the relevant Subscription Version or the Premium Download Version (as applicable) or made available to the Customer by FlowForma via e-mail or such other means as may be notified by FlowForma to the Customer from time to time which sets out a description of the Software Solution and the user instructions for the Software Solution;

“FlowForma Data Service”, the FlowForma data feed based on the Open Data Protocol (OData), available in respect of the Premium Subscription Version only as set out in the Order Details or the Renewal Details (as applicable);

“Initial Term”, the initial term of the Agreement in respect of the Premium Versions only as set out in the Order Details;

“Intellectual Property Rights”, patents, rights to inventions, copyright and neighbouring and related rights, trade marks and service marks, business names and

domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) 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;

“Order Details”, the document detailing the commercial terms relating to this Agreement, made available by e-mail to the Customer as part of the order/renewal process (as applicable), referred to as the “Renewal Details” in respect of a Renewal Term where the Initial Term has expired;

“Premium Version(s)”, the Premium Subscription Version and the Premium Download Version and the relevant Documentation, as applicable;

“Renewal Date”, the periodical times/dates on which the Charges become due and payable for commencement of a Renewal Term as set out in the Order Details or the Renewal Details (as applicable);

“Renewal Term”, is defined in Clause 13.1;

“Software”, the then current release and versions (as applicable) of the FlowForma software application provided by FlowForma as part of the relevant Software Solution and set out in the Order Details or the Renewal Details (as applicable);

“Software Solution”, the relevant Subscription Version or the Premium Download Version (as applicable) and the relevant Documentation provided by FlowForma to the Customer under this Agreement, as more particularly described in the Order Details or the Renewal Details (as applicable);

“Standard Business Hours”, 9.00am to 5.30pm Irish time on Business Days;

“Start Date”, the date that the Customer’s Access is made available by FlowForma, as set out in the Order Details;

“Subscription Version(s)”, the Free Subscription Version and/or the Premium Subscription Version, as applicable, and the relevant Documentation;

“Support Policy”, FlowForma’s Support Policy detailing the Support Services and may be amended or updated by FlowForma from time to time;

“Support Services”, the support services to be provided by FlowForma to the Customer in respect of the relevant Premium Version as further detailed in the Support Policy;

“Term”, the Initial Term and any Renewal Terms or the Trial Term (as applicable);

“Trial Term”, the term of the Agreement in respect of the Free Subscription Version

only, as communicated to the Customer during the ordering process; and

“Virus”, any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, Trojan horses, worms, time-bombs, keystroke loggers, spyware, adware, viruses and other similar things or devices.

30. Interpretation

30.1 Clause and paragraph headings shall not affect the interpretation of this Agreement. References to Clauses and Parts are to the Clauses and Parts of this Agreement. A reference to writing or written includes faxes and e-mail. The words “includes” and “including” are to be construed without limitation.

30.2 A person includes a natural person, 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. A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

30.3 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular and a reference to one gender shall include a reference to the other genders.