

**XCORE LICENSE  
TERMS AND CONDITIONS**

**1. DEFINITIONS**

1.1 All capitalised terms used, but not defined herein shall have the meanings given to them in the XCore License Agreement. In addition, the following definitions apply:

- Affiliates*** shall mean, with respect to a person, any other person which directly or indirectly controls, is controlled by or is under common control with the first person. For the purposes of this definition “control” means the ability to direct, or cause the direction of, the management or policies of such person whether by means of ownership of voting securities or partnership interests, representation on board of directors or similar governing body, or contract or otherwise. In respect of the Client, it shall, where appropriate, procure that each of its Affiliates who use the Software complies with the terms of the License hereunder and shall retain the responsibility for its Affiliates compliance to the same extent as applicable to the Client;
- Agreement*** shall mean the XCore License Agreement, incorporating these XCore License Terms and Conditions and the XCore Service Level Agreement;
- API*** shall mean a purposely built application program interface creating access to the Software;
- Business Day*** shall mean a day (other than a Friday or Saturday or public holiday) on which banks are generally open in Dubai for the transaction of normal banking business;
- Client Customers*** shall mean any customer of the Client who by using Client’s services will be using XCore;
- Confidential Information*** shall mean any information which either party (the ***Disclosing Party***) may find beneficial to disclose or allow to be disclosed or make available to the other party (the ***Receiving Party***) relating to itself or its Affiliates pursuant to or in connection with the Agreement (whether orally or in writing) and whether or not such information is expressly stated to be confidential or marked as such including, but not limited to, trade or business secrets, discoveries, ideas, concepts, customer names, marketing plans, formulas, computer programs, processes, data, ideas, Software, Software Documentation, Software Improvements, drawings, inventions (whether patentable or not), algorithms, source code, object code, know-how, software listings, passwords and usernames, schematics, and other technical, financial, or business information;
- Fees*** shall mean all the monies due from the Client to PrimeXM, calculated and payable as per clause 4 of these Terms and Conditions and as per the XCore License Agreement;
- License*** shall mean the license granted under clause 2.1;
- Personal Data*** shall have the meaning ascribed thereof in the personal data protection legislation applicable;
- PrimeXM Portal*** shall mean a specifically designed graphical user interface, accessible at <https://portal.primexm.com>, creating access to the Software;
- Setup Delivery*** shall mean the point in time at which, in PrimeXM’s reasonable professional opinion, the Client has acquired access to the Software through the PrimeXM Portal and/or via APIs which have been set up for Client’s use;
- Software*** shall mean the XCore Software which is the hosted and managed solution consisting of a liquidity aggregation, order routing and execution engine, which facilitates connectivity between the Client, the Client’s customers and liquidity providers via Financial Information Exchange (“FIX”) or custom protocols to any platform, and any reference thereof shall also include the add-ons and/or plugins and/or bridges and/or any other accommodating software created and/or owned by PrimeXM which works together with the XCore Software;
- Software Documentation*** shall mean all documentation relating to or distributed with the Software for aiding the use and application of the Software, in whatever form, including operating manuals, technical literature, software user manuals, installation guides and reference manuals whether in physical or electronic version;

- Software Improvements** shall mean those improvements or updates or modifications generally released as to the Software by PrimeXM, and designated by PrimeXM as program improvements, including, but not limited to, (i) additions of substantial functionality incorporating improvements provided to the Client to correct program faults and (ii) patches and bugs correcting errors and/or program faults;
- Support Services** shall mean all the services offered by PrimeXM and are related to the support of the XCore as those are referred in the XCore Service Level Agreement between PrimeXM and the Client.;
- SLA** shall mean the XCore Service Level Agreement between PrimeXM and the Client; and
- XCore Software** shall mean the Software.

1.2 In these Terms and Conditions, unless the context requires otherwise:

- 1.2.1 references to **persons** shall include individuals, bodies corporate (wherever incorporated), and unincorporated associations and partnerships;
- 1.2.2 the **headings** are inserted for convenience only and shall not affect the construction of the Agreement;
- 1.2.3 references to the singular include the plural and vice versa and references to one **gender** include all genders;
- 1.2.4 any reference to any **enactment** or statutory provision is a reference to it as it may have been, or may from time to time be, amended, modified, consolidated or re-enacted;
- 1.2.5 the words **including** and **in particular** shall be construed as being by way of illustration or emphasis only and shall not be construed as, nor shall they take effect as, limiting the generality of any earlier words;
- 1.2.6 references to any statute, legislation or regulation are references to Cyprus statutes, legislation or regulations unless otherwise specified;
- 1.2.7 references to 'USD' and/or the '\$' symbol shall mean United States Dollars; and
- 1.2.8 unless stated otherwise, references to any time, are to the local time in Cyprus.

## 2. LICENSE OF SOFTWARE

### 2.1 License

2.1.1 PrimeXM grants to the Client and the Client hereby accepts, a non-exclusive and non-transferable license, subject to the Terms and Conditions, during the term of the Agreement:

- 2.1.1.1 to access the Software and configure such via the PrimeXM Portal and/or via the APIs, in accordance to Client's needs and operations; and
- 2.1.1.2 to receive and use the Software Documentation for the purposes of use of the Software.

The License for the avoidance of doubt shall not give the Client a right and/or any form or degree of access to the source code to the Software but only to the features of the same which can be accessible via PrimeXM Portal and/or via the APIs.

2.1.2 The access to the Software is strictly confidential, non-transferable and is only to be used by the Client. Passwords and usernames to the created access will survive for the duration of the Agreement, but replacement passwords and usernames may be provided by PrimeXM if requested by the Client. The Client may, at its own discretion, reset the passwords and usernames at any time during the term of the Agreement.

### 2.2 Software Improvements

2.2.1 PrimeXM may install Software Improvements in the Software from time to time and shall provide the Client with reports of the errors and "patches" (which correct errors or defects in the Software) which are dealt with in the Software Improvements in accordance to the terms and conditions of the SLA.

2.2.2 The Client acknowledges and agrees that it will be obliged to accept any Software Improvements and that PrimeXM will intervene in the Software as much as is necessary for the purpose of installing the Software Improvements and that any Software Improvements the Client receives will form part of the Software for the purposes of the Agreement and shall be subject to the same proprietary rights and Client's undertakings set out herein, including but not limited to, those set out in clause 3 below. The Client is entitled to use the Software Improvements on the same terms and conditions as the Software but not further or otherwise.

- 2.2.3 The Client acknowledges that Software Improvements might be released with or without additional fees and agrees that where such Software Improvements are requested by the Client those will be subject to additional fees and to further terms and conditions, as those will be mutually agreed by both parties, before PrimeXM proceeds to perform any work on the requested Software Improvements. The relevant Software Improvements, once created, will form part of the Software for the purposes of the Agreement and shall be subject to the same proprietary rights and Client's undertakings set out herein, including but not limited to, those set out in clause 3 below. The Client acknowledges that PrimeXM shall be free to licence or otherwise provide the Software Improvements (or any part thereof) to any third party and the Client waives ab initio any rights and or ownership of intellectual property to any such instructed Software Improvements.

### **3. INTELLECTUAL PROPERTY RIGHTS AND CLIENT'S UNDERTAKINGS**

#### **3.1 Intellectual Property Rights**

- 3.1.1 The Client acknowledges and agrees that the Software, Software Documentation (including the Software Improvements) and all copies thereof (whether in machine-readable or printed form and howsoever and wheresoever arising) and all copyright, database rights, patents, trade secrets, trademarks and other proprietary or intellectual property rights of any nature whatsoever therein, including, without limitation, in the Software Improvements, compilations, or collective works thereof and all related technical know-how and all rights therein (regardless of whether pending, perfected, registered, issued or otherwise protectable) (*PrimeXM Intellectual Property Rights*) are and will, unless otherwise stated herein or the parties agree otherwise in writing, remain the sole property of PrimeXM.
- 3.1.2 PrimeXM reserves the right to grant licenses to any other person or body or to use or otherwise exploit the Software and the Software Documentation in any way it deems fit.
- 3.1.3 In the event that new intellectual property rights evolve or are developed by PrimeXM from the Software, including but not limited to, inventions, designs or processes evolving as a result of the performance by PrimeXM of its obligations under this Agreement, including the provision of Software Improvements, the Client acknowledges that the same will be the property of PrimeXM.
- 3.1.4 The Client shall not during or at any time after the expiry or termination of the Agreement in any way dispute or question or take any action to jeopardise, limit or interfere in any manner with PrimeXM's ownership and rights with respect to the Software and Software Documentation. The Client shall have only those rights in or to the Software and Software Documentation expressly granted to it pursuant to the Agreement.
- 3.1.5 For the avoidance of doubt, all legal and beneficial right, title and interest in all and any Client Intellectual Property Rights, whether pre-existing or independently developed by or on behalf of the Client and/or its Affiliates will remain the absolute property of the Client or the relevant Affiliate.

#### **3.2 Client's Undertakings**

- 3.2.1 The Client undertakes only to use the Software in the manner and for the purposes as set out in the Agreement and only to the extent permitted by the applicable law to the Client as a lawful user (i.e. a party with an express right to use).
- 3.2.2 The Client undertakes that it will:
- 3.2.2.1 not itself or through any Affiliate, subsidiary, agent or third party:
- (a) reproduce, translate, adapt, vary, modify or otherwise reproduce the Software or PrimeXM's Confidential Information, save that Client may copy the Software Documentation to the extent reasonably necessary for use of the Software under this Agreement. Nothing in this Agreement shall prevent the Client developing its own software application with similar features to the Software provided that this does not arise as a result of the Client or any person on its behalf, in any way directly or indirectly using, copying, reproducing, translating, adapting, varying or modifying the Software's source code, object code, the Software Documentation and/or the Confidential Information in existence at the time of the Client's software development, or in any way infringing PrimeXM's Intellectual Property Rights set out in clause 3.1, in order to develop the Client's software;
  - (b) reverse engineer, decompile, bug fix, disassemble or otherwise attempt to derive the source code, techniques, processes, algorithms, know-how or other information from the Software (collectively, "Reverse Engineering") or permit or induce the foregoing. If

however, directly applicable law prohibits enforcement of the foregoing, Client may engage in Reverse Engineering solely for purposes of obtaining such information as is necessary to achieve interoperability of independently created software with the Software, or as otherwise and to the limited extent permitted by directly applicable law, but only if: (a) Reverse Engineering is strictly necessary to obtain such information; and (b) Client has first requested such information from PrimeXM and PrimeXM failed to make such information available (for a fee or otherwise) under reasonable terms and conditions. Any information supplied to or obtained by Client under this section is Confidential Information of PrimeXM and may only be used by Client for the purpose described in this section, and will not be disclosed to any third party or used to create any software which is substantially similar to the expression of PrimeXM XCore.

- (c) sell, lease, licence, sub-licence or otherwise deal with the Software or any part or parts or variations, modifications, copies, releases, versions or enhancements thereof or have any software or other program written or developed for itself based on any Confidential Information supplied to it by PrimeXM, save as permitted pursuant to the terms of the Agreement; nor
  - (d) use the Software or any part thereof for any improper or unauthorised purposes or take any action which is reasonably likely to bring PrimeXM into disrepute with any relevant regulator;
- 3.2.2.2 supervise and control use of the Software and retain the XCore under its exclusive control, in accordance with the terms of the Agreement;
  - 3.2.2.3 not provide or otherwise make available access to the XCore via the PrimeXM Portal and/or the APIs, in whole or in part, in any form to any person other than the Client's Affiliates, and any of Client's and its Affiliates employees, agents or contractors, without prior written consent from PrimeXM;
  - 3.2.2.4 effect and maintain adequate security measures to safeguard the Software from access or use by any unauthorised body or person; and
  - 3.2.2.5 at PrimeXM's written request, and at PrimeXM's cost, make available to any relevant regulator such information which is in the Client's possession or control as the relevant regulator may request of PrimeXM, within the time frame specified by the regulator.
- 3.2.3 The Client undertakes to, and to procure that its Affiliates and any of Client's and its Affiliates employees, officers, directors and agents shall not remove or alter any trademark, trade name, copyright, or other proprietary notices, legends, symbols, or labels appearing on the Software and Software Documentation delivered to Client by PrimeXM.
  - 3.2.4 The Client must fully comply with all applicable from time-to-time laws, rules and regulations relating to the export of software data and/or technical data.
  - 3.2.5 The Client will permit PrimeXM to check the use of the Software and Software Documentation at all times during normal business hours upon reasonable notice from PrimeXM and will procure that PrimeXM is provided with such access to Client's system, as is reasonably requested by PrimeXM for such purpose, including but not limited to, checking that the Software is being used in accordance to the License.
  - 3.2.6 The Client undertakes to keep all access codes including those that may from time to time be provided as replacement(s) of the initial access codes, provided by PrimeXM strictly confidential.
  - 3.2.7 The Client will be solemnly responsible to monitor and restrict the access and usage of the Software by any person strictly not authorised to use and or access XCore.
  - 3.2.8 The Client is also responsible for maintaining any systems of its own, so that no viruses can contaminate the PrimeXM Portal and/or the APIs and/or the XCore Software.
  - 3.2.9 The Client undertakes to notify PrimeXM of any anticipated change in its corporate status, such as a change of its registered office, business address, name (company name, trade name and business name), re-domiciliation, merger, acquisition, split, transfer of assets that affects the subject of this Agreement and a material change in ownership, as early as reasonably possible before any such anticipated change.

#### **4. FEES**

##### **4.1 Fees**

- 4.1.1 The Client shall, subject to clause 4.2, pay to PrimeXM the non-refundable and non-creditable Fees which shall be the Monthly Fees, in consideration of the grant of the License to the Client. It is agreed and understood that the first invoice issued by PrimeXM to the Client, will include an amount equivalent to one (1) month's Connection Fees (as per the initial requested setup as per the Agreement above), which shall be non-refundable, and will constitute credit towards the future Fees.
- 4.1.2 In addition:
  - 4.1.2.1 PrimeXM retains the right to charge such amount as may be agreed in writing between PrimeXM and the Client in respect of Software services requested by the Client in addition to those to be provided pursuant to the terms of the Agreement;
  - 4.1.2.2 after the expiry of the Initial Term, fees payable under the Agreement may be subject to change. The revised fees will take effect on expiry of the period expressly referred in the notice for such change, unless the Client notifies PrimeXM within such period that it wishes to terminate the Agreement for reasons concerning the change of the Fees;
  - 4.1.2.3 the Client shall not be entitled to withhold payment of any sum by reason of any right of set-off or any claim or dispute with PrimeXM, whether relating to the quality or performance of the Software or otherwise.

## **4.2 Payment**

- 4.2.1 PrimeXM will issue an invoice in respect of any fees due under the Agreement and the Client shall procure that all payments due under the Agreement are paid by electronic funds transfer to such bank account, as PrimeXM may from time to time notify the Client in writing, within twenty (20) days of receipt of such invoice for the relevant fee, clear of any outgoing, intermediary and incoming bank charges resulting from the payment. All payments shall, unless otherwise specified, be made in United States Dollars. Without prejudice to clause 9 below, late or, no or, partial payment, shall constitute a breach of the present Agreement giving to PrimeXM the absolute right to consider, at its absolute discretion, the same instantly terminated and to immediately disable access of the Client to the full functionalities of the Software without further notice according to clause 10, below. In this event PrimeXM reserves the right to apply a one-time fee amounting to \$250.00, for every invoice that remains unpaid, as pre-estimated administrative costs.

Notwithstanding the above absolute right for immediate disabling of access of the Client to the Software as above described, PrimeXM may elect to apply intermediate measures such as to limit the access to the Software as it may deem fit until full repayment of the unpaid invoice by the Client. In such a case PrimeXM will proceed with further invoicing related to the limited access of the Client to the Software.
- 4.2.2 The fees payable under the Agreement shall be solely for the License and shall not relate to any other services which PrimeXM may provide to the Client including, but not limited to hosting services, connectivity services, technical support services or any other service.
- 4.2.3 If the Client fails to pay any amount payable by it under the Agreement, on condition that such amounts have remained unpaid for sixty (60) days of receipt of an invoice for the relevant amount, PrimeXM reserves the right to claim an annual interest to the rate applicable by the laws governing the present Agreement.
- 4.2.4 The fees payable pursuant to the Agreement are exclusive of all taxes, duties or levies, however designated or computed. Client shall be responsible for and pay all taxes based upon the transfer, use, distribution of Software, or upon payments due under the Agreement, including but not limited to sales, use, or VAT, duties, withholding taxes and other assessments now or hereafter imposed on or in connection with the Agreement.

## **5. WARRANTY**

- 5.1 The Client acknowledges that the Software has not, (except as expressly set out in this Agreement) been produced to meet the individual requirements of the Client and cannot be tested in every possible combination.
- 5.2 PrimeXM warrants and undertakes for the duration of this Agreement that:
  - 5.2.1 it will carry out its obligations to provide the Software under this Agreement with the due skill, care and diligence required according to good industry practice;
  - 5.2.2 at the time of the Setup Delivery, the Software (together with any subsequent Software Improvements) does not, to the best efforts exercised by PrimeXM, contain any trojan horse, worm, logic bomb, time

bomb, back door, trap door or keys, as such terms are commonly understood in the Software development industry, which is likely to materially harm the Software; and

- 5.2.3 so far as PrimeXM is aware having exercised best efforts, the Client's use and operation of the Software in accordance with the terms of this Agreement will not infringe any intellectual property rights of any nature whatsoever of a third party.

Except as expressly stated in this Agreement, PrimeXM excludes all other representations, conditions, terms or warranties of any kind, whether express or implied (either in fact or by operation of laws, common law, case law or otherwise) with respect to the Software and/or the Software Documentation, including but not limited to, the implied conditions as to satisfactory quality and fitness for purpose. Except as expressly stated in this Agreement, PrimeXM does not warrant the use of the Software in association with third party products, or that the operation of the Software will be entirely uninterrupted or error free, or that all Software defects can be corrected.

- 5.3 PrimeXM makes no warranty or representation that the Software will be free from all viruses.
- 5.4 Each party warrants and represents to the other for the duration of the Agreement, with respect to itself, that:
- 5.4.1 it is duly incorporated and validly existing under the laws of its jurisdiction of incorporation;
- 5.4.2 it has obtained all necessary consents, powers, licenses and authorisations and has the requisite corporate power and authority to enter into the Agreement and to perform its obligations hereunder;
- 5.4.3 neither the Agreement nor the implementation of the transactions contemplated by it (including, but not limited to, in the case of the Client only, the execution of trades by the Client Customers on the Software) will result in:
- 5.4.3.1 a violation or breach of any provision of the memorandum and articles of association, bye-laws or equivalent constitutional documents of it;
- 5.4.3.2 a violation or breach of any applicable laws or regulations or any order or decree or judgment of any court, governmental agency or regulatory authority applicable to it; or
- 5.4.3.3 a requirement for the party to obtain any consent or approval of, or give any notice or make any registration with, any governmental, regulatory or other authority which has not been obtained or made at the date of the Agreement on a basis which is unconditional and cannot be revoked;
- 5.4.3.4 the Agreement and the obligations created thereunder are binding upon it and enforceable against it in accordance with their terms and that it is not subject to any law or regulation which prevents that party's performance of the Agreement; and
- 5.4.3.5 there is no reason or reasons which will, or might reasonably be expected to, lead to the revocation, refusal or application of conditions to any current license or registration of the Client and/or PrimeXM, as applicable.

## **6. INDEMNITY**

- 6.1 PrimeXM agrees to indemnify and defend at its own expense the Client (save as otherwise set out herein) from and against any and all claims, costs, damages, losses or expenses (including reasonable legal fees) suffered or incurred by the Client in respect of claims of infringement of any copyright, patents, trade marks, industrial designs, or other intellectual property rights relating to the Software, provided that:
- 6.1.1 the Client promptly, and in any event within thirty (30) Business Days of becoming aware of the claim, notifies PrimeXM in writing of any such claim and PrimeXM has sole control of the defence of such claim, subject to the undertaking by PrimeXM to use competent counsel; and
- 6.1.2 the Client gives PrimeXM such assistance, information and co-operation, at PrimeXM's expense, as PrimeXM may reasonably require to settle or oppose any such disputes.
- 6.2 For the avoidance of doubt, PrimeXM shall have no liability for, and Client shall indemnify from and against all reasonable loss, costs and expenses suffered by PrimeXM arising from third party actions, proceedings and claims only to the extent attributable to the Client from:
- 6.2.1 any failure by the Client to perform its obligations under the Agreement;
- 6.2.2 modification, alteration, enhancement, variation or addition to the Software not performed by PrimeXM or authorised in writing by PrimeXM;
- 6.2.3 incorrect or improper use, abuse or corruption of the Software or the Software Documentation;

6.2.4 compliance with Client's designs, specifications or instructions.

Client shall not be entitled to settle or compromise any action, proceeding or claim related thereto without the prior written consent of PrimeXM (not to be unreasonably withheld or delayed).

6.3 Client agrees to indemnify and defend at its own expense PrimeXM (save as otherwise set out herein) from and against any and all claims, costs, damages, losses or expenses (including reasonable legal fees) suffered or incurred by PrimeXM in respect of claims of infringement of any copyright, patents, trademarks, industrial designs, or other intellectual property rights relating to the Client's intellectual property rights.

Client shall not be entitled to settle or compromise any claim related thereto without the prior written consent of PrimeXM (not to be unreasonably withheld or delayed).

## **7. LIMITATION OF LIABILITY**

7.1 The remedies provided herein are Client's and PrimeXM's sole and exclusive remedies. Neither PrimeXM nor the Client and their respective suppliers shall be liable for any claim against the Client or PrimeXM (as the case may be) by any third party with respect to the infringement of any intellectual property rights or otherwise, save as set out in clause 6 above.

7.2 Subject to clause 7.5 and 7.7, PrimeXM expressly excludes liability for any loss of profits, loss of business, loss of revenue, goodwill or anticipated savings, loss of use or data, interruption of business, and for indirect, special, incidental or consequential damages of any kind to the Client, even if the Client has been advised of the possibility of such damages and notwithstanding any failure of essential purpose of any limited remedy.

7.3 Subject to clauses 7.5 and 7.7, the entire liability of PrimeXM towards the Client for damages in any way related to the subject matter of the Agreement, and regardless of whether the claims for such damages are based in contract, tort (including negligence) or otherwise, shall not exceed the total amount received by PrimeXM from the Client under this Agreement, during any three (3) month period of this Agreement preceding the event that resulted the damages.

7.4 In no event will PrimeXM or its suppliers be liable for:

7.4.1 failure of the Software to perform the facilities and functions set out in the Agreement, save as expressly provided herein; or

7.4.2 any misuse of the Software or the Software Documentation by Client customers or the Client's agents and contractors and any use of the Software or the Software Documentation by Client customers, in so far as such use relates to the performance and/or enforcement of transactions.

7.5 Nothing in the Agreement shall exclude or limit either party's liability for death or personal injury to the extent only that the same arises as a result of that party's negligence, or the negligence of its employees, agents or authorised representatives, or for fraud, or any other liability which may not be excluded or limited by law.

7.6 Save as set out herein, the rights and remedies provided for pursuant to the Agreement are cumulative and in addition to, and not in lieu of, any other rights or remedies which the party may possess at law or in equity.

7.7 Nothing in this Agreement shall be taken as excluding or limiting the liability of PrimeXM or the Client, as appropriate, in respect of the indemnity in clause 6 and the breach of clause 8 (confidentiality), due to such party's fraud or wilful misconduct.

7.8 For the avoidance of doubt, the parties shall take reasonable steps to mitigate their losses, costs or damages arising out of or in relation to this Agreement.

## **8. CONFIDENTIALITY**

8.1 Each party agrees to treat as confidential and keep secret all Confidential Information, to use such Confidential Information only as permitted under the Agreement, to take all reasonable precautions to prevent any unauthorised disclosure or use of Confidential Information, and must not without the consent of the Disclosing Party:

8.1.1 Exploit the Confidential Information in whole or in part, other than is strictly necessary to enable the Receiving Party to perform its obligations hereunder; nor

- 8.1.2 disclose the Confidential Information in whole or in part or make any aspect of the Confidential Information available to any person, subject always to clause 8.2 below, other than those employees, agents, contractors of the Receiving Party who need to know or to use the same to further permitted uses of such information hereunder.
- 8.2 The Receiving Party undertakes to ensure that any person to whom any part of the Confidential Information is disclosed pursuant to clause 8.1.2 is made aware prior to the disclosure that the Confidential Information is confidential and that they owe an express duty of confidence to the Disclosing Party and to take appropriate steps to implement and enforce such confidentiality obligations.
- 8.3 Each party agrees to promptly notify the other if it becomes aware of any breach of confidence pursuant hereto and to give the other party all reasonable assistance in connection with any proceedings which that party may institute.
- 8.4 The obligations of confidentiality set out in this clause shall survive termination of the Agreement and, as soon as possible following termination of the Agreement, but in any event within three (3) months thereafter, the Receiving Party shall, and shall procure that any of its employees with access thereto shall, upon the Disclosing Party's instructions, either deliver to the Disclosing Party or destroy, Software Documentation and Confidential Information and any other materials provided by the Disclosing Party to the Receiving Party pursuant hereto, which are in its possession or under its control, and shall deliver to the Disclosing Party a certificate signed by an officer of the Receiving Party certifying that the same has been done, unless the Receiving Party has obtained the Disclosing Party's prior written consent to retain one copy for archive purposes which the Disclosing Party may authorise, together with any conditions the Disclosing Party may impose in respect of such continued retention.
- 8.5 Unless required by law, and except to assert its rights hereunder or for disclosures to its own employees on a "need to know" basis, both parties agree not to disclose the detailed terms of the Agreement or matters relating thereto without the prior written consent of the other, which consent shall not be unreasonably withheld.
- 8.6 If either party is requested to disclose any of the other party's Confidential Information pursuant to any judicial or governmental order, such party will not disclose such Confidential Information without, to the extent practicable, first giving the other written notice of the request and reasonable opportunity to contest the order and/or obtain confidential treatment for such disclosure.
- 8.7 The Client acknowledges and agrees that PrimeXM may use the Client's name for PrimeXM's own promotional purposes, including PrimeXM's website, subject to the relevant rules and regulations, for so long as the use of the Client's name would not objectively be considered to be harmful to the reputation of such party or would not objectively be considered likely to lead any person to reduce their level of business with such party.

## **9. TERMINATION**

- 9.1 In addition to the right of the party to terminate the Agreement without cause with written notice of not less than sixty (60) days, as set out in the Agreement or as may otherwise be expressly provided in the same, either party may terminate the Agreement at any time and with immediate effect by serving a notice of termination on the other party if:
- 9.1.1 The other commits any breach of any term of the Agreement and fails to remedy such breach within twenty-one (21) Business Days after the receipt of a request in writing from the first party to do so (such request to contain a warning of that party's intention to terminate); or
- 9.1.2 the other commits any material or continuing breach of any term of the Agreement which is not capable of being remedied, including but not limited to any breach of clauses 2.1, 3.2, and 5.
- 9.2 Either party may terminate the Agreement at any time and with immediate effect by serving a notice of termination on the other party if the other party:
- 9.2.1 presents a petition or has a petition presented against it by a creditor for the appointment of an administrator or for its winding up;
- 9.2.2 convenes a meeting to pass a resolution for voluntary winding up or the making of an administration order;
- 9.2.3 enters into any liquidation (other than for the purposes of a bona fide reconstruction or amalgamation);
- 9.2.4 calls a meeting of its creditors, or has a receiver, administrator, administrative receiver, liquidator or any other similar officer or insolvency practitioner appointed in respect of all or any of its undertakings or assets;



- 9.2.5 suspends payment of its debts or becomes unable to pay its debts as they fall due, or the value of its assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities;
- 9.2.6 refuses or becomes unable to meet any sums due to the other party when such sums fall due;
- 9.2.7 ceases to carry on business as a going concern or ceases to be in a position to fulfill the Agreement;
- 9.2.8 any security created by any mortgage or charge becomes enforceable against the party and the mortgagee or chargee takes steps to enforce the security or charge;
- 9.2.9 takes or suffers any similar, under 9.2.1–9.2.8, action or occurrence in any jurisdiction;
- 9.2.10 ceases or threatens to cease to carry on business or any substantial part of its business;
- 9.2.11 has been convicted of any criminal or fraudulent offence; or
- 9.2.12 any relevant regulator, requires the Agreement to be terminated or imposes any requirement or restriction which materially affects the ability of either party to take the action required of it under the Agreement, including but not limited to, revoking or amending a license granted to that party in a manner which is prejudicial to the interests of the other party, or PrimeXM has reasonable cause to suspect that such action will be taken in relation to a party.
- 9.3 Termination of the Agreement shall not act as a waiver of any breach of the Agreement and shall not act as a release of either party from any liability for breach of such party's obligations under the Agreement.
- 9.4 Upon termination or expiration of the Agreement:
  - 9.4.1 PrimeXM will be discharged from any further obligation to perform under the Agreement and the License shall terminate;
  - 9.4.2 the Client shall pay to PrimeXM on demand all sums then properly due and owing, including all agreed costs, and expenses and other fees incurred by PrimeXM pursuant hereto in connection with the performance of its obligations to the Client up to the date of such termination for which the Client has provided its written approval and PrimeXM has paid or is legally obliged to pay, and all arrears of fees, charges or other payments arising in respect of the Software or the Agreement, on condition that such amounts are due and payable to PrimeXM, and that PrimeXM will use reasonable endeavours to avoid or mitigate such costs or expenses; and
  - 9.4.3 subject to clause 9.5 the Client and PrimeXM (as the case may be) shall comply with its obligations to return or destroy Software Documentation, if appropriate, and Confidential Information as set out in clause 8.4 above.
- 9.5 Termination will be without prejudice to any rights and remedies that the terminating party may have in law or equity and shall not affect any accrued rights or liabilities of either party nor the coming into force or the continuance of force of any provision which is expressly or by implication intended to come into force or continue to be in force on or after such termination.

## **10. NOTICES**

- 10.1 Any notice or other communication to be given by one party to the other under or in connection with the Agreement, shall be in writing and signed by or on behalf of the party giving it. It shall be served by delivering it by hand, sending it by registered post to the address set out in clause 10.2, or sending it by email to the email addresses as defined by each party at the beginning of their contractual relationship and or as these will be notified to each other at any given point in time the Agreement will be in effect and in each case marked for the attention of the relevant party set out in clause 10.2 (or as otherwise notified from time to time in accordance with the provisions of the Agreement). Any notice so served by hand or registered post shall be deemed to have been duly given:
  - 10.1.1 in the case of delivery by hand, when delivered; and
  - 10.1.2 in the case of registered post, at 10am on the first Business Day following the date of receipt notice as this will be notified to the sender by the elected postal services,

provided that in each case where delivery by hand occurs after 6pm on a Business Day or on a day which is not a Business Day, service shall be deemed to occur at 9am on the next following Business Day. References to time in this clause are to local time in the country of the addressee.

Any notice sent by email shall be deemed to have been dully given on the day of transmission.

- 10.2 The addresses of the parties for the purposes of clause 10.1 are as set out in the Agreement or as notified from one party to the other at any given time this Agreement will be valid.
- 10.3 A party may notify the other party to the Agreement of a change to its name, relevant addressee or address for the purposes of clause 10.2, provided that, such notice shall only be effective on:
  - 10.3.1 the date specified in the notice as the date on which the change is to take place; or
  - 10.3.2 if no date is specified or the date specified is less than 5 Business Days after the date on which notice is given, the date following five (5) Business Days after notice of any change has been given.
- 10.4 In proving such service, it shall be sufficient to prove that the envelope containing such notice was properly addressed and delivered either to the address shown thereon or into the custody of the postal authorities as a pre-paid recorded delivery, special delivery or registered post letter.

**11. DATA PROTECTION**

- 11.1 Each party shall comply with all applicable data protection, privacy laws, and regulations applicable.
- 11.2 Where a party processes Personal Data on behalf of the other party, the first party represents and warrants that:
  - 11.2.1 it will only process Personal Data supplied to it by the other party to the extent and in such manner as is necessary for the performance of its obligations under this Agreement, and in accordance with the instructions of the other party and by signing this Agreement the other party accepts to have given full and explicit consent in processing of Personal Data for the purpose described herein;
  - 11.2.2 it will not disclose, sell, assign, copy, or reproduce any Personal Data without the other party's express written consent, except as necessary to comply with this Agreement;
  - 11.2.3 the Personal Data processed and stored in the first party's systems are in accordance with the applicable data protection, privacy laws and regulations, systems and policies and that any access and control of the Personal Data must be handled by the first party accordingly;
  - 11.2.4 it will take appropriate technical and organizational measures to prevent unlawful disclosure or unauthorized processing of the Personal Data supplied to it by the other party;
  - 11.2.5 upon expiration or termination of this Agreement, it will:
    - 11.2.5.1 promptly return to the other party, all or any part of the Personal Data; and
    - 11.2.5.2 erase or destroy all or any part of the Personal Data in the first party's possession, in each case to the extent requested by the other party, or as permitted by applicable law.

**12. SEVERABILITY**

If any provision of the Agreement is held to be invalid or unenforceable, then such provision shall (so far as it is invalid or unenforceable) be given no effect and shall be deemed not to be included in the Agreement but without invalidating any of the remaining provisions of the Agreement. The parties shall then use all reasonable endeavors to replace the invalid or unenforceable provisions by a valid and enforceable substitute provision the effect of which is as close as possible to the intended effect of the invalid or unenforceable provision.

**13. FORCE MAJEURE**

PrimeXM will be under no liability to the Client in respect of anything which, apart from this provision, may constitute breach of the Agreement arising by reason of *force majeure*, namely, circumstances beyond the control of PrimeXM, including but not limited to, acts of God, perils of the sea or air, fire, flood, drought, explosion, sabotage, accident, embargo, riot, civil commotion, including acts of local government and parliamentary authority; inability to supply or licence the Software, materials, breakdown of equipment which inability affects the entire software development industry, and labour disputes of whatever nature and for whatever cause arising including (but without prejudice to the generality of the foregoing) work to rule, overtime bars, strikes and lockouts and whether between either of the parties hereto and any or all of its employees and/or any other employer and any or all of its employees and/or between any two or more groups of employees (and whether of either of the parties to the Agreement or any other employer).

**14. VARIATION**

No variation of the Agreement (or of any of the documents referred to in the Agreement) shall be valid unless it is in writing and signed by or on behalf of each of the parties to it. The expression "variation" shall include any variation, supplement, deletion or replacement however effected.

**15. WAIVER**

- 15.1 No failure or delay in exercising or relaxation by PrimeXM of any of these terms and conditions shall operate as a general waiver of the relevant term, condition, right or power and no partial or single exercise of any term, condition, right or power shall preclude any other or further exercise of some or any of PrimeXM's other rights and remedies against the Client.
- 15.2 No waiver of any breach of any term of the Agreement shall (unless expressly agreed in writing by the waiving party) be construed as a waiver of a future breach of the same term or as authorising a continuation of the particular breach.

**16. NO PARTNERSHIP OR AGENCY**

Nothing in the Agreement (or any of the arrangements contemplated by it) is or shall be deemed to constitute a partnership between the parties nor, except as may be expressly set out in it, constitute either party the agent of the other for any purpose. Neither the Client nor its agents have any authority of any kind to bind PrimeXM in any respect whatsoever.

**17. ASSIGNMENT**

Neither party may assign this Agreement or any interest hereunder except with the prior written consent of the other. PrimeXM may transfer its rights and obligations under this Agreement (in whole or part) at any time to any Affiliate or to any successor of any part of its business or operations, provided that 30 Business Days' written notice of such proposed assignment is given to the Client.

**18. OFFER OF EMPLOYMENT**

The parties undertake that they shall not for the duration of the Agreement and for a period of 12 months following termination solicit, procure or attempt to procure the employment of any persons employed at any time by the other party during the course of the Agreement. Nothing in this Agreement shall prevent a party at any time from running recruitment advertising campaigns nor from offering employment to any of the other party's partners, members, directors or employees, as the case may be, who may respond to any such campaign.

**19. FURTHER ASSURANCE**

Each party agrees to execute such documents and waivers and generally do everything further that may be necessary to fulfil its obligations under the Agreement.

**20. ENTIRE AGREEMENT**

The Agreement sets out the entire agreement and understanding between the parties in respect of the License and supersedes all proposals or prior agreements whether oral or written, and all communications between the parties relating to the subject matter of the Agreement and all past courses of dealing or industry custom. It is agreed that no party has entered into the Agreement or any other document referred to in the Agreement in reliance upon any statement, representation, warranty or undertaking of the other party or any of the other party's employees, officers, agents or advisers which is not expressly set out or referred to in the Agreement or such other document.

**21. GOVERNING LAW AND JURISDICTION**

- 21.1 The Agreement shall be governed by and construed in accordance with the laws of Cyprus.
- 21.2 Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force:
- a. Either party may demand such arbitration in writing within ten days after the controversy arises, which demand shall include the name of the arbitrator appointed by the party demanding arbitration, together with a statement of the matter in controversy.

- b. Within 10 days after such demand, the other party shall name its arbitrator, or in default of such naming, such arbitrator shall be named immediately or as soon as that is possible by the Secretary General of the Permanent Court of Arbitration at the Hague (“the Arbitration Committee”), and the two arbitrators so selected shall name a third arbitrator within further days or, in lieu of such agreement on a third arbitrator by the two arbitrators so appointed, a third arbitrator shall be appointed by the Arbitration Committee.
- c. The arbitration hearing shall be held at Limassol Cyprus on sixty days’ notice to the parties.
- d. The language of the arbitration shall be the English language.
- e. An award rendered by a majority of the arbitrators appointed under this agreement shall be final and binding on all parties to the proceeding.

**By signing the XCore License Agreement, the Client agrees to these Terms and Conditions.**