



Terms and Conditions for the Supply of PACER

These Terms and Conditions apply to the supply by Preoptima Ltd of the Planning Application Carbon Evaluation and Reduction (PACER) software service to the public sector customer under the G-Cloud 15 framework.

For further details about Preoptima or PACER, please see preoptima.com/pacer or contact us at pacer@preoptima.com.

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Main Agreement

1. About these Terms

- 1.1 These Terms & Conditions ("Terms") apply to the supply by **Preoptima Ltd** (the "Supplier") of the **Planning Application Carbon Evaluation and Reduction (PACER)** cloud software service (the "Service") to the public sector customer (the "Customer") under the G-Cloud 15 framework.
- 1.2 Commercial terms (including fees, subscription packages, and add-ons) are set out in the Supplier's **G-Cloud Pricing Document** and confirmed in an **Order Form** agreed under the call-off contract.
- 1.3 **Order of precedence.** If there is any conflict, the following order applies (highest first):
 - a) the call-off contract and any Order Form;
 - b) Schedule 2 (Data Protection Schedule) and/or any DPA agreed separately;
 - c) Schedule 1 (Service Levels & Service Credits);
 - d) these Terms;
 - e) Documentation.

2. Definitions

Agreement Date: the date the last party signs the call-off contract or Order Form (as applicable).

Authorised Users: the Customer's staff (and contractors acting on its behalf) authorised to access the Service.

Customer Data: all data submitted to, stored in, or processed by the Service on the Customer's behalf.

Documentation: user guides, knowledge hub content, and training materials made available by the Supplier.

Order Form: the written schedule confirming the subscription package, any add-ons, terms, support, and invoicing frequency.

Service Start Date: the date the Supplier first makes the Service available to the Customer for use, including provisioning the Customer environment/tenant and providing administrative access credentials (and/or enabling SSO where agreed).

Subscription Term: the period from the Service Start Date set out in the Order Form.

3. Term

- 3.1 This agreement comes into force on the Agreement Date.
- 3.2 The Supplier will provide the Service from the Service Start Date and for the Subscription Term.
- 3.3 Renewals (if any) are as stated in the Order Form/call-off contract.

4. Provision of the Service

- 4.1 The Supplier will provide the Service and associated support in accordance with these Terms, the Order Form, and the Documentation.
- 4.2 The Service may be provided as **PACER Core**, **PACER Complete**, and/or optional **add-ons**, as specified in the Order Form.
- 4.3 The Customer may request to **update its subscription** during the Subscription Term by adding any additional add-ons it requires. Any such changes will be agreed in writing by the parties and will take effect from the date set out in the updated Order Form.
- 4.4 Any amendment to the Customer's subscription (including the addition of add-ons) will be documented by an updated Order Form (or written variation to the Order Form) signed or otherwise agreed by both parties, and any associated fee changes will be charged in accordance with the updated Order Form.
- 4.5 The Supplier may update the Service to maintain security, compliance, performance, and functionality. Where an update materially reduces core functionality relied upon by the Customer, the Supplier will provide reasonable notice and work with the Customer to mitigate impacts.

5. Onboarding and Trials

- 5.1 If onboarding/training is included in the subscription, the Supplier will provide it as described in the Pricing Document and/or Order Form.
- 5.2 If a trial environment is offered, it is for evaluation only. Trials may not include all integrations and must not be used for live operational decision-making.
- 5.3 **Customer cooperation and onboarding duration.** The Customer will provide timely cooperation and information reasonably required for onboarding and configuration. Onboarding is intended to be completed within a short period (typically no more than **4 weeks**), and delays caused by a lack of Customer cooperation will not delay the Service Start Date or relieve the Customer of payment obligations from the Service Start Date.

6. Customer Responsibilities

- 6.1 The Customer is responsible for:
 - a) ensuring Authorised Users comply with these Terms and Documentation;
 - b) the accuracy, quality, and legality of Customer Data;
 - c) maintaining suitable devices, browsers, and connectivity;
 - d) user administration (joiners/movers/leavers) and access controls; and
 - e) promptly notifying the Supplier of suspected unauthorised access.
- 6.2 The Customer must not:
 - a) reverse engineer, decompile, or attempt to derive source code (except as permitted by law);

- b) interfere with or disrupt the Service, security, or integrity of systems;
- c) use the Service to store or transmit unlawful material;
- d) use the Service to provide bureau/managed services to third parties without written agreement.

7. Accounts, Access and Security

- 7.1 Access is provided via individual user accounts. Credential sharing is not permitted.
- 7.2 The Supplier will maintain appropriate technical and organisational measures to protect the Service and Customer Data, consistent with applicable law and **Schedule 2**.
- 7.3 The Customer is responsible for user administration (including joiners/movers/leavers) and internal access controls.

8. Support

- 8.1 Support scope and hours are as set out in the Order Form. Unless otherwise agreed, support is provided **09:00–17:00 UK time Monday to Friday**, excluding UK bank and public holidays.
- 8.2 Support requests should be raised via the Supplier's nominated support channel(s). Requests received outside support hours will be treated as received at 09:00 on the next working day.
- 8.3 The Supplier targets (not guarantees):
 - a) acknowledgement within **4 working hours**; and
 - b) resolution targets by severity below.
- 8.4 Severity targets (not guarantees):
 - **Severity 1 (Critical)**: total service outage, key component inoperable, or material security/privacy risk — target fix/workaround within **24 hours**.
 - **Severity 2 (Non-critical)**: other issues — target fix within **5 working days** (or scheduled into a release where appropriate).
- 8.5 The Supplier may decline or limit support where issues are caused by incorrect use, Customer systems/configuration, or environments not meeting reasonable system requirements
- 8.6 Additional services beyond subscription scope (for example, bespoke customisation, data migration, or reporting) may be agreed separately and may be chargeable.

9. Availability

- 9.1 The Supplier will use reasonable efforts to meet the availability target set out in **Schedule 1**.
- 9.2 Availability is measured using the Supplier's monitoring and logging. If the Customer provides evidence materially contradicting the Supplier's measurement, the parties will work together in good faith to reconcile the discrepancy.
- 9.3 Planned Maintenance and Excluded Downtime (as defined in Schedule 1) do not count as downtime for SLA purposes.

10. Fees, Invoicing and Payment

- 10.1 Fees are set out in the **G-Cloud Pricing Document** and confirmed in the Order Form.
- 10.2 Subscription fees become payable from the **Service Start Date** (as set out in the Order Form). The Service Start Date may be earlier than the Customer's internal **go-live date**.
- 10.3 Invoicing is **in advance** and may be **monthly, quarterly, or annually**, as agreed in the Order Form.
- 10.4 All fees are exclusive of VAT (where applicable).
- 10.5 Payment terms are as stated in the Order Form or, if not stated, within **30 days** of invoice date.
- 10.6 If the subscription configuration changes (package selection and/or add-ons), fees will be adjusted in line with Customer and Service scoping and reflected in an updated Order Form and subsequent invoice(s).

11. Intellectual property

- 11.1 The Supplier (and its licensors) own all intellectual property rights in the Service and Documentation.
- 11.2 The Supplier grants the Customer a non-exclusive, non-transferable right for Authorised Users to access and use the Service during the Subscription Term for the Customer's internal business purposes, subject to these Terms and the Order Form.
- 11.3 The Customer retains all rights in Customer Data.
- 11.4 The Supplier may use aggregated and/or anonymised usage data for service improvement and analytics, provided it does not identify any Service users.

12. Confidentiality

- 12.1 Each party may receive, or have access to, the other's Confidential Information. The receiving party will keep it confidential and use it only to perform obligations or exercise rights under the agreement, protecting it with at least the same degree of care it uses for its own confidential information.
- 12.2 Confidentiality does not apply to information that is public (other than through breach), already known without restriction, independently developed, or lawfully obtained from a third party.
- 12.3 A party may disclose Confidential Information where required by law or competent authority.

13. Freedom of Information and Transparency

- 13.1 The Customer may be subject to the Freedom of Information Act 2000, the Environmental Information Regulations 2004, and related transparency obligations.
- 13.2 The Supplier will provide reasonable assistance to the Customer to respond to requests relating to the Service, including identifying information the Supplier considers commercially sensitive, but the Customer remains responsible for compliance with its legal obligations.
- 13.3 The Supplier will maintain appropriate records and controls relevant to the provision of the Service.
- 13.4 Where reasonably required for governance, risk, or compliance, the Supplier will provide relevant documentation or summaries of controls (subject to confidentiality and security constraints).

14. Service credits

- 14.1 If the Supplier fails to meet the Monthly Availability Target, the Customer may be eligible for service credits in **Schedule 1**.
- 14.2 Service credits are the Customer's **sole and exclusive financial remedy** for failure to meet the Monthly Availability Target.
- 14.3 Credits are applied against future invoices (not refundable), subject to the claim process and caps in Schedule 1.

15. Termination

- 15.1 **Termination for convenience (Customer).** The Customer may terminate the agreement for convenience by giving the Supplier no less than **90 days'** prior written notice.
- 15.2 **Refund on termination for convenience.** Where the Customer terminates under clause 15.1, the Supplier shall refund to the Customer any **undisputed Subscription Fees paid in advance** in respect of the period after the effective date of termination.

- 15.3 **Termination for cause.** Without affecting any other right or remedy, either party may terminate this agreement with immediate effect by written notice to the other party if:
- a) the other party fails to pay any amount due and remains in default **30 days** after written notice to pay; or
 - b) the other party commits a material breach of this agreement and (if such breach is remediable) fails to remedy it within **14 days** after written notice requiring remedy; or
 - c) the other party becomes insolvent, suspends or ceases (or threatens to suspend or cease) carrying on all or a substantial part of its business, or its financial position deteriorates to the extent that its ability to perform this agreement is reasonably considered to be in jeopardy; or
- 15.4 **Effect of termination.** On termination for any reason:
- a) all licences granted under these Terms shall terminate and the Customer shall cease use of the Service and Documentation;
 - b) any rights, remedies, obligations or liabilities accrued up to the date of termination are not affected; and
 - c) clauses which by their nature are intended to survive termination shall survive.
- 15.5 **Customer Data on termination.** On termination, the Supplier shall make no further use of Customer Data except to comply with the Customer's written instructions and applicable law. The Supplier shall preserve Customer Data until it has completed any agreed export and received written instructions from the Customer to delete or return Customer Data, in each case in accordance with clause 16 and Schedule 2.

16. Offboarding, Data Export and Deletion

- 16.1 **Request window.** The Customer may request a copy of Customer Data by giving the Supplier written notice no later than **10 days** after the effective date of termination or expiry
- 16.2 **Delivery.** If the Customer makes a valid request under clause 16.1 and all undisputed amounts due have been paid, the Supplier will use reasonable commercial endeavours to deliver a standard export of Customer Data in a commonly used format within **30 days** of receiving the request
- 16.3 **Included vs chargeable support.** A reasonable level of support for the standard export is included. Requests beyond reasonable/standard support (including delivery in non-standard formats) may be chargeable, subject to prior written agreement.
- 16.4 **Deletion.** If no export is requested within the window in clause 16.1, or after the export has been delivered, the Supplier may delete Customer Data in accordance with its retention policies and Schedule 2, subject to any legal retention requirements.

17. Warranties

- 17.1 Each party warrants it has authority to enter into the agreement.
- 17.2 The Supplier warrants it will provide the Service with reasonable skill and care and will use reasonable endeavours to ensure the Service functions materially in accordance with the Documentation. The Supplier does not warrant the Service will be uninterrupted or error-free.

18. Intellectual property infringement

- 18.1 If a third party claims the Customer's use of the Service infringes IP rights, the Supplier will, at its option:
 - a) procure the right for the Customer to continue using the Service; or
 - b) modify/replace the affected part so it is non-infringing without materially reducing functionality; or
 - c) if neither (a) nor (b) is reasonably practicable, terminate the affected Service and refund any prepaid fees for the terminated portion of the then-current invoicing period (to the extent permitted by the call-off contract).
- 18.2 This clause does not apply where the claim arises from Customer Data, Customer instructions, unauthorised modifications, or use contrary to the Documentation.

19. Liability

- 19.1 Nothing limits liability for death/personal injury caused by negligence, fraud, or any liability that cannot be limited by law.
- 19.2 Subject to clause 19.1, neither party is liable for indirect or consequential losses, loss of profit, loss of business, or loss of anticipated savings.
- 19.3 Subject to clause 19.1, each party's aggregate liability arising out of or in connection with the agreement is limited to the fees paid (or payable) for the Service in the 12 months preceding the event giving rise to the claim, unless the call-off contract states a different cap.
- 19.4 The Supplier is not liable for failures caused by third-party systems/networks or Customer systems outside the Supplier's reasonable control.

20. Force majeure

- 20.1 Neither party is liable for failure or delay caused by events beyond its reasonable control.
- 20.2 If force majeure persists for **3 months**, either party may terminate by written notice.

21. Assignment and Subcontracting

- 21.1 The Supplier may subcontract elements of service delivery (including cloud hosting and support) provided it remains responsible for performance and complies with **Schedule 2**.
- 21.2 The Customer may assign the agreement to a successor body as required by law or government reorganisation.

22. Notices

Notices must be in writing and sent to the addresses (including email) specified in the Order Form or Call-Off Contract.

Schedule 1 — Service Levels & Service Credits

1. Definitions

- 1.1 **Monthly Availability** for a calendar month is: $\text{Monthly Availability \%} = (\text{Total Minutes in Month} - \text{Downtime Minutes}) / \text{Total Minutes in Month} \times 100$
- 1.2 **Downtime**: time when the Service is unavailable to all Authorised Users due to a fault within the Supplier's control, evidenced by the Supplier's monitoring.
- 1.3 **Monthly Availability Target: 99.0%** per calendar month (unless the Order Form states otherwise).
- 1.4 **Planned Maintenance**: scheduled maintenance to be notified at least **48 hours** in advance, where reasonably practicable.
- 1.5 **Excluded Downtime** includes:
 - a) Planned Maintenance;
 - b) factors outside the Supplier's reasonable control (including general internet issues and third-party network failures);
 - c) Customer systems/configuration/credentials or user actions;
 - d) suspensions required for security or legal compliance;
 - e) trial/evaluation environments.
- 1.6 **Monthly Subscription Fee**: the subscription fee attributable to the Service for the relevant month (and, where add-ons are invoiced separately, the relevant component), as invoiced in accordance with the Order Form.

2. Measurement

- 2.1 The Supplier will measure Monthly Availability using its monitoring and logging systems (including endpoint checks and service health telemetry).
- 2.2 SLA performance is assessed monthly (no rolling averages). Availability reporting will be provided on request (or as otherwise agreed).

3. Service Credits

- 3.1 If Monthly Availability falls below the Monthly Availability Target for a calendar month, the Customer may claim a service credit calculated as a percentage of the **Monthly Subscription Fee** for the affected Service (or affected module).

Credit table (99.0% target):

Monthly Availability achieved Service credit (% of Monthly Subscription Fee)

≥ 99.0%	0%
98.0% to < 99.0%	5%
97.0% to < 98.0%	10%
95.0% to < 97.0%	15%
< 95.0%	25%

- 3.2 **Credit cap:** total service credits in any single month are capped at **25%** of the Monthly Subscription Fee.
- 3.3 Credits will be applied to the **next invoice** following approval of the claim (or, if timing does not allow, the subsequent invoice). Credits are not refundable and are not payable in cash.

4. Exclusions

- 4.1 Service credits are not available where the failure to meet the Monthly Availability Target arises from Excluded Downtime.
- 4.2 Service credits are not available for issues affecting only an individual user or subset of users (unless the issue is due to service-wide unavailability).

5. Claim Process

- 5.1 Claims must be submitted in writing via the support channel with: contract reference, month claimed, and a brief description/impact (plus evidence if available).
- 5.2 **Time bar:** claims must be submitted within **30 days** after the end of the month being claimed.
- 5.3 The Supplier will validate and confirm the credit (or reasons for rejection) within a reasonable timeframe.

Schedule 2 — Data Protection Schedule

1. Roles

- 1.1 For personal data processed under this agreement, the Customer is the **Controller** and the Supplier is the **Processor**.

2. Data Subjects, Categories and Processing

- 2.1 **Data subjects** may include: Authorised Users; applicants/agents/consultants submitting planning information; and other individuals whose details are included in submissions.
- 2.2 **Categories of personal data** may include: names, business contact details (email/phone), role/organisation, and any other information submitted to the Service by users.
- 2.3 **Special category data:** the Service does not require special category personal data as standard fields; however, users may input free-text that could include special category data. The Customer should avoid entering special category data unless strictly necessary and lawful.
- 2.4 **Processing activities and duration:** the Supplier processes personal data to provide, secure, support, and maintain the Service; provide support/training; and produce reporting/exports as requested by the Customer, for the duration of the Subscription Term (and any agreed exit period), subject to retention/deletion below.

3. Processor Obligations

The Supplier will:

- 3.1 process personal data only on documented instructions from the Customer (including as set out in this agreement);
- 3.2 implement appropriate technical and organisational measures to protect personal data;
- 3.3 ensure authorised personnel are subject to confidentiality obligations;
- 3.4 assist the Customer, where reasonably required, with data subject requests, breach notifications, and DPIAs insofar as relevant to the Service;
- 3.5 notify the Customer without undue delay of a personal data breach and provide available information on: categories/approximate number of individuals concerned; categories/approximate number of records concerned; likely consequences; and mitigation steps taken/proposed;
- 3.6 delete or return personal data on termination/expiry in line with clause 16, unless legal retention obligations apply.

4. Audit and Assurance

- 4.1 The Supplier will make available information reasonably necessary to demonstrate compliance with this Schedule.
- 4.2 Where the Customer reasonably requires an audit relating to compliance, it will provide reasonable notice, minimise disruption, and reimburse the Supplier's reasonable costs (to the extent permitted by applicable law and procurement rules).

5. Sub-Processors

- 5.1 The Customer authorises the Supplier to use sub-processors for hosting/support where necessary.
- 5.2 The Supplier will maintain a sub-processor list available on request.
- 5.3 The Supplier will notify the Customer of any new sub-processor before authorising it to process personal data. The Customer may object in writing within **5 business days** of notice.
- 5.4 If the Customer objects, the Supplier will use reasonable efforts to provide an alternative. If not practicable within **30 days**, the Customer may terminate the affected part of the Service by written notice.
- 5.5 The Supplier remains responsible for acts and omissions of sub-processors.

6. International Transfers

The Supplier will not transfer personal data outside the UK/EEA except where an adequacy decision applies or with appropriate safeguards under data protection law.