

XYLO - LICENCE TERMS

These Licence Terms ("**Licence Terms**") set out the terms and conditions upon which the Buyer may use the Cloud Product defined below as Xylo and these Licence Terms are incorporated by reference into, and form part of, the Call-Off Contract.

1. Interpretation

- 1.1 In these Licence Terms capitalised expressions and phrases defined in the Call-Off Contract have the meaning given to them and, unless the context otherwise requires, capitalised expressions in the body of these Licence Terms have the meaning given to them, and the following additional definitions apply:

"Feedback"	means any and all comments, suggestions, ideas, or other feedback provided, disclosed, or otherwise made available to the Supplier by the Buyer or any End User from time to time;
"Virus"	means any code or data designed or adapted to impair or otherwise adversely affect the operation of any computer or equipment, prevent or hinder access to any program or data (whether by rearranging the same within the computer or equipment or any storage medium or device, or by altering or erasing the program or data in whole or part, otherwise), including computer viruses and other similar things; and
"Xylo"	means the Supplier's proprietary cloud-based AI powered software application which is intended to support local government planning authorities work more efficiently known as "Core" and "Patch", as may be more particularly described in the Call-Off Contract.

2. Access to Xylo

- 2.1 Subject to the payment of the Charges when due, the Supplier shall provide the Buyer with access to Xylo during the Call-Off Contract Period, on and subject to the terms and conditions of the Call-Off Contract (including these Licence Terms).
- 2.2 Subject to the Buyer's compliance with the Call-Off Contract, the Supplier hereby grants the Buyer a non-exclusive, non-transferable, personal and non-sub-licensable licence to permit End Users to use Xylo as permitted by the functionality of Xylo for the Buyer's own internal business purposes.
- 2.3 Where the Buyer's use of Xylo is limited to the scope (e.g. number of users, volume of data, transactions) as set out in the Call-Off Order, the Supplier may monitor usage and, if the Buyer exceeds the agreed scope, to charge for such additional use at the rates set out in the Call-Off Contract or to suspend excess use after notice in writing.
- 2.4 The Buyer hereby acknowledges that Xylo may evolve over time and that functionality may be added or removed from time to time.

- 2.5 The Buyer shall, and shall ensure that each End User will, keep secure and confidential any username and password provided to the End User for the End User's use of Xylo and shall not disclose such user name and password to any other person, including any other End Users.
- 2.6 The Supplier may, at the Supplier's sole discretion, disable any username or password at any time if an End User or the Buyer has failed to comply with any of the provisions of the Call-Off Contract, or the Supplier reasonably suspects any such non-compliance.
- 2.7 The Buyer must take reasonable precautions to prevent any unauthorised access to, or use of, Xylo and, in the event of any such unauthorised access or use, promptly notify the Supplier.
- 2.8 The Supplier may monitor the Buyer's and each End User's use of Xylo from time to time to ensure quality, improve Xylo, and verify the Buyer's compliance with the Call-Off Contract.

3. Buyer Content

- 3.1 The Buyer acknowledges and agrees that, as between the Buyer and the Supplier, the Buyer shall:
 - 3.1.1 be responsible for all Buyer Content provided, distributed, or otherwise transmitted to the Supplier or processed via Xylo (including by End Users); and
 - 3.1.2 have sole responsibility for the legality, reliability, integrity, accuracy, and quality of the Buyer Content.
- 3.2 The Buyer hereby grants the Supplier a non-exclusive, non-transferable licence to permit the Supplier to access, download and use the Buyer Content for the purposes of making Xylo available to the Buyer and End Users.
- 3.3 The Buyer hereby warrants and represents that it has and will continue to have the authority, including all necessary rights, licences, and permissions, to upload and use, and to permit the Supplier to use from time to time, the Buyer Content in accordance with the Call-Off Contract.
- 3.4 The Buyer shall maintain backups of all Buyer Content from time to time and the Supplier shall not be responsible or liable, to the maximum extent permitted by applicable law, for the deletion, corruption, alteration, destruction, damage, loss, or failure to store any Buyer Content.
- 3.5 The Buyer acknowledges and agrees that the failure or delay of the Buyer or any End User to provide Buyer Content (in the manner required by the functionality of Xylo or these Licence Terms) may prevent the Supplier providing Services and performing the Call-Off Contract and Supplier shall not be responsible for any such non-performance.
- 3.6 The Buyer grants the Supplier a licence to use the Buyer Content for the purpose of:
 - 3.6.1 analysing the use and performance of the Xylo for the purposes of providing analytics to the Buyer and the Supplier's customers provided that such analytics does not include the Buyer Content; and

3.6.2 improving the performance and functionality of Xylo.

4. Buyer's Obligations

4.1 The Buyer must:

- 4.1.1 comply with all applicable laws and regulations with respect to its use of Xylo and the Buyer's activities under the Call-Off Contract;
- 4.1.2 use and ensure its End Users use Xylo in accordance with the terms of the Call-Off Contract and the Buyer shall be responsible for any actions and omissions in connection with the use of Xylo by all End Users;
- 4.1.3 obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier to perform its obligations to the Buyer under the terms of Call-Off Contract;
- 4.1.4 ensure that its network and systems, including its internet browser used complies with any relevant specifications provided by the Supplier from time to time;
- 4.1.5 procure and maintain network connections and telecommunications links from its systems in order to access and use Xylo, and the Buyer shall be solely responsible for doing so;
- 4.1.6 not carry out any penetration testing or automated or manual vulnerability scans (or similar security testing) in relation to Xylo without the Supplier's express prior written consent to do so;
- 4.1.7 not use Xylo for any benchmarking or competitive analysis purposes; and
- 4.1.8 not use Xylo: (a) to access, store, distribute or transmit or prepare for the distribution or transmission of any Virus; (b) to access, store, distribute or transmit or prepare for distribution or transmission any material that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; (c) in a manner that is illegal or causes damage or injury to any person or property; (d) to infringe any copyright, database right or trademark of any person; (e) to transmit, send prepare for transmission or prepare for sending any unsolicited or unauthorised advertising or promotional material or any other form of similar solicitation ('spam'); or (f) to interfere with or attempt to interfere with or compromise the integrity or security of Xylo.

4.2 The Buyer will not and shall ensure that all End Users will not, when using Xylo, except as may be allowed by any applicable law which is incapable of exclusion:

- 4.2.1 attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of Xylo in any form or media or by any means;
- 4.2.2 attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of Xylo; or

- 4.2.3 access all or any part of Xylo in order to build a product or service which competes with Xylo or use or attempt to use Xylo to directly compete with the Supplier.
- 4.3 The Buyer agrees that failure to comply with this clause 4 constitutes a material breach of the Call-Off Contract.

5. Consequences of Termination

- 5.1 On termination of the Call-Off Contract for any reason:
 - 5.1.1 except as otherwise set out in the Call-Off Contract, all licences granted under it shall immediately terminate and the Buyer's and each End User's right to access and use Xylo will end;
 - 5.1.2 subject to clause 5.2, the Buyer is entitled by notice in writing to the Supplier, received within the period of three (3) months commencing on the date of termination of the Call-Off Contract, to request the delivery-up of the Buyer Content in the possession or control of the Supplier, and the Supplier shall provide a copy of the requested Buyer Content in an industry standard format as soon as reasonably practicable after receipt of the Buyer's notice; and
 - 5.1.3 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.
- 5.2 Nothing in the Call-off Contract shall prevent the Supplier from retaining Buyer Content to the extent required in order to comply with law or regulations, or for audit and compliance purposes.
- 5.3 Termination or expiry of the Call-Off Contract does not affect the continuance in force of any of the provisions of this clause 5 (*Consequences of Termination*), or clauses 6 (*Intellectual Property Rights*) or 9 (*Disclaimer*) which survive the expiry or termination of the Call-Off Contract.

6. Intellectual Property Rights

- 6.1 The Supplier is the owner or the licensee of any and all Intellectual Property Rights in and to Xylo.
- 6.2 All Intellectual Property Rights in and to Xylo shall remain vested in (or automatically upon creation shall vest in), the Supplier.
- 6.3 Except for the licence granted to the Buyer in clause 2.2, nothing in the Call-Off Contract grants to the Buyer any rights, title, or interest to or in any Intellectual Property Rights in or to Xylo and any and all such rights, title, and interest are reserved to the Supplier.
- 6.4 The Buyer may provide Feedback and the Buyer agrees that the Supplier shall be free to use, modify, and incorporate any Feedback without restriction or obligation to the Buyer.

7. Publicity

- 7.1 The Supplier may use the Buyer's name, logo and related trade marks in any publicity or marketing materials (whether in printed or electronic form) for the purpose of highlighting that the Buyer uses Xylo subject to the Buyer's prior written consent, not to be unreasonably withheld.

8. IPR Claims

- 8.1 Except as may otherwise be set out in the Call-Off Contract, the Supplier shall not be responsible or liable under or in connection with an IPR Claim where the infringement or alleged infringement is based on:

- 8.1.1 modification of Xylo by anyone other than the Supplier;
- 8.1.2 the Buyer's or End Users' use of Xylo otherwise than in accordance with the Call-Off Contract or in a manner contrary to the instructions given to the Buyer by the Supplier;
- 8.1.3 the Buyer's or any End User's use of Xylo after notice of the alleged or actual infringement from the Supplier or any appropriate authority; or
- 8.1.4 use or combination of Xylo with any other software or hardware, in circumstances where, but for such combination, no infringement would have occurred.

- 8.2 If an infringement to which clause 8.1 refers occurs or may occur, the Supplier may at its discretion and expense:

- 8.2.1 procure for the Buyer the right to continue using Xylo in accordance with the Call-Off Contract; or
- 8.2.2 render Xylo non-infringing without any material reduction in quality, functionality, or performance.

9. Disclaimer

- 9.1 The Supplier shall not be responsible for any failure to perform the Call-Off Contract if such failure has been caused by any act or omission of the Buyer or any End Users.

- 9.2 The Buyer acknowledges that Xylo generates results and outputs based on the Buyer Content and artificial intelligence technologies and, due to errors in the Buyer Content or the inherent limitations of software (which may contain errors or bugs), the Buyer acknowledges and agrees that any such results or outputs should be independently reviewed and verified by suitably qualified personnel before being relied upon.

- 9.3 Except as is otherwise set out in the Call-Off Contract and subject to clause 14.4 of the General Terms:

- 9.3.1 Xylo is provided on an "as-is" basis and the Supplier gives no representations, warranties, conditions or other terms of any kind in respect of Xylo or the availability of Xylo, whether express or implied, including, but not limited to, warranties of satisfactory quality, merchantability fitness for a particular purpose or non-infringement, or that the Buyer's or End Users' use of Xylo will be uninterrupted, timely, secure, or free from error;

- 9.3.2 the Buyer assumes sole responsibility for any results obtained from the Buyer's and its End Users' use of Xylo and for any decisions or actions taken arising from such use and it relies on the results obtained from Xylo at its own risk;
- 9.3.3 all representations, warranties, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by law, excluded from the Call-Off Contract; and
- 9.3.4 the Supplier will not be responsible for any interruptions, delays, failures or non-availability affecting Xylo or the performance of Xylo which are caused by third party services or errors or bugs in software, hardware or the internet on which the Supplier relies to provide access to Xylo and the Buyer acknowledges that the Supplier does not control such third party services and that such errors and bugs are inherent in the use of such software, hardware and the Internet.