

## Nedap New Zealand General Terms and Conditions

### CHAPTER 1 – GENERAL PROVISIONS

#### 1. DEFINITIONS AND INTERPRETATION

1.1 **Definitions:** In this Agreement, background recitals, and any annexures to it, the following terms will, unless the context otherwise admits or requires, have (with or without the definite article) the following meanings. Any definitions set out in the Agreement will also apply to all attached annexures:

- a) **Affiliate:** means a related company (as defined in section 2(3) of the Companies Act 1993) of the applicable Party.
- b) **Agreement:** means the Customer Agreement between the Customer and Nedap to which these General Terms are attached.
- c) **Authorised Installer:** has the meaning set out in clause 7.4.
- d) **Customer:** means the Customer identified in the Customer Agreement.
- e) **Customer Agreement:** means the first section of this Agreement.
- f) **Customer Data:** means all data that is input into the Software by or on behalf of the Customer, or by the Products, which relates to the Customer. Customer Data includes User Data, but excludes Nedap Data.
- g) **Change of Control:** means a change in the identity of more than 50% of those people or entities that are able to control a Party, or any other direct or indirect change in control, ownership or effective management, that has not been consented to by all other Parties to this Agreement in writing.
- h) **Confidential Information:** means:
  - (i) the existence and terms of any agreement between the Parties; and
  - (ii) Customer Data and User Data; and
  - (iii) any non-public, confidential or proprietary information relating to a disclosing Party, whether or not technical in nature, including any that is designated by the disclosing Party as Confidential Information at the time of its disclosure, either by a written or visual confidentiality designation, or otherwise if such information would, under the circumstances, appear to a reasonable person to be confidential or proprietary.

Notwithstanding the foregoing, Confidential Information does not include information, technical data or know-how which:

- (iv) is in the public domain at the time of disclosure or becomes available thereafter to the public without restriction, and in either case not as a result of the act or omission of the receiving Party;
  - (v) is rightfully obtained by the receiving Party from a third party without restriction as to disclosure;
  - (vi) is lawfully in the possession of the receiving Party at the time of disclosure by the disclosing Party and not otherwise subject to restriction on disclosure;
  - (vii) is approved for disclosure by prior written authorization of the disclosing Party; or
  - (viii) is developed independently and separately by either Party without use of the disclosing Party's Confidential Information.
- i) **Data:** means Nedap Data, Customer Data and User Data.
  - j) **Delivery:** has the meaning set out in clause 7.1, and "Delivered" shall have a corresponding meaning.
  - k) **Documentation:** means all current and valid information relating to the Products and/or Software

that is published by Nedap, as may be updated by Nedap from time to time without notice to the Customer.

- l) **Firmware:** means any software that is pre-installed on the Products when delivered to the Customer.
- m) **Force Majeure Event:** means any event or cause reasonably beyond the control of a Party, including a fire, flood, tsunami, storm, tempest, earthquake or other act of God or nature, contamination, war or government, epidemic or pandemic, any civil disturbance, or any labour disruption, change in applicable law, or an event or cause that makes it impossible or illegal to perform this Agreement.
- n) **General Terms:** means these Nedap New Zealand General Terms and Conditions.
- o) **GST:** has the meaning given to it pursuant to the Goods and Services Tax Act 1985.
- p) **Insolvency Event:** means any of the following events occurring to a person:
  - (ix) being a natural person, committing any act of bankruptcy, being adjudicated bankrupt, having a receiver, manager or official assignee appointed, or entering farm debt mediation;
  - (x) being an incorporated entity (including a company, limited partnership, incorporated society and incorporated trust board), entering liquidation, having a receiver, liquidator, statutory manager or administrator appointed over all or any part of their property, being wound up otherwise than for the purpose of a solvent reconstruction, entering farm debt mediation or being struck off the applicable register of incorporation;
  - (xi) being an unincorporated entity (including a partnership, unincorporated society or group of people), committing any act of bankruptcy, being adjudicated bankrupt, having a receiver, manager or official assignee appointed over all or any part of their property, or entering farm debt mediation; or
  - (xii) being a trust, being wound up by the trustees, in accordance with its trust deed or an order of the Court, going into liquidation, having a liquidator, receiver, statutory manager or administrator appointed, or being wound up otherwise than for the purpose of a solvent reconstruction or entering farm debt mediation.
- q) **Intellectual Property:** means all intellectual and industrial property rights and interests (including common law rights and interests) including, trademarks, trade name(s), know-how, designs, copyright and patents.
- r) **Maintenance:** means patches, bug fixes, updates and upgrades implemented by Nedap as part of Nedap's standard maintenance programme, but excludes the provision of any customised functionality or upgrades.
- s) **Nedap:** means Nedap NZ Ltd.
- t) **Nedap Data:** means all data associated with the operation, performance and use of the Products and/or Software, and all analytical information regarding usage of the Products and/or Software. Nedap Data excludes Customer Data and User Data.
- u) **Open Source Software:** means any software that is distributed with its source code and a permissive software licence that allows at least royalty free modification and public redistribution of the source code.
- v) **Personnel:** means the applicable Party's present and future officers, directors, shareholders, employees, agents or contractors.
- w) **Price:** means the price payable for the Products and/or Software, as described in Annex 1, and 'Pricing' has the same meaning.

- x) **Product(s):** means the Products described in Annex 1, and where the context requires, a reference to the Products includes its Firmware.
  - y) **Related Company:** has the meaning set out in section 2(3) of the Companies Act 1993.
  - z) **Software:** means the Software described in Annex 1, and includes all modifications and improvements provided to the Customer for use by Nedap pursuant to this Agreement.
  - aa) **Specifications:** means the specifications relating to the Products and Documentation, that is set out in the Documentation.
  - bb) **Support:** means the support relating to the Products and Software, set out in Chapter 4 of these General Terms.
  - cc) **Term:** has the meaning set out in the Customer Agreement.
  - dd) **Third Party Software:** means any software that is owned by a third party (not being an Affiliate of Nedap).
  - ee) **User:** means, subject to clause 1.2 of Chapter 3, those officers, employees and independent contractors of the Customer that the Customer grants access and use of the Software to, using the tools set out in the Software (provided that such rights have not been revoked by the Customer).
  - ff) **User Data:** means all personal information relating to the User that is input into the Software, but excludes Nedap Data.
  - gg) **Working Day:** has the meaning set out in the Interpretation Act 2019.
  - hh) **Working Hours:** means the hours of 8:30am to 5pm on Working Days.
- 1.2 **References:** In this Agreement, unless the context requires otherwise, or specifically stated, reference to:
- (i) the plural includes reference to the singular, and vice versa;
  - (ii) words importing one gender includes all genders;
  - (iii) any law, legislation, or legislative provision includes any statutory modification, amendment, or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision whether before or after the date of this Agreement;
  - (iv) "applicable laws" includes all applicable laws and legislation and all applicable common law requirements;
  - (v) any agreement will include any agreement which amends or replaces it;
  - (vi) "written" and "in writing" include any means of reproducing words, figures or symbols in a tangible and visible form;
  - (vii) times or a time of day are references to New Zealand times;
  - (viii) dollars, NZD and \$ means New Zealand Dollars; and
  - (ix) 'including' (and its similar expressions) shall be interpreted as if followed by 'without limitation'.
- 1.3 **Headings:** Headings inserted in this Agreement are for convenience of reference only and do not affect the interpretation of this Agreement.
- 1.4 **Payment:** Any reference to, or obligation in this Agreement which requires payment of money will be a reference to, or deemed to be an obligation requiring payment of money in immediately available cleared funds, without setoff or deduction.
- 1.5 **Time period:** If a period of time is specified as being from a given day or the day of an act or event, it is to be calculated as excluding that day.
- 1.6 **Background recitals:** The Parties acknowledge the accuracy of the background recitals to this Agreement.
- 1.7 **No Contra Proferentem Rule:** None of the terms nor any of the parts of this Agreement are to be construed against a Party, by reason of the fact that a term or part was first proposed or was drafted by that Party.
- ## 2. APPLICABILITY
- 2.1 This Agreement applies to the provision of all Products, Software and Support by Nedap to the Customer.
- ## 3. OFFERS
- 3.1 All quotes, offers and estimates for Products and Software issued by Nedap from time to time are non-binding estimates only, and may be revoked by Nedap at any time prior to acceptance in writing.
- ## 4. PRICE, PAYMENT AND TAXES
- 4.1 **Price:** The Price payable for the Products and Software shall be that set out in Annex 1, subject to variation in accordance with clause 4.7
- 4.2 **Invoice:** Nedap will issue the invoices to the Customer for the Price, in accordance with the requirements and timing set out in Annex 1.
- 4.3 **Payment:** The Customer agrees to pay the amount set out in each invoice issued by Nedap to the bank account specified by Nedap from time to time, within the payment terms and method specified in Annex 1, without deduction or set off.
- 4.4 **Failure of direct debit:** Nedap may immediately terminate this Agreement if Annex 1 requires the Customer to make payment by direct debit, and the Customer has not entered into such direct debit agreement within 5 Working Days after the date of this Agreement, or such direct debit agreement is terminated, or more than three attempted payments are dishonoured.
- 4.5 **GST:** All amounts payable pursuant to this Agreement, including the Price, are exclusive of and plus GST.
- 4.6 **Freight, insurance and integration:** Where agreed by the Customer in Annex 1, the Customer shall reimburse Nedap for any freight and insurance costs that it incurs in addition to the Price. In addition, whether or not specified in Annex 1, the Customer shall reimburse Nedap for any third party integration fees or costs that Nedap incurs in relation to the Products or Software.
- 4.7 **Price variation:** Nedap may vary the Price for the Software by notifying the Customer in writing, at least 60 Working Days prior to a Renewal Term taking effect, with such Price variation to take effect from the first day of the next Renewal Term after such notice is given by Nedap.
- 4.8 **Application:** Nedap may apply any payment received from the Customer to any amount due by the Customer, in its discretion.
- 4.9 **Non-refundable:** Except where expressly specified in this Agreement, or as agreed by Nedap in writing, any amount paid to Nedap by the Customer is non-refundable, including on termination or expiry of this Agreement.
- ## 5. DEFAULT
- 5.1 **Default:** If the Customer fails to pay any amounts pursuant to this Agreement on or prior to the applicable due date for payment, or is otherwise in breach of this Agreement, Nedap may, in its sole discretion, without prejudice to and in addition to any other rights and remedies, do any one or more of the following:
- (i) suspend the Customer's, and all of its User's, access to the Software (with the effect that the Customer's and User's

- licences and other rights set out in this Agreement are suspended), suspend or cancel delivery of any Products and/or Software and/or terminate (in whole or in part) this Agreement by providing notice to the Customer;
- (ii) charge, and the Customer shall pay on demand, interest at a rate of 1.5% per month on all amounts due but unpaid, calculated on a daily basis from the due date until Nedap receives payment in full;
  - (iii) enforce the terms and conditions of this Agreement and/or any security (if any);
  - (iv) sue for infringement of Nedap's Intellectual Property rights as a result of unlicensed use of the Software; and/or
  - (v) take legal action to recover the amounts owing, appoint a collections agent, receiver or other third party to collect the amounts owing,
- 5.2 and all costs and expenses associated with such actions (including legal costs as between solicitor and client, collection agency fees and court costs) shall be reimbursed to Nedap by the Customer in addition to any other amount owing, on Nedap's written request.
- 5.3 **No withholding payment:** The Customer shall not withhold payment of any amount payable to Nedap, on the basis that a warranty claim has been submitted, or as a result of the performance of the Products and/or Software.

## 6. RISK, TITLE AND SECURITY

- 6.1 **Risk:** Risk in all Products shall transfer to the Customer in accordance with the selected Incoterm.
- 6.2 **Title:** Nedap shall retain ownership of the Products until the Customer has paid the Price payable in respect of those Products to Nedap. On payment of the Price, ownership of the Products shall transfer to the Customer. Title to the Software shall at all times remain owned by Nedap.
- 6.3 **Fixtures:** The Parties agree that the Products shall not become affixed to any land until such time as title has transferred to the Customer.
- 6.4 **Security Interest:** To secure the Customer's payment and other obligations set out in this Agreement, the Customer grants a security interest over the following ("**Collateral**"):
- (i) all property owned by Nedap, that is in the Customer's possession or control (which includes Products that have been Delivered but not paid for); and
  - (ii) all of the Customer's present and after acquired property.

### 6.5 Cooperation and waiver:

- The Customer agrees to:
- (i) if required by Nedap, cooperate in good faith with Nedap to execute the documentation required to register any security interest in favour of Nedap on the Personal Property Securities Register; and
  - (ii) waive any right to receive a copy of the verification statement, pursuant to s148 of the Personal Property Securities Act 1999.

6.6 **Access:** The Customer gives irrevocable authority to Nedap to enter onto any land, enter into any building or other premises, owned or occupied by the Customer or on which the Products are situated, at any reasonable time after the Customer has defaulted in its obligations under this Agreement, or before default if Nedap reasonably believes a default of such obligations is likely or the Collateral is at risk, and to remove and repossess any such Collateral. Nedap shall not be liable for any costs, damages, expenses or losses incurred by the Customer or any third party as a result of this action, nor liable in contract or in tort or otherwise in any way whatsoever unless by statute such liability cannot be excluded.

6.7 **Additional security:** Nedap may at any time demand, and the Customer shall provide, additional security in a form required by Nedap, if Nedap believes that the Customer's financial position and/or payment performance justifies such action. Nedap may terminate this Agreement by providing notice in writing to the Customer, if such security is not provided within 20 Working Days after written request.

## 7. DELIVERY, LEAD TIMES AND INSTALLATION

- 7.1 **Delivery:** Nedap shall, after the Effective Date, deliver the Products to the delivery address specified in Annex 1, in accordance with the Incoterm specified in Annex 1 ("**Delivery**"). Delivery may be made in instalments.
- 7.2 **Delivery costs:** Nedap may on charge the Customer for the costs it incurs in respect of freight and insurance to Deliver the Products, if permitted by the Incoterm specified in Annex 1.
- 7.3 **Lead times:** Any lead time specified in respect of Delivery is an estimate only and is not binding. If any estimated Delivery timeframe or lead time will be exceeded, Nedap will inform the Customer as soon as reasonably practicable and advise the Customer as to the revised estimated Delivery timeframe.
- 7.4 **Installation:** The Customer must engage one of Nedap's then current authorised installers ("**Authorised Installer**") to install the Products at the Installation Location, at the Customer's cost. A list of Nedap's Authorised Installers is available from Nedap on request. Nedap provides no warranty or representation in respect of its Authorised Installers, or the goods and/or services supplied by them.

## 8. INTELLECTUAL PROPERTY OWNERSHIP AND RIGHT OF USE

8.1 **Products and Software:** All Intellectual Property rights in and to the Products and Software, including all improvements and modifications thereto, remain owned by Nedap and/or its licensor(s) at all times.

### 8.2 Restrictions:

- The Customer shall not:
- (i) use, modify or otherwise alter Nedap's (or its licensor's) Intellectual Property, except as expressly permitted by this Agreement;
  - (ii) affix any other, tamper with or remove, any markings, patent numbers, trademarks or other indication of the source of origin placed on any Product or Software; or
  - (iii) damage or otherwise endanger Nedap's Intellectual Property rights; and/or
  - (iv) register any patent or trade mark involving, based upon, or relating to, Nedap, or any of the Products and/or Software.

### 8.3 Infringement:

- The Customer agrees:
- (i) not to cause or permit anything that may damage or endanger Nedap's (or its licensor's), Intellectual Property rights, or ownership thereof;
  - (ii) to notify Nedap of any suspected infringement of Nedap (or its licensor's) Intellectual Property;
  - (iii) to take such reasonable action as Nedap may direct at the expense of Nedap in relation to such infringement;
  - (iv) to compensate Nedap for any use of Nedap's (or its licensor's) Intellectual Property by the Customer or any person associated with the Customer or by any person that operates through or via the Customer, otherwise than in accordance with this Agreement; and
  - (v) not to use Nedap's (or its licensor's) Intellectual Property otherwise than as permitted by this Agreement.

8.4 **Customer rights to use Hardware and Software:** The Customer's right to use the Software, Products and Documentation is set out in Chapter 2 and Chapter 3. The Customer does not receive any other right to use the Software or Products.

8.5 **Third party and open source software:** The Software and Firmware may include Open Source Software or Third Party Software from time to time. Notwithstanding anything else in this Agreement, such Open Source Software and Third Party Software is licensed pursuant to its terms and not this Agreement. The terms and conditions on which Open Source Software or Third Party Software is licensed are contained in a readme file available in the Software. Nedap provides no warranty in respect of such Open Source Software and Third Party Software. If the Customer wishes to make a claim against any warranty provided by the licensor of Open Source Software and Third Party Software, then the Customer must do so at its own cost and risk.

## 9. DATA

9.1 **Data ownership:** The Parties agree that Nedap shall remain the owner of all right title and interest in and to the Nedap Data, the Customer shall remain the owner of all right title and interest in and to the Customer Data.

9.2 **Customer Data licence:** The Customer grants Nedap a perpetual, worldwide, non-exclusive, royalty free license to use, modify, store, disclose and sublicense any and all Customer Data and User Data, including any personal information, to the extent necessary to:

- (i) provide the Products and Services;
- (ii) to train any of Nedap's artificial intelligence models or products;
- (iii) to update and improve the Products and/or Software;
- (iv) to create new products and services;
- (v) to supply any goods or services the Customer or User has requested;
- (vi) for the purpose of monitoring compliance with this Agreement and for statistical purposes; and
- (vii) to comply with its obligations, and to enforce its rights, pursuant to this Agreement or applicable law.

9.3 **Further Customer Data licence:** The Customer grants Nedap a perpetual, worldwide, non-exclusive, royalty free license to use, modify, store, disclose and sublicense any and all Customer Data, excluding any personal information that comprises part of the Customer Data or provided that such personal information is aggregated and anonymised, for Nedap's internal and external commercial purposes (including connecting to other third party's systems and products for exchanging data and for benchmarking purposes). The Customer agrees to procure the User to grant Nedap a license to use the User Data, in accordance with the Terms of Use

9.4 **Customer ownership:** If the Customer does not own any part of the Customer Data licensed in clauses 9.2 or 9.3, the Customer must ensure that its right to use the Customer Data is sufficiently broad to grant the licenses set out in clauses 9.2 or 9.3.

9.5 **Monitoring:** Nedap is entitled to monitor the Customer's and its Users use of the Software for the purpose of checking compliance with the Agreement.

9.6 **Inspection:** Nedap may, on giving three Working Days' notice in writing to the Customer, but no more often than once every six months during the Term, attend (or appoint agents to attend) the Customer's premises (or any other location used by the Customer) during normal working hours, to inspect, and take and remove copies of, all of the

Customer's records, accounts and information relating to its use of the Products and/or Software, and to observe the Customer's use of the Products and/or Software, for the purpose of ensuring that the Customer, and all Users are complying with this Agreement (**Audit**). The Customer shall provide reasonable access to its IT systems to Nedap as part of the Audit.

9.7 **Rectification measures:** If Nedap becomes aware, that the Customer is or may be in breach of this Agreement, then Nedap may, without prejudice to any other right or remedy, do any one or more of the following:

- (i) invoice the Customer for an amount that would have been payable if the Customer was correctly licensed to use the Products and/or Software. Such invoice shall be paid by the Customer within three Working Days of the Customer's receipt of such invoice; and/or
- (ii) where the breach is minor, issue written notice to the Customer setting out those measures that the Customer must immediately take to rectify such breach ("Rectification Measures"), the Customer shall immediately comply (to the satisfaction of Nedap) with such Rectification Measures, and provide evidence of such implementation and compliance to Nedap; and/or
- (iii) issue notice of a material breach pursuant to clause 12.2.

9.8 **Unauthorised amendments:** The Customer and Users and any other persons are not to be permitted to perform or engage any third party to perform, any maintenance, repairs or otherwise modify the Products and/or Software without express written consent of Nedap ("**Unauthorised Amendments**"). If the Customer attempts any Unauthorised Amendments, the warranties described in clause 13.2 shall no longer apply, and repairs or other work required to be carried out by Nedap or any third parties to reverse any Unauthorised Amendments and to restore Nedap shall be chargeable at Nedap's then current professional services rates. Nedap shall have no liability for any loss or corruption of any Data, where Unauthorised Amendments are carried out by any Party other than Nedap or its nominated representatives, or where such loss or corruption could have been avoided or corrected if the Customer had retained backup copies.

## 10. MAINTENANCE AND SUPPORT

10.1 Maintenance and support offered by Nedap in respect of the Products and Software is set out in Chapter 4 of these General Terms.

## 11. CONFIDENTIAL INFORMATION, PRIVACY AND EXPORT

11.1 **Safeguard:** Each Party ("**Receiving Party**") agrees it will safeguard the confidentiality of the Confidential Information supplied by the other Party ("**Disclosing Party**") and it will observe the same due care with respect to such information as it would observe with respect to its own Confidential Information, provided that this standard must never be less than a reasonable standard.

11.2 **Restricted dealing:** The Receiving Party shall not sell, copy and/or distribute in any way the Disclosing Party's Confidential Information except as set out below:

- (i) to third parties with the Disclosing Party's prior written consent, where such consent may be granted or withheld at the Disclosing Party's sole and absolute discretion;
- (ii) to its professional advisors (including lawyers, accountants, bankers and insurers), provided that such advisors are subject to a contractual obligation, or duty,

of confidentiality at least as robust as that set out in this clause 11.

- 11.3 **Restricted disclosures:** Each Party agrees it will restrict disclosure of the Confidential Information to those of its employees or third parties as much as is reasonably possible, and provide such access only on a need to know basis.
- 11.4 **Return obligation:** Immediately following the receipt of a written request to this effect by the Disclosing Party, the Receiving Party will return any and all Confidential Information received from the Disclosing Party or destroy such Confidential Information, if the Disclosing Party so requests. The Customer acknowledges that a request for the return of the Customer Data or User Data may materially impact the ability of the Products and/or Software to perform in accordance with this Agreement, and as such the warranties referenced in clause 13.2 will no longer apply.
- 11.5 **No media statements:** Neither Party will make any statements to the media, or publish any material concerning this Agreement or the other Party, without the prior written consent of the other Party.
- 11.6 **Privacy:** The Parties agree to comply with the Privacy Act 2020. The Customer shall ensure that the Customer and all of its Users have all necessary permissions, consents and approvals to upload Data, including personal information contained within the Data, to the Products and/or Software and for that Data to be used as contemplated by this Agreement, and as set out in the Terms of Use and the Privacy Policy. Nedap collects, stores, uses and discloses personal information (including that personal information included within any Data) in accordance with its Privacy Policy. Details regarding the correction of personal information, contact details for Nedap's privacy officer and other information are set out in Nedap's Privacy Policy.
- 11.7 **Export:** The Customer represents and warrants its understanding that any Software, or technology, including technical data (collectively, the "**Supplied Items**"), that is licensed by Nedap may be subject to the jurisdiction of the export controls and trade sanctions of New Zealand, the Netherlands, the European Union, the United States, and/or the United Nations (collectively "**Export Controls**") and that such Export Controls can have extraterritorial application. The Customer represents and warrants its understanding that the use, export, reexport, resale, release or other transfer of any Supplied Item or of any hardware, Software or technology that contains or is the product of any Supplied Item, may be subject to the jurisdiction of Export Controls, with which it covenants and agrees to comply. Nedap may terminate any sale hereunder, immediately for cause, if it knows or, in its unilateral discretion, has reason to believe that the Customer has or may have breached this covenant. Nedap shall not be liable for its failure, using commercially reasonable efforts, to obtain any necessary export license relating to the Supplied Items.

## 12. TERMINATION AND SUSPENSION

- 12.1 **No termination for convenience:** The Customer cannot terminate this Agreement for convenience, although the Customer can bring this Agreement to an end by giving notice of non-renewal in accordance with clause **Error! Reference source not found.** of the Customer Agreement.
- 12.2 **Termination with cause:** A Party may immediately terminate this Agreement by providing notice in writing to the other Party if:

- (i) the other Party commits a material breach of this Agreement that is capable of remedy, and such breach is not remedied to the satisfaction of the notifying Party within 20 Working Days of receipt by the breaching Party of written notice of such breach from the notifying Party;
  - (ii) the other Party commits a material breach of this Agreement, which is not reasonably capable of remedy;
  - (iii) the other Party experiences an Insolvency Event; or
  - (iv) the other Party experiences a Force Majeure Event that continues for a period of 40 Working Days or more.
- 12.3 **Nedap termination rights:** Nedap may immediately terminate this Agreement by providing notice in writing to the Customer if:
- (i) Nedap is no longer lawfully permitted to supply the Products and/or Software to the Customer, or a change in law (or proposed change in law) makes it imprudent to continue to do so;
  - (ii) Nedap issues three notices to the Customer under clause 9.7(ii) within any twelve month period;
  - (iii) Nedap determines that, in respect of the New Zealand territory, it will no longer sell Products or license the Software to its customers on a direct basis, provided that at least 6 months' notice in writing has first been provided to the Customer, and Nedap has arranged for one of its fulfilment partners to continue a relationship with the Customer; or
  - (iv) otherwise permitted by this Agreement.
- 12.4 **Effect of expiry or termination:** Termination of this Agreement shall be without prejudice to any rights and/or obligations of the Parties existing at the time of termination. Upon the termination or expiry of this Agreement:
- (i) the Customer and all User's rights to access and use the Products and Software shall immediately terminate, and the Customer and all Users shall immediately cease use of the Products and Software;
  - (ii) all rights of the Customer, and Users to access and use the Documentation, Support and Nedap's (and its licensor's) Intellectual Property rights shall immediately cease;
  - (iii) Nedap may complete the supply of the Products, and invoice the Customer for those Products, or terminate the supply of the Products;
  - (iv) Nedap shall issue any final invoices for the Price, and the Customer shall immediately pay all outstanding monies due and payable to Nedap, including any final invoice and any other outstanding amount;
  - (v) provided all invoiced amounts have been paid by the Customer, Nedap will make the Customer Data available to the Customer for download, for a period of 30 days after the date that termination occurs. After such period, Nedap shall be permitted to permanently delete the Customer Data;
  - (vi) subject to subclause (v) above, each Party will cease to use any other Party's Intellectual Property and Confidential Information; and
  - (vii) subject to subclause (v) above, each Party shall permanently destroy any electronic copies of the other Party's Intellectual Property or Confidential Information, except those that have been previously captured by an automatic electronic back up system that is generally inaccessible to that Party's personnel or as are required to be retained for statutory or compliance purposes.
- 12.5 **End of life:** Nedap may discontinue any Product, Software, Support and/or Maintenance, at any time, provided that at least 12 months' notice in writing has been provided to

the Customer. If a Product, Software, Support and/or Maintenance is discontinued, Nedap shall have no obligation to provide it under, and it shall be removed from, this Agreement.

### 13. WARRANTY

- 13.1 **Information warranty:** The Customer warrants to Nedap that all information supplied to Nedap, and all Customer Data and User Data entered into the Product and/or Software (either directly, by a User, Authorised Installer, Nedap at the Customer's instruction, or a third party at the Customer's or a User's instruction), is or will be true, correct and complete.
- 13.2 **Product and Software warranties:** Nedap provides limited warranties in relation to the Products and Software in Chapter 2 and Chapter 3 ("**Nedap Warranty**") for a limited period of time as specified in such chapters ("**Warranty Period**").
- 13.3 **Exclusion of implied warranties:** The Customer agrees that they are in trade, and entering into this Agreement for a business purpose, and as such the Parties, to the extent permitted by applicable law, agree that:
- (i) except as expressly set out in this Agreement, the Products and Software are provided by Nedap (and its licensors, third party suppliers and affiliates) on an "as is" and "as available" basis, without any guarantee, warranty, condition or representations (whether express, implied by law, statute, trade custom or otherwise) including in relation to quality, merchantability, suitability or fitness for a particular purpose, ownership, compatibility or otherwise, in respect of the Products, Software and/or Services, whether pursuant to the Contract and Commercial Law Act 2017, Fair Trading Act 1993, applicable law or regulations, or otherwise;
  - (ii) the Customer acknowledges that in purchasing the Products, Software and/or Services, that it is relying on its own expertise, skill and judgement and that it is not relying on the expertise, skill and judgement of Nedap, nor any advice, information or other representations made by Nedap;
  - (iii) the implied terms, guarantees, covenants, and conditions in the Contract and Commercial Law Act 2017, Consumer Guarantees Act 1993 and sections 9, 12A, 13 and 14(1) of the Fair Trading Act 1993 do not apply, and are excluded to the fullest extent permitted by applicable law;
  - (iv) the provisions of the United Nations Convention on Contracts for the International Sale of Goods (the Vienna Convention 1980) are excluded and do not apply; and
  - (v) this clause 13.3 is fair and reasonable in the circumstances, and that each Party has had the opportunity to obtain independent legal advice in relation to this Agreement prior to signing.

### 14. LIABILITY

- 14.1 **General:** Farming is an inherently risky endeavour, and is subject to significant factors outside of Nedap's control that can significantly adversely affect the benefit of the Products and/or Software. As a result, Nedap does not give any warranty, representation, guarantee or condition of sale, that any specific results, outcomes or performance can be achieved or expected from using the Products and/or Software.
- 14.2 **Users:** The Customer must ensure that its Users comply with this Agreement, as if it were the Customer. The Customer is liable for all acts and omissions of its Users in relation to the Products and/or Software, even if such

activities were to occur without the Customer's express permission.

- 14.3 **Loss of Data:** Nedap shall not in any circumstance be liable for any loss or corruption of data uploaded or input into the Software, any other data, or be liable for any loss, cost, expense or damage suffered or incurred by the Customer as a result of loss, corruption or reconstitution of data in transmission or when being uploaded or input into, or stored by, the Software or any other data, whether caused by any defect, malfunction or non-performance of the Products and/or Software, or otherwise.
- 14.4 **Exclusion:** Notwithstanding anything else in this Agreement to the contrary, in no event shall Nedap, Nedap's Personnel, Nedap's Affiliates or Nedap's licensors be liable, however caused and whether arising under contract, warranty, tort (including negligence), statute, or any other form of liability, whether contemplated by this Agreement or not, whether arising out of or flowing from this Agreement or the supply or performance of the Products and/or Software or not, for any indirect, incidental, special, punitive or consequential damages, or any loss of income, business, sales, profits (whether actual or anticipated), loss of or corruption to data, or interruption of business.
- 14.5 **Liability cap:** Notwithstanding anything else in this Agreement to the contrary, Nedap's aggregate liability for all liability, loss, claims or damages of any kind shall not exceed the following amounts:
- (i) in respect of all liability relating to Software arising in a calendar year, 100% of the total amount paid by the Customer for the Software during that same calendar year; and
  - (ii) in respect of all other liability relating to the Agreement, including in relation to the Products, 100% of the total amount paid by the Customer for the Products.
- 14.6 **Proportionate liability:** The Parties agree that Nedap will not be liable to the Customer, User or any third party, to the extent that liability is caused or contributed to by the Customer or a User.
- ### 15. INDEMNIFICATION
- 15.1 **Customer indemnity:** The Customer agrees to indemnify, defend and hold Nedap, Nedap's Affiliates and Nedap's Personnel harmless from and against any and all claims, demands, losses, damages, penalties, liability and costs, including reasonable legal fees (on a solicitor client basis), in connection with or arising out of:
- (i) the Customer's failure to comply with applicable laws;
  - (ii) the Customer's and/or User's use of the Products and/or Software in breach of this Agreement;
  - (iii) the Customer's and/or User's breach of this Agreement;
  - (iv) any Unauthorised Amendments or attempts thereto;
  - (v) any third party claim arising out of or incidental to an allegation that the Customer Data, or its incorporation or use within the Products and/or Software, misappropriates or infringes a third party's Intellectual Property or privacy rights; or
  - (vi) the Customer's gross negligence, fraud or willful misconduct,
- but only to the extent that such claim was not a result of gross negligence by Nedap or Nedap's Personnel.
- 15.2 **Nedap indemnity:** Provided that the Customer has paid the Price in full as required by this Agreement, and is

otherwise in compliance with (and remains in compliance with) this Agreement, Nedap agrees, subject to clause 15.3, to indemnify, defend and hold the Customer, and the Customer's Personnel harmless from and against any and all claims, demands, losses, damages, penalties, liability and costs, including reasonable legal fees (on a solicitor client basis), in connection with or arising out of:

- (i) Nedap's failure to comply with applicable Laws;
- (ii) any third party claim arising out of or incidental to an allegation that the Products or Software, misappropriates or infringes a third party's Intellectual Property rights; and
- (iii) the gross negligence, fraud, or willful misconduct of Nedap;

but only to the extent that such claim was not as a result of gross negligence by the Customer, the Customer's Personnel or Users.

- 15.3 **Relationship:** The Parties agree that Nedap's indemnity obligations set out in clause 15.2 are at all times subject to clause 14.

## 16. INDEMNIFICATION PROCEDURE

16.1 **Definition:** For the purpose of this clause 16, a "Claim" means any claim (including counterclaim or cross-claim) or other assertion brought or threatened to be brought in a legal proceeding by a third party, or any investigation or any examination by a governmental authority.

16.2 **Process:** If a Party receives notice of any Claim for which indemnification may be available under this Agreement (the "Indemnified Party"):

- (i) the Indemnified Party must promptly notify the other Party (the "Indemnifying Party") in writing of the Claim, including, if possible, the amount or estimate of the amount of liability arising from it.
- (ii) where the Indemnifying Party is required to defend the Indemnified Party:
- (iii) such defence will be conducted at the Indemnifying Party's expense but in the name of the Indemnified Party. The Indemnifying Party will select the counsel for the defence of such Claim, but such counsel must be approved by the Indemnified Party, such approval is not to be unreasonably withheld or delayed.
- (iv) The Indemnified Party will reasonably cooperate with the Indemnified Party in the conduct of the defence.
- (v) The Parties agree to cooperate in good faith to coordinate the defence of the Claim.
- (vi) the Indemnified Party may, where reasonably necessary, engage its own counsel in respect of the Claim, to advise it through the process, and the reasonable costs of such counsel shall be paid for by the Indemnifying Party.
- (vii) the Indemnifying Party must not settle any Claim without the prior written consent of the Indemnified Party, where such consent must not be unreasonably withheld or delayed.
- (viii) the Indemnifying Party will be subrogated to any Claims or rights of the Indemnified Party as against any other persons with respect to any amount paid by the Indemnifying Party under an indemnity. The Indemnified Party will reasonably cooperate with the Indemnifying Party, at the Indemnifying Party's expense, in the assertion by the Indemnifying Party of any such claim against such other persons.

## 17. MISCELLANEOUS

17.1 **Severance:** If any provision of this Agreement is held to be null, void, unenforceable or otherwise ineffective or invalid by a court of competent jurisdiction, then:

- (i) such provision shall be replaced with a provision that reflects to the extent possible the original meaning of the terms or agreement; and
- (ii) the remaining terms, provisions, covenants and restrictions shall remain binding on the Parties.

17.2 **Force Majeure:** Nedap will not be liable for any delay in performing or failure to perform any of its obligations under this Agreement caused by a Force Majeure Event, and such failure or delay will not be considered a breach of this Agreement. Nedap will notify the Customer promptly in writing of the reasons for a Force Majeure Event occurring and the likely duration (where known) and will take reasonable steps to overcome the Force Majeure Event.

17.3 **Assignment:** The Customer is not permitted to assign, novate or otherwise transfer this Agreement, or any of its rights or obligations hereunder, without Nedap's prior written consent. In the event that the Customer sells its farm or farming operation, and the Products form part of that sale, Nedap agrees not to unreasonably withhold its consent to a novation of this Agreement to the purchaser, provided the Customer has paid the Price in full, and is otherwise in compliance with this Agreement. Any attempted assignment, novation or transfer, other than as contemplated above, will be null and void. For the purposes of this clause, the Customer experiencing a Change of Control is deemed to be an assignment. Nedap is permitted at its sole discretion to assign, novate or otherwise transfer the Agreement, or any rights or obligations hereunder, to any third party, without giving prior notice to the Customer.

17.4 **Waiver:** The failure to exercise, or delay in exercising, a right, power or remedy provided by the Agreement or by law shall not constitute a waiver of that right, power or remedy. If Nedap waives a breach of any provision of this Agreement, this shall not operate as a waiver of a subsequent breach or that provision or as a waiver of a breach of any other provision. The waiver of any right or claim pursuant to this Agreement shall not be effective unless in writing.

17.5 **Third party rights:** Any agreement between the Parties is for the sole benefit of the Parties thereto and, except as otherwise contemplated in this Agreement, nothing therein expressed or implied shall give or be construed to give any person, other than the Parties, any legal or equitable rights thereunder.

17.6 **Survival:** Termination or expiry of this Agreement for any reason (including in the event of misrepresentation) will not affect the rights and obligations of the Parties that are intended to survive such termination, and any other provision to the extent required in order to give effect to such provisions.

17.7 **Notices:** Notices, communication documents or demands required to be made or served pursuant to this Agreement shall be in writing signed by the Party giving the notice, to one of the addresses set out in the Customer Agreement. Any notice or document shall be deemed to be duly given or made if delivered by hand, when so delivered; if sent by post, on the third Working Day following posting; if communicated by email, when transmitted with no indication of incomplete transmission to the recipient's last known email address.

17.8 **Relationship:** This Agreement does not create a joint venture, partnership, agency, or employer/employee relationship between the Parties.

- 17.9 **Subcontracting:** Nedap may subcontract all or any part of its obligations pursuant to this Agreement, without notice to the Customer.
- 17.10 **Counterparts:** This Agreement may be executed in counterparts (which may be email copies) and all of which, when taken together constitute the one document.
- 17.11 **Electronic signatures:** A Party may sign this Agreement by way of the application of that Party's electronic signature in accordance with Part 4 of the Contract and Commercial Law Act 2017.

## **CHAPTER 2 – PRODUCTS**

### **1. PRODUCT WARRANTY**

1.1 **Warranty:** Subject to the warranty limitations and exclusions set out in clause 1.2 and 2, Nedap warrants that the Products Delivered to the Customer by Nedap will:

- (i) will be of a number and type that matches Annex 1;
- (ii) will be free of material damage on Delivery; and
- (iii) will remain free of material defects in materials and workmanship for a period of one (1) year from the date of Delivery ("Warranty Period").

1.2 **Warranty exclusions:** The Nedap Product warranty set out clause 1.1(iii) does not apply in respect of the following:

- (i) where any warranty claim under clause 1.1(iii) is notified to Nedap outside the Warranty Period;
- (ii) where the Customer has not paid the Price for the Products that is the subject of the Nedap Warranty claim, or where the Customer is in breach of this Agreement;
- (iii) if the Products are used for any purpose that it is not reasonably intended, or in a manner that does not comply with or is contemplated by, the Documentation;
- (iv) any physical damage to the Products, or fair wear and tear, whether caused by an animal, adverse weather event or act of God, a reckless, improper, careless accidental, negligent or deliberate act or omission or otherwise, regardless of whether the Products have been used as intended or not;
- (v) the Customer's failure to comply with the Documentation in relation to the Products, including in relation to:
  - (vi) maintenance, cleanliness and use;
  - (vii) installation, and prior to installation, the storage and unloading of the Products;
  - (viii) improper or defective environmental circumstances, such as magnetic or electrical interference;
- (ix) the Customer's network performance, or performance of any other equipment located on the Customer's network; or
- (x) the Customer's internet connection, including quality and speed;
- (xi) any product not supplied by Nedap;
- (xii) the Customer's failure to follow any reasonable instructions or directions issued by Nedap;
- (xiii) if the Customer makes any alteration or modification to the Products, or their installation, except at the direction of Nedap; and
- (xiv) any other exclusion set out in this Agreement or the Documentation.

1.3 **Warranty claims process:** If the Customer considers that the Products breach the warranty set out in clause 1.1(iii), the Customer must notify Nedap in writing, and complete the following steps:

- (i) **Products:** Products must be returned to Nedap, in accordance with Nedap's returns policy, located at [add [website reference](#)]. An RMA number must be issued by Nedap prior to the Product being returned.
- (ii) All information reasonably available in respect of such alleged breach of Nedap Warranty must be provided to Nedap, including a written report setting out a detailed description of Customer's testing, and the nature of any issues experienced.

1.4 **Investigation:** On receipt of a warranty claim, Nedap will investigate the matters raised by the Customer, and test the Product. If Nedap determines that the Nedap Warranty has not been breached, Nedap shall make the Products available for the Customer's collection, deliver the Products to the Customer at the Customer's cost, or dispose of the Products at the Customer's cost.

1.5 **Exclusive remedy:** If Nedap determines, acting reasonably, that a breach of a warranty set out in clause 1.1 has occurred, Nedap will, at its sole discretion, either repair, replace or refund the Price paid for, the defective Product or Software (as applicable). This is the Customer's exclusive remedy in respect of Nedap's breach of the Nedap Warranty.

### **2. DELIVERY ISSUES**

2.1 **Shortages:** Claims in connection with the warranties set out in clauses 1.1(i) and 1.1(ii) must be reported in writing to Nedap within three (3) Working Days of receipt of such shipment. If the Customer fails to report timely, Nedap will have no obligation to correct such shipments, unless the Customer bears all expenses thereof.

2.2 **Inspection:** Immediately upon receipt of the Products, the Customer shall inspect them for defects and non-conformance with the Agreement and will notify Nedap in writing within three (3) Working Days of receipt, of any defects or non-conformance. After such period, the Customer shall be deemed to have irrevocably accepted the Products, if not already previously accepted. After acceptance, the Customer shall not have the right to reject the Products for any reason or to revoke acceptance. The Customer hereby agrees that a three (3) Working Day period is a reasonable amount of time for inspection and revocation.

2.3 **Nedap inspection:** In the case of any alleged shortage, errors, defects or nonconformance with the Agreement, the Customer shall allow Nedap to inspect the Products subject to the alleged defect.

### **3. SITE ATTENDANCE**

3.1 If for any reason, Nedap agrees to attend the Customer's premises in relation to the Products, or any Warranty claim, then the Customer shall:

- (i) provide Nedap with access to all documentation and materials relevant to the installation of the Products; and
- (ii) provide for adequate and safe working space and facilities; and
- (iii) access to and use of Customer Personnel, information, and Customer resources and facilities as reasonably determined necessary by Nedap.

3.2 If the Customer fails to provide such access, resulting in Nedap's inability to install or maintain or service the Products, Nedap shall be entitled to charge the Customer its standard rates for all related travel time and time Nedap personnel is present at the Customer's premises. The Customer must notify Nedap in advance if the Customer's

premises, or parts thereof, might pose a health or safety hazard to Nedap's employees or subcontractors.

- 3.3 Nedap may postpone installation, service or maintenance until the Customer remedies such hazards, without being liable to the Customer for any damages. The Customer shall always have a representative present when Nedap provides services or maintenance or installation at the Customer's site.

## **CHAPTER 3 – SOFTWARE**

### **1. SUBSCRIPTION LICENSE**

- 1.1 **Subscription:** Subject to the Customer's payment of the Price, compliance with this Agreement and the Customer's and User's compliance with the Terms of Use, Nedap grants the following non-exclusive and non-transferrable rights to the Customer and the Users during the Term:

- (i) to access and use the Software for the purpose of processing Customer Data and User Data;
- (ii) to use the Firmware, for the purpose of connecting the Product to the Software, and for Customer Data to be collected by the Product and transmitted to the Software; and
- (iii) to access and use the Documentation in electronic form.

- 1.2 **Users:** The Customer may only use the tools available in the Software to grant access and use of the Software to its Users that are officers, employees and independent contractors. The Parties agree that the Customer must immediately revoke any such access where the employees or independent contractor's employment or engagement with the Customer comes to an end for any reason.

- 1.3 **Sublicensing:** The Customer (and any User) is not permitted to grant any sublicense in respect of the Software to any third party.

- 1.4 **Delivery:** The Software is hosted on third party owned servers, and is made available to the Customer and the Users as a service. A copy of the Software (whether in object code form, or source code) will not be provided to the Customer. Firmware will be preinstalled on any Products Delivered to the Customer. The Customer's right of use for the Software under this Agreement does not extend to any source code.

### **2. SOFTWARE WARRANTY**

- 2.1 **Warranty:** Subject to the warranty limitations and exclusions set out in clauses 2.2 and 2.3 below, Nedap warrants that the Software will materially comply with the Specifications during the Term.

- 2.2 **Warranty exclusions:** The warranty set out in clause 2.1 does not apply in respect of the following:

- (i) where any warranty claim has not been notified to Nedap within the Term;
- (ii) where the Customer has not paid the Price for the Software that is the subject of the warranty claim, or where the Customer is in breach of this Agreement;
- (iii) if the Software is used for any purpose that it is not reasonably intended, or in a manner that does not comply with or is contemplated by, the Documentation;
- (iv) in respect of the Customer's failure to comply with the Documentation in relation to the Software, including in relation to:
  - (v) use;
  - (vi) installation;

- (vii) the Customer's network performance, or performance of any other equipment located on the Customer's network; or
- (viii) the Customer's internet connection, including quality and speed;
- (ix) any software not supplied by Nedap;
- (x) that the Data will be always available, free of defects or corruption;
- (xi) that the information available by means of the Software (whether provided by Nedap or any third party) will be current, accurate or complete;
- (xii) the Customer's failure to follow any reasonable instructions or directions issued by Nedap;
- (xiii) if the Customer makes any alteration or modification to the Software, except at the direction of Nedap; and
- (xiv) any other exclusion set out in this Agreement.

- 2.3 **Further warranty exclusions:** Nedap does not warrant that the Software is or will be:

- (i) bug or error free. The existence of any bugs or errors will not constitute a breach of a Nedap Warranty or this Agreement;
- (ii) free of defects, whether notified or not, nor that Nedap will correct any defect notified by the Customer or User;
- (iii) always available, or that access or use will be uninterrupted;
- (iv) compatible with other software or hardware;
- (v) secure, or free from viruses or other malicious software;
- (vi) complying or continue to comply with applicable law;
- (vii) always available, free of defects or corruption, nor that the Data will be; or
- (viii) current, accurate or complete.

- 2.4 **Warranty claims process:** If the Customer considers that the Software breaches the warranty set out in clause 2.1, the Customer must notify Nedap Support in accordance with Chapter 4 of these General Terms.

- 2.5 **Exclusive remedy:** The Customer's exclusive remedy in respect of a breach of the warranty set out in clause 2.1 is to receive Support in accordance with Chapter 4 of these General Terms.

## CHAPTER 4 – MAINTENANCE AND SUPPORT

### 1. MAINTENANCE

1.1 **Maintenance:** Nedap may, but is not obliged to, perform Maintenance on or to the Software from time to time during the Term. Such Maintenance may alter the functionality or operation of the Software. Nedap shall not be liable for any unavailability during a period of Maintenance. The Software may be unavailable while Maintenance is being performed. Maintenance will be undertaken by Nedap or its service provider(s)/subcontractors. Nedap will use reasonable endeavours to:

- (i) perform scheduled Maintenance on the Software outside of Working Hours; and
- (ii) provide a reasonable period of notice to the Customer of any scheduled Maintenance required to be undertaken during Working Hours.

For the avoidance of doubt, Maintenance, whether scheduled or emergency, may notwithstanding this clause 1.1, be undertaken by Nedap at any time without notice. The Service Level Agreement as set out in clause 3 applies.

1.2 **New modules:** Nedap may, but is not obliged to, develop and release new Products, or modules, upgrades or other add-ons to the Software, from time to time (“**Additional Modules**”). The Customer may add Additional Modules to their Software by contacting Nedap. Such Additional Modules may be subject to additional terms and conditions, and additional Prices may apply.

1.3 **Internet:** For the avoidance of doubt, the Customer is responsible to ensure a high speed, robust and reliable internet connection, with sufficient bandwidth, to connect to the Software, at the Customer’s cost. The Customer shall ensure that it is using hardware and internet browser software that complies with the Documentation. Nedap is explicitly not responsible or liable for lack of functionality or access to Nedap Now Connect due to any internet connection issues suffered by the Customer.

1.4 **Training:** Nedap may provide access to training materials in relation to Nedap Now Connect to the Customer and Users within Nedap Now Connect.

### 2. SUPPORT

2.1 **Support:** Nedap will use reasonable endeavours to provide Support to the Customer Users during the Term, which can be accessed by phone and email, during Working Hours, using the Support Contact information set out in Annex 1. Support is not provided to Users.

2.2 **Support response times:** Nedap will use reasonable endeavours to respond to any request for Support placed by a Customer or User within the following timeframes:

Nature of Issue	General Description	Response Timeframe
Critical	[Software unable to be used or accessed by the Customer]	[ ] Working Hours.
Urgent	[Software can be accessed, but functionality substantially compromised]	[ ] Working Days

Nature of Issue	General Description	Response Timeframe
Routine	[Software performance impaired but work around available]	[ ] Working Days

### 3. SERVICE LEVEL AGREEMENT

3.1 **General:** This service level agreement in this clause 3 (“**SLA**”) describes the service levels that apply in relation to the Software. In this SLA, all expressions used shall have the meaning assigned to them in the Agreement, unless a deviating definition is provided in this SLA, in which case the definition provided in this SLA applies.

3.2 **Uptime guarantee:** Subject to clauses 3.6 and 3.9, Nedap will use commercially reasonable efforts to make the Software available with a monthly uptime percentage (calculated in accordance with clause 3.3), during any calendar month, of at least 99.5% (**Service Uptime**).

3.3 **Calculation:** All availability calculations will be based on Nedap’s system records. Nedap shall proactively monitor the availability of the Software and in the event of unavailability, provide details of the interruption and timeline to the Customer. Service Uptime is calculated as follows:

- (i)  $A/B * 100$ , where
- (ii) A is the total number of minutes in the applicable month less any period that the Software was Unavailable.
- (iii) B is the total number of minutes in the applicable month, less any Permitted Downtime.
- (iv) Permitted Downtime means the total number of minutes in the applicable month that the Software is Unavailable for any reason as a result of an exclusion set out in clause 3.4.
- (v) Unavailable means a period of 5 minutes or more where all requests to the Software fail due to i) a HTTP5xx code; or ii) the response time of the request exceeds 60 seconds. Unavailability does not include any period of downtime due to an exclusion set out in clause 3.4.

3.4 **Exclusions:** The Service Uptime does not apply to any unavailability, suspension or termination of the Software, or any other performance issues in respect of the Software:

- (i) caused by factors outside Nedap’s reasonable control, including any force majeure event, problems with internet access or problems unrelated to the Software;
- (ii) that result from any voluntary actions or inactions from the Customer or any third party;
- (iii) that result from the Customer’s equipment, software or other technology and/or third-party equipment, software or other technology (other than third party equipment within Nedap’s direct control);
- (iv) planned downtime e.g. for scheduled maintenance or emergency maintenance (for which Nedap shall give the Customer written notice in advance by email, regarding emergency maintenance insofar as reasonably possible); or
- (v) arising from Nedap’s suspension or termination of the Customer’s rights to use the Software in accordance with the Agreement.

3.5 **Other:** If availability of the Software is impacted by factors other than those explicitly used in clause 3.4, then Nedap may issue a Service Credit considering such factors at Nedap’s discretion.

3.6 **Service Credit:** In the event there are two (2) consecutive calendar months during which the Service Uptime falls below 99.5% in each such calendar month, the Customer will be entitled to receive a service credit equal to the pro-rated amount of the Price applicable to the Software as measured within two (2) or more consecutive calendar months during which the Service Uptime fell below 99.5% (**Service Credit**).

3.7 **Claim:** To receive Service Credits, the Customer will need to submit a claim within sixty (60) days of the end of the relevant calendar month in which Nedap did not meet the Service Uptime and such request must include:

- (i) the words "SLA Software Credit Request" in the subject line;
- (ii) the billing cycle you are claiming Service Credits, together with the Service Uptime for the billing cycle.

3.8 **Application:** If the Service Uptime of such credit request is confirmed by Nedap, then Nedap will apply the Service Credit to the Customer's account, which will be offset from the next invoice issued by Nedap to the Customer. Failure to provide the credit request and other information as required above will disqualify the Customer from receiving the Service Credits. Nedap will apply Service Credits only against future invoices and payments due from the Customer.

3.9 **Exclusive remedy:** Service Credits are the Customer's exclusive remedy in respect of any failure by Nedap to comply with the Service Uptime. Service Credits are paid on a without prejudice basis, and do not imply any admission in relation to breach of warranty. Service Credits will not entitle the Customer to any refund or other payment from Nedap. Service Credits are not transferrable or applied to any other account.