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## **1 PURPOSE**

- 1.1 These Terms of Use govern the rights and obligations of parties to this Prototype Proof of Concept Agreement for the provision of the Prototype Proof of Concept Services, and for the Period specified in the Prototype Proof of Concept Statement of Works. These terms of use may be altered any time and any changes will be incorporated into this Prototype Proof of Concept Agreement and become legally binding, on the date of publication online.
- 1.2 By executing the Prototype Proof of Concept Statement of Works that references this Prototype Proof of Concept Agreement You agree to these Terms of Use.

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## **2 DEFINITIONS**

**"Prototype Proof of Concept Agreement"** or **"Terms of Use"** means this Prototype Proof of Concept Agreement and Terms of Use, any addenda, Prototype Proof of Concept Statement of Works and any Documentation (as listed in the relevant Prototype Proof of Concept Statement of Works) arising out of the performance of this Prototype Proof of Concept Agreement and Terms of Use.

**"Confidential Information"** means all information (in any form), exchanged between the parties, in relation to this Prototype Proof of Concept Agreement, by a Disclosing Party (party disclosing information) as confidential, or which the Receiving Party (party receiving information) knows or ought reasonably to know is confidential. Confidential Information includes (but is not limited to) Customer Data, Intellectual Property, Readiness Software, content, Readiness business operations and this Prototype Proof of Concept Agreement (including pricing, technology, technical information and designs). Confidential Information does not include information that is developed or becomes known to a Party without reference to the other Party's Confidential Information, or becomes publicly known other than from a breach of this Prototype Proof of Concept Agreement.

**"Force Majeure"** means an event, or a series of related events, that are outside the reasonable control of the Party affected, including failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, Malicious Code, power failures, industrial disputes affecting any third party, changes to applicable law, disasters, explosions, fires, floods, riots, terrorist attacks and wars.

**"Period"** means between the dates (inclusive) as set out in the Prototype Proof of Concept Statement of Works.

**"Prototype Proof of Concept Services"** means any of those things listed as services in the Prototype Proof of Concept Statement of Works.

**"Taxes"** means any applicable taxes, levies, duties or similar governmental assessments of any nature assessable by any jurisdiction whatsoever.

**"User"** means an individual authorised by You to use the Prototype Proof of Concept Service as set out in the Prototype Proof of Concept Statements of Works.

**"We", "Us" or "Our"** means Readiness Corporation Pty Ltd (ABN 83149568712) as set in the Prototype Proof of Concept Statement of Works.

**"You" or "Your"** means, for an individual accepting this Prototype Proof of Concept Agreement on their own behalf such individual, or for an individual accepting this Prototype Proof of Concept Agreement on behalf of a legal entity, the legal entity for which the individual is accepting this Prototype Proof of Concept Agreement, and its Affiliates as described in the Prototype Proof of Concept Statement of Works.

**"Your Data"** means electronic data and information submitted by or for You to the Prototype Proof of Concept Services, excluding content and any third-party content or applications.

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## **3 OUR OBLIGATIONS**

- 3.1 We will maintain Our administrative, physical and technical safeguards to protect the security, confidentiality and integrity of Your Data.
- 3.2 We will oversee the performance of Our personnel (including Our employees and contractors) and their compliance with Our obligations under this Prototype Proof of Concept Agreement.
- 3.3 Nothing in this Prototype Proof of Concept Agreement restricts or prevents Us from providing similar services to any other party.

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## **4 USE OF PROTOTYPE PROOF OF CONCEPT SERVICES AND CONTENT**

- 4.1 Prototype Proof of Concept Services purchased under these Terms of Use are purchased as set out in the Prototype Proof of Concept Statement of Works.
- 4.2 Unless otherwise specified: (a) a quantity in a Prototype Proof of Concept Statement of Work refers to Users, and the Prototype Proof of Concept Service or content may not be accessed by more than that number of Users; (b) a User's password may not be shared with any other individual except as set out in the Prototype Proof of Concept Statement of Works.
- 4.3 You are responsible for ensuring that You and Your Users comply with these Terms of Use and the laws of New South Wales that govern this Prototype Proof of Concept Agreement.

- 4.4 We may remove or request that you remove any Prototype Proof of Concept Services, content or Your Data from Readiness platforms due to a breach of these Terms of Use by You or a User, at the request of a third-party provider, or due to illegality.

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## **5 FEES AND PAYMENT FOR PURCHASED PROTOTYPE PROOF OF CONCEPT SERVICES**

- 5.1 Unless otherwise mutually agreed in writing: (a) fees are payable in advance of the provision of any services under a Prototype Proof of Concept Statement of Works; (b) fees will be invoiced on receipt of an accepted Prototype Proof of Concept Statement of Works; (c) invoiced charges are due net 14 days from the invoice date; and (d) You are responsible for notifying Us of complete and accurate billing and contact information and any changes to such information.
- 5.2 We may (without limiting Our rights or remedies) for any outstanding balance of an invoice amount not received by the due date, accrue charges with a late interest rate of 1.5% per month (or the legally maximum permitted rate, whichever is lower), and/or condition any subsequent payments on payment terms shorter than those specified in this section.
- 5.3 Fees do not include any taxes. You are responsible for paying all Taxes associated with this Prototype Proof of Concept Agreement. If We are legally obligated to pay or collect Taxes for which You are responsible We will invoice You and You will pay that amount.
- 5.4 You agree that Your purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by Us regarding future functionality or features.

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## **6 NON READINESS PROVIDERS**

- 6.1 If in the performance of this Prototype Proof of Concept Agreement We or a third party provide You any third-party products or services then Your use of such, is solely between You and the applicable Non-Readiness Provider. We do not warrant or support Non-Readiness applications, products or services including those designated by Us as "certified" or otherwise.
- 6.2 By using a Non-Readiness Application with a Prototype Proof of Concept Service, You grant Us permission to allow the Non-Readiness Application and its provider access to Your Data as required for the interoperability of that Non-Readiness Application with the Prototype Proof of Concept Service. We are not responsible for any disclosure, modification or deletion of Your Data resulting from access by such Non-Readiness Application or its provider.

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## **7 ACCOUNT, PASSWORD AND SECURITY**

- 7.1 You are responsible for ensuring the confidentiality and legality of Your passwords, accounts and all activities that occur under Your account by You or Your Users. You agree to immediately notify Us of any unauthorized use or breach of security of Your account. We are not liable for any losses You incur resulting from someone else using Your password or account, either with or without Your knowledge. You may be held liable for losses incurred by Us or another party due to someone else using your account or password. You may not use anyone else's account at any time.

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## **8 PRIVACY**

- 8.1 Please read the [Readiness Privacy Policy](#) for information about Our collection, storage and use of Your personal information. The Prototype Proof of Concept Services may be governed by their own privacy statement(s), as referenced in the applicable agreements and sign-up processes specific to each Prototype Proof of Concept Service.

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## **9 PROPRIETARY RIGHTS AND LICENSES**

- 9.1 You are only granted those rights expressly set out in the Prototype Proof of Concept Agreement. Subject to those rights We and Our Affiliates, Our licensors and content providers reserve all of Our/their right, title and interest in the Prototype Proof of Concept Services and content, including all of Our/their related intellectual property rights.
- 9.2 You have the right to access and use the Prototype Proof of Concept Services and content subject to the terms of this Prototype Proof of Concept Agreement.
- 9.3 We and Our Affiliates may use any feedback provided by You or Users relating to Our or Our Affiliates' services to alter such services on a worldwide, perpetual, irrevocable, royalty-free license.

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## **10 CONFIDENTIALITY**

- 10.1 Each party retains all its rights (including ownership) to its Confidential Information and must treat the other party's Confidential Information with the same degree of care and protection (but no less than reasonable care) as its own confidential information of a like kind. The Receiving Party must not, without the Disclosing Party's prior written approval, use or disclose the Disclosing Party's Confidential Information for a purpose outside the scope of this Prototype Proof of Concept Agreement.
- 10.2 The Receiving Party may only disclose Confidential Information to those members of its or its Affiliates employees, contractors and advisors that need access to perform this Prototype Proof of Concept Agreement. In such circumstances, the disclosure must be made under confidentiality terms as protective as those in this Prototype Proof of Concept Agreement and the Receiving Party must remain responsible for compliance with this section 10. Notwithstanding this, We may under confidentiality terms as

protective as this section 10, disclose the terms of this Prototype Proof of Concept Agreement to a subcontractor or Non-ReadiNow Provider that needs access, to perform Our rights and obligations in this Prototype Proof of Concept Agreement.

- 10.3 Section 10.1 is not breached if a Party is legally compelled to disclose the other Party's Confidential Information. Before such a disclosure, the Receiving Party must (if legally permitted) provide notice to the Disclosing Party, and allow the Disclosing Party (if it wishes) time to take reasonable steps to dispute such a disclosure.

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## **11 INTELLECTUAL PROPERTY RIGHTS**

- 11.1 We and Our suppliers retain all rights, titles and interests in the Prototype Proof of Concept Services, content and Portal, including all copyrights, patents, trade secrets, trademarks and other intellectual property rights. We reserve all rights not expressly granted and do not grant or imply to You or Your Affiliates any rights.

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## **12 REPRESENTATIONS, WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS**

- 12.1 We warrant that during the Period: (a) this Prototype Proof of Concept Agreement will accurately describe the administrative, physical, and technical safeguards for the protection of the security, confidentiality and integrity of Your Data; (b) the Prototype Proof of Concept Services will perform materially in accordance with the Prototype Proof of Concept Agreement; and (c) subject to Section 6, We will not materially decrease the overall functionality and security of the Prototype Proof of Concept Services. For any breach of a warranty above, Your exclusive remedies are those described in section 15.
- 12.3 Neither party makes any warranty of any kind (unless mutually agreed to in writing), whether express, implied, statutory or otherwise. Each party specifically disclaims all implied warranties, including any implied warranty of merchantability, fitness for a particular purpose or non-infringement, to the maximum extent permitted by law. Each party disclaims all liability and indemnification obligations for any harm or damages caused by any third-party hosting providers.

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## **13 MUTUAL INDEMNIFICATION**

- 13.1 Each Party indemnifies (Indemnifying Party) and holds harmless the other Party (Indemnified Party) regarding any Loss suffered relating to: (a) a breach of law arising from a breach of this Prototype Proof of Concept Agreement; (b) a Claim by a third party related to an allegation of an infringement of any person's Intellectual Property Rights due to a use granted under a licence under this Prototype Proof of Concept Agreement; or (c) a breach of a confidence or privacy obligation by the Indemnifying Party.

- 13.2 A Party seeking to rely on an indemnity under this section 13 must: (a) promptly give the Indemnifying Party written notice of the Claim; (b) give the Indemnifying Party sole control of the defence and settlement of the Claim (except that the settlement must unconditionally release the Indemnified Party from all liability in respect of the Claim); and (c) provide all assistance reasonably requested by the Indemnifying Party, at the Indemnifying Party's cost.

- 13.3 The indemnities under this section 13 are independent of the Party's other obligations under of this Prototype Proof of Concept Agreement and survives termination or expiry of this Prototype Proof of Concept Agreement.

- 13.4 Each Party must take reasonable steps to mitigate any Loss it incurs related to this Prototype Proof of Concept Agreement, including any matter the subject of an indemnity.

- 13.5 This section 13 sets out the Indemnifying Party's sole liability to the Indemnified Party and the Indemnified Party's exclusive remedy in respect of any indemnifiable claim.

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## **14 LIMITATION OF LIABILITY**

- 14.1 To the maximum extent legally permitted, each Party's aggregate liability (under statute, contract, tort, negligence, or otherwise) for liability suffered or incurred by the other Party relating to this Prototype Proof of Concept Agreement is limited to the amount paid by You for the Prototype Proof of Concept Services under the applicable Prototype Proof of Concept Statement of Works. However, the above limitations will not limit Your payment obligations as listed in Section 5.

- 14.2 Neither Party will be liable to the other Party (or to any person or entity claiming through such other Party) for the other Party's loss or consequential loss (which includes but is not limited to an indirect, special, incidental, reliance or consequential damages of any kind that does not arise naturally and according to the usual course of things from the relevant breach), arising out of or in any manner connected with this Prototype Proof of Concept Agreement or the subject matter hereof, regardless of the form of action and whether or not such other Party has been informed of or otherwise might have anticipated the possibility of such Loss.

- 14.3 The limitations of liability set forth in section 12 and 14 shall not apply to or take into account, damages, stemming from personal injury, death, or arising from a Party's breach of its obligations with respect to Confidentiality and Intellectual Property set out in this Prototype Proof of Concept Agreement.

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## **15 TERM AND TERMINATION**

- 15.1 This Prototype Proof of Concept Agreement is for the Period listed in the Prototype Proof of Concept Statement of Works unless terminated by either party in accordance with the rights and obligations in these Terms of Use.
- 15.2 You agree that Prototype Proof of Concept Services, content, Your Data entry and customisations provided during the Period will be permanently lost to You (may be deleted or destroyed) unless You elect to purchase a subscription to the same Prototype Proof of Concept Service for an agreed term, within 30 days of the completed Prototype Proof of Concept build (unless otherwise mutually agreed to in writing).
- 15.3 The sections titled "Fees and Payment for Purchase", "Non-ReadiNow Providers", "Proprietary Rights and Licenses", "Confidentiality", "Mutual Indemnification", "Limitation of Liability" and "General Provisions" will survive any termination or expiration of this Prototype Proof of Concept Agreement.
- 15.4 All notices (unless otherwise mutually agreed to in writing) related to this Prototype Proof of Concept Agreement must be in writing and will be effective upon either personal delivery or the second business day after mailing. Notwithstanding this, notices of termination or an indemnifiable claim ("Legal Notices") must be clearly identifiable as Legal Notices and will be effective on the day it is sent by email. Billing-related notices to You will be addressed to the relevant billing contact designated by You. All other notices to You will be addressed to the relevant Prototype Proof of Concept Services system administrator designated by You. Notices should be addressed to the address listed in the Prototype Proof of Concept Statement of Works.

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## **16 FORCE MAJEURE**

- 16.1 Parties are not liable for any delay or failure to perform obligations (except to pay money) in this Prototype Proof of Concept Agreement to the extent that such delay or failure is due to a Force Majeure.
- 16.2 A Party that becomes aware of a Force Majeure which gives rise to, or which is likely to give rise to, any failure or delay in that Party performing any obligation under this Prototype Proof of Concept Agreement, must: (a) promptly notify the other Party; and (b) inform the other Party of the period for which it is estimated that such failure or delay will continue.
- 16.3 If a Force Majeure event prevents the delivery of the Prototype Proof of Concept Services by Us, then You may suspend the applicable Fees charged by Us for the applicable period of the Force Majeure event. If a Force Majeure event continues for a period exceeding 30 days, either Party may terminate the applicable Prototype Proof of Concept Agreement immediately by giving written notice to the other Party. If termination

proceeds then all Fees due up to the time of the event will be due and payable and all Fees paid to date at the time of the event will be non-refundable. Future Fees or outstanding future invoices for the remainder of the term will be deemed non-payable.

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## **17 GENERAL PROVISIONS**

- 17.1 This Prototype Proof of Concept Agreement, Prototype Proof of Concept Statement of Works and Documentation (as listed in the relevant Prototype Proof of Concept Statement of Works) arising from the performance of this Prototype Proof of Concept Agreement, is the entire agreement between You and Us regarding Your use of Prototype Proof of Concept Services and content and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Prototype Proof of Concept Agreement will be effective unless in writing and signed by the party against whom it is to be asserted. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) the applicable Prototype Proof of Concept Statement of Work, (2) this Prototype Proof of Concept Agreement, and (3) the Documentation.
- 17.2 Neither party may assign any of its rights or obligations in this Prototype Proof of Concept Agreement, whether by the operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld). Notwithstanding this, either party may assign this Prototype Proof of Concept Agreement in its entirety, without the other party's consent to its Affiliate or in connection with a merger, acquisition, corporate reorganisation, or sale of all or substantially all of its assets.
- 17.3 The parties are independent contractors. This Prototype Proof of Concept Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.
- 17.5 No failure or delay by either party in exercising any right under this Prototype Proof of Concept Agreement constitutes a waiver of that right.
- 17.6 If any provision of this Prototype Proof of Concept Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be deemed null and void, and the remaining provisions of this Prototype Proof of Concept Agreement will remain in effect.
- 17.6 This Prototype Proof of Concept Agreement is governed by the applicable laws of the state of New South Wales.
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