

## Terms of Service

These Terms of Service (“**Terms of Service**”) govern the access to and the use of services provided by PlaxidityX Ltd. (“**Company**”) including the DevSecOps Platform and/or any other services, plans, features, products, documentation, content, applications, software, plugins, maintenance, support and/or training offered by Company from time to time (collectively the “**Services**”) identified in a duly executed statement of work, proposal and/or purchase order (“**Order**”). By executing the Order or otherwise accessing the Services, Customer hereby accepts and agrees to be bound by these Terms of Service and all Orders which are incorporated herein by reference (collectively referred to as the “**Agreement**”). This Agreement constitutes a binding agreement between the customer as stated in the Order (“**Customer**”) and Company. This Agreement represents the Parties’ entire understanding regarding the Services and shall govern over any prior oral or written agreement or discussions or different or additional terms or conditions of any purchase order, invoice or other ordering document. No other terms or conditions of any purchase order, invoice or other ordering document shall apply to the Services, unless agreed to in writing by both Parties. Company and Customer may hereinafter be individually referred to as a “**Party**” and collectively as the “**Parties**”;

In consideration of the mutual promises and covenants herein, the Parties agree as follows.

### **1. SUPPLY OF THE SERVICES**

- 1.1 Subject to the terms and conditions of this Agreement, Company grants Customer a limited, non-exclusive, non-transferable, revocable right to access and use the Services solely for Customer’s internal business purposes and not for resale or further distribution. Customer’s right to access and use the Services shall be subject to Customer’s compliance with the terms and conditions contained herein and limited to the Term purchased by Customer.
- 1.2 Such use and access grant for any software associated with the Services that must be downloaded by Customer includes the right to make one copy of such software for internal use. Subject to the terms and conditions of this Agreement, Company shall grant Customer a worldwide, non-exclusive, non-transferable, non-sub-licensable license to such software during the Term.
- 1.3 The Services may display, contain links to, or connect with third-party products, services, software, content, specifications, plug-ins, applications, websites and other features (collectively, “**Third-Party Services**”). To the extent Third Party Service are contained in the Services, any use by Customer and/or anyone on its behalf of any Third Party Services contained in the Services will be subject to the terms and conditions applicable to such Third Party Service: (a) as may be made available to Customer by the Third Party Service provider(s) or through the Company as part of the provision of the Services; (b) any such terms and conditions are subject to changes by the Third Party Service provider at any time without notice. Company will make reasonable efforts to inform Customer in advance of any such changes that come to its knowledge from the Third Party Service provider.
- 1.4 Company is entitled to modify or update the Services from time to time in order to adapt it technically, to change menu guidance or layouts or to expand or limit functionality in a way that does not materially alter the Services.
- 1.5 Customer hereby acknowledges that the Company may engage third party sub-contractors and/or sub-providers in the provision of the Services. Company, upon its sole discretion, may change the identity of those sub-contractors or materially change the obligations they are appointed to perform.

### **2. REPORTS**

- 2.1 Any information, advice, recommendations, update, reports or other content of any reports, presentations or other communications Company provides to Customer under this Agreement (“**Report(s)**”), other than Customer’s Confidential Information, is for Customer’s internal use only (consistent with the purpose of the Services). Customer may disclose a Report externally, in connection with the Services, only (i) to Customer’s customers for whom the Services have been ordered, as necessary and in connection with Customer’s engagement with those customers; (ii) to Customer’s

attorneys, who may review it only in connection with advice relating to the Services; (iii) to the extent, and for the purposes, required by applicable law or in accordance with any applicable regulatory requirements; or (iv) to other persons with Company's prior written consent.

- 2.2 Should a Report be made available to third parties other than as stated in Section 2.1, Company assumes no liability for any and all actions, claims, proceedings, losses, costs, damages and liabilities of any nature, including attorneys' fees and costs and expert witness fees and costs, that such third party may incur or suffer as regards the advice given pursuant to such Report. If Customer is permitted to disclose a Report (or a portion thereof), it shall not alter, edit or modify it from the form provided by Company.

### **3. RESPONSIBILITIES AND OBLIGATIONS**

- 3.1 "**Customer Data**" shall mean any technologies, information, data, materials, systems, software, libraries, devices, components, documentation, specifications, technology, know-how or records of whatever nature, in whatever form, provided to Company in connection with this Agreement, for the purpose of, and to enable the provision of, or to facilitate Customer's use of, the Services (to the exclusion of any Service Results and Feedback). Customer shall: (a) provide Company with complete, timely and accurate Customer Data required by Company for the performance of the Services; (b) be responsible for, and assumes the risk of, any problems resulting from its accuracy, completeness and consistency of Customer Data; and (c) cooperate with Company as reasonably required for the performance of this Agreement, and it shall provide Company with any information and/or content in its possession or, with assistance needed in order to enable the provision of the Services by Company.
- 3.2 Customer agrees and acknowledges that from time-to-time Customer may be required to provide some input and Feedback on Services. Any delay in providing required input or Feedback by Customer may result in delay in completion and the provision of Services. Company shall not be held accountable for any delay caused by Customer.
- 3.3 Unless required for the performance of the Services under this Agreement, Company will not (i) reverse engineer, decompile, disassemble, or make derivatives of the Customer Data; (ii) copy or reproduce the Customer Data; (iii) remove or alter the copyright, trademark, or other notices in the Customer Data; or (iv) rent, lease, sell, distribute, sublicense, assign, or otherwise transfer to any third party or permit any third party to use or distribute, in whole or in part, the Customer Data.
- 3.4 Upon termination of the relationship with Customer, Company shall have no obligation to maintain or provide any Customer Data and will delete Customer Data unless prohibited by applicable law, and to exclude data which is required to be kept and/or maintained under applicable law.

### **4. AUTHORIZED USERS**

Customer shall only permit its authorized users ("**Authorized User(s)**") to access and use the Services, and shall be responsible for, and use its reasonable endeavours to procure, each Authorized User's compliance with the provisions of this Agreement and all applicable laws. Customer shall notify the Company immediately if it becomes aware of any unauthorized use of the Services. To the extent permitted under applicable law, Customer shall remain responsible towards Company for any breach or omission of this Agreement by the Authorized Users.

### **5. RESTRICTIONS**

- 5.1 With respect to the Service, Customer shall not and shall not permit any Authorized User or any third party to do the following (in whole or in part) in connection with the use of the Services: (i) reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form; (ii) copy, duplicate, modify, alter, create derivative works from or distribute all or any portion of the software except to the extent expressly set out in this Agreement or as may be allowed by any applicable law; (iii) access the Services or any part thereof to build or create derivative, competitive, or similar product or service, or copy any ideas, features, functions or graphics of it; (iv) license, sell, rent, lease, transfer,

assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services available to any third party except the Authorized Users as permitted under this Agreement; (v) store any illegal content or content which violates any applicable law and/or privacy laws, or material rights of third parties in the Services; (vi) access the Services by any means other than through the interface that is provided by Company, except for industry standard penetration testing in alignment with the Company; (vii) remove, alter, or conceal any copyright, trademark, or other proprietary rights notices displayed on, or in, the Services; (viii) circumvent, disable, manipulate, overload, impair or disrupt or otherwise interfere with the operation, or the functionality of the Services and any security-related or technical features, limitations and/or protocols of the Services; (ix) store or transmit any robot, malware, Trojan horse, spyware, virus, worm or similar malicious item or harmful code or attachment intended (or that has the potential) to damage or disrupt the Services; or (x) intentionally engage in any activity that interferes with or disrupts the Services or infringes on Company's and/or its third-party vendors' brand or intellectual property rights.

- 5.2 Company shall not be responsible for any service failure or any other kind of dysfunctionality or unavailability of the Service as a result of Customer's use of the Services in contravention of Section 5.1, to the extent that Customer is responsible for the occurrence of such service failure, dysfunctionality or unavailability.

## **6. SUSPENSION OF ACCESS**

Without derogation from Company rights under Section 13, Company may suspend the provision of the Services: (a) upon written notice to Customer with an immediate effect, in the event an Authorized User commits a material breach of the Agreement, particularly the provisions of Section 5, and in such circumstances: (i) the Company shall endeavour to give as much advance notice to Customer as is reasonably practicable, save where the Authorized User's action has compromised the security of the Services or is fraudulent (and in such circumstances the Company shall endeavour to give as much advance notice to Customer as is reasonably practicable); (ii) to the extent it is technically and practically feasible, the suspension shall be with respect to that Authorized User unless the impacts of such material breach is considered as a material breach of Customer under this Agreement or otherwise reasonably require the Company to suspend the whole or larger portion of the Services; and (iii) if technically and practically possible, the suspension shall be withdrawn as when and if Customer is able to procure the cessation of such material breach by such Authorized User to Company's satisfaction and upon Company's consent; and (b) upon ten (10) business days prior written notice, if Customer fails to pay the Fees and/or any payments due to the Company in accordance with this Agreement.

## **7. FEES AND PAYMENT**

- 7.1 In consideration of the Services and Customer's use of the Services, Customer will pay Company the fees for Services as described on an applicable Order ("**Fees**").
- 7.2 Company shall bill through an invoice, in which case, full payment for invoices shall be received by Company according to the payment terms as set forth herein and in the Order. Services are billed in advance of the Term and automatically renew for an equivalent renewal term, at the end of the Term, unless otherwise stated in an Order. Customer may opt not to renew for an equivalent renewal term by writing to Company 30 days prior to the end of the Term. Fees paid hereunder during the Term are non-cancellable and non-refundable.
- 7.3 Fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including value-added, use or withholding taxes (collectively, "**Taxes**"). Customer is responsible for payment of all Taxes associated with its purchases hereunder (excluding taxes based on Company's net income or property), and any related penalties and interest. All sums payable by Customer to Company under or in respect of this Agreement shall be paid free and clear of any deductions, withholdings, set-

offs or counterclaims, save only as may be required by law. Customer may not withhold or set-off any payment due to Company under this Agreement or otherwise.

- 7.4 Company reserves the right, in its sole discretion, to modify the pricing of its services and subscription plans, add new services or pricing plans for additional fees and charges, or amend fees and charges for existing services, at any time without prior notice to Customer. Notwithstanding the foregoing, unless otherwise provided in an Order, the fees set forth on an Order shall remain fixed for the duration of the Term set forth therein.

## **8. INTELLECTUAL PROPERTY RIGHTS**

- 8.1 Customer retains all rights, title and interest in and to the Customer Data and Company shall claim no ownership or rights in Customer Data (other than usage rights as explicitly provided herein). Next to that Customer will be the exclusive owner of all data, customizations, parametrizations and the like that Company generates exclusively and specifically for Customer. Notwithstanding the aforesaid, Customer hereby grants Company, during the Term, a non-exclusive, worldwide, royalty free license to use Customer Data for the purpose of the provision, use and performance of various aspects of the Services. This license shall be limited to the duration of the contract and solely for the purpose of fulfilling Company's obligations under this agreement. No other license of any patent, copyright or any other intellectual property right is granted by Customer to Company under this Agreement, by implication, estoppel or otherwise.
- 8.2 Company and/or its licensors own all rights, title, interest, know how, patent rights, inventions, moral rights, rights in get-up, goodwill, copyrights, trade secret rights, mask works, and trademark rights (including service marks and trade names), and all other intellectual property rights and any applications for these rights, in all countries ("**Intellectual Property Rights**") in the Services, the Reports and all associated methods, know-how, processes, software or other technologies accessed or used in connection with the Services and all improvements, enhancements or modifications thereto. Customer's only rights in the Services are the rights expressly granted in this Agreement; all other rights are reserved by Company. Company's licensors are third-party beneficiaries of, and thus may enforce against Customer, the license restrictions and confidentiality obligations in this Agreement with respect to their intellectual property and proprietary information.
- 8.3 Subject to the terms and conditions of this Agreement, Company shall grant Customer a worldwide, perpetual, non-exclusive, non-transferable, non-sub-licensable license to use the Reports (subject to Section 2.1) and/or any products, services, software, content, specifications, plug-ins, applications and other features or any other materials that Company provides to Customer as part of, or in the course of providing services in connection with the Services ("**Company Materials**") for Customer's internal business purposes during the Term. In the event that any Company Materials are held to be owned by the Customer due to the performance of Services by Company, Customer hereby assigns to Company all right, title and interest therein or to the extent such assignment is not permitted or effective, hereby grants to Company a perpetual, irrevocable, exclusive, worldwide, fully-paid, sub-licensable (through multiple layers), assignable license to any such part of the Company Materials, including but not limited to an assignable license to incorporate the Company Materials into the Services.
- 8.4 Each party reserves all rights not expressly granted in this Agreement and no other licenses are granted by either party to the other party under this Agreement except as expressly stated herein or in an Order, whether by implication, estoppel or otherwise. Any and all Intellectual Property Rights in Third Party Services, are the property of their respective owners, and their use inures to the benefit of their respective owners.
- 8.5 Neither party shall use any of the other party's trademarks (registered and unregistered), service marks, logos, get up or brands without the other party's prior written consent. Any approved use of the other party's trademarks under this Section 8 shall only be used in compliance with the relevant brand

guidelines to be provided to the owning party, as amended from time to time and the terms of the owning party's written consent.

- 8.6 Company shall be entitled to use aggregative and/or statistical information based on the Customer Data (to the extent such information is not personally or uniquely identifiable – meaning no personal related data), and any expression or result arising out of Services for Company's purposes, including for research, supervision and control over the Services, improvement, development, diagnostic and correction of the Services (collectively "**Service Results**"), in an unlimited and irrevocable manner and with no obligation to pay royalties or any other payment whatsoever. It is hereby clarified that, Company shall not disclose Confidential Information of Customer contained in the Service Results to a third-party. Any Service Results created by the Company in the course of performing this Agreement are and will be the sole and exclusive property of the Company.
- 8.7 It is clarified that Company remains the owner of all the rights (including Intellectual Property Rights) in any offer, suggestion, enhancement request, recommendation, correction, or other feedback provided by Customer pertaining to the Services, and which are received by Company from Customer ("**Feedback**"), all rights, including Intellectual Property Rights in such Feedback shall belong exclusively to Company and shall be considered Company's Confidential Information, and Customer hereby irrevocably and unconditionally transfers and assigns to Company all Intellectual Property Rights in such Feedback and waives any and all moral rights that Customer may have in such Feedback. In the event ownership cannot be transferred to Company, Customer grants to Company a worldwide, perpetual, irrevocable, royalty-free permission to use and incorporate Feedback into the Services.

## **9. REPRESENTATIONS AND WARRANTIES**

- 9.1 Each Party hereby represents and warrants (i) that it is duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or organization; (ii) that it has the legal power and authority to enter into this Agreement; and (iii) that this Agreement, when executed and delivered, will constitute a valid and binding obligation of such Party and will be enforceable against such Party in accordance with its terms.
- 9.2 The Services are being provided by Company on an 'as-is' and 'as available' basis. Except for the warranties and representations set forth in this Section 9, Company makes no warranties or representations of any kind or nature in connection with the Services or whether written or oral, statutory, express and/or implied and/or by virtue of law and/or by virtue of commerciality or compatibility of the Services, its fitness for a particular purpose or use, its performance, credibility, precision, level of security or, results that may be obtained from using the Services or any conclusions derived from any such usage, nor does Company grant any warranty or representation in relation to other Third Party Services, including for their data security and/or cybersecurity or their impact on the Services. Without derogating from the generality of the aforesaid, Company does not undertake that the Services will be continuous and/or without mistakes or flaws, and further, Company does not undertake that the software will be available at all times (e.g., in the event of a planned or unplanned shut-down, scheduled maintenance or for unscheduled emergency maintenance either by Company or by Third Party Services).
- 9.3 Without derogating from the aforesaid, Company shall not be liable in connection with the Services: (i) if any modifications are made to the Services by any party other than Company; (ii) if third-party products or third-party software components were embedded in the Services without the explicit prior written authorization thereto by Company; (iii) if the Services and/or any part thereof had been installed on Customer's systems in a composition and/or manner that differs from that which had been agreed to, or instructed, by Company; (iv) for any matter relating to and/or arising from any hardware or third party products or services including in connection with their usage as aforesaid, in conjunction with the Services; or (v) for any external services that are not part of the Services and that their availability and/or operation are not under the control or the responsibility of Company.

9.4 With respect to Customer Data, Customer warrants that: (i) Customer owns or has a license to use and has obtained all consents and approvals necessary for the provision and use of all of the Customer Data that is placed on, transmitted via or recorded by the Services or otherwise required for the provision of the Services; (ii) the provision and use of Customer Data as contemplated by this Agreement does not and shall not violate any third party rights or applicable law; and (iii) that it has obtained any third party consent with respect to any components, software or any other third party data or materials incorporated into Customer Data processed under this Agreement. Upon request, Customer shall provide Company with a written confirmation of such third party's consent.

## 10. CONFIDENTIALITY

10.1 During the Term and for a period of five (5) years after the termination or expiration of this Agreement, a Party receiving Confidential Information of the other Party in connection with this Agreement undertakes to maintain the and refrain from disclosing such Confidential Information to any third-party. "**Confidential Information**" shall mean any non-public information (which, for the purpose of this Agreement shall mean any information or data that becomes part of the public domain without fault on the part of the receiving party), that relates to the business, affairs, operations, customers (including Customer Data), processes, budgets, pricing policies, product information, strategies, developments, trade secrets, know-how, methods, technology, technical data, personnel and suppliers of the Disclosing Party, and any other information clearly designated by a Party as being confidential to it (whether or not it is marked "confidential"), or which ought reasonably be considered to be confidential or other matters connected with the Services; The Customer Data shall be considered Confidential Information of Customer including non-public data provided by Customer to Company, to enable the provision, and or to facilitate Customer's use, of the Services.

10.2 Each Party may disclose Confidential Information solely to the extent necessary for the performance of the Agreement, and solely to its and its Affiliates' directors, employees and/or sub-contractors on its behalf that are in need of such Confidential Information within the scope of the Services under the Agreement, on a need-to-know basis. "**Affiliate**" shall mean as regards each Party, any legal entity which directly or indirectly controls, is controlled by or under common control with such Party, whereby "control" means the ownership direct or indirect of more than 50% of such legal entity's voting rights and/or capital.

10.3 The provisions of this Section 10 shall not apply to (i) information that had independently come into the possession of the recipient prior to disclosure by the disclosing party, as recipient can demonstrate with dated documents; (ii) information that is part of the public domain at the time this Agreement becomes effective or, that has become part of the public domain through no breach of the obligations by recipient; (iii) information that was independently developed by recipient without use of the Confidential Information of disclosing party, as demonstrated by recipient with dated documents; (iv) information obtained by recipient from a third-party that was entitled to disclose the same to recipient; and (v) information the disclosure of which is mandated by law or an order of an authorized entity or by an authorized judicial or administrative instance, provided that the Party required to disclose the information as aforesaid has provided the other Party a notice thereof immediately upon having received the demand for disclosure, subject to the Party being required to make the disclosure not being legally prohibited from informing the other Party of such demand, and subject to the other Party having been given, to the extent permitted by law, a reasonable opportunity to take action to challenge the demand for disclosure. Notwithstanding the above, the Parties may disclose the existence of this Agreement.

## 11. EXPORT CONTROL

Customer shall remain familiar and comply with its obligations under any and all laws, statutes, regulations, ordinances of any local, states, federal, national, or other jurisdictional locality, as applicable to the export, import, and/or end-use of the Services. The Services and/or technology sold, leased, or licensed under this Agreement may be subject to various Export Control Laws and

Regulations. Where a government-issued export license must be obtained prior to fulfilment, under this Agreement and in accordance with applicable laws, Customer agrees that Company shall not be required to complete delivery of export-controlled Services or technology unless and until all required export licenses have been obtained.

## **12. DATA PROTECTION AND DATA SECURITY**

The Parties agree and undertake that to the extent any personal information or data will be processed within the framework of performance of this Agreement (“**Personal Data**”), all such Personal Data to the extent processed by the Parties, will be processed in accordance with the applicable privacy laws and the Data Processing Agreement which is incorporated into this Agreement by this reference. In particular, the Parties shall process the Personal Data exclusively on the basis of a sufficient legal basis and only in accordance with the respective purpose for which it was sent and shall, where so required under the applicable data protection rules, meet any information and transparency obligations towards the data subjects.

## **13. TERM AND TERMINATION**

- 13.1 This Agreement shall commence, and shall remain in force and effect during the period of time, as indicated in the applicable Order during which Customer is granted access to use the Services (“**Term**”), until terminated in accordance with this Section 13.
- 13.2 Notwithstanding any other provision in this Agreement, either Party may by written notice served on the other Party terminate this Agreement immediately, in the event of one of the following: (a) if the other Party is in material breach (including persistent breach), of any of the terms of this Agreement, and, where the breach is capable of remedy, the other Party fails to remedy such breach within thirty (30) days’ service of a written notice, specifying the breach and requiring it to be remedied; (b) notwithstanding the above, in addition to any other remedies it may have, either party may also terminate this Agreement with immediate effect on giving notice to the other Party if the other party materially breaches any of its obligations under this Agreement, including the obligations relating to Restrictions (Section 5), Intellectual Property Rights (Section 8), and Confidentiality (Section 10); or (c) if the other Party shall become insolvent, cease doing business as a going concern, make an assignment, composition or arrangement for the benefit of its creditors, or admits in writing its inability to pay debts, or if proceedings are instituted by or against it in bankruptcy, under applicable insolvency laws, or for receivership, administration, winding-up or dissolution (otherwise than in the course of a solvent reorganization or restructuring approved by the other Party to this Agreement), provided that such proceedings are not dismissed within sixty (60) days.
- 13.3 In the event of expiration and/or termination of this Agreement for any reason whatsoever the right of use and any license granted to Customer shall immediately expire and Company shall immediately cease providing the Services to Customer.
- 13.4 Any provision herein which by nature is intended to survive the termination and/or expiration of the Agreement as aforesaid, including Sections 2, 7, 8, 9, 10, 13, 14, 15, 17, 18, 19, 22 and 24 shall survive the termination of this Agreement and remain in effect.

## **14. LIMITATIONS OF LIABILITY**

- 14.1 NOTWITHSTANDING ANYTHING TO THE CONTRARY, COMPANY AND/OR ITS SUPPLIERS (INCLUDING BUT NOT LIMITED TO TECHNOLOGY SUPPLIERS), OFFICERS, AFFILIATES, REPRESENTATIVES, SUBCONTRACTORS AND EMPLOYEES SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS; (B) FOR ANY LOST PROFITS OR LOST REVENUES OR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES; (C) FOR ANY MATTER BEYOND COMPANY’S REASONABLE CONTROL (INCLUDING ANY FORCE

MAJEURE EVENT); OR (D) ANY DAMAGE ARISING OUT OF THE SERVICES IN DEVIATION FROM THIS AGREEMENT AND/OR TERMS OF USE AND/OR THE LICENSE. THE FOREGOING LIMITATIONS AND DISCLAIMERS SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

- 14.2 IN NO EVENT WILL COMPANY, ITS AFFILIATES OR ITS SUBSIDIARIES, OR ITS SUPPLIERS' AGGREGATE LIABILITY UNDER THIS AGREEMENT, OR RELATING TO ITS SUBJECT MATTER, EXCEED WITH RESPECT TO ANY SERVICE, THE AMOUNT PAID BY CUSTOMER FOR THE SERVICES DURING THE 12 MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.
- 14.3 Additionally, Company shall not be liable for: (i) the manner of operation of any Third Party Service provider (to the extent applicable), its availability and its meeting of Customer's requirements; and/or (ii) any unplanned shut-down or downtime of the Services caused due to Customer's servers and/or any external services or means through which Customer connects to the Services.
- 14.4 Notwithstanding anything in this Agreement to the contrary, the limitations of liability shall not apply to liability due to death or personal injury caused by gross negligence or wilful misconduct.

## **15. INDEMNITY**

- 15.1 Subject to Section 14, Company will defend Customer at Company's expense from any and all claims, demands, suits or proceedings ("**Claims**") brought against Customer by a third party alleging that the use of the Services as permitted hereunder infringes such third party's patent, copyrights, or trademarks, or misappropriates such third party's trade secrets. Further, Company shall indemnify and hold Customer harmless against all costs (including reasonable attorneys' fees) finally awarded against Customer by a court of competent jurisdiction or paid to a third party in accordance with a settlement agreement signed by Company, in connection with such Claims. If a Claim is received or is reasonably likely to be received, Company may, at Company's option and sole discretion and expense, either (i) replace or modify the Services, or any part thereof, as appropriate, (ii) obtain a license for Customer to continue using the Services, (iii) replace the Services with a substantially equivalent service; or (iv) terminate the applicable Order and refund to Customer a pro-rated amount of any prepaid, unused fees applicable to the remaining portion of the then current Term following the effective date of termination. However, Company's obligations under this Section 15 are subject to the following conditions: (a) Customer must promptly notify Company in writing of the action; (b) Customer grants Company sole control of the defense and settlement of the action; and (c) Customer must provide Company, at Company's expense, with all assistance, information and authority reasonably requested for the defense and settlement of the action. Company will not be responsible for any compromise made or expense incurred without its consent.
- 15.2 If use of any of the Services is, or in Company's reasonable opinion is, likely to be, the subject of an action specified in this Section 15.1, Company may, at its sole option and at no additional charge: (i) procure for Customer the right to continue using such Services; (ii) replace or modify such Services so that it is non-infringing and substantially equivalent in function to the original Services; or (iii) if options (i) and (ii) above are not accomplished despite Company's reasonable efforts, terminate Customer's rights and Company's obligations hereunder with respect to such Services and refund to Customer a pro-rated amount of any prepaid, unused fees applicable to the remaining portion of the then current Term.
- 15.3 Notwithstanding the terms of Section 15.1, Company will have no liability for any infringement or misappropriation action or claim of any kind to the extent that it results from: (a) modifications to the Services made by a party other than Company, if the infringement or misappropriation would not have occurred but for such modifications; (b) the combination, operation or use of the Services with equipment, devices, software, systems or data not supplied by Company, if the infringement or misappropriation would not have occurred but for such combination, operation or use; (c) Customer's failure to use the updated or modified Services provided by Company to avoid infringement or misappropriation; (d) Company's compliance with any designs or specifications provided by Customer; and/or (e) Customer's use of the Services other than as authorized by this Agreement.



15.4 THE PROVISIONS OF THIS SECTION 15 SET FORTH COMPANY'S SOLE AND EXCLUSIVE OBLIGATIONS, AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES, WITH RESPECT TO INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS OF ANY KIND. EXCEPT AS SET FORTH ABOVE, COMPANY AND ITS SUPPLIERS DISCLAIM ALL IMPLIED OBLIGATIONS WITH RESPECT TO INTELLECTUAL PROPERTY INDEMNIFICATION.

15.5 Upon Company's request, Customer will indemnify, defend and/or hold Company and its Affiliates, and any of its or their shareholders, Affiliates, directors, officers, employees, agents, vendors, representatives, successors and assigns ("**Company Party**") harmless from any third party claim or action, resulting from, arising out of, or connected with (a) Customer's misuse of the Services, Reports, or Company Materials; or (b) Customer's breach of this Agreement, including use of the Services or any Company Materials or Report in contravention of this Agreement. Customer will also indemnify the Company Party for any damages or losses any Company Party suffers and costs any Company Party reasonably incurs that are directly attributable to any such claim and that are assessed against any Company Party in a final, non-appealable judgment or agreed upon by a Company Party in a settlement. Customer's obligation to defend and indemnify the Company Party with respect to a particular claim are subject to the following conditions (a) Company must promptly give Customer written notice of the claim; and (b) Company must provide Customer with all information Company has regarding the claim and cooperate with Customer if Company requests that Customer defend the claim.

## **16. FORCE MAJEURE**

Neither Party shall be liable for a breach of this Agreement directly or indirectly caused by circumstances beyond its reasonable control (a "**Force Majeure**"), provided, however, that the affected Party shall promptly notify the other of the existence of the Force Majeure and the effect on its ability to perform its obligations, and that the affected Party undertakes all reasonable efforts to mitigate the impact of the Force Majeure on the other Party. The term "**Force Majeure**" shall mean and include any act of God, industry-wide strikes, explosion, fire, flood, terrorist acts, war and other hostilities, civil commotion, governmental acts, regulations or orders, failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, acts or omissions of internet service providers, generalized inadequate supply of raw materials or components, or any other circumstance of a similar nature beyond the reasonable control of an affected Party (but excluding any act or omission by an Affiliate of such Party). If any Force Majeure endures more than sixty (60) days, the Parties shall meet and review in good faith the desirability and conditions of this Agreement.

## **17. ASSIGNMENT**

17.1 Customer may not assign, transfer, charge, create a trust over or otherwise deal in this Agreement or any of its rights or obligations under this Agreement (or purport to do so) without the prior written consent of Company. Any purported assignment in breach of this Section 17.1 shall not confer any rights on the purported assignee.

17.2 For avoidance of doubt, Company may assign this Agreement, or any of its rights under it, or by a novation transfer the benefit and the burden of this Agreement or of any of its rights and obligations under it, in whole or in part, to any of its Affiliates, or - in the scope of a reorganization, change of structure, change of control and/or merger, to a successor entity and/or into which it merges, without the need to obtain the consent or approval.

## **18. ENTIRE AGREEMENT**

18.1 This Agreement constitutes the entire agreement and understanding of the Parties and supersedes and extinguishes all previous drafts, agreements and understandings between them, whether oral or in

writing, relating to its subject matter. Customer agrees that additional or different terms on Customer's purchase order shall not apply.

- 18.2 In any event of discrepancy between this Agreement and the Order, unless specifically stated otherwise in the Order this Agreement shall take precedence.

## **19. NOTICES**

Any notice or similar communication given under or in connection with this Agreement shall be in writing and shall be delivered to the email address of Customer as stated in the Order, and for Company at [legal@plaxidityx.com](mailto:legal@plaxidityx.com). Notices and similar communications shall be deemed to have been received at the time of delivery to the email address.

## **20. RELATIONSHIP**

- 20.1 This Agreement does not constitute, establish or imply any partnership, joint venture, agency, employment or fiduciary relationship between the Parties or any of the Parties' employees.

- 20.2 Neither Party shall have, nor represent that it has, any authority to make or enter into any commitments on the other Party's behalf or otherwise bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability or the exercise of any right or power).

## **21. REMEDIES**

Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law. Any right or remedy expressly included in any provision of this Agreement (or the exercise of them) shall not be considered as limiting a Party's rights or remedies under any other provision of this Agreement (or the exercise of them).

## **22. SEVERABILITY**

If any provision, or part of a provision, of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect the other provisions of this Agreement, which shall remain in full force and effect.

## **23. WAIVER**

- 23.1 A failure to exercise, or delay in exercising, a right, power or remedy provided by this Agreement or by law shall not constitute a waiver of that, or any other, right, power or remedy and shall not, and nor shall any single or partial exercise of any such right, power or remedy, preclude the further exercise of that, or any other, right, power or remedy.

- 23.2 Any waiver of any right under this Agreement is only effective if it is in writing and it shall only apply to the Party to whom the waiver is addressed and to the circumstances for which it is given.

## **24. GOVERNING LAW AND JURISDICTION**

- 24.1 This Agreement and any dispute relating to it shall be governed by and construed in accordance with the laws of Israel without regard to conflict of law principles.

- 24.2 Notwithstanding anything contained herein to the contrary, in the event that Company requires injunctive relief in order to prevent infringement of any Company's Intellectual Property Rights, it may seek such relief from any competent court anywhere in the world where such infringement takes place – at which case *lex fori* shall apply to such proceedings (rather than the law governing this Agreement).