

The Provost, Fellows, Foundation Scholars, and the other members of Board, of the College of the Holy and Undivided Trinity of Queen Elizabeth near Dublin (“TCD”)

Terms & Conditions

Pervasive Nation Infrastructure Access Agreement (“PNIAA”)

THE PARTIES AGREE AS FOLLOWS:

1. Agreement

- 1.1 These Terms and Conditions together with the TCD Access Charge Quotation and Invoice constitute a legally binding agreement (the “**Agreement**”) between TCD and the User.
- 1.2 TCD and the User are referred to individually as a “Party” and collectively as the “Parties”.
- 1.3 This Agreement may not be added to, modified or superseded except in writing on behalf of TCD, even though other terms may appear on User’s documents (all of which are hereby objected to by TCD without further notice).
- 1.4 This Agreement will be effective from the Commencement Date and will remain effective until properly terminated by the User or TCD as permitted by this Agreement.
- 1.5 By issuing a purchase order to TCD, the User confirms that all information therein relating to the User is accurate and that the User expressly accepts these Terms and Conditions.
- 1.6 TCD has been authorised on behalf of the Pervasive Nation Partners to grant Facilities Access to the Pervasive Nation Infrastructure and to provide certain Technical and Integration Supports to certain third parties who meet the Pervasive Nation Access Criteria.
- 1.7 The User wishes to access the Pervasive Nation Infrastructure for the Access Purpose.

Definitions

In this Agreement unless the context requires otherwise or unless otherwise specified, the following words shall have the following meanings:

Acceptable Use Policy	The acceptable use policy, as published on the Pervasive Nation website, the current version of which is set out in Schedule 1 of this Agreement.
Access Fees	Fees payable to TCD by the User for accessing the Pervasive Nation Infrastructure specified in the Statement of Work.
Access Purpose	The agreed purpose that the User may access Pervasive Nation Infrastructure for as specified in the Statement of Work.
Ancillary Agreement	Any agreement in respect of Pervasive Nation Infrastructure, the Facilities Access and /or the Technical and Integration Supports, including without limitation agreements with the Pervasive Nation Partners
Commencement Date	The commencement date specified in the Statement of Work.
Confidential Information	Any information relating to the business, affairs, technology, products or processes of a Party that: (i) in respect of information provided in documentary form or by way of a model or in other tangible form, at the time of provision is marked or otherwise designated to show expressly or by necessary implication that it is imparted in confidence; (ii) in respect of information that is imparted orally, described as being confidential at the time of disclosure and confirmed in writing, marked confidential and sent to the receiving Party within 28 days of the oral disclosure; (iii) is a copy of any of the foregoing; or due to its character or nature, a reasonable person in a like position to the receiving Party and under like circumstances would consider confidential.
Disclosing Party	The Party disclosing Confidential Information to the other Party.

End Date	The end date specified in the Statement of Work.
Event of Force Majeure	Circumstances beyond the reasonable control of any Party, including labour disputes involving that Party, which may lead to a delay or failure of performance of obligations under this Agreement.
Excusable Delay	The circumstances set out in clause 2.12
Facilities Access	The access to the Pervasive Nation Infrastructure the User is granted as specified in the Statement of Work.
FOIA	The Freedom of Information Act 2014, as amended, revised, modified or replaced from time to time.
Government-related Bodies	Irish Government departments, agencies or State research funding organisations to which the TCD may need to report on their activities, which may include, but are not limited to: the Higher Education Authority; Enterprise Ireland; Science Foundation Ireland.
Installation Activities	The activities to be carried out by the User specified in the Statement of Work.
Intellectual Property	All intellectual property of any description including Know-How, copyright, trade marks, database rights, design rights, patents, utility models, and applications for, and the right to apply for any of the foregoing items.
Know How	Any unpatented technical information (including, without limitation, information relating to inventions, discoveries, concepts, methodologies, models, research, development and testing procedures, the results of experiments, tests and trials, manufacturing processes, techniques and specifications, quality control data, analyses, reports and submissions) that is not in the public domain.
New Technology	Any new technology installed on the Pervasive Nation Infrastructure.
Parties Representatives	The persons specified in the Statement of Work who have signed this Agreement on behalf of the Parties.
Pervasive Nation Infrastructure	Pervasive Nation Infrastructure means the research infrastructure all or in part consisting of a collection of (“IoT”), sensors, actuators, networking and sensor data hosting equipment used to support the communication, networking and data requirements of organisations who wish to perform research, test and validation activities of IoT to a technology readiness level of 7.
Pervasive Nation Access Criteria	The criteria set out in section 1 of the Pervasive Nation Acceptable Use Policy.
Pervasive Nation Partners	TCD and Waterford Institute of Technology, Cork Institute of Technology, National University of Ireland Maynooth, University College Dublin, National University of Ireland, Dublin, University College Cork – National University of Ireland, Cork, Dublin City University and Dublin Institute of Technology and any other persons hosting any part of the Pervasive Nation Infrastructure.
Publishing Party	Any Party intending to publish any results in relation to the subject matter of this Agreement.
Purpose	The purpose for which Facilities Access and the Technical and Integration Supports are provided as specified in the Statement of Work.
Prime Award	The Science Foundation of Ireland letter of offer dated 17 December 2015, together with its associated terms and conditions and guidelines.
Receiving Party	The Party receiving Confidential Information from the other Party.
Reviewing Party	The Party other than the Publishing Party.
Technical and Integration Supports	The technical and integration supports for utilising the Pervasive Nation Infrastructure provided by or on behalf of TCD to the User specified in the Statement of Work.
Staff	Officers, employees, contractors, servants, agents, researchers or registered students of a Party.
Statement of Work	The factors agreed with the User for accessing the Pervasive Nation Infrastructure specified in in the TCD quote and/or TCD invoice issued to the User.
Support Fees	The fees payable to TCD by the User in respect of the Technical and Integration Supports specified in the Statement of Work, including any subsistence expenses.
Term	The period between the Commencement Date and the End Date specified in the Statement of Work.
Total Fees	Access Fees plus the Support Fee
User	The legal entity granted access to the Pervasive Nation Infrastructure.
Third Party Vendors	Any third parties providing supports / services in connection with the Pervasive Nation Infrastructure.
Vendor Technology	Any technology used to build, deploy and/or maintain the Pervasive Nation Infrastructure.

2. **Conditions of Facilities Access and Technical and Support Services**

- 2.1 *Purpose.* The User is granted Facilities Access and/or provided with the Technical and Integration Supports solely for the Purpose for the duration of the Term in accordance with the terms and conditions of this Agreement. TCD shall use its reasonable endeavours to provide and maintain the Facilities Access and any Technical and Integration Supports in a timely manner.
- 2.2 *Pervasive Nation Policies.* The User shall, and shall ensure that the User's Staff shall, comply with all TCD's instructions and operating procedures for Facilities Access and the provision of the Technical and Integration Supports, including but not limited to the Acceptable Use Policy and the Privacy and Data Protection Policy, the current versions of which are as set out in Schedules 1 and Schedule 2. TCD may modify these policies by publishing updated versions on the Pervasive Nation website. Breach of any of the requirements of the Acceptable Use Policy and / or the Privacy and Data Protection Policy by the User shall be considered a material breach of this Agreement. TCD at its absolute discretion may terminate the Agreement with immediate effect on notice to the User in the event of such breach.
- 2.3 *Installation.* The User shall be responsible for carrying out its Installation Activities.
- 2.4 *New Technology.* TCD reserves the right to install or use New Technology on Pervasive Nation Infrastructure at any time.
- 2.5 *Vendor Technology.* The Parties acknowledge that the Facilities Access and Technical and Integration Supports are dependent on and /or may require interaction with Vendor Technology. TCD's sole obligation in this regard shall be to provide the User with the Vendor's representative's contact information so that the Vendor and the User can agree and arrange to take any necessary action. The User shall promptly inform TCD of the outcome / agreed actions. For the avoidance of doubt, nothing in the Agreement shall permit the User to make any alternations to the Pervasive Nation Infrastructure, unless expressly agreed otherwise by TCD.
- 2.6 *Disclaimer.* The User acknowledges and agrees that TCD is providing the Facilities Access and Technical and Integration Supports "as is" and without any representations or warranties (express, implied or statutory) of any kind including:
- (a) those regarding operation, functionality, durability, merchantability, fitness for a particular purpose and non-infringement of any third party's rights; or
 - (b) that the Facilities Access and Technical and Integration Supports will meet the User's needs; and
 - (c) that any results or outcome shall be achieved or achievable.

The User acknowledges that it is availing of the Facilities Access and Technical and Integration Supports entirely at its own risk and that TCD and any other party hosting Pervasive Nation Infrastructure shall not be liable for any loss or damage, whether direct, indirect, consequential, incidental, special, punitive or otherwise, arising from any defect, delay, error or failure to perform under, or arising from or relating to this Agreement, the Facilities Access and the Technical and Integration Supports whether in contract, negligence or otherwise, even if TCD and any other party hosting Pervasive Nation Infrastructure has been advised of the possibility of such damages.

- 2.7 *Withdrawal of Access.* TCD shall not be obliged to provide Facilities Access and/or Technical and Integration Supports where it reasonably believes that to do so would:
- (a) impair or damage the Pervasive Nation Infrastructure;
 - (b) impair or prevent the installation of New Technology;
 - (c) present a danger to the health and safety of the public, Pervasive Nation Partners' Staff or the environment;
 - (d) cause TCD to be in breach of the Prime Award;
 - (e) cause TCD to be in breach of any Ancillary Agreement;
 - (f) cause TCD to be in breach of any applicable laws, permits or regulations.

where any of these circumstances (a) to (f) arise TCD shall engage with the User to agree a course of remedial action if TCD deems appropriate and at no additional cost to TCD. If at TCD's absolute discretion it considers that it is not appropriate to do so it shall terminate the Agreement pursuant to clause 4.3 or clause 4.4 as appropriate.

TCD shall not be obliged to provide the Facilities Access and/or Technical and Integration Supports in circumstances where there is insufficient usage of the Pervasive Nation Infrastructure generally and / or insufficient funding available to sustain the Pervasive Nation Infrastructure. In such circumstances TCD shall, at TCD's discretion, agree a course of action with the User to wind down the Facilities Access and/or Technical and Integration Supports. If at TCD's absolute discretion it considers necessary to do so it may terminate the Agreement pursuant to clause 4.3.

- 2.8 *User's due diligence obligation.* The User is solely responsible for undertaking its own due diligence and quality assurance with respect to all matters arising from or related to this Agreement, the Facilities Access and the Technical and Integration Supports.
- 2.9 *Compliance with Applicable Laws.* Each Party shall be solely responsible for the acts and omission of their Staff and for compliance with all applicable laws relevant to the subject matter of this Agreement.
- 2.10 *Excluded Activities.* The following activities are not included in the Facilities Access and the Technical and Integration Supports:
- (a) any action or remediation caused by an Event of Force Majeure;
 - (b) any actions necessary due to a change in laws;
 - (c) any actions necessary due to New Technology;
 - (d) the presence of foreign objects, including without limitation chemicals and harmful gases in the physical environment affecting the Pervasive Nation Infrastructure, other than as introduced by TCD or the Pervasive Nation Partners; and/or
 - (e) any action by TCD or the Pervasive Nation Partners' at its sole discretion required to address an emergency condition required to protect Pervasive Nation Infrastructure,
- 2.11 *Risk of Loss.* The risk of material loss or damage to any of the User's data, facilities or equipment connected or to be connected to Pervasive Nation Infrastructure shall be borne by the User.
- 2.12 *Excusable Delays.* TCD shall not have any liability or be considered in breach of this Agreement to the extent that performance of such obligations is delayed or prevented by the following Excusable Delays:
- (a) acts or omissions of the User;
 - (b) failure to pay the Access Fees;
 - (c) failure to pay the Support Fees;
 - (d) circumstances arising from or related to the ancillary agreements

TCD shall notify the User of when an Excusable Delay arises and the Parties shall agree an extension to the Term such agreement to be in writing duly signed by TCD and the User.

3. **Payment**

- 3.1 *Payment.* In consideration of receiving Facilities Access and Technical and Integration Supports the User shall pay TCD the Access Fees and Support Fees, and subsistence rates if applicable, in the amount and manner specified in TCD's invoice to the User. All amounts are exclusive of value added tax (if applicable), unless stated otherwise.
- 3.2 Interest shall be automatically applied if payment has not been received within forty five (45) days of receipt of a valid invoice. Interest shall be calculated on a daily basis using an interest rate equal to the European Central Bank main refinancing rate (as at 1 January and 1 July in each year) plus 8 percentage points.

4. **Term & Termination**

- 4.1 *Duration.* This Agreement shall commence on the Commencement Date and end on the End Date, unless terminated earlier or extended in accordance with the terms of this Agreement. The Term of this Agreement may be extended by mutually consent of the Parties, subject to the same or new terms and conditions.
- 4.2 *Termination on change of Purpose.* Any alternation of the Purpose shall require the prior written consent of TCD. In the event of a change of Purpose, TCD reserve the right to terminate this Agreement immediately on notice to the User.
- 4.3 *Termination on notice.* TCD may terminate this Agreement for any reason upon at least 30 days prior written notice to the other Party.
- 4.4 *Termination for cause.* Either Party may terminate this Agreement, at any time, on written notice to the other Party:
- (a) if the other Party is in material breach of its obligations under this Agreement and, where the breach is capable of remedy within thirty (30) days, the other Party has not remedied the breach within thirty (30) days of receiving written notice which specifies the breach and requires the breach to be remedied; or
 - (b) if (i) the other Party becomes insolvent or unable to pay its debts as and when they become due; and (ii) the other Party takes or suffers any similar or analogous action.
- 4.5 *Prime Award terminated.* TCD may terminate this Agreement by written notice to the User if the Prime Award is terminated. TCD shall give the User as much notice of such termination as is reasonably possible.
- 4.6 *Consequences of termination.* On termination of this Agreement for any reason except for material breach by the TCD, the User shall pay to TCD:
- (a) any payment which was due to the TCD prior to the date of termination but which was not paid prior to termination;
 - (b) a proportion of the next payment (if any) falling due after the date of termination reflecting TCD's work prior to the date of termination and any non-cancellable commitments entered into by TCD; and
 - (c) any and all sums due which are non-cancellable and irrevocably committed by TCD as at the date of termination.

5. **Intellectual Property**

- 5.1 Subject to any research agreement that may be concluded between TCD and the User, the terms of which shall supersede these Terms and Conditions,:
- (a) all rights and title in and to Intellectual Property and/or data created solely by the User's Staff in the course of Facilities Access and/or Technical and Integration Supports shall be the sole and exclusive property of the User;
 - (b) all rights and title in and to Intellectual Property created solely by TCD's Staff in the course of supplying Facilities Access and/or Technical and Integration Supports shall be the sole and exclusive property of TCD.

6. **Notification to Irish Government-related Bodies**

- 6.1 *Reporting obligations.* The User acknowledges that as a publicly funded organisation, TCD may be obliged to report on its activities, including those relating to this Agreement to Government-related Bodies.
- 6.2 *Provision of information.* The User hereby consents to information relating to this Agreement being reported to Government-related Bodies providing that any such information shall be kept to the minimum required and shall, except for the name of the User, the amount of the Access Fees and Support Fees, and a non-confidential project title, be marked "confidential" to the extent it comprises Confidential Information.

7. Confidentiality

7.1 *Confidentiality obligations.* Each Receiving Party undertakes:

- (a) to maintain as secret and confidential all Confidential Information obtained directly or indirectly from the Disclosing Party during the Term;
- (b) to use such Confidential Information only for the purposes of this Agreement;
- (c) to disclose such Confidential Information only to those of its Staff, professional advisers and Third Party Vendors pursuant to this Agreement (if any) to whom and to the extent that such disclosure is reasonably necessary for the purposes of this Agreement; and
- (d) to ensure that all those to whom disclosure of or access to such Confidential Information has been given, including its Staff, professional advisers and Third Party Vendors comply with the provisions of this Agreement, and the Receiving Party shall be liable to the Disclosing Party for any breach of this Agreement by any of the foregoing.

7.2 *Exceptions to obligations.* The provisions of Clause 7.1 shall not apply to Confidential Information which the Receiving Party can demonstrate by reasonable, written evidence:

- (a) was, prior to its receipt by the Receiving Party from the Disclosing Party, in the possession of the Receiving Party and at its free disposal; or
- (b) is subsequently disclosed to the Receiving Party without any obligations of confidence by a third party who has not derived it directly or indirectly from the Disclosing Party; or
- (c) is independently developed by the Receiving Party by individuals who have not had any direct or indirect access to the Disclosing Party's Confidential Information; or
- (d) is or becomes generally available to the public through no act or default of the Receiving Party or its Staff.

7.3 *Disclosure in accordance with legal obligations.* To the extent that the Receiving Party is required to disclose any of Disclosing Party's Confidential Information by order of a court or other public body that has jurisdiction over it or under other statutory or regulatory obligations it may do so, provided that, before making such a disclosure the Receiving Party shall, unless it is prohibited from so doing by law:

- (a) inform the Disclosing Party of the proposed disclosure as soon as possible; and
- (b) reasonably cooperate with Disclosing Party's reasonable, lawful efforts to resist, limit or delay such disclosure (at the cost and expense of the Disclosing Party).

7.4 *Freedom of Information Act.* The Parties acknowledges that to the extent either of them is subject to FOIA and the codes of practice issued under FOIA (as may be amended, updated or replaced from time to time), they shall cooperate in relation to responding to requests under FOIA relating to this Agreement.

7.5 *Notice of breach.* Each Party shall give notice to the other Party of any unauthorised use, disclosure, theft or other loss of that other Party's Confidential Information as soon as is practicable after becoming aware of it.

7.6 *Duration of obligations.* The obligations of confidentiality and non-use set out in this Clause 7 shall survive expiration of termination of this Agreement for any reason for a period of 3 years from the date of termination.

7.7 *Non-disclosure agreement / confidential agreement.* The terms of this clause 7 replace and supersede the terms (if any) of any non-disclosure agreement or similar type agreement entered by the Parties in respect of the subject matter of this Agreement.

8. Publication

8.1 Any and all publications resulting from research must include the following reference:

“This publication has emanated from research conducted with the financial support of Science Foundation Ireland (SFI) under the Grant Number 15/RI/3219”.

OR, where the publication has emanated from multiple sources of funding:

“This publication has emanated from research supported in part by a research grant from Science Foundation Ireland (SFI) under the Grant Number 15/RI/3219”.

- 8.2 *Prior consultation.* Each Publishing Party shall submit its proposed publication in writing to the Reviewing Party at least 30 days before submitting it for publication.
- 8.3 *Delay for protection of IP.* If the Reviewing Party believes that delay is needed in order to seek patent or similar protection for any of the Reviewing Party’s Intellectual Property the Reviewing Party may by giving written notice to the Publishing Party require the Publishing Party to delay the proposed publication for a maximum of ninety (90) days or other such time as both Parties may agree, or until any affected Intellectual Property is protected, whichever is the sooner.
- 8.4 *Removal of Confidential Information.* The Reviewing Party may by giving written notice to the Publishing Party require the removal of any of the Reviewing Party’s Confidential Information from the publication.
- 8.5 *Assumed permission.* If the Publishing Party does not receive a written objection from the Reviewing Party within 30 days of submission of notification of publication then permission to publish shall be deemed to have been given.

9. **Indemnities and Liabilities**

- 9.1 *Indemnity.* The User hereby agrees to indemnify, hold harmless and defend TCD and the Pervasive Nation Partners’, their servants and agents and to keep it fully and effectually indemnified against any and all actions, proceedings, claims, demands, costs, damages, expenses and other liability or any kind or nature, whether asserted by third parties or otherwise, arising directly or in-directly and out of or in connection with:-
- (a) the Facilities Access;
 - (b) the Technical and Integration Supports;
 - (c) use by the User or a sublicensee thereof of any results and/or findings and/or discussions with TCD and/or Pervasive Nation Partners’ Staff arising from the Facilities Access, the Technical and Integration Supports and this Agreement;
 - (d) the manufacture, use, sale or other disposal by the User or a sublicensee thereof of any product, process, report or findings deriving directly or indirectly from the Facilities Access, the Technical and Integration Supports and this Agreement or discussions with TCD and/or Pervasive Nation Partners’ Staff in connection with same; and/or
 - (e) any injury to or the death of any person and all damage to any property moveable or immovable (including the Pervasive Nation Infrastructure) caused by or arising from any act, neglect or default of the User or any Staff, or invitees of the User.
- 9.2 *Cap on Liability.* If despite the disclaimer of liability contained in this Agreement, TCD is held liable for any reason in respect of the Facilities Access and/or Technical and Integration Supports, or in any other way in connection with or arising out the this Agreement, TCD’s maximum liability to the User shall be the Total Fees received by TCD from the User.
- 9.3 *Non-excludable Liability.* Nothing in this Agreement excludes or limits any Party’s liability for death or personal injury caused by that Party’s negligence, for fraud or fraudulent misrepresentation or for any other liability to the extent it cannot be excluded or limited under applicable law.

10. **Insurance**

- 10.1 *User’s Staff.* The User will ensure that all User Staff having Facilities Access and if applicable availing of the Technical and Integration Supports, are covered by the User’s professional indemnity, employer’s liability and

public liability insurance, which shall extend to cover any work carried out by them at any location in respect of this Agreement.

10.2 *Compliance with Insurance.* The User will not do or permit to be done anything with whereby any of its or TCD's policies of insurance in respect of the Access Facilities or the Technical and Integration Supports may become void or voidable or whereby the rate of the premium may be increased. The User shall immediately repay on demand to TCD all expenses incurred by TCD in the renewal of any such policies rendered necessary by a breach of this obligation. The User shall at all times comply with all requirements of TCD's insurers as notified by TCD.

11. **Dispute Resolution**

11.1 *Internal escalation.* The Parties shall make every reasonable effort to resolve all issues fairly by negotiation.

11.2 *Mediation.* In the event that the dispute has not been settled within sixty (60) days, it shall be submitted for mediation by a mediator or other appropriate independent third party expert agreed by the Parties or, in default of agreement, appointed by the Centre for Dispute Resolution in Dublin. The cost of any such mediator or expert shall be borne equally by the Parties.

11.3 *Injunctive relief.* Nothing in this Clause 11 shall prevent or delay a Party from applying to a court of competent jurisdiction for the purposes of seeking injunctive relief provided that there is no delay in the prosecution of that application.

12. **Force Majeure**

(a) Neither Party shall have any liability or be deemed to be in breach of this Agreement for any delays or failures in performance of this Agreement (except payment obligations) that result from any Event of Force Majeure. The Party affected by an Event of Force Majeure shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so.

(b) If a Party is prevented from performing a material obligation under this Agreement by any Event of Force Majeure for a continuous period of 30 days or more, then the other Party shall be entitled to terminate this Agreement with immediate effect by giving notice in writing. Neither Party shall be liable to the other for such termination.

13. **General**

13.1 *Amendments.* The User accepts that TCD may alter the terms of this Agreement at any time and for any reason by notifying the User.

13.2 *Independent contractors.* The relationship of the Parties shall be that of independent contractors. This Agreement is not intended to, and does not, create any contract of employment or other legal relationship between the Parties.

13.3 *Assignment.* Neither Party may assign, novate, mortgage, charge, or otherwise transfer any or all of its rights and obligations under this Agreement without the prior written agreement of the other Party.

13.4 *Subcontracting.* TCD may at its discretion sub-contract any of its obligations under the Agreement. TCD shall be responsible for the work of any sub-contractor and for such sub-contractor's compliance with the provisions of this Agreement.

13.5 *Entire agreement.* This Agreement, including its Schedules, sets out the entire agreement between the Parties relating to its subject matter and supersedes all prior oral or written agreements, arrangements or understandings between them relating to its subject matter.

13.6 *Notices.* All notices given by either Party to the other pursuant to this Agreement shall be provided in writing by and may be delivered by pre-paid post, registered courier or by hand to the Parties Representatives. Any such notice, if so given, shall be deemed to have been served:

(a) if sent by hand, when delivered;

(b) if sent by post or courier, one business day after posting.

Any notice regarding a change to these Terms and Conditions shall be notified to the User by way of email to the User.

- 13.7 *Severability.* If the whole or any part of a provision of this Agreement is or becomes illegal, invalid or unenforceable under the law of any jurisdiction, that shall not affect the legality, validity or enforceability under the law of that jurisdiction of the remainder of the provision in question or any other provision of this Agreement and the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Agreement.
- 13.8 *Waiver of rights.* If a Party fails to enforce, or delays in enforcing, an obligation of the other Party, or fails to exercise, or delays in exercising, a right under this Agreement, that failure or delay will not affect its right to enforce that obligation or constitute a waiver of that right. Any waiver of any provision of this Agreement will not, unless expressly stated to the contrary, constitute a waiver of that provision on a future occasion.
- 13.9 *Costs.* Each Party shall pay its own costs in connection with or incidental to the preparation, negotiation and execution of this Agreement.
- 13.10 *Counterparts and Signatures.* This Agreement may be executed in counterparts all of which taken together shall constitute one single agreement between the Parties. Transmission of an executed counterpart of this Agreement by fax or e-mail (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this Agreement.
- 13.11 *Announcements.* Neither Party shall make any press or other public announcement concerning any aspect of this Agreement, or make any use of the name of the other Party in connection with or in consequence of this Agreement, without the prior written consent of the other Party.
- 13.12 *Law and jurisdiction.* This Agreement and any non-contractual obligations arising out of, or in connection with, this Agreement shall be governed by and construed in accordance with the laws of Ireland and each Party agrees to submit to the exclusive jurisdiction of the courts of Ireland.
- 13.13 *Construction.* In this Agreement, unless the context requires otherwise:
- (a) the headings are used for convenience only and shall not affect its interpretation;
 - (b) references to persons shall include incorporated and unincorporated persons; references to the singular include the plural and vice versa; and references to either gender include the other and the neuter;
 - (c) any reference to persons includes their successors, personal representatives and permitted assigns;
 - (d) references to Clauses and Schedules mean clauses of, and schedules to, this Agreement;
 - (e) any reference to a provision of any constitution, statute, statutory instrument, order, by-law, directive, regulation or decision of any governmental entity and statutory instruments, regulations or orders made thereunder or deriving their validity therefrom, and any judicial or administrative interpretation of any of the foregoing, shall in each case be construed, as amended, revised, modified or replaced from time to time;
 - (f) where the word “including” is used it shall be understood as meaning “including without limitation”;
 - (g) time shall be construed by reference to time in Ireland;
 - (h) ‘this Agreement’ means the Clauses of, and the Schedules to, this Agreement, all of which shall be read as one document; and
 - (i) ‘business day’ shall be construed as a reference to a day (other than a Saturday or Sunday) on which the banks are generally open for business in Ireland.

Schedule 1 Acceptable Use Policy version 1.1

Pervasive Nation Infrastructure is the name given to the research infrastructure in all or part consisting of a collection of internet of things (“IoT”) sensors, actuators, networking and sensor data hosting equipment used to support the communication, networking and data requirements of organisations who wish to perform research, test and validation activities of IoT to a technology readiness level of 7.

Users are all organisations who have been granted access to the Pervasive Nation Infrastructure.

1. Access Criteria

- a. Pervasive Nation Infrastructure is accessible to three categories of Users: education institutes, governmental agencies and industry.
- b. Access may be provided to individual private citizens on a case-by-case basis.
- c. Pervasive Nation Infrastructure is accessible to Users for academic and research and innovation purposes only.
- d. **Users are not permitted to use Pervasive Nation Infrastructure to generate any commercial revenue.**
- e. Users are those organisations/individuals that the Pervasive Nation Governance Board has decided are eligible to connect to Pervasive Nation Infrastructure.

2. Disclaimer

The User acknowledges and agrees that the Pervasive Nation Infrastructure is accessible “as is” and without any representations or warranties (express, implied or statutory) of any kind including:

- a. those regarding operation, functionality, durability, merchantability, fitness for a particular purpose and non-infringement of any third party’s rights; or
- b. that the Pervasive Nation Infrastructure will meet the User’s needs; and
- c. that any results or outcome shall be achieved or achievable.

The User acknowledges that it is accessing the Pervasive Nation Infrastructure entirely at its own risk and that TCD and any other party hosting Pervasive Nation Infrastructure shall not be liable for any loss or damage, whether direct, indirect, consequential, incidental, special, punitive or otherwise, arising from any defect, delay, error or failure to perform under, or arising from or relating to the Pervasive Nation Infrastructure whether in contract, negligence or otherwise, even if TCD and any other party hosting Pervasive Nation Infrastructure has been advised of the possibility of such damages.

3. Integrity of Use

- a. The User shall ensure that its officers, employees, contractors, servants, agents, researchers and registered students (“Staff”) use the Pervasive Nation Infrastructure in an acceptable manner in compliance with good research practice and ethics.
- b. Access to Pervasive Nation Infrastructure is conditional on the User complying, and ensuring the User’s Staff comply with:
 - i. the terms of any agreement pursuant to which the User is granted access to the Pervasive Nation Infrastructure; and
 - ii. all Pervasive Nation Governance Board’s instructions and operating procedures for the Pervasive Nation Infrastructure, including but not limited to this Acceptable Use Policy and the Privacy and Data Protection Policy.
- c. Users are not permitted to use Pervasive Nation Infrastructure for illegal or unlawful activities.
- d. Users granted access to the Pervasive Nation Infrastructure do so at their own risk.
- e. Users must not:
 - i. develop, use or disseminate malicious programs or copy, modify, disassemble, reverse engineer, decompile or in any other way interfere with any software provided as part of Pervasive Nation Infrastructure;
 - ii. use any automated means, including without limitation, agents, robots, scrapers, spiders, or scripts to access, monitor or copy any part of Pervasive Nation Infrastructure;
 - iii. seek to gain unauthorised access to the resources of any party;

- iv. use the Pervasive Nation Infrastructure in a manner that adversely affects the operation of Pervasive Nation Infrastructure or jeopardises, inconveniences or disturbs the use or performance for any party;
 - v. waste resources (people, capacity, computer);
 - vi. alter the Pervasive Nation Infrastructure, except where expressly permitted to do so pursuant to a written agreement with TCD;
 - vii. Access other User's data or restricted portions of Pervasive Nation Infrastructure;
 - viii. damage the software or hardware components of the Pervasive Nation Infrastructure.
- f. The Pervasive Nation Infrastructure is shared by multiple authorised Users, Users must therefore avoid capacity and performance degrading usage of the system. Users are not permitted to use the Pervasive Nation Infrastructure in any way that:
- i. interferes with the Pervasive Nation Infrastructure in an unauthorised way;
 - ii. destroys the integrity of computer-based information;
 - iii. compromises the privacy of any party;
 - iv. creates or transmits any offensive, obscene or indecent images, data or other material, or any data capable of being resolved into obscene or indecent images or material;
 - v. creates or transmits defamatory or discriminatory material;
 - vi. transmits material in such a way as to infringe the copyright of any party, or infringes any party's copyright, trademark, confidence, privacy or other intellectual property rights;
 - vii. transmits unsolicited commercial or advertising material, or involves the transmission of IoT junk, chain letters, unsolicited "spamming", pyramid schemes, unsolicited advertising or promotional material, or any other form of unauthorised or unsolicited and unwelcome communication;
 - viii. makes available any material that contains viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment, including but not limited to in connection with Pervasive Nation Infrastructure;
 - ix. violates any applicable laws or regulations (including without limitation data protection legislation) and any practices and policies as set out from time to time by TCD.

4. User Organisations

- a. Users are only allowed to connect to sites directly connected to Pervasive Nation Infrastructure – i.e. they are not allowed to transit Pervasive Nation Infrastructure into other networks.
- b. Users are forbidden to extend access to Pervasive Nation Infrastructure.
- c. Users shall be solely responsible for their use of the Pervasive Nation Infrastructure. Users are also solely responsible for any and all use of Pervasive Nation Infrastructure that has been authorised for them.
- d. It is the responsibility of each User to:
 - i. restrict traffic according to their own requirements;
 - ii. secure themselves against the misuse of the Pervasive Nation Infrastructure; and
 - iii. take all steps to ensure compliance with the conditions of this Acceptable Use Policy and to ensure that unacceptable usage of Pervasive Nation Infrastructure does not occur; and
 - iv. keep all sites clean and tidy and free from hazards,

The discharge of these responsibilities must include informing all Users Staff of their obligations in this respect.

5. Withdrawal of Use

- a. At the discretion of the Pervasive Nation Governance Board, Pervasive Nation Infrastructure access may be withdrawn from the User in the following way:
 - i. Indefinite withdrawal of access: shall take place where there is a violation or a series of violations of the terms and conditions of the Acceptable Use Policy and/or the Privacy and Data Protection Policy. At the Pervasive Nation Governance Board's discretion access may be withdrawn on immediate notice to the User or after appropriate warnings have been given by the Pervasive Nation Governance Board. Restoration may be considered where the Pervasive Nation Governance Board is satisfied that the appropriate steps have been taken by the User to adhere to the Acceptable Use Policy and/or the Privacy and Data Protection Policy.
 - ii. Suspension of access: where a violation of the Acceptable Use Policy and/or the Privacy and Data Protection Policy causes material degradation of the service to other Users, the Pervasive Nation Governance Board may on notice immediately suspend the User's access until such time as the cause of the degradation of service to other Users has been removed.

- iii. Applicable Terms: in accordance with the terms of the agreement pursuant to which the User is granted access to the Pervasive Nation Infrastructure.
- b. The User shall immediately notify the Pervasive Nation Governance Board of any violation of the Acceptable Use Policy and/or the Privacy and Data Protection Policy.

5. Governance Board

- a. Pervasive Nation is overseen by the Pervasive Nation Governance Board.
- b. The responsibility for interpreting these terms lies with the Pervasive Nation Governance Board. The Pervasive Nation Governance Board reserves the right to review and modify these conditions from time to time.

Schedule 2 Privacy and Data Protection Policy Statement

1. General

The Pervasive Nation Data Protection Policy Statement is a commitment to protect the rights and privacy of individuals in accordance with the data protection legislation. This policy is as per the Data Protection Policy of Trinity College Dublin.

2. What personal data do we collect?

We retain two types of information:

- *Non-Personal Data.* We gather data from end-points connected to the Pervasive Nation Infrastructure, and statistical and other analytical information from the network and from visitors to the Pervasive Nation portals and websites.
- *Personal Data.* This is data that identifies you, your project or organisation and can be used to identify or contact you and may include your name, contact address, email address, telephone number.

3. Purposes for which we hold your Information.

Non-Personal Data. We use the Non-Personal Data gathered from visitors to Pervasive Nation Infrastructure in an aggregate and anonymised form to get a better understanding of where our visitors come from and to help us better design, troubleshoot, evolve and organise the Pervasive Nation Infrastructure.

Personal Data. We will process any Personal Data you provide to us for the following purposes:

- to provide you with Pervasive Nation Infrastructure services that you have requested
- to contact you if required in connection with your request or to respond to any communications you might send to us.

4. Disclosure of Information to Third Parties

We will not disclose your Personal Data to third parties unless you have consented to this disclosure or unless the third party is required to fulfil your request (in such circumstances, the third party is bound by similar data protection requirements). We will disclose your Personal Data if we believe in good faith that we are required to disclose it in order to comply with any applicable law, a summons, a search warrant, a court or regulatory order, or other statutory requirement.

5. Security

The nature of the internet is such that we cannot guarantee or warrant the security of any information you transmit to us via the internet. No data transmission over the internet can be guaranteed to be 100% secure. However, we will take all reasonable steps (including appropriate technical and organisational measures) to protect your Personal Data.

6. Changes to the Pervasive Nation Privacy Statement

Any changes to this Privacy and Data Protection Policy Statement will be posted on the Pervasive Nation website so that you are always aware of what information we collect, how we use it, and under what circumstances, if any, we disclose it.