

SOFTWARE LICENSE, MAINTENANCE AND HOSTING AGREEMENT

FOR JCAD LACHS & CORE

This Software License, Maintenance and Hosting Agreement is made on the [] day of [] 20

BETWEEN

The Licensor: **J C Applications Development Limited** registered in England and Wales under company number 07000813 and whose registered office is at Manor Barn, Hawkley Road, Hawkley, Liss, GU33 6JS

AND

The Licensee:

The terms and conditions of this Software License, Maintenance and Hosting Agreement are annexed and include the Schedule to the Agreement and any Addendum (if any). By signing below you are confirming that you have read and understood the terms and conditions and that they are ACCEPTED:

By the Licensee..... Name
(Authorised Signature)

Title: Date:

The Licensor Name
(Authorised Signature)

Title: Date:

SOFTWARE LICENSE, MAINTENANCE AND HOSTING AGREEMENT

PARTIES

This Software License, Maintenance and Hosting Agreement is made on the date set out on the cover page of this Agreement.

J C Applications Development Limited registered in England and Wales under company number 07000813 and whose registered office is at Manor Barn, Hawkley Road, Hawkley, Liss, GU33 6JS (**the "Licensor"**) (which expression shall include any holding company, subsidiaries, agents and assigns and where appropriate the Licensor in its capacity as host in respect of the Hosting Arrangement)

AND

the Licensee details of which are set out on the cover page of this Agreement (**the "Licensee"**).

BACKGROUND

The Licensor is the sole and exclusive owner of the Software referred to in the Schedule. Upon execution of this Agreement by the Licensee, the Licensee accepts a non-exclusive, non-transferable License to Use the Software on the Server. Upon execution of this Agreement by the Licensor, the Licensor grants to the Licensee a non-exclusive, non-transferable license as specified above and undertakes to maintain the Software upon the terms and subject to the conditions contained in this Agreement.

HOSTING ARRANGEMENT

The Licensor agrees to host, via an outsourced service provider under a service level agreement, a website allowing the Licensee to make use of the Software on either a shared managed or a dedicated Server. The Licensee wishes the Licensor to host its Website on the shared manager or dedicated Server and to connect to the internet via such Server upon the terms and subject to the conditions contained in this Agreement ("the Hosting Arrangement").

INTERPRETATION

BST means British Summer Time being Greenwich Mean Time + 1 hour for the period of each year from late March to late October

GMT means Greenwich Mean Time

Hosting Fee means the fee set out in the Schedule to this Agreement in respect of hosting the Website on the Server

Intellectual Property Rights means copyright, rights in inventions, patents, know-how, trade secrets, trade marks and trade names, service marks, design rights, rights in get-up, database rights, chip topography rights, and any other intellectual property rights (whether registered or unregistered) and all applications for any of the foregoing, anywhere in the world;

License means the license granted under the terms of this Agreement

License Fee means the initial and subsequent annual fees set out in the Schedule to this Agreement including the Maintenance and Hosting Fee

Maintenance means maintenance of the Software as detailed in clause 4 of this Agreement

Maintenance Release means release of software that adds functionality or otherwise amends or updates the Software but which does not constitute a New Version

Maintenance Software means the maintenance software defined in clause 5 (a) of this Agreement

New Version means any new version of the Software which from time to time is publicly marketed by the Licensor for purchase in the course of its normal business activity which upgrades the previous version of the Software

Term means an initial period of thirty six months from the date of this Agreement ("the Initial Term") and thereafter for successive periods of twelve months unless terminated by either party in accordance with the provisions of this Agreement

Software means the Software referred to in the Schedule to this Agreement

Server means the shared managed or dedicated server computer connected to the world wide web and upon which the Website will be hosted

Use means the use as defined in clause 2 (d) below

Users means the number of named users authorised by the Licensor to use the Software as detailed in the Schedule

Website means the Licensee's website which the Licensee wishes the Licensor to host on the Server in accordance with the Hosting Arrangement

Unless the context otherwise requires:

- (a) references to the Licensor and the Licensee include their permitted successors and assigns
- (b) references to statutory provisions include those statutory provisions as amended or re-enacted
- (c) references to one gender includes a reference to the other genders; and
- (d) references to "including" or "includes" shall be deemed to have the words "without limitation" inserted after them.

The headings of the terms and conditions herein contained are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of any of these terms and conditions of this Agreement.

1. Rights

Grant of the Software License entitles the Licensee to:

- (a) Use the Software for the Term together with the necessary documentation to Use the same
- (b) Use the Software via the Website on the Server for itself and the specified number of Users detailed in the Schedule)
- (c) Use the Software in accordance with the provisions of Clause 2 of this Agreement
- (d) Maintenance and support services as specified in clause 4 of this Agreement

- (e) receive notification of the Licensor's bulletin reports of errors and "patches" and the benefit of any Maintenance Release
- (f) receive information on any New Version together with details of the cost of upgrading to such New Version

2. Use of Software

- (a) Upon execution and return of this Agreement and receipt by the Licensor of the initial payment detailed in the Schedule the Licensor shall allow the Licensee access to the Software and the Website on the Server for Use on the Server by the Licensee together with the necessary documentation to Use the same.
- (b) The Software shall be used by the Licensee only for the Licensee's own data processing and that of the Licensee's subsidiaries and shall not be used to provide a data processing service to any third party whether by trade or otherwise. Database size is limited to 20GB.
- (c) The Licensee may not transfer the Software to another system or server except with the consent in writing of the Licensor.
- (d) For the purposes of this Agreement "Use" shall mean and include:
 - (i) utilisation of the Software by copying transmitting or loading the same into the temporary memory (RAM) or installing into the permanent memory (e.g. hard disk, CD ROM or other storage device) of the Server for the processing of instructions or statements contained in such Software;
 - (ii) copying the Software which is in machine-readable form for Use by the Licensee on the Server for the purposes only of understanding the contents of such machine-readable material and for back-up provided that no more than one (1) back up copy will be in existence under any License at any one time without prior written consent from the Licensor or as otherwise permitted by the applicable law;
 - (iii) merging the whole or any part of the Software in machine-readable form into another software program;
 - (iv) storing the whole or any part of the Software on the Server or other storage unit or disk; and
 - (v) utilising (but not copying) the instructional and/or operational manuals relating to the Software.

3. License Fee and Maintenance Charges

- (a) The License Fee specified in the Schedule is payable annually in advance unless otherwise agreed in writing by the Licensor and will increase by 8% at the end of the Initial Term and thereafter annually on the anniversary of the commencement date of this Agreement. Such revised fee shall take effect automatically on expiry of the Initial Term and thereafter annually on the anniversary of the commencement date of this Agreement unless and until the Licensee has exercised its right to terminate this Agreement in accordance with the provisions set out in clause 13 of this Agreement. Maintenance Releases will be provided by the Licensor as part of the annual maintenance charge which for the avoidance of doubt does not include any New Version. The Licensee will be entitled to purchase the New Version from the Licensor. On receipt of an order from the Licensee, such additional charge for the New Version shall become payable within thirty (30) days of release. New Version upgrades are not mandatory and the Licensor will continue to support the current version + 1 and Maintenance Releases as part of this agreement.
- (b) An additional License and Maintenance Agreement will be required and an additional Fee is payable for additional named user which the Licensee wishes to Use the Software. In the event that the System is inoperable or requires or is under repair, the Licensee shall report the same to the Licensor for permission to Use the Software on a back-up system at no extra charge, until the System is operational.
- (c) The License fee includes the Hosting Fee and Maintenance charges but does not include the costs of prerequisite software or equipment (except Sybase where applicable), sub-application fees, data conversion charges or fee for any New Version of the Software.
- (d) The License Fee specified in the Schedule is payable annually in advance upon receipt of the Licensor's invoice unless otherwise agreed in writing by the Licensor. No Maintenance shall be given until payment has been received by the Licensor of the annual License Fee.
- (e) The License Fee may be subject to review as specified in (a) above as well as to additional charges where any of the details specified in the Schedule change.
- (f) Maintenance in terms of this Agreement are based on services provided during normal working hours (0900–1700 GMT/BST) Monday to Friday, excluding national holidays in the United Kingdom. Additional or out-of-hours maintenance is subject to a higher charge.
- (g) All charges referred to are exclusive of and net of any taxes, duties or such other additional sums including, but without prejudice to the foregoing generality, value added or purchase tax, excise tax, tax on sales, property or use; import or other duties, whether levied in respect of this Agreement, the Software, its Use or otherwise.
- (h) The Licensor reserves the right to charge interest on invoices that are more than 30 days overdue, at the rate of 4% per cent over Barclays Bank base rate from the due date until the total invoice sum has been paid.
- (i) Failure to make payment when due may result in suspension/disconnection of the hosting service. A reconnection fee as specified by the Licensor from time to time, will be payable thereafter for resumption of service upon receipt of the overdue payment.

4. Maintenance

4.1 Maintenance provided under this Agreement shall include:

- (a) help desk facilities between 0900 and 1700 GMT/BST Monday to Friday (excluding national holidays in the United Kingdom). The help desk telephone number is +44 01730 712020, email is support@jcad.co.uk. The help desk facility will function in the following terms:
 - (i) The Licensor will endeavour to acknowledge a call identifying a possible error or raising a query immediately. If the Licensor is unable to acknowledge the call immediately then it will endeavour to acknowledge the call the same working day but failing that, within twenty four hours of the time of receipt. At the time of acknowledgement the query/problem will be resolved or a schedule planned for resolution.
 - (ii) At the request of the Licensor the Licensee will provide to the Licensor details of the query or possible error in writing. Any delay in providing such confirmation may lead to a delay in the resolution of the error. Contact with prerequisite software suppliers required for the resolution of a Software query or problem with the Software, will be undertaken by the Licensor.
- (b) maintenance will be provided by the Licensor if specified in the Schedule and where appropriate in the event telephone maintenance does not resolve a Software problem.
- (c) out-of hours maintenance shall, only where specified in the Schedule, be provided by the Licensor.
- (d) correction of critical errors or assistance to overcome problems. The Licensor may, in its sole discretion, correct errors by "patch" or by Maintenance Release.
- (e) information on availability of New Versions. New Versions purchased or any Maintenance Release provided will be installed by the Licensor. If the Licensor makes a visit to the Licensee for purposes not already specified in the Schedule then the Licensee will be charged at the rate specified by the Licensor from time to time for this service.
- (f) training if specified in the Schedule will be provided at the additional cost specified in the Schedule.

4.2 Maintenance not Included in the License Fee and which shall be charged except includes but is not limited to:

- (a) maintenance of other software, accessories, attachments, machines, systems or other devices not supplied by the Licensor nor listed in the Schedule.
- (b) rectification of lost or corrupted data arising for any reason other than the Licensor's own negligence.
- (c) maintenance rendered more difficult because of any changes, alterations, additions, modifications or variations to the Software or the Website or operating environment.
- (d) attendance to faults caused by using the Software outside design or other specifications or outside the provisions laid down in any documentation or manual supplied with the Software; or caused by operator error or omission.
- (e) diagnosis and/or rectification of problems not associated with the Software.

4.3 The Licensee will make available at its own expense whatever skills and equipment that may be required in order to determine the parameters of any query or problem.

4.4 The Licensor takes no responsibility for the Licensee using the Software incorrectly or in any manner that does not accord with instructions provided by the Licensor or for queries/problems arising from malfunctions, incorrect settings and such like in hardware or in associated software, including but not limited to operating systems, graphical user interfaces, network software or other applications which have an effect on the functioning of the Software as accepted. Despite this the Licensor will use best efforts to assist in resolving such queries/problems. Time spent on such problems will be charged to the Licensee at the Licensor's rates which are current at the time.

5. Software Maintenance and Maintenance Release

(a) The Licensor offers Maintenance of the Software and Maintenance Releases in accordance with the provisions of this Agreement. As part of such Maintenance, the Licensor may provide maintenance or diagnostic software (the "Maintenance Software") and in such an event the Maintenance Software and any Maintenance Release shall be subject to the terms of the License granted in accordance with Clause 1 above but to the extent of maintenance activities only.

(b) Where the Software is dependent on another software or other products, the Licensee cannot have Maintenance services in respect of the Software without also having such services with respect to the software or other product upon which it depends.

(c) The Licensor shall charge for services requested by the Licensee which are not specifically covered by this Agreement.

6. Licensee's Undertakings

(a) The Licensee undertakes that it and any of its named Users will not perform any of the acts referred to in this sub-clause (a) except to the extent and only to the extent permitted by the law applicable to the Licensee as a lawful user (i.e. a party with an express right to use) of the Software and only then for the specific limited purposes stated in such applicable law or under the terms of this Agreement. The Licensee undertakes:

- (i) not to copy the Software (other than for normal operation on the Website and as specified in Clause 2 above) or the Maintenance Software or Maintenance Release (other than for normal maintenance activities) nor otherwise reproduce the same provided that the Licensee may copy the Software for back-up purposes or incidentally, in the course of converting the Software in accordance with 6(a)(iii) below;
- (ii) not to translate, adapt, vary, modify the Software, Maintenance Software or Maintenance Release;
- (iii) not to disassemble, decompile or reverse engineer the Software, Maintenance Software or Maintenance Release without the prior written permission of the Licensor.

In addition, the Licensee undertakes:

- (b) to follow all reasonable instructions given by the Licensor from time to time with regard to the use of the Software.
- (c) to permit the Licensor, at all reasonable times and at the Licensor's expense, to verify that the use of the Software is within the terms of the License.
- (d) to maintain accurate and up-to-date records of Users the number and location of all copies of the Software, Maintenance Release and Maintenance Software.
- (e) to supervise and control Use of the Software and Maintenance Software and any Maintenance Release in accordance with the terms of this Agreement.
- (f) to reproduce and include the copyright notice of the Licensor on all and any copies, whether in whole or in part, in any form, including partial copies or modifications of the Software Maintenance Software and Maintenance Release.
- (g) not to provide or otherwise make available the Software, Maintenance Software or Maintenance Release in whole or in part (including but not limited to program listings, object and source program listings, object code and source code), in any form to any person other than the Licensee's licensed Users without prior written consent from the Licensor.
- (h) within fourteen (14) days after the date of termination or discontinuance of this Agreement for whatever reason (other than with respect to maintenance only), to return or destroy (as the Licensor shall instruct) the Software and, in the event of termination of maintenance, the Maintenance Software and any Maintenance Release, all copies, in whole and in part, in any form including partial copies or modifications of the Software or Maintenance Software or Maintenance Release made in connection with this Agreement and all documentation relating thereto and to furnish the Licensor with a certificate, certifying that the same has been done, unless the Licensee has obtained the Licensor's prior written authorisation to retain one copy for archive purposes only.

7. Specific Hosting Conditions and Undertakings

The Licensee undertakes:

- (a) to pay the fees and charges specified herein in accordance with the Licensor's payment terms.
- (b) to comply with the Licensor's service level agreement in relation to hosting, a copy of which will be provided upon request, and acknowledges and agrees that the Licensor or its outsourced provider are entitled at any time and without notice to remove the Website from the Server and/or bar access to the same in the event of any violation or alleged or suspected violation of such service level agreement or if otherwise authorised so to do by a competent law enforcement agency.
- (c) to comply with generally accepted principles of internet usage (whether governed by the laws of any jurisdiction or not) including:
 - (i) refraining from sending "spam" mail (i.e. unsolicited mass communications);
 - (ii) never sending mail bombs; trojan horses, viruses or other disruptive programs or devices;
 - (iii) never pirating or otherwise illegally copying software or other proprietary material;
 - (iv) never violating the security of any Website or engaging in unauthorised decryption of protected material.

8. Specific Responsibilities of Licensee

- (a) The Licensee is solely responsible for the accuracy, legality, currency and compliance of its own material and Website and will be solely liable for false, misleading, inaccurate, infringing or other actionable material contained or referred to therein.
- (b) The Licensee is solely responsible for maintaining the confidentiality and security of its internet account and usage including use of its unique logon ID.
- (c) The Licensee acknowledges and agrees that the Licensor may be required by a law enforcement agency to monitor Website content and traffic and if necessary give evidence of the same together with use of the logon ID to support or defend any dispute or actionable cause or matter which arises in relation to the same.

9. Warranty

- (a) The Licensee acknowledges that software in general is not free of minor errors and agrees that the existence of such minor errors shall not constitute a breach of this Agreement.
- (b) In the event that the Licensee discovers a material error which substantially affects the Licensee's use of the same and notifies the Licensor of the error within 90 days from the date of this License (the "warranty period") the Licensor shall at its sole option either refund the License Fee or use all reasonable endeavours to correct by patch or Maintenance Release (at its option) that part of the Software which does not so comply PROVIDED THAT such non-compliance has not been caused by any modification, variation or addition to the Software not performed by the Licensor or caused by its incorrect use, abuse or corruption of the Software or by use of the Software with other software or on equipment with which it is incompatible.
- (c) To the extent permitted by the applicable law, the Licensor disclaims all other warranties with respect to the Software, Maintenance Software and any Maintenance Release, either express or implied, including but not limited to any implied warranties of merchantability or fitness for any particular purpose. The Licensee is responsible for ensuring that the Software is suitable for the Licensee's business requirements. The Licensor cannot be responsible for the information transmitted or received by the Licensee in the course of using the Software, Maintenance Software or Maintenance Release or the quality and accuracy of the Licensee's content.
- (d) The Licensor warrants that there are no disabling programs or devices in the Software.

10. Licensor's Liability

- (a) The Licensor shall not be liable to the Licensee for any loss or damage whatsoever or howsoever caused arising directly or indirectly in connection with this Agreement, the Software, the Maintenance Software, any Maintenance Release, its Use or application, Maintenance or the connectivity to the internet, the hosting, the Website, Server or otherwise, except to the extent to which it is unlawful to exclude such liability under the applicable law.
- (b) Notwithstanding the generality of (a) above, the Licensor expressly excludes liability for consequential loss or damage which may arise in respect of the Software, the Maintenance Software and any Maintenance Release its Use, damage or corruption of the Website other software or data or in respect of other equipment or property, or for loss of profit, business, revenue, goodwill or anticipated savings.
- (c) In the event that any exclusion contained in this Agreement shall be held to be invalid for any reason and the Licensor becomes liable for loss or damage that may lawfully be limited, such liability shall be limited to 3 (three) times the annual Maintenance charge.
- (d) The Licensor does not exclude liability for death or personal injury to the extent only that the same arises as a result of the negligence of the Licensor, its employees, agents or authorised representatives.

11. Exclusion of Warranties and Liability in respect of Hosting Arrangement

- (a) The Licensor does not warrant that the hosting service or the Server will be continuously available but will use its reasonable endeavours to keep downtime to a minimum.
- (b) The Licensee accepts the hosting service and Server with any faults or failings and without any representation, warranty or guarantee whatsoever, whether express or implied, including without limitation any implied warranty of accuracy, completeness, quality, continuity of service, connectivity, merchantability, fitness for a particular purpose or non-infringement.

12. Copyright, Patents, Trade Marks and Other Intellectual Property Rights

- (a) The Licensee acknowledges that any and all of the copyright, patents, trade marks, and other Intellectual Property Rights subsisting in or used in connection with the Software and the Support Software and any Maintenance Release including the manner in which it is comprised, compiled, presented or appears ("look and feel") and all information, documentation and manuals relating thereto are the property of the Licensor and the Licensee shall not during or at any time after the expiry or termination of the Agreement in any way question or dispute the ownership by the Licensor of any such rights.
- (b) The Licensee shall not during or after the expiry or termination of this Agreement, without the prior written consent of the Licensor or to the extent only permitted by the applicable law, abuse or permit the abuse of such Intellectual Property Right or use or adopt any trade mark, trade name or commercial designation that includes or is similar to or may be mistaken for the whole or any part of any trade mark, trade name or commercial designation used by the Licensor.
- (c) The Licensee undertakes not to reproduce, adapt, translate, arrange or make available to any third-party, either directly or indirectly, any part of the Software or the Support Software or any Maintenance Release (including any electronic materials necessary for its operation) except to the extent that and for so long as the Licensee is expressly permitted to do so in accordance with this Agreement, or as permitted by any mandatory provisions of law, and undertakes to take all necessary steps to prevent access to the Software or the Support Software or the Maintenance Release by any person except those of its authorised personnel/employees who have access for the purposes permitted by this Agreement.
- (d) Notwithstanding other provisions of this clause and irrespective of whether or not copyright in the Software or Support Software or any Maintenance Release is owned by the Licensor, the Licensee shall not, other than as expressly permitted in this Agreement, extract or re-utilise the Software or Support Software or Maintenance Release (or any part thereof) for any commercial purpose including but not limited to trading, reselling or redistributing the Software or Support Software or Maintenance Release.
- (e) The Licensee acknowledges that civil and criminal penalties may be incurred in the event of any infringement of the copyright and/or other rights in relation to the Software or the Support Software or the Maintenance Release, and that any such infringement by the Licensee may result in incalculable damage and/or loss to the Licensor, and accordingly agrees that, in addition to any other right or remedy of the Licensor, the Licensor shall be entitled to immediate injunctive relief to restrain any actual or apprehended infringement thereof. The Licensee undertakes to indemnify

the Licensor in full, against all loss, damage, costs and expenses (including loss of profit) which may be incurred by the Licensor by reason of any such infringement by the Licensee.

13. Indemnity

(a) The Licensor undertakes to defend the Licensee against any action or claim that the use or possession of the Software, or any part of it infringes the Intellectual Property Rights of any third party (IPR Claim) and shall indemnify the Licensee against any losses, damages and costs only insofar as they are incurred by the Licensee as a result of any IPR Claim and which are agreed in settlement of any IPR Claim or awarded by a court of competent jurisdiction against the Licensee as a result of that IPR Claim. The Licensor shall have no liability under the foregoing indemnity to the Licensee if the Licensee:

- (i) does not notify the Licensor in writing of any IPR Claim of which it has notice as soon as reasonably practicable;
- (ii) makes any admission of liability or agrees any settlement or compromise of the relevant IPR Claim without the prior written consent of the Licensor (which shall not be unreasonably withheld or delayed);
- (iii) does not let the Licensor at its request and own expense have the conduct of or settle all negotiations and litigation arising from the relevant IPR Claim; or
- (iv) does not, at the Licensor's request and cost, give the Licensor all reasonable assistance.

(b) This undertaking and indemnity given by the Licensor shall not apply to any infringement arising from any modification to the Software made by the Licensee or any employee, agent or service provider of the Licensee without the authorisation in writing of the Licensor.

(c) The Licensee shall indemnify the Licensor against all actions, proceedings, costs, claims and expenses incurred and hold the Licensor harmless in respect of any IPR Claim or other claim made by any third party against either the Licensee or the Licensor arising out of any infringement by the Licensee of the terms of this Agreement.

(d) The Licensee undertakes to give prompt notice to the Licensor of any claim that is made against either the Licensor or the Licensee and the Licensor shall have the right to defend any such claims and make settlements thereof at its own discretion and the Licensee shall give such assistance as the Licensor may reasonably require to settle or oppose any such claims.

(e) The Licensee agrees to indemnify and keep indemnified the Licensor from and against any and all liability, damages, losses, claims (including reasonable legal fees) resulting in any way from its use of and from any material posted on the Website or from any other matter relating to the hosting arrangement including but not limited to use of the information contained on the Website.

(f) The Licensee waives any right to bring any claim or action against the Licensor for any loss, damage or injury arising from the Website or any material from the Website or from the service level agreement.

14. Confidential Information

(a) All information, data, drawings, specifications, documentation, software listings, source or object code which the Licensor may have imparted and may from time to time impart to the Licensee relating to the Software, Maintenance Release or Maintenance Software (other than the ideas and principles underlying the same) or maintenance documentation or procedures is proprietary and confidential. The Licensee hereby agrees that it shall Use the same solely in accordance with the provisions of this Agreement and that it shall not at any time during or after expiry or termination of this Agreement, disclose the same, whether directly or indirectly to any third-party without the Licensor's prior written consent.

(b) The Licensee further agrees that it shall not itself or through any subsidiary, agent or third-party modify, vary, enhance, copy, sell, lease, license, sub-license or otherwise deal with the Software. Maintenance Software or Maintenance Release or any part or parts or variations, modifications, copies, releases, versions or enhancements thereof or any supporting software or have any software or other program written or developed for it based on any confidential information supplied to it by the Licensor.

(c) The foregoing provisions shall not prevent the disclosure or use by the Licensee of any information which is or hereafter, through no fault of the Licensee, becomes public knowledge or to the extent permitted by law.

15. Force Majeure

The Licensor shall be under no liability to the Licensee in respect of anything which, apart from this provision, may constitute breach of this Agreement arising by reason of force majeure, namely, circumstances beyond the control of the Licensor which shall include (but shall not be limited to) acts of God, perils of the sea or air, fire, flood, drought, explosion, acts of war (declared or undeclared), terrorism, sabotage, accident, embargo, riot, civil commotion, including acts of local government and parliamentary authority; inability to supply the Software, Maintenance Software, Maintenance Release, materials or Maintenance; the breakdown of equipment and labour disputes of whatever nature and for whatever cause arising including (but without prejudice to the generality of the foregoing) work to rule, overtime bars, strikes and lockouts and whether between either of the parties hereto and any or all of its employees and/or any other employer and any or all of its employees and/or between any two or more groups of employees (and whether of either of the parties hereto or any other employer).

16. Termination

(a) This Agreement may be terminated by either party giving to the other three months' prior written notice to take effect at the end of the Initial Term or annually thereafter to end on the anniversary date of the commencement of this Agreement. The Licensee may not terminate the hosting and maintenance service element of this Agreement without also terminating the License. Termination of the License shall not prejudice any rights of either party which have arisen on or before the date of the termination.

(b) In addition to any other provisions for termination as herein provided, the Licensor may by notice in writing to the Licensee terminate this Agreement if any of the following events shall occur:

- (i) if the Licensee is in material breach of any term, condition or provision of this Agreement or required by applicable law and fails to remedy such breach (if capable of remedy) within 30 days of having received written notice of such breach from the Licensor;
- (ii) if the Licensee, being a body corporate shall present a petition or have a petition presented by a creditor for its winding up, or shall convene a meeting to pass a resolution for voluntary winding up, or shall enter into any liquidation (other than for the purposes of a bona fide reconstruction or amalgamation) shall call a meeting of its creditors, or shall have a receiver of all or any of its undertakings or assets appointed, or shall be deemed by the relevant statutory provisions under the applicable law to be unable to pay its debts.

(c) Upon termination, the Licensee shall pay to the Licensor all costs and expenses, including legal and other fees incurred and all arrears of fees, charges or other payments arising in respect of the Software, Maintenance Software, Maintenance Release or Maintenance generally provided in accordance with this Agreement or otherwise.

(d) Termination, howsoever or whenever occasioned shall be subject to any rights and remedies the Licensor may have under this Agreement or in law.

(e) On termination for any reason:

(i) all rights granted to the Licensee and its Users under this License shall cease;

(a) (ii) the Licensee and Users shall cease all activities authorised by this License;

(b) (iii) the Licensee shall immediately pay to the Licensor any sums due to the Licensor under this License; and

(c) (iv) the Licensee shall immediately destroy or return to the Licensor (at the Licensor's option) all copies of the Software, Maintenance Software and any Maintenance Release then in its possession, custody or control and, in the case of destruction, certify to the Licensor that it has done so.

(d) (v) The Licensor shall provide copy of Licensee's data in useable format if requested. Fees for this service may be charged at Licensor's discretion.

17. Assignment

The parties shall not assign or otherwise transfer all or part of the Software or this Agreement without the prior written consent of the other such consent not to be unreasonably withheld.

18. Waiver

Failure or neglect by either party to enforce at any time any of the provisions hereof shall not be construed nor shall be deemed to be a waiver of that party's rights hereunder nor in any way affect the validity of the whole or any part of this Agreement nor prejudice that party's rights to take subsequent action.

19. Entire Agreement

This License and the Schedule and Addendum (if any) annexed to this License or otherwise referred to herein contain the whole agreement between the parties relating to the subject matter hereof and supersede all prior agreements, arrangements and understandings between the parties relating to that subject matter. Each party acknowledges that, in entering into this License, it does not rely on any statement, representation, assurance or warranty (whether it was made negligently or innocently) of any person (whether a party to this License or not) (Representation) other than as expressly set out in this License.

Each party agrees that the only rights and remedies available to it arising out of or in connection with a Representation shall be for breach of contract. Nothing in this clause shall limit or exclude any liability for fraud.

20. Variation

No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

21. Severance

If any court or competent authority finds that any provision of this Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Agreement shall not be affected. If any invalid, unenforceable or illegal provision of this Agreement would be valid, enforceable and legal if some part of it were deleted, the parties shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the parties' original commercial intention.

22. Third-Party Rights

A person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement, but this does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

23. No Partnership or Agency

Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party to be the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party.

24. Notices

Any notice or other communication required to be given under this Agreement shall be in writing and shall be delivered personally, or sent by pre-paid first-class post or recorded delivery or by commercial courier, to each party required to receive the notice or communication as set out in at the beginning of this Agreement or as otherwise specified by the relevant party by notice in writing to each other party. Any notice or other communication shall be deemed to have been duly received:

if delivered personally, when left at the address and for the contact referred to in this clause;

if sent by pre-paid first-class post or recorded delivery, at [9.00 am] on the [second] Business Day after posting; or

if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

A notice or other communication required to be given under this Agreement shall only be validly given by e-mail if receipt is acknowledged by each party required to receive the notice. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

25. Governing Law and Jurisdiction

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

The Licensee, if based outside of the jurisdiction of England and Wales, will irrevocably appoint an agent to receive on its behalf in England or Wales service of any proceedings arising from this Agreement and will notify the Licensor in writing of the name and address of such agent. Such service shall be deemed completed on delivery to such agent (whether or not it is forwarded to and received by the Licensee) and shall be valid until such time as the Licensor has received prior written notice from the Licensee that such agent has ceased to act as agent. If for any reason such agent ceases to be able to act as agent or no longer has an address in England or Wales, the Licensee shall forthwith appoint a substitute acceptable to the Licensor and deliver to the Licensor the new agent's name and address within England and Wales.

26. Data Protection and Data Processing

Both parties will comply with all applicable requirements of the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and any successor legislation to the GDPR or the Data Protection Act 2018 ("The Data protection Legislation"). This clause is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

- a) The parties acknowledge that for the purposes of the Data Protection Legislation, the Licensee is the data controller and the Licensor is the data processor and the meanings and definition of person data are as defined in the Data Protection Legislation.
- b) Without prejudice to the generality of this clause the Licensee will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of personal data to the Licensor for the duration and purposes of this agreement.
- c) Without prejudice to the generality of this clause the Licensor shall in relation to any personal data processed in connection with the performance by the Licensor of its obligations under this agreement:
 - I. process that personal data only on the specific instructions of the Licensee unless the Licensor is required by law to process that personal data under applicable Data Processing Legislation. Should the Licensor be required by law to process personal data without the express consent of the Licensee then the Licensor will notify the Licensee unless prohibited by law from doing so; and
 - II. ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it); and
 - III. ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and
 - IV. not transfer any personal data outside of the European Economic Area unless the prior written consent of the Licensee has been obtained and the following conditions are fulfilled:
 - e) the Licensee or the Licensor has provided appropriate safeguards in relation to the transfer;
 - f) the data subject has enforceable rights and effective legal remedies;
 - g) the Licensor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
 - h) the Licensor complies with reasonable instructions notified to it in advance by the Licensee with respect to the processing of the personal data;
- e) The Licensee consents to the Licensor appointing a third-party processor of personal data under this agreement. The Licensor confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this clause.

27. Acceptance

By signing the cover page of this Agreement the Licensee accepts the terms and conditions set out in this Agreement and the Schedule (and any Addendum) annexed to it.

SCHEDULE OF COSTS

[SOFTWARE LICENSE, MAINTENANCE and HOSTING SCHEDULE TO BE ANNEXED]

Licensee and JCAD agree that the use of the PROGRAM products listed in the Schedule shall be subject to the terms and conditions of the Software Licence Agreement attached or previously executed between the parties.

**Licensee/
Organisation**

Address

Contact

Contact Tel

Contact email

Software/service	Initial (Year1)	Support (years 2, 3, etc)
TOTAL	£	£

Agreed by Licensee;

Signed:

Name:

Job Title:

Date:

Agreed by JCAD;

Signed:

Name:

Job Title:

Date: