



Terms and conditions of
**implementation and
software services**

TERMS AND CONDITIONS OF IMPLEMENTATION AND SOFTWARE SERVICES

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THE EFFECTIVE DATE OF THIS AGREEMENT is the date the customer acknowledges and accepts the contractual arrangements via the online order form.

Parties:

(1) Evergreen Health Solutions Limited, a company incorporated and registered in England and Wales with company number 09484935 whose registered office is Evergreen House the Edge, Clowes Street, Manchester, England, M3 (the Supplier); and

(2) The contracting organisation purchasing the Services with name, registration and address details recorded via the online order form. (the Customer).

Background:

(A) The Supplier has developed certain software applications and platforms which it makes available to subscribers via the internet for the purpose of allowing health professionals to access and view information input by patients.

(B) The Customer wishes to use the Supplier's service in its business operations.

(C) The Supplier has agreed to provide and the Customer has agreed to take and pay for the Supplier's service subject to the terms and conditions of this agreement.

Operative Provisions:**1. Interpretation**

1.1 The definitions and rules of interpretation in this clause apply in this agreement.

Data Protection Laws

means all applicable data protection and privacy Laws in force from time to time in the UK including the UK GDPR and Data Protection Act 2018; the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426); the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (SI 2019/419), all as amended or superseded. **Data Controller, Data Processor, Personal Data Breach, Data Subject, processing/process** have the meanings given the meaning set out in the UK GDPR.

Users

persons who are authorised under this agreement by the Customer and/or Supplier to use the Services and the Documentation in the course of the Customer's business operations (not Patients).

Patients

the patients of the Customer and/or other members of the public who are authorised under a separate agreement with the Supplier to use the Services.

Customer Data

any data (but excluding Personal Data of patients) input by the Customer, Users, or the Supplier on the Customer's behalf for the purpose of or in the course of using the Services or facilitating the Customer's use of the Services.

Patient Request

any data input by Patients which is then accessible to the Users from time to time.

Documentation

materials made available to the Customer by the Supplier which set out a description of the Services and the user instructions for the Services.

Implementation Service

Services detailed in the Sales Agreement.

Personal Data

Personally identifiable data provided by Patients pursuant to their use of the Services

Services

the services provided by the Supplier to the Customer under this agreement.

Software

all the online software applications provided by the Supplier as part of the Services from time to time.

Subscription Fee

the fees payable by the Customer to the Supplier for the Services, Documentation and Implementation Services, as set out in The Sales Agreement.

Subscription Term

has the meaning given in the Sales Agreement.

Patient Subscriptions

the subscriptions purchased by the Customer pursuant to clause 9.1 which entitle Patients to access and use the Services and the Documentation in accordance with this agreement.

Business Day

any day which is not a Saturday, Sunday or public holiday in the UK.

Normal Business Hours

9.00 am to 5.00 pm local UK time, each Business Day.

1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.

1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.

1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.5 Words in the singular shall include the plural and vice versa.

1.6 A reference to one gender shall include a reference to the other genders.

1.7 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.8 A reference to writing or written includes email and fax.

1.9 References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule to this agreement.

2. User Subscriptions

2.1 The Supplier hereby grants to the Customer a non-exclusive, non-transferable right to permit the Users to use the Services and Documentation during the Subscription Term solely for the Customer's internal business operations (the provision of healthcare services).

2.2 Users will have varying levels of access to the Services. Access will be decided by the Customer.

2.3 The Customer undertakes that:

2.3.1 it will not allow or suffer any User login to be used by more than one individual User;

2.3.2 each User shall keep a confidential secure password for his use of the Services and Documentation;

2.3.3 no User shall exceed their allocated permissions by using the details of another User;

2.3.4 it shall put in place measures to ensure that Users effectively monitor communications delivered via the Services and process the same to ensure Patients receive healthcare services in a timely fashion;

2.3.5 it shall make it clear to the Patients that the Services are not intended to provide medical advice;

2.3.6 it shall have in place and shall maintain such IT systems as are necessary for it to enjoy access to the Services.

2.4 The Customer shall not access, store, distribute or transmit any viruses, or any material during the course of its use of the Services that:

2.4.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;

2.4.2 facilitates illegal activity;

2.4.3 depicts sexually explicit images;

2.4.4 promotes unlawful violence;

2.4.5 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or

2.4.6 is otherwise illegal or causes damage or injury to any person or property; and the Supplier reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to the Services where it finds any material that breaches the provisions of this clause.

2.5 The Customer shall not:

2.5.1 except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this agreement: (a) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or (b) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or

2.5.2 access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or

2.5.3 license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Users, or

2.5.4 attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this agreement.

2.6 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify the Supplier.

2.7 The rights provided under this clause 2 are granted to the Customer only and shall not be considered granted to any subsidiary or holding company of the Customer.

3. Patient Subscriptions

3.1 The Customer undertakes that the maximum number of Patients that it directs to access and use the Services shall not exceed the number of Patient Subscriptions it has purchased from time to time.

3.2 The Customer may, from time to time during any Subscription Term, purchase additional Patient Subscriptions and the Supplier shall grant access in accordance with the provisions of this agreement.

3.3 If the Customer wishes to purchase additional Patient Subscriptions, the Customer shall notify the Supplier in writing, by post or email to the addresses provided in this agreement or as otherwise notified from time to time. The Supplier shall evaluate such request for additional Patient Subscriptions and respond to the Customer with approval or rejection of the request. If the Supplier approves the Customer's request to purchase additional Patient Subscriptions, the Customer shall, within 21 days of the date of the Supplier's invoice, pay to the Supplier the relevant fees for such additional Patient Subscriptions as set out in The Sales Agreement.

4. Services

4.1 The Supplier shall, during the Subscription Term, provide the Services and make available the Documentation to the Customer on and subject to the terms of this agreement.

4.2 The Supplier shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:

4.2.1 planned maintenance; and

4.2.2 unscheduled maintenance performed outside Normal Business Hours, advance notice of which will only be given where reasonably practicable.

4.3 The Supplier will, as part of the Services and at no additional cost to the Customer, provide the Customer with access to a telephone helpline and online assistance during Normal Business Hours.

5. Customer Data and Data Protection

5.1 The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data. The Customer hereby grants an irrevocable, royalty free licence to the Supplier to enable the Supplier to use, for any purposes, the Customer Data in a patient anonymised form.

5.2 The Supplier shall follow its archiving procedures for Customer Data as set out in its Back-Up Policy. In the event of any loss or damage to Customer Data, the Supplier shall use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by the Supplier in accordance with the archiving procedure described in its Back-Up Policy. The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by the Supplier to perform services related to Customer Data maintenance and back-up).

5.3 Depending on the Services purchased by the Customer, the Supplier may either be a Data Controller or Data Processor and this will be specified at the time of placing an order for the Service. In the event both the Customer and Supplier are Data Controllers, both parties shall at all times comply with the Data Protection Laws when performing their obligations in respect of this agreement.

5.4 In the event The Supplier will processes Personal Data on the Customer's behalf when performing its obligations under this agreement, and the parties record their

intention that in this instance the Customer shall be the Data Controller and the Supplier shall be a Data Processor and shall in any such case the follow:

5.4.1 ensure that Personal Data is processed only on the documented written instructions of the Customer unless the Supplier is required or permitted by applicable laws to otherwise process that Personal Data;

5.4.2 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;

5.4.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and

5.4.4 not transfer any Personal Data outside of the UK (or European Economic Area for as long as it has an adequacy decision from the UK Government) unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:

(a) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;

(b) the Data Subject has enforceable rights and effective legal remedies;

(c) the Supplier complies with its obligations under the Data Protection Laws by providing an adequate level of protection to any Personal Data that is transferred; and

(d) the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;

5.4.5 assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Laws with respect to exercising data rights, security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

5.4.6 notify the Customer within 48 hours of becoming aware of a Personal Data Breach;

5.4.7 at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the agreement unless required by Applicable Law to store the Personal Data;

5.4.8 notify the Customer, if in the Supplier's reasonable opinion, a Customer instruction is likely to infringe the Data Protection Laws; and

5.4.9 maintain complete and accurate records and information to demonstrate its compliance with this clause 5.4 and permit an audit to establish the same on

reasonable notice from the Customer.

5.5 The Supplier's Data Privacy Impact Assessment can be provided on request.

6. Third Party Providers

The Customer acknowledges that the Services may enable it or assist it to access and purchase products and services from third parties and that it does so solely at its own risk. Any contract entered into, and any transaction completed with any third-party website is between the Customer and the relevant third party, and not the Supplier.

7. Supplier's Obligations

7.1 The Supplier undertakes that the Services will be performed substantially in accordance with the Documentation, and with reasonable skill and care.

7.2 The undertaking at clause 7.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to the Supplier's instructions, or modification or alteration of the Services by any party other than the Supplier or the Supplier's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, the Supplier will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 7.1. Notwithstanding the foregoing, the Supplier:

7.2.1 does not warrant that the Customer's use of the Services will be uninterrupted or error-free; or that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements; and

7.2.2 is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

7.3 This agreement shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this agreement.

7.4 The Supplier warrants that it has and will maintain all necessary licences,

consents, and permissions necessary for the performance of its obligations under this agreement.

7.5 The Supplier warrants that it will not process data in a format which can identify Patients other than for the provision of the Services and that it will not do so for longer than is needed to provide the Services.

7.6 For the avoidance of doubt, the Supplier shall store and use material in anonymised form, such that it cannot identify Patients for its own purposes (unless otherwise agreed with a Patient) including without limitation, research and/or publicity materials.

7.7 It is agreed that the Supplier shall provide the Implementation Services, as detailed on the Sales Agreement, then the Supplier shall supply such Implementation Services as described at the link given on the Sales Agreement and to the service level described at the link.

8. Customer's Obligations

The Customer shall:

8.1 provide the Supplier with: (a) all necessary co-operation in relation to this agreement; and (b) all necessary access to such information, including any recent NHS Policy Documents, as may be required by the Supplier in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;

8.2 to the fullest extent possible use its best endeavours to offer the Services to Patients and use the Services through its Users;

8.3 ensure that each Patient Request is reviewed by a clinically qualified User, or other clinically qualified person where a clinically qualified User is not available, before any clinical decisions are made;

8.4 comply with all applicable laws and regulations with respect to its activities under this agreement;

8.5 carry out all other Customer responsibilities set out in this agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;

8.6 ensure that the Users use the Services and the Documentation in accordance with the terms and conditions of this agreement and shall be responsible for any User's breach of this agreement;

8.7 obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under this agreement;

8.8 ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time;

8.9 be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the Supplier's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet;

8.10 ensure all devices connected to the system have antivirus software deployed and configured to ensure regular scans are carried out and alerts are raised when suspicious files are found.

8.11 ensure that all Users are trained on use of the Software and are competent in its use; and

8.12 the Customer warrants that all Users will only use the Software as an aid, and not as a replacement for their own knowledge and expertise, and further warrant that all Users shall be competent in their respective field before making use of the Software and acknowledges that the software and/or services do not constitute medical advice.

9. Charges and Payment

9.1 The Customer shall pay the Subscription Fee to the Supplier for the Patient Subscriptions in accordance with this clause 9 and the Sales Agreement.

9.2 The Customer shall ensure that the Supplier has up-to-date and complete billing details and/or approved purchase order information. The Supplier accepts payment by direct debit, BACS or any other kind of telegraphic transfer at the Supplier's discretion. Where payment is made following approved purchase order information to the Supplier, the Supplier shall invoice the Customer:

9.2.1 on the Effective Date as per the Sales Agreement for the Subscription Fees payable in respect of the Subscription Term; and

9.2.2 the Customer shall, within 21 days of the date of the Supplier's invoice, pay to the Supplier the fees set out in the invoice

9.3 If the Supplier has not received payment within 15 days after the due date, and without prejudice to any other rights and remedies of the Supplier:

9.3.1 the Supplier may, without liability to the Customer, disable the Customer's access to all or part of the Services and the Supplier shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and

9.3.2 interest shall accrue on such due amounts at an annual rate equal to 5% over

the then current base lending rate of Barclays Bank Plc at the date the relevant invoice was issued, commencing on the due date and continuing until fully paid, whether before or after judgment.

9.4 All amounts and fees stated or referred to in this agreement are:

9.4.1 payable in pounds sterling;

9.4.2 non-cancellable and non-refundable;

9.4.3 exclusive of value added tax, which shall be applied at the appropriate rate.

9.5 The Supplier shall be entitled to amend the Subscription Fees at the start of each Subscription Term. The Sales Agreement shall be amended accordingly.

10. Proprietary Rights

10.1 The Customer acknowledges and agrees that the Supplier and/or its licensors own all Intellectual Property Rights in the Services and the Documentation. Except as expressly stated herein, this agreement does not grant the Customer any rights to, or in, patents, copyright, database right, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Documentation.

10.2 The Customer grants the Supplier a royalty-free non-exclusive right to use the get-up, trademarks, trading style and colour palettes of the Customer's business in order to provide an integrated appearance to the Services and Software.

10.3 Neither clause 10.2 or any other clause in this agreement is intended to form an assignment of Intellectual Property Rights or goodwill in either the Supplier's or Customer's business.

10.4 The Services do not constitute medical advice, provision of a medical device or clinical decision support. Each Patient Request must be reviewed by a clinically qualified person before any clinical decisions are made and the Customer warrants that this will be done and hereby indemnifies the Supplier against any and all losses and/or other claims howsoever arising as a result of any breach of this warranty.

10.5 The Customer shall not gain any Intellectual Property Rights in the Software.

11. Confidentiality

11.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this agreement. A party's Confidential Information shall not be deemed to include information that:

11.1.1 is or becomes publicly known other than through any act or omission of the receiving party;

11.1.2 was in the other party's lawful possession before the disclosure;
11.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
11.1.4 is independently developed by the receiving party, which independent development can be shown by written evidence; or
11.1.5 is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

11.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this agreement.

11.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this agreement.

11.4 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.

11.5 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute the Supplier's Confidential Information.

11.6 The Supplier acknowledges that the Customer Data is the Confidential Information of the Customer.

11.7 This clause 11 shall survive termination of this agreement, however arising.

12. Indemnity

12.1 The Customer shall defend, indemnify and hold harmless the Supplier against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services and/or Documentation, provided that:

12.1.1 the Customer is given notice of any such claim;

12.1.2 the Supplier provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and

12.1.3 the Customer is given sole authority to defend or settle the claim.

12.2 In the defence or settlement of any claim, the Supplier may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available,

terminate this agreement on 5 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.

12.3 In no event shall the Supplier, its employees, agents and sub-contractors be liable to the Customer to the extent that the claim referred to in clause 12.1 is based on:

12.3.1 a modification of the Services or Documentation by anyone other than the Supplier; or

12.3.2 the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by the Supplier; or

12.3.3 the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from the Supplier or any appropriate authority.

12.4 The foregoing and clause 4.2 state the Customer's sole and exclusive rights and remedies, and the Supplier's (including the Supplier's employees', agents' and sub-contractors') entire obligations and liability for infringement of any patent, copyright, trademark, database right or right of confidentiality.

13. Limitation Of Liability

13.1 This clause sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer:

13.1.1 arising under or in connection with this agreement;

13.1.2 in respect of any use made by the Customer of the Services and Documentation or any part of them; and

13.1.3 in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with this agreement.

13.2 Except as expressly and specifically provided in this agreement:

13.2.1 the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Customer, and for conclusions drawn from such use. The Supplier shall have no liability for any damage including, inter alia, loss of profits caused by errors or omissions in any information, instructions or scripts within the Services howsoever caused.

13.2.2 all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this agreement; and

13.2.3 the Services and the Documentation are provided to the Customer on an “as is” basis.

13.3 Nothing in this agreement excludes the liability of the Supplier:

13.3.1 for death or personal injury caused by the Supplier’s negligence; or

13.3.2 for fraud or fraudulent misrepresentation.

13.4 Subject to clause 13.2 and clause 13.3:

13.4.1 the Supplier shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this agreement; and

13.4.2 the Supplier’s total aggregate liability in contract (including any indemnity as set out in this agreement), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall be limited to the total Subscription Fees paid for the Patient Subscriptions during the 10 months immediately preceding the date on which the claim arose.

14. Term And Termination

14.1 This agreement shall, unless otherwise terminated as provided in this clause 14, commence on the Effective Date and shall continue for the Subscription Term unless otherwise terminated in accordance with the provisions of this agreement.

14.2 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate this agreement with immediate effect and without liability to the other by giving written notice if:

14.2.1 the other party commits a material breach of any of the terms of this agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or

14.2.2 an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in relation to the other party; or

14.2.3 an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the

other party, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or

14.2.4 a receiver is appointed of any of the other party's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets; or

14.2.5 the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or

14.2.6 the other party ceases, or threatens to cease, to trade; or

14.2.7 there is a change of control of the other party within the meaning of section 1124 of the Corporation Tax Act 2010; or

14.2.8 the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

14.3 The Supplier may terminate this agreement with immediate effect in the event that any third-party licence required by the Supplier to grant any licence set out in this agreement is terminated for any reason. In the event that the Supplier terminates this agreement in accordance with this clause 3, the Supplier shall refund any paid fees on a pro-rata basis for any unused subscription period.

14.4 On termination of this agreement for any reason:

14.4.1 all licences granted to the Customer under this agreement shall immediately terminate;

14.4.2 each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party (other than Customer Data);

14.4.3 the Supplier may destroy or otherwise dispose of any of the Customer Data in its possession unless the Supplier receives, no later than ten days after the effective date of the termination of this agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. The Supplier shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by the Supplier in returning or disposing of Customer Data; and

14.4.4 the accrued rights of the parties as at termination, or the continuation after

termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.

15. Force Majeure

The Supplier shall have no liability to the Customer under this agreement if it is prevented from or delayed in performing its obligations under this agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

16. Waiver

16.1 A waiver of any right under this agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.

16.2 Unless specifically provided otherwise, rights arising under this agreement are cumulative and do not exclude rights provided by law.

17. Severance

17.1 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, unenforceable or illegal, the other provisions shall remain in force.

17.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

18. Entire Agreement

18.1 This agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.

18.2 Each of the parties acknowledges and agrees that in entering into this agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any

person (whether party to this agreement or not) relating to the subject matter of this agreement, other than as expressly set out in this agreement.

19. Assignment

19.1 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract, or deal in any other manner with all or any of its rights or obligations under this agreement.

19.2 The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

20. No Partnership or Agency

Nothing in this agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

21. Third Party Rights

This agreement does not confer any rights on any person or party (other than the parties to this agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

22. Notices

22.1 Any notice given to a party under or in connection with this agreement shall be in writing and shall be:

22.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

22.1.3 sent by email to the email address provided by the other party. Each party must inform the other party of any change in their email address for this purpose.

22.2 Any notice shall be deemed to have been received:

22.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

22.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the

delivery service;

22.2.4 if sent by email, at 9.00 am on the next Business Day after sending.

22.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

23. Governing Law and Jurisdiction

23.1 This agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by, and construed in accordance with, the law of England.

23.2 The parties irrevocably agree that the courts of England 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).