



Terms of Use

YOU (ALSO KNOWN AS “**CLIENT**”) AGREE TO BE BOUND BY THIS TERMS OF USE LICENCE AGREEMENT (“**AGREEMENT**”) IN ANY OF THE FOLLOWING WAYS (A) BY ACCEPTING AN ORDER FORM, (B) BY OPENING THE PACKAGING CONTAINING THE SOFTWARE, (C) BY INDICATING YOUR ACCEPTANCE OF THE FOLLOWING TERMS (BY SELECTING “**AGREED**” “**YES**” OR ANOTHER WORD OR PHRASE OF AFFIRMATION), OR (D) BY INSTALLING, COPYING OR IN ANY WAY USING THE LICENCED MATERIALS (as defined in section 1(f), below) PROVIDED TO YOU BY IAMRECOGNISED NORTH AMERICA INC. (HEREAFTER, “**IAMRECOGNISED**”) AND/OR THAT OF ITS AFFILIATES AS PROVIDED HEREUNDER, TOGETHER WITH ANY UPDATES THERETO.

WHERE YOU HAVE NOT PREVIOUSLY AND UNAMBIGUOUSLY AGREED TO THE TERMS OF THIS AGREEMENT (SAVE WHERE EXPRESSLY AMENDED BY WRITTEN AGREEMENT SIGNED BY BOTH IAMRECOGNISED AND CLIENT) THEN BY INSTALLING OR USING THIS SOFTWARE YOU ARE AGREEING TO BE BOUND BY THESE TERMS. ACCORDINGLY, IF YOU DO NOT AGREE TO THESE TERMS, DO NOT INSTALL OR USE THE SOFTWARE AND RETURN IT TO IAMRECOGNISED, TOGETHER WITH ALL DOCUMENTATION AND MATERIALS PROVIDED, WITHIN TEN (10) DAYS FOR A FULL REFUND.

WHERE IAMRECOGNISED IS HOSTING THE SOFTWARE FOR CLIENT OR MAKING IT AVAILABLE VIA A CLOUD BASED SUBSCRIPTION SERVICE, THE TERMS OF THE ATTACHED HOSTING ADDENDUM SHALL APPLY IN ADDITION TO THIS AGREEMENT. IN THE EVENT OF ANY CONFLICT BETWEEN THE PROVISIONS OF THIS AGREEMENT AND THAT HOSTING ADDENDUM, THE PROVISIONS OF THE HOSTING ADDENDUM SHALL PREVAIL.

1) DEFINITIONS

- (a) “**Affiliated**” means affiliated in the manner indicated in the Order Form.
- (b) “**Authorized Users**” shall consist of the individuals Client permits to either access or use the Licenced Materials and is a subset of the individuals included in Client’s FTE number. Authorized Users must be associated with either a Listed Licenced Location or an Unlisted Licenced Location.
- (c) “**Documentation**” means the published user manuals and other written materials concerning the Software that IAMRecognised generally makes available to its clients from time to time.
- (d) “**Enhancements**” means any updates, upgrades, improvements or new versions of the Software or Documentation that IAMRecognised may release or make generally available to its clients from time to time, which items are also subject to licence.
- (e) “**FTE**” means full time equivalents, and is a tool used for pricing to measure the size of Client’s organization and thus the scope of its use of the Licenced Materials. FTEs are expressed in numerical units, with full time workers expressed as 1.0 FTE, someone who works half time expressed as .5 FTE, and so on. As used in connection with this Agreement, Client’s FTEs include:
 - (i) all of Client’s employees, (ii) Client’s agents and affiliates, (iii) Permitted Independent IT Contractors, (iv) independent or contract medical personnel (physicians, nurses, pharmacists, etc.) including their support and ancillary staff, and (v) any other groups of health care providers, medical workers and volunteers having privileges or working with Client. Client’s FTEs are deemed to exclude: (A) FTEs associated with Non-Licensed Locations as recorded on the Order Form (only to the extent that there is no overlap with Listed Licenced Locations or Unlisted Licenced Locations), and (B) Client’s patients and customers (to the extent that they do not fall into one of the other groups of individuals listed in the preceding sentence).
- (f) “**Licensed Materials**” means (i) the Software, (ii) the Documentation, (iii) any Enhancements; (iv) any Modifications; and (v) any copy of the Software, Documentation, Enhancements or Modifications and Third Party Software.
- (g) “**Modifications**” means any alteration, change or modification to any Licenced Materials made at Client’s request.
- (h) “**Order Form**” or “**Order**” refers to the order form or quotation provided by IAMRecognised to Client that specifies the fees and certain parameters for the Licenced Materials, such as, without limitation, Licence Thresholds.
- (i) “**Permitted Independent IT Contractor**” means an individual or group of individuals not employed by Client but who are engaged in work that supports Client’s use of the Licenced Materials, for example as outsourced information technology resources. To qualify as Permitted Independent IT Contractors, such individuals or group of individuals must be identified on the Order Form, must be included in the FTE count, and must not provide services to, or on behalf of, any business which is competitive with IAMRecognised.
- (j) “**Software**” means the executable object code form of the IAMRecognised-owned Software identified on the Order Form, together with any Enhancements or Modifications. The term “Software” excludes any software licenced by third parties.
- (k) “**Support Guide**” means the IAMRecognised Software Support & Maintenance Guide, the most current copy of which is always available at support@iamrecognised.com
- (l) “**Third Party Software**” means any computer programs not owned by IAMRecognised that are licenced to Client and provided along with the Licenced Materials.

2) GRANT OF RIGHTS/CLIENT RESPONSIBILITIES

- (a) **Licence Grant.** IAMRecognised hereby grants to Client a non-transferable, non-exclusive perpetual or subscription licence (as so identified on the Order Form) (“**Perpetual Licence**” or “**Subscription Licence**”, respectively) for its Authorized Users to (i) under a Perpetual Licence, install and use the Licenced Materials in accordance with this Agreement, or (ii) under a Subscription Licence, to remotely access and use the Licenced Material, in each case, subject to any Licence Threshold limitations set forth in this Agreement.
- (b) **Limitations.** Any right not specifically granted herein is reserved. Client shall have no right to assign, sublicense, transfer, rent, lease, or distribute the Licenced Materials. No right of ownership or any other exclusive right in any particular manner of configuration, customization or setup of the Software performed by IAMRecognised is granted to Client. No right is granted to use the Licenced Materials other than in support of Client’s own business processes and activities. No right is granted herein to operate the Software in a service bureau, outsourcing business or other manner in which the Software is used to process or manage information other than that generated by Client in the course of Client’s own operations. Subject to this section, Client specifically agrees to refrain from any direct or indirect efforts or attempts to reverse engineer the Software or to develop any derivative work thereof of any kind. Subject to this section, except as is necessary to install and operate the Software in a single* live / production environment, and a single backup thereof, and one training / test environment, Client shall enjoy no right of duplication of the Software. *Notwithstanding the previous sentence, under a Perpetual Licence Client shall not permit any person or entity other than IAMRecognised to maintain or in any way change or modify the Software or any element thereof. If Client has elected for a Subscription Licence, Client’s right to the use of the Licenced Materials is limited to the duration of the Subscription Licence (or renewal thereof) for which the Subscription Licence fee has been paid. Nothing in this section 2 (b) shall be construed as removing any right Client may have under European Union Directive 2009/24/EC.
- (c) **Authorized Users.** Only Authorized Users are entitled to make use of and access the Licenced Materials.
- (d) **Hardware and Other Software.** Client shall be solely responsible to obtain and ensure the proper operation of the hardware and software necessary to operate and use the Licenced Materials. The minimum hardware and software requirements are set forth in the proposal and background information on the Software, which may be updated from time to time in conjunction with operating system transitions. Any costs associated with acquiring, maintaining or using the hardware or any supporting software (such as without limitation operating systems) and/or any connectivity necessary to use or support the Licenced Materials shall be entirely those of Client. In the event that IAMRecognised is hosting the Software for client or making it available via a cloud based subscription service, the terms of

this section 2(e) are not applicable.

(e) Other Responsibilities. Client shall cooperate with IAMRecognised to permit IAMRecognised to install, support, troubleshoot or otherwise provide services, as needed to Client. Such cooperation may include but not be limited to the provision of reasonable facilities and access to systems and equipment and the assignment of appropriately skilled and trained personnel to interact with IAMRecognised representatives, whether through telephone support, in-person service calls or otherwise. Where Client hosts the Software, Client will assist IAMRecognised in establishing remote access through an Internet-based third-party remote access solution when IAMRecognised requires access to effectively support the Software. In the event that Client fails to fulfill its responsibilities, IAMRecognised shall be relieved of the obligation to provide services to Client which are made more difficult or expensive by reason of Client's failure to fulfill Client's responsibilities. IAMRecognised may, in its sole discretion, offer to continue providing services to Client under such circumstances for an additional charge.

(f) Acceptance. Within three (3) months of delivery of the Licenced Materials (or, as the case may be within three (3) months of making the Licenced Materials available for use or download), Client shall commence testing and evaluation of the Licenced Materials. In the event that there is a substantial non-conformance in the operation of the Software or a substantial defect in the other Licenced Materials during this period, Client shall provide written notice thereof to IAMRecognised. A substantial non-conformance in the operation of the Software is defined as a Severity Level A or Severity Level B issue as per the Support Guide. IAMRecognised shall then have fourteen (14) days to address the non-conformance or defect in accordance with the terms of the Support Guide and to provide Client with a written Notice of Repair, thereafter starting a fourteen (14) day time period for Client to retest and re-evaluate the Licenced Materials. In the event the non-conformance is not cured within this time period, Client, at its sole discretion, can extend the cure period for such non-conformances or terminate the applicable Order Form. The Licenced Materials shall be deemed accepted by Client upon the earliest of (i) Client providing written notice of acceptance, (ii) Client not presenting a notice of non-conformance or defect within the first thirty (30) days after Client places the Software into a production/live environment for go live, (iii) Client not presenting a notice of non-conformance or defect within the first three (3) months after the Licenced Materials is made available to Client for use (or, as the case may be within three (3) months of making the Licenced Materials available for download), or (iv) more than fourteen (14) days passing since IAMRecognised's last Notice of Repair being provided to Client without a written notice of substantial non-conformity being issued by Client, such date being the "Acceptance Date".

3) SUPPORT AND MAINTENANCE

(a) Maintenance. Support and maintenance services ("Maintenance") will be provided in accordance with the then-current version of the Support Guide. If Client has elected for a Subscription Licence, Client's Subscription Licence Fee includes a non-cancellable subscription to Maintenance for the term of the Subscription Licence or any renewal thereof.

(b) Maintenance Term. Maintenance is available for one (1) year terms. Unless otherwise indicated on the Order Form, the "Initial Term", being the initial Agreement period. Maintenance shall commence on the Effective Date of the Agreement, the month and day of which shall become known as the "Anniversary Date." The Anniversary Date shall constitute the commencement date of each successive one year maintenance term (each a "Renewal Term"). Following the Initial Term (and completion of the Minimum Commitment period if applicable), Maintenance may be renewed for successive one year terms on the Anniversary Date upon payment of the invoice received from IAMRecognised for such Renewal Term, provided, however, that either party may, by written notice to the other party at least three (3) months prior to the expiration of the Initial Term or any Renewal Term elect to discontinue Maintenance as of the end of the latter of (i) the then-current maintenance term and (ii) the Minimum Commitment. In the absence of a Minimum Commitment Client may also cause the termination of Maintenance by electing not to pay the applicable renewal invoice received from IAMRecognised by its due date. In the event that Client does not renew its term of Maintenance with IAMRecognised and later elects to receive Maintenance, Maintenance may be reinstated by IAMRecognised, at their option, provided that IAMRecognised is still providing Maintenance on the Software, for a Maintenance fee equal to (i) the fee that Client would have paid had Client retained the Maintenance since termination of Maintenance, prorated for any partial periods, plus (ii) prepayment of Maintenance fees for the following full term, plus (iii) a reactivation fee equal to 10% of the total of (i) and (ii) above. If Client and IAMRecognised elect to reinstate Maintenance as set forth above, IAMRecognised shall provide Client with the most recent version of the Software and provide Maintenance as described herein. Maintenance cannot be discontinued nor terminated in accordance with this section 4(b) during the term of a Minimum Commitment.

(c) Minimum Commitment. The payment obligations per this section are only applicable if a Minimum Commitment is specified on the Order Form. In the event Client elects to make an extended commitment to receive Maintenance, hosting services and/or continue with its Subscription Licence as a part of their order, the duration of that commitment is specified on the Order Form ("Minimum Commitment"), and that commitment will commence concurrent with the Initial Term of Maintenance. If Client cancels its order, fails to pay the specified fees for the duration of the Minimum Commitment in accordance with this section, or this Agreement is otherwise terminated (other than for the failure of the Software to be accepted), Client agrees to immediately pay all outstanding invoices and 100% of all remaining fees otherwise due for the remainder of the term of the Minimum Commitment. Client's obligation to pay the remaining fees during the term of the Minimum Commitment shall cease if Client has remained current with payments of said fees prior to cessation, and also prior to cessation IAMRecognised was in an RL Service Breach, as defined in Section 7(f) below.

(d) Enhancements. Unless IAMRecognised is providing hosting services or making the Licenced Materials available via a cloud based subscription service, IAMRecognised will periodically group revisions, updates and/or Enhancements into a version or release of the Software that will be sent to Client (or made available for download by Client), together with instructions for the installation thereof. Client will be responsible for installing the new version or release of the Software. At Client's request, IAMRecognised will install the updated version at IAMRecognised's then-current rates on a time and materials basis. Client is solely responsible for adding versions and releases of the Software on a timely basis.

(e) Limitation on version. IAMRecognised will provide Maintenance for only the most current version of the Software and any version released within two (2) calendar years preceding the release of the most current version of the Software, subject only to Client's payment of the applicable Maintenance fees as provided hereunder. IAMRecognised may, but is not obligated to, offer Maintenance, possibly on a time and materials basis, for older versions of the Software. Such Maintenance on outdated versions of the Software is only available, if at all, to those clients currently receiving Maintenance.

(f) Support Guide. IAMRecognised reserves the right, as IAMRecognised shall in its discretion determine, to make an improvement, substitution or modification in the specification of any element or part of the Support Guide provided that such improvement, substitution or modification will not substantially worsen the services received by Client under the Support Guide taken as a whole.

4) TRAINING & OTHER SERVICES

(a) Services. Training, implementation, integration and other services shall be supplied by IAMRecognised as indicated on the Order Form.

(b) Service Terms and Conditions. The parties agree that all services will be supplied in accordance with the relevant IAMRecognised Statements of Work. In the event that Client does not materially adhere to the guidelines in these documents, IAMRecognised reserves the right to either (i) perform the services on a time and materials basis, or (ii) not perform the services, in which case the fee will be adjusted accordingly. Services dates and times which have been agreed to by both parties which are later cancelled or rescheduled at Client's request will result in: (i) Client shall reimburse IAMRecognised for expenses incurred prior to the cancellation or rescheduling notice being received, and (ii) if IAMRecognised is notified less than twenty (20) business days before the scheduled date, forfeiture by Client of the service hours which IAMRecognised is unable to re-book with another client for the same date and time (Client will pay IAMRecognised for said hours if they haven't already done so). Any Services listed on the associated Order Form must be used by Client prior to the one year anniversary of the Effective Date. Any Services unused by Client as of that time shall expire. Unused services cannot be transferred to other engagements.

5) TERMINATION & BREACH

- (a) Client shall have the right to terminate this Agreement at any time for convenience, provided the Agreement is not then the current subject of a Minimum Commitment and provided that Client has remained current with payments to IAMRecognised of applicable fees prior to termination.
- (b) If the licence is a Subscription Licence, this Agreement shall terminate in the event that Client does not timely renew the Subscription Licence by paying the invoice for same before the expiry of the term of the Subscription Licence.
- (c) Client shall have the right to terminate the whole of this Agreement (including any then prevailing Schedule or Addendum) if IAMRecognised is in a Service Breach (as defined in section 5(f) below) and thirty (30) days have elapsed since Client provided to IAMRecognised written notice of that breach, identifying in detail the nature and particulars of the breach, and such breach has not been cured.
- (d) The parties agree that the purpose of the right set forth in 5(c) is to permit Client to escape from an unworkable situation. Thus, if Client chooses not to make use of a right to terminate pursuant to 5(c) within six (6) months of said breach by IAMRecognised, the parties agree that Client's right to terminate for that breach shall expire.

IAMRecognised shall have the right to immediately terminate this Licence upon written notice if (i) Client is in material breach of this Agreement and fails to cure such breach within thirty (30) days of IAMRecognised providing written notice thereof identifying in detail the nature and particulars of the breach, (ii) Client is in material breach of the limitations on distribution of the Licenced Materials to third parties, in which case there shall be no right of cure; or (iii) (i) Client has a receiver, administrative receiver, administrator or manager appointed over the whole or any part of its undertaking or assets or goes into liquidation or enters into any composition or arrangement with its creditors or any similar event occurs under the laws of the country in which Client is constituted.

- (e) A "Service Breach" is defined as any of the following: (i) IAMRecognised repeatedly fails to provide Maintenance services which are substantially in accordance with the Support Guide, or (ii) there has been a substantial non-conformance in the operation of the Software, defined as a Severity Level A or Severity Level B issue as per the Support Guide, which lasts for a minimum of 30 consecutive days (without a workaround being provided by IAMRecognised), subsequent to IAMRecognised being properly notified of the issue(s), or (iii) the Software has repeatedly and substantially not performed in accordance with the applicable Documentation and the identified issue(s) have not been resolved in accordance with the Support Guide, or (iv) IAMRecognised has not made general release updates to the Licenced Materials available to Client in a timeframe consistent with similar releases to other clients.

6) RETURN OR DESTRUCTION OF LICENCED MATERIALS UPON TERMINATION, CONSEQUENCES OF TERMINATION

- (a) Upon the termination of this Agreement, Client shall immediately cease to be entitled to use the Licenced Materials and Client shall immediately cease to use the Licenced Materials.
- (b) If Client is hosting the Software, then upon termination of this Agreement, Client shall either (i) uninstall and return to IAMRecognised the original and all copies of the Licenced Materials including partial copies and modifications or (ii) destroy all of the foregoing and provide a notarized certificate executed by one of Client's directors or officers certifying that such destruction has occurred. Upon any termination of this Agreement, Client shall not be entitled to a rebate of any monies paid in advance in respect of Maintenance or hosting services nor to a rebate of any licence fee paid in advance in respect of the use of the Software or the Licenced Materials.

7) TITLE

- (a) IAMRecognised shall, at all times, retain full and exclusive right, title, and ownership in and to the Licenced Materials and all intellectual property rights associated therewith, including all derivative works, regardless of their origin, excluding all Third Party Software, which shall remain the property of its provider. Any Modifications to any part of the Licenced Materials, excluding the Third Party Software, will be owned by IAMRecognised immediately on creation regardless of whether the Modifications were made at the request of Client or not. To the extent Client owns or acquires any right, title, or interest in and to any Modifications, Client hereby assigns to IAMRecognised all such right, title, and interest in and to such Modifications, including all intellectual property rights therein. IAMRecognised will own all intellectual property rights in any works created in performing this Agreement or in providing any services.
- (b) **Client data.** Client, at all times, shall be and remain the exclusive owner of all data entered into the Software licenced to Client.

8) WARRANTIES AND LIMITATIONS

- (a) **General Warranty.** IAMRecognised warrants it has the right to (i) enter into this Agreement, (ii) grant the licences offered pursuant to this Agreement and grant the right for Client and its Authorized Users to make use of the Third Party Software.
- (b) **Limited Warranty.** IAMRecognised also warrants that the Software and any Enhancements will, for a period of six (6) months from the Effective Date, perform substantially as described in the then-current Documentation. No warranty or assurance is made (i) as to the ability of the Software to satisfy any or all of Client's particular requirements or (ii) that use of the Software will be uninterrupted or error free. The Limited Warranties shall not apply to the extent that (i) Client does not report a nonconformity or defective element of the Software within the Limited Warranty period set forth above, (ii) the Software is not used in accordance with the then-current Documentation, (iii) Client makes any changes to the underlying Software that have not been approved in writing by IAMRecognised, and/or (iv) the nonconformity is due to the misuse of the Software.
- (c) **Remedies.** In the event of written notice of a breach of the Limited Warranty set forth in section 10(b), IAMRecognised or its representative will undertake all commercially reasonable efforts to correct the nonconformity or repair or replace any defective element of the Licenced Materials. If the breach cannot be so cured, IAMRecognised will (i) accept the return of the Licenced Materials, (ii) terminate the licence granted herein, and (iii) refund the Initial Fees and Maintenance fees paid by Client as of the date such written notice was provided to IAMRecognised.
- (d) **DISCLAIMER.** EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT OR TO THE EXTENT REQUIRED BY APPLICABLE LAW, ALL WARRANTIES, CONDITIONS, INDEMNITIES AND GUARANTEES WITH RESPECT TO THE LICENCED MATERIALS, WHETHER EXPRESS OR IMPLIED, ARISING BY LAW, CUSTOM, PRIOR ORAL OR WRITTEN STATEMENTS BY CLIENT, IAMRECOGNISED OR ITS REPRESENTATIVES OR OTHERWISE (INCLUDING, BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY, SATISFACTORY QUALITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY ASSURANCE OF SATISFACTION) ARE HEREBY DISCLAIMED, OVERRIDDEN, AND EXCLUDED. ANY PROMISE, COMMITMENT OR ASSURANCE OF ERROR FREE OR UNINTERRUPTED USE OF THE LICENCED MATERIALS IS ALSO HEREBY DISCLAIMED.

9) INDEMNIFICATION

- (a) **Intellectual Property Indemnification.** If an action is brought against Client claiming that any part of the Licenced Materials infringes a patent, trade secret or copyright, IAMRecognised will defend, indemnify, protect and hold harmless Client (along with its shareholders, directors, officers and employees), from such claim or action, but only if (i) Client notifies IAMRecognised promptly upon learning that the claim has been or might be asserted, (ii) IAMRecognised has sole control over

the defense of the claim and any negotiation for its settlement or compromise, (iii) Client takes no action in the litigation or in the face of litigation that undermines any defense available to Client or IAMRecognised and (iv) in any such circumstances, Client shall act at all times to mitigate its losses.

(b) Alternative Remedy. If a claim described in the preceding paragraph may be or has been asserted, Client will permit IAMRecognised, at IAMRecognised's sole option and expense, to (i) procure the right to continue using the Licenced Materials, (ii) replace or modify the Licenced Materials to eliminate the infringement while providing functionally equivalent performance, or (iii) cancel this Agreement and call for the return of the Licenced Materials, and (iv) in the case of a Perpetual Licence (contingent on the return of the Licenced Materials), refund a prorated portion of the Initial Fees based on a five year, straight line depreciation for the period thereof during which Client was or is unable to use the Licenced Materials.

(c) Limitation. IAMRecognised shall have no indemnity or liability obligation to Client under this section 11 if any intellectual property infringement claim results from (i) a correction or modification of the Licenced Materials not provided by IAMRecognised or approved by IAMRecognised in writing, (ii) if Client hosts the Software, the failure to promptly install an Enhancement or new release, if installation of such Enhancement or new release would have avoided the infringement, or (iii) the combination of the Licenced Materials or any element thereof used in combination with materials provided by others, if the resulting combination creates the claim of infringement, whereas the separate use of the Licenced Materials or any element thereof would not give rise to such a claim.

(d) Liability of IAMRecognised. Client shall be fully liable to IAMRecognised for all claims and actions arising out of Client's use or misuse of the Licenced Materials, without limitation.

10) LIMITATION OF LIABILITY

(a) Subject to section 10 above and to the maximum extent permissible in law all conditions and warranties which are to be implied by statute or otherwise by general law into this Agreement or relating to the Licenced Materials or the services provided by IAMRecognised are hereby excluded to the maximum extent permitted in law.

(b) IAMRecognised's charges to Client are determined on the basis of the exclusions from and limitations of liability contained in this Agreement. Client expressly agrees that these exclusions and limitations are reasonable because of (amongst other matters) the possibility that the amount of damages awardable to Client for a breach by IAMRecognised of this Agreement may be disproportionately greater than the price of the Software. IAMRecognised is willing to consider arranging for additional insurance cover to enable IAMRecognised to take on the burden of additional liability to Client provided that Client pays IAMRecognised a commensurately higher price. If Client wishes IAMRecognised to obtain a quotation for such additional insurance cover Client shall notify IAMRecognised accordingly prior to this Agreement being entered into.

(c) The following provisions in this section 10 set out IAMRecognised's entire liability (including any liability for the acts and omissions of its employees, agents or sub-contractors) to Client in respect of:

- a. a breach of IAMRecognised's contractual obligations;
- b. a tortious act or omission for which IAMRecognised is liable;
- c. an action arising out of a misrepresentation made by or on behalf of IAMRecognised, arising in connection with the performance or contemplated performance of this Software or out of an act done or omission made as a consequence of the entry into by IAMRecognised of this Agreement.

(d) The total liability which IAMRecognised shall owe to Client and in respect of all claims shall not exceed the higher of (i) the Specified Monies, (ii) the sum of two hundred and fifty thousand pounds (£250,000), and (iii) in the case of action brought against Client which is covered by the indemnity contained in section 11(a), five hundred thousand pounds (£500,000). In this section 12(d) "Specified Monies" means the total monies payable by Client pursuant to this Agreement for the twelve (12) month period commencing on the date on which this Agreement is entered into.

(e) IAMRecognised shall in no circumstances be liable to Client for any economic loss, loss of profit, loss of use of trade marks, loss of business and like consequential loss.

(f) IAMRecognised shall in no circumstances be liable to Client for any indirect loss.

(g) IAMRecognised shall in no circumstances (whether before or after termination of this Agreement) be liable to Client for any loss of or corruption to data or programs held or used by or on behalf of Client and Client shall at all times keep adequate back-up copies of the data and programs held or used by or on behalf of Client.

(h) Client acknowledges that the Software has not been designed for use in circumstances where its failure could cause severe loss and accordingly Client (i) will not use the Software or cause the Software to be used, or (ii) will at a minimum undertake a risk analysis assessment (for the purpose of minimizing their risk) of:

- a. the whole or a part of the Software; or
- b. the processes and products in association with which the whole or a part of the Software is used including without limitation where the Software is to be used in the following industries: medical; transport; control, processing or utilisation of nuclear products.

(i) The exclusions from and limitations of liability referred to in this section 12 do not apply so as to exclude or limit IAMRecognised's liability to Client for:

- a. death or personal injury resulting from the negligence of IAMRecognised, its employees, agents or sub-contractors;
- b. breach of IAMRecognised's implied undertaking (if any) as to title to the Software or the warranty (if any) as to quiet possession implied by law or statute
- c. damage for which IAMRecognised is liable to Client under part I of the Consumer Protection Act 1987 where Client acts as a consumer pursuant to that Act; or
- d. fraud,

save that nothing in this section 12 shall confer a right or remedy upon Client to which Client would not otherwise be entitled.

(j) The exclusions from and limitations of liability set out in this section 12 shall be considered severable. The invalidity or unenforceability of any one part of this section 12 shall not affect the validity or enforceability of any other part of this section 12.

(k) The provisions of this section 12 shall survive the termination of this Agreement.

11) CONFIDENTIALITY

(a) IAMRecognised Proprietary Information. IAMRecognised retains for itself ownership and all rights to all information and data related in any manner to the Licenced Materials and their various elements (including, but not limited to routines, sub-routines, formulae, source code, algorithms and know-how) together with this Agreement and its terms, IAMRecognised's Order Form, proposal and RFP/RFO response to Client, along with any IAMRecognised financial matters, technical, security and accounting data or other proprietary or confidential information provided by IAMRecognised to Client (the "IAMRecognised Proprietary Information"), and Client, its agents, servants, employees, representatives and independent contractors shall retain in strict confidence, the IAMRecognised Proprietary Information and shall not make use of, disclose or allow to be disclosed the IAMRecognised Proprietary Information, except in accordance with the terms of this Agreement. In the event Client is called upon to turn over IAMRecognised Proprietary Information in response to a request for public records, Client shall

immediately notify IAMRecognised of the request and work with IAMRecognised to exercise all defenses available to protect IAMRecognised. Client will ensure that all outside consultants who access or make use of any part of IAMRecognised Proprietary Information execute a confidentiality agreement protecting the IAMRecognised Proprietary Information and shall inform such outside consultants that all such information is confidential and shall not be disclosed or used except as is necessary to assist Client in using the Licensed Materials.

(b) Client Proprietary Information. Client retains for itself ownership and, subject to the licence granted to IAMRecognised in section 9(b) of this Agreement, all rights to all information and data related in any manner to financial matters, technical or accounting data or confidential information, patients' or clients' names, addresses or health records or any other information in any manner related to Client's patients or clients, or any programs or documentation in any form or format not part of the IAMRecognised Proprietary Information (collectively the "Client Proprietary Information"), and IAMRecognised, its agents, servants, employees, representatives and independent contractors shall retain in strict confidence, Client Proprietary Information and shall not make use of, disclose or allow to be disclosed Client Proprietary Information, except in accordance with the terms of, or in connection with the performance of IAMRecognised under, this Agreement. IAMRecognised will ensure that all outside consultants who access or make use of any part of Client Proprietary Information execute a confidentiality agreement (and, where appropriate a HIPAA Business Associate Agreement) protecting Client Proprietary Information and shall inform such outside consultants that all such information is confidential and shall not be disclosed or used except as is necessary to carry on business with IAMRecognised in service to Client.

(c) Precautions. Both IAMRecognised and Client shall take reasonable precautions, at least to the same extent that they each protect their own similar confidential information, to ensure the security and confidentiality of the other party's Proprietary Information or materials related to the performance of their respective obligations under this Agreement both during and after the termination of this Agreement. Neither party will use or disclose Proprietary Information of the other party for any purpose without the other party's express written consent, other than (i) as may be reasonably necessary for the performance of its duties pursuant to this Agreement, (ii) as required to satisfy a court order (with reasonable notice to the other party whenever possible) and (iii) to its employees, authorized agents, subcontractors, legal counsel, accountants, banks and other financing sources and their professional advisors on a "need-to-know" basis and under an obligation of confidentiality no less stringent than the provisions contained in this Agreement.

(d) Exclusions from Confidentiality. The provisions of this section 13 shall not apply to Proprietary Information of a disclosing party: (i) if the receiving party can prove that it was in its possession or knowledge prior to the execution of this Agreement, (ii) to the extent the disclosure is required by the receiving party to either defend any action or claim made against it or to compel performance or seek any other remedy relating to the performance of this Agreement, (iii) to the extent that the receiving party can prove that such Proprietary Information of such party is in the public domain through no act or omission of the receiving party, or (iv) if the receiving party has rightfully obtained such Proprietary Information of such party in good faith from third parties without obligations of confidence.

12) COMPLIANCE WITH PRIVACY PROVISIONS

(a) Definitions In this section 14:

- a. **"DPA"** means the Data Protection Act 1998, the General Data Protection Regulation or any replacement legislation; and
- b. **"Personal Data"** means personal data, as defined in the DPA, about Client's employees, users and patients provided or made available to IAMRecognised by Client in connection with IAMRecognised's provision of the Licensed Materials and the services pursuant to the Agreement; and
- c. **"Data Controller"** and **"Data Processor"** shall have the meanings ascribed to them by the DPA.

(b) General

- a. Unless authorised in the Agreement or otherwise by Client, IAMRecognised shall not use or disclose any Personal Data for any purpose save that (i) IAMRecognised may use the Personal Data as reasonably necessary to provide or assist in the provision of the Services and to exercise any rights granted to it under the Agreement and (ii) IAMRecognised may disclose the Personal Data as required by applicable law and (iii) IAMRecognised may analyse and store the Personal Data for statistical purposes using pseudonymisation.
- b. Each Party agrees to comply with the provisions of the DPA in relation to the collection, exchange and processing of the Personal Data pursuant to this Agreement. Each party shall take appropriate measures in accordance with the provisions of the DPA to protect against the unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to the Personal Data.
- c. Notwithstanding anything to the contrary in the Agreement, Client acknowledges and agrees that IAMRecognised's obligations and Client's rights under the Agreement shall not apply to any Personal Data that is required by applicable law, rule, order, or regulation, or any government request, to be retained, disposed of, or disclosed in accordance with a lawful governmental or judicial demand.
- d. Client shall remain the Data Controller of the Personal Data of Client and Users processed by IAMRecognised. IAMRecognised shall be the data processor of such Personal Data.

Data Security and Records Retention. IAMRecognised shall use appropriate commercially reasonable administrative, technical, and physical safeguards to protect the security and confidentiality of the Personal Data. Personal Data shall not be retained by IAMRecognised beyond the expiration or termination of the Agreement, except to the extent necessary for IAMRecognised to fulfill its obligations under the Agreement or as required by any applicable laws, rules, or regulations, whichever is longer; and in any event only in accordance with IAMRecognised's own obligations under the DPA.

(c) Data Security Breach. In the event there is any unauthorised or unlawful access to or use of Personal Data that is required to be notified by IAMRecognised under the DPA (or which is required to be notified by Client under the DPA) (a "Security Incident"), IAMRecognised shall as soon as reasonably possible notify Client of the Security Incident, subject to applicable confidentiality obligations and to the extent required by the DPA. In the event of a Security Incident, IAMRecognised and Client shall cooperate in good faith to resolve any data privacy or security issues involving Personal Data.

13) MISCELLANEOUS PROVISIONS

(a) Entire Agreement. This Agreement, the Order Form, the Terms of Use Addendum (where applicable), the Hosting Addendum (where applicable), the Service Level Agreement (where applicable), and any other document expressly referred to in the body of this Agreement or Order Form (for example but without limitation the Support Guide) constitutes the entire agreement between the parties relating to any and all software or services acquired by Client from IAMRecognised, and supersedes all prior agreements, understandings and representations as to the subject matter set forth in this Agreement. The terms of this Agreement can only be varied by a written agreement signed by both IAMRecognised and Client or an updated version of this Agreement being presented by IAMRecognised and accepted by Client. The headings in the Agreement are provided for convenience only and shall not affect the construction of this Agreement. In the event of a conflict between the terms of this Agreement and any other document forming part of the Agreement (including, but not limited to, the Order Form, the Terms of Use Addendum (where applicable), the Hosting Addendum (where applicable) and the Service Level Agreement), the order of precedence shall be the Order Form, the Terms of Use Addendum (only if signed by both parties), the Hosting Addendum, this Agreement, the Service Level Agreement, the Support Guide. In the case of any other document, unless the other document is signed by both parties and makes specific reference to this Agreement and identifies by section or paragraph number the specific elements of this Agreement in respect of which the other document is to take precedence, it shall have no bearing. The parties agree that where a future version of this Agreement is presented to and accepted by Client, that future version shall automatically apply in substitution for this Agreement. No general statement that another document takes precedence shall apply. This Agreement shall always apply to the exclusion of any terms and conditions contained in or referred to in Client's purchase order or any other document submitted by Client, and any terms on Client's purchase order or other document submitted by Client are hereby expressly rejected. This Agreement also applies to any services or work IAMRecognised does for Client without any other written agreement. The parties acknowledge that in entering into this Agreement they have not relied upon any representations other than

those reduced to writing in this Agreement. The provisions of this section 15(a) shall not apply to any fraudulent misrepresentation.

(b) Incompatibility with Law; Severability. In the event that a law, regulation or ordinance prevents a party from agreeing to one or more terms of this Agreement or in the event that any of the terms of this Agreement become or are declared to be invalid or unenforceable, then this Agreement will be deemed to be amended to reflect the limit of what is permitted by the law, regulation or ordinance.

(c) Notices. Any notice provided for or permitted under this Agreement will be treated as having been given (a) when delivered personally or sent by confirmed facsimile transmission, on the next business day after the day on which it is sent, (b) when sent by commercial overnight courier with written verification of receipt, on the next business day after its delivery to the courier during normal business hours, or (c) when mailed postage prepaid by certified or registered mail, return receipt requested, on the fifth business day after its date of posting. Any notices required or permitted to be given shall be in writing and addressed to the other party at the address listed on the Order Form, or such replacement address as may be supplied from time to time.

(d) Waiver. The failure by a party to exercise any right hereunder shall not operate as a waiver of such party's right to exercise such right or any other right in the future.

(e) Dispute Resolution. In the event of any dispute relating to this Agreement, the parties will endeavor to resolve such dispute by conducting a minimum of two (2) discussions between senior executives of each party having authority to settle such dispute. If such discussions do not result in a resolution of the dispute, such dispute will be referred to mediation before a mediator agreed to by both parties. If the dispute remains unresolved thirty (30) or more days after the first request for mediation by either party, this provision will be deemed satisfied and either party may resort to litigation. In the event that satisfying the requirements of this section 15(e) would cause the expiration of a statute of limitations, the aggrieved party may commence suit provided that the filing party causes an order to be entered staying the action until this section is satisfied.

(f) Time Limitation on Claims. Any claim that one party to this Agreement wishes to assert against the other which arises out of this Agreement must be the subject of a demand letter calling for the process in section 15(e) above to commence within twenty four (24) months of the time the party became (or ought reasonably to have become) aware of its right to bring the claim.

(g) Liability and Costs. Client shall be fully liable to IAMRecognised for any claim, action, damage, loss, liability or cost (including proper legal costs) which IAMRecognised may incur arising out of any breach by Client of the Agreement or any negligence or wrongful act or omission by Client. Client must pay IAMRecognised all its proper costs incurred in the recovery of monies owing by Client or in otherwise enforcing IAMRecognised's rights against Client under the Agreement.

(h) Applicable law. The formation, construction, performance, validity and all aspects whatsoever of this Agreement shall be governed by English Law and subject to the provisions of section 15(e), the parties hereby submit to the non-exclusive jurisdiction of the English courts.

(i) No Agency. Nothing contained herein will be construed as creating any agency, partnership, joint venture or other form of joint enterprise between the parties.

(j) Migration. In the event of a termination by either party, or if IAMRecognised ceases to support the Software, or Client desires to transition its data to another system, IAMRecognised will work in good faith to assist Client to transfer the data out of the system(s) to an industry accepted format, at IAMRecognised's then prevailing time and materials charge.

Software Delivery. In cases where IAMRecognised is not hosting the Software, all Licenced Materials will be delivered electronically and/or shipped on memory device(s), FOB Origin, IAMRecognised or made available for downloading by IAMRecognised. Any Client shipping terms that indicate shipments are effective upon arrival at Client's location are refused and superseded.

(k) Force Majeure. Neither party shall be liable to the other for any delay or default in performing hereunder if such delay or default is caused by conditions beyond that party's reasonable control, including, but not limited to acts of God, governmental restrictions, wars, insurrection, terrorism, natural disasters and the failure of telecommunications links under the control of others. Both parties shall promptly resume performance once the force majeure event has passed.

(l) Audit Rights. Client shall maintain accurate books and records relating to the Licenced Materials, including but not limited to the use made thereof by Client in comparison to the Licence Thresholds and limitations on the Order Form. Wherever possible, such books and records shall be in a form to permit remote access and review. IAMRecognised may, at its sole cost and expense, conduct an audit of Client's books and records relating to the Licenced Materials during normal business hours, with reasonable advanced notice and no more frequently than annually, and subject to any reasonable requirements of Client in respect of confidentiality. In the event that an audit reveals that Client's use of the Licenced Materials is in excess of any Licence Thresholds at any time, Client shall immediately tender the necessary Supplemental Licence Fees, and should the audit reveal that Client's use was more than 5% in excess of any Licence Threshold at any time, Client shall reimburse IAMRecognised for the proper costs of the audit.

(m) Effect of Termination. Any provision of any document forming part of this Agreement, that by its nature must survive the termination of the Agreement to have its full effect, shall survive termination, including, without limitation, confidentiality obligations, indemnification obligations, limitations of liability. The termination of this Agreement shall be without prejudice to the rights and duties of either party accrued prior to termination.

(n) Assignment. Client shall not assign this Agreement or the rights and benefits conferred herein without the express written consent of IAMRecognised, except that Client may assign the Agreement in its entirety in the event of the acquisition of all or a majority of the assets of Client by a similar business entity, in which case no written consent shall be required in the event of an assignment to the acquirer. IAMRecognised may acting reasonably assign this Agreement in whole or in part as it sees fit. IAMRecognised shall be free to sub-contract any of its rights and obligations under this Agreement as it in its discretion sees fit. Subject to the limitations of liability set out in section 12, IAMRecognised shall be liable to Client for the acts and omissions of its sub-contractors.

(o) Instructions. IAMRecognised will assume that Client's employees, directors and officers who give IAMRecognised operational and implementation instructions related to the Software are authorized to do so.

(p) Non-competition. This Agreement shall not preclude IAMRecognised from providing Software or services of a similar nature to any person, entity or enterprise which conducts a business competitive to Client's business.

- (q) **Costs.** To the extent this Agreement does not specify, each party must pay its own costs and expenses in performing its obligations under the Agreement.
- (r) **Attorney Fees.** Client must pay IAMRecognised all its costs (on a lawyer/client basis) incurred in the recovery of monies owing by Client or in otherwise enforcing IAMRecognised's rights against Client under the Agreement.
- (s) **Currency.** All charges are in Pounds Sterling unless indicated otherwise on the Order Form.
- (t) **Payments.** Payments will be made in full and Client may not deduct from the price any set off, counterclaim or other sum unless IAMRecognised agrees in writing. If Client selects a payment method that causes IAMRecognised to incur charges, fees or expenses, Client agrees to the enlargement of the payment or charge (as the case may be) in order to fully offset the expense incurred by IAMRecognised.
- (u) **Interest and Invoices.** IAMRecognised reserves the right to charge Client simple interest on any undisputed sums, fees or other charges payable pursuant to this Agreement which are not paid on the due date and such interest may be charged (as well after as before a judgment) at the rate of two and a half per cent (2½%) per annum above the base rate of National Westminster Bank plc from time to time subsisting; such interest to accrue on a daily basis. Unless otherwise specified herein, all undisputed sums are due within 30 days of being invoiced.
- (v) **Taxes.** In addition to all charges specified in this Agreement, Client shall pay or reimburse IAMRecognised for all federal, state, local and other taxes, other than those on the income of IAMRecognised, including but not limited to sales, use and privilege taxes, Value Added Tax or any amount levied in lieu thereof. In the event that Client is tax exempt, Client must supply a copy of the tax-exempt certificate to IAMRecognised.
- (w) Wherever the word "including" occurs in this Agreement it shall be read as "including without limitation".
- (x) A third party who is not a party to this Agreement shall have no right under the Contract (Rights of Third Parties) Act 1999 to enforce any provision of this Agreement but this shall not affect any right or remedy of any third party which exists or is available apart from that Act.
- (y) In this Agreement where the context so admits and requires the same the use of the plural shall include the singular and the use of the singular shall include the plural. In this Agreement references to the masculine, feminine or neuter genders shall include each and every gender.