

The Seller has developed and owns the Licenced Program Materials, Licensed Programs and Software related to the Healthcare sector. The Seller also provides Other Services related to healthcare.

The Seller shall sell and the Customer shall purchase the Equipment, Licenced Program Materials, Licensed Programs, Other Services and Software as specified in the Invoice, or any order of the Customer which is accepted by the Seller and; These Terms and Conditions in conjunction with the Service Level Agreement, shall govern the Contract to the exclusion of any other terms and conditions.

Definitions and Interpretation

1.1 Unless the context otherwise requires, the following expressions have the following meanings:

"Acceptance Date"	Means the date on which the Licenced Program Materials, Licensed Programs, Other Services and Software are accepted (or when the Seller deems them to be accepted) by the Customer as per term 5.
"Backup"	Refers to the process of making copies of Your Data to use in the event the original data or data files are lost or destroyed. It is not intended to be an archive of data.
"Business Day"	Means any day (other than Saturday or Sunday) on which ordinary banks are open for their full range of normal business in England.
"Change Request"	Any change in the software requested by the Customer and approved by the Seller
"Confidential Information"	Means, in relation to either Party, information which is disclosed to that Party by the other Party pursuant to, or in connection with, this agreement (whether orally or in writing or any other medium, and whether or not the information is expressly stated to be confidential or marked as such). This shall include, but not be limited to, information contained in the Licenced Program Materials, Licensed Programs, Other Services and Software and the Specification; usernames and passwords; URLs; any pricing information; product, software, service specifications or information provided by the Seller and any other documentation or information marked as Confidential.
"Contract"	Means the agreement for the supply of the Licenced Program Materials, Licensed Programs and Software, Equipment or Other Services under these Terms and Conditions.
"Contract Price"	Means the Price stated in the invoice payable for the Licenced Program Materials, Licensed Programs and Software, Equipment and/or Other Services.
"The Customer"	Means the customer as specified in the invoice.
Customer's Customer	A client or customer of the Customer Group
"Data Hosting"	Refers to the storage of Your Data and the Licenced Programs
"Delivery Date"	Means the date access is provided or usernames and passwords are provided to all or part of the Licenced Programs or the Licenced Program Materials, or all or part of the Licenced Program Materials are delivered to the Customer.
"Equipment"	Means any Equipment as supplied by the Seller and Software as a Service (SaaS) supplied under these terms and as listed in the invoice.
"Fee"	The charge for the Licence or data hosting or additional Maintenance Services or Other Services as laid out in the invoice.
"Fix"	The process of creating or amending programming codes / files or software and other measures.
"Hacker"	Any person who gains unauthorised access to computer systems and/or programming codes for the purpose of altering programming code, stealing or corrupting data;
"Intellectual Property Rights"	All copyright and other intellectual property rights, howsoever arising and in whatever media, whether or not registered, including (without limitation) patents, trademarks, service marks, trade names, registered design and any applications for the protection or registration of these rights and all renewals and extensions thereof throughout the world.
"Licence"	Means the Licence granted by the Seller.
"Licence Fee"	Means the Fee for the Licence provided under this agreement as specified in the Invoice;
"Licenced Program Materials"	Means, the tablet computer, Licensed Programs, Other Services and Software, design, layouts, content, written content, visual elements, web based system or the Program Documentation or the Media.
"Licensed Programs"	Means the computer software programs of the Seller specified in the invoice/quotation and all releases and versions thereof.
"Location"	Means the Location where the Equipment is to be used as specified by the Customer and recorded on the invoice.
"Maintenance Services"	The Maintenance Services carried out by the Seller as set out in the invoice.
"Media"	Means the Media on which the Licenced Program Materials, Licensed Programs, Other Services and Software, the web based system, the tablet computer and the Program Documentation are accessed, stored or printed as provided to the Customer by the Seller;
"Other Person"	Means any individual or organisation or healthcare facility not directly owned or under the management of the Licensee and/or not included in the terms of this agreement;
"Other Services"	This refers to services such as training, consultancy, Software, advice and support or any other service provided by the Seller as detailed in the invoice or service level agreement.
"PDN"	Means the public data network provided by the Post and Telecommunications office (UK) or Telecom Eireann (Ireland) or other recognised supplier as defined by the Telecommunications Act, 1984.
"Planned Delivery Date"	The date specified on the invoice on which the Software is intended to be delivered to the Customer in accordance with this agreement.
"Program Documentation"	Means the operating manuals, user instructions, technical literature and all other related Materials in eye-readable form and on other Media made available or supplied to the Customer by the Seller for aiding the use and application of the Licenced Program Materials, Licensed Programs and Software or any Other Services provided.
"Restore"	'Restore' Relates solely to the amount of Your Data that has been able to be recovered from a Backup and not to the amount of Agreed Data originally contained in the backup. This is the process of copying Your Data from Storage Media and putting it back in its original location or a new location.
"Services"	Means the supply of the Licenced Program Materials, Licensed Programs and Software and any Other Services supplied to the customer by the Seller as agreed in the invoice
"Seller"	Medical Audits limited.
"Specification"	The Specification of the Licenced Program Materials, Licensed Programs and Software Materials describing the facilities and functions thereof, or Other Services as set out in the invoice
"Software"	The software, software development, procurement, consulting, computer programming services, programming code, design, layouts, content, written content, visual elements website, website pages developed or being developed or customised by the Seller to the specification of the Customer
"Use the Licenced Program Materials"	Means to read or access any or all parts of the Licenced Program Materials, Licensed Programs, Other Services and Software from any form of storage Media or to read and possess the Program Documentation in conjunction with the use of the Licenced Program Materials, Licensed Programs, Other Services or Software.
"Warranty Period"	The period of 1 month after the Acceptance Date.
"Your Data"	Your Data, is the audit data, non-compliance data, photos, comments and user information that is collected and/or updated using the Licenced Program Materials, Licensed Programs, Other Services or Software for a maximum of one year.

1.2 Unless the context otherwise requires, each reference in these Terms and Conditions to:

1.21 "writing", and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;

1.22 A statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;

1.23 A "Party" or the "Parties" refer to the parties to this agreement i.e. the Customer and the Seller.

1.3 The headings used in this agreement are for convenience only and shall have no effect upon the interpretation of this agreement.

1.4 Words imparting the singular number shall include the plural and vice versa.

1.5 References to any gender shall include the other gender.

1.6 Words importing persons include firms, companies, organisations, healthcare providers and corporations and vice versa.

2.0 Grant of Licence

2.1 The Seller grants to the Customer a non-exclusive Licence to Use the Licenced Program Materials, Licensed Programs, Other Services and Software subject to these terms and conditions.

2.2 The Customer shall use the Licenced Program Materials, Licensed Programs, Other Services and Software for processing its own data for its own internal business purposes only.

2.3 The Use of the Licenced Program Materials, Licensed Programs, Other Services and Software is restricted to use on and in conjunction with the Equipment unless a licence to use with other equipment is detailed in the invoice.

2.4 The Customer shall not, without the prior written consent of the Seller, use the Licenced Program Materials, Licensed Programs, Other Services and Software in any Location except the Location.

2.5 The Customer may not disclose or make available Licenced Program Materials, Licensed Programs, Other Services and Software to any entity other than the Customer who have agreed to these licence terms nor permit others to use it except the Customer's employees who may use it only on the Customer's behalf within the limits of the application licence and who are deemed to have agreed to such term without the written consent of the Seller.

2.6 The Licence shall not be deemed to extend to any programs or Materials of the Seller other than the Licenced Program Materials, Licensed Programs, Other Services and Software unless specifically agreed to in writing by the Seller.

2.7 The Customer acknowledges that it is licensed to Use the Licenced Programs, Licenced Program Materials, Other Services and Software only in accordance with the express terms hereof and not further or otherwise.

2.8 Where the Seller develops bespoke Licenced Programs or Licenced Program Materials or Other Services or Software for a Customer, the Customer may be given an exclusive licence to use that Licenced Programs or Licenced Program Materials or Other Service or Software. This will be specified by the Seller as an exclusive licence in the invoice if applicable. However, this exclusive licence shall not be deemed to extend to any other Licenced Programs or Licenced Program Materials or Other Services of the Seller and the Intellectual Property Rights in the bespoke Licenced Programs or Licenced Program Materials or Other Services or Software shall be and remain vested in the Seller.

2.9 Any Customer's Customer cannot access the Licenced Programs or Licenced Program Materials or Other Services or Your Data without the written consent of the Seller. In granting this consent it will be deemed that the Customer's Customer has agreed to these Terms and Conditions.

3.0 Licence Term

The Licence shall commence on the Delivery Date and shall continue for a period of two calendar years unless otherwise stated by the Seller and from year to year thereafter (unless otherwise stated by the Seller) until or unless terminated in accordance with any of the provisions of Term 16 or any other relevant Term and Condition.

4.0 Payment

4.1 The Licence Fee and all other payments required to be made pursuant to this agreement shall be paid by the Customer as provided in the Invoice without any set-off, withholding or deduction except such amount (if any) of tax as that party is required to deduct or withhold by law.

4.2 The Licence Fee and any other payments are exclusive of any applicable VAT and other sales tax which shall be payable by the Customer at the rate and in the manner prescribed by law against submission of a valid tax invoice.

4.3 The time of payment shall be of the essence of this agreement. If the Customer fails to make any payment on the due date in respect of the Price or the Fee or any other payment due under this agreement then the

- Seller shall,
- 4.3.1 without prejudice to any right which the Seller may have pursuant to any statutory provision in force from time to time, have the right to charge the Customer interest on a daily basis at an annual rate equal to the aggregate of 5% and the base rate of European Central Bank from time to time on any sum due and not paid on the due date. Such interest shall be calculated cumulatively on a daily basis from the date when payment of the invoice becomes due for payment up to and including the date of actual payment whether before or after judgment
- 4.3.2 reserve the right to recoup the Licenced Program Materials, Licensed Programs, Other Services and Software and any other software pertaining to this agreement
- 4.4 All payments shall be made to the Seller as indicated on the invoice issued by the Seller
- 4.5 All payments made to the Seller shall be non-refundable.
- 4.6 The Seller will reassess the customers required Price and/or Fee and/or Licence Fee on an annual basis to reflect any increase in the Seller's costs, Data Hosting, Data Management and/or inflation.
- 4.7 Any charges payable by the Customer shall be paid within 30 Days after the receipt by the Customer of the Seller's invoice.
- 5.0 Acceptance**
- 5.1 The Licenced Program Materials, Licensed Programs, Other Services and Software shall be deemed to be accepted by the Customer within 14 days of the Delivery Date or on the date the Customer commences live use of the whole or any part of the Licenced Program Materials, whichever is sooner.
- 5.2 In addition to 5.1, where the Seller develops bespoke Software, Licenced Programs or Licensed Program Materials or Other Services for a Customer, the Customer will be deemed to have accepted the software unless the Seller receives written notice from the Customer of amendments required to meet the specification (minor omissions and errors excluded) as laid out in the invoice, within 5 working days of notification from the Seller that a stage is complete (which can be by delivery of an Invoice for that stage).
- 6.0 Risk in Media**
- Risk in the Media shall pass to the Customer on delivery. If any part of the Media shall thereafter be lost, destroyed or damaged the Seller shall attempt to replace the same (embodying the relevant part of the Licenced Program Materials, Licensed Programs, Other Services and Software or Program Documentation) subject to the Customer paying the cost of such replacement.
- 7.0 Data Management**
- 7.1 The Seller shall provide the Customer after purchase of the Licenced Program Materials, Licensed Programs or Software with a data hosting service if noted in the Specification.
- 7.2 The Seller will be permitted to retain such backup copies in accordance with its standard back up and disaster recovery protocols.
- 7.3 The Seller retains the right to use the anonymised data and to conduct analysis and publish results of the anonymised analysis. The data may be accessed by the Sellers employees as part of the ongoing development and enhancement of the software.
- 7.4 The Seller excludes all liability and responsibility for any amount or kind of loss or damage that may result to you or a third party, including without limitation,
- 7.4.1 any direct, special, incidental, indirect, punitive, exemplary or consequential loss or damages,
- 7.4.2 or any loss of income, profits, goodwill, data, contracts, loss of money or loss or damages arising from or connected in any way to business interruption, loss of profit, loss of revenue,
- 7.4.3 or loss or damage to Your Data and whether in thought (including without limitation negligence, contract or otherwise) in connection with our Data Hosting or Backups or in connection with the use, inability to use or the results of use of our Data Hosting and Backups,
- 7.4.4 Including but not limited to loss or damage due to viruses that may infect Your Data or other property on account of your using these services, regardless of legal theory
- 7.5 The Seller will not be liable for the condition, existence or loss of any of Your Data if and when we recover it from a Backup.
- 7.6 The Seller is not liable for any problems or technical malfunction of any telephone network or lines, computer online systems, servers or providers, computer equipment, software, failure of any email or to technical problems or traffic congestion on the Internet or on any of the IT Services, Idrive Service or combination thereof
- 7.7 The Seller is not liable for infection by malware, ransomware, virus, other cyber-attack, or any other security breach, and/or The Customer deliberately disabling, bypassing, or otherwise undermining security controls. This includes but is not limited to proxy servers, antivirus, anti-Malware, anti-ransomware, and firewalls.
- 7.8 These exclusions or limitations will apply regardless of whether or not the Seller or any of its affiliates has been warned of the possibility of such damages. Our liabilities under this section are detailed in the liabilities section 14.0 below.
- 8.0 Restrictions on Copying**
- 8.1 The Customer shall not: (a) reverse engineer, decompile or disassemble or create derivative works based on the whole or part of the software comprising Licenced Program Materials, Licensed Programs, Other Services and Software (b) use the Medical Audits Service, the Software or the Documentation except as authorised under this Agreement; or (c) permit third parties to view, access or use the Medical audits Service, the Software or the Documentation or the Licenced Program Materials in any way.
- 8.2 The Customer shall not create or attempt to create any software which is similar to the Sellers Software or Licenced Program Materials or engage a third party to do this on their behalf.
- 8.3 No copies may be made of the Program Documentation without the prior written consent of the Seller. If the Customer requires further copies of the Program Documentation then these may be obtained under Licence from the Seller in accordance with its standard scale of charges from time to time in force.
- 9.0 Restrictions on Alterations**
- 9.1 The Parties acknowledge that the Licenced Program Materials, Licensed Programs, Other Services and Software may be modified from time to time by the Seller.
- 9.2 The Customer undertakes not to translate, adapt, vary or modify disassemble, decompile or reverse engineer the Licenced Program Materials, Licensed Programs, Other Services and Software without the Seller's prior written consent.
- 10.0 Security**
- 10.1 The Seller shall at all times take measures to protect Your Data in line with Data Protection as laid out in 17.1 below.
- 10.2 Access to Your Data is based on customer set up and configuration, limitations and constraints to Your Data will apply.
- 10.3 The Customer shall during the continuance of the Licence:
- 10.3.1 Effect and maintain adequate security measures to safeguard the Licenced Program Materials, Licensed Programs, Other Services and Software from access or use by any unauthorised person;
- 10.3.2 Not divulge passwords to any third party and makes all reasonable endeavours to keep same confidential and inaccessible to third parties.
- 10.3.3 Retain the Licenced Program Materials, Licensed Programs, Other Services and Software under the Customer's effective control; and not provide, loan or make otherwise available the Licenced Program Materials, Licensed Programs, Other Services and Software in whole or part to any Other Person
- 10.3.4 Ensure the Licenced Program Materials, Licensed Programs, Other Services and Software are used by the Customer's employees and representatives in accordance with the terms and conditions.
- 10.3.5 Replace the current version of the software with any updated or upgraded versions or new releases as notified to you by the Seller under the terms of this Licence immediately on receipt of such notification.
- 11.0 Seller's Proprietary and Intellectual Property Rights**
- 11.1 The Intellectual Property Rights in the Licenced Program Materials, Licensed Programs, Other Services and Software (including the source and object code) and any Documentation shall be and remain vested in the Seller. The Customer shall notify the Seller immediately if the Customer becomes aware of any unauthorised use of the whole or any part of the Licenced Program Materials, Licensed Programs, Other Services and Software by any person.
- 11.2 The Customer agrees **not** to :-
- 11.2.1 Provide, make available, demonstrate, allow access or loan, in whole or part, The Licenced Program Materials, Licensed Programs, Other Services, Software and Program Documentation to any third party or any Other Person.
- 11.2.2 Allow any copying of The Licenced Program Materials, Licensed Programs, Other Services, Software or Program Documentation.
- 11.2.3 Disclose any Confidential Information or passwords to any person or third party, or use any Confidential Information for any purpose other than as contemplated by The Seller
- 12.0 Intellectual Property Claims and Disputes**
- 12.1 The Seller shall defend at its own expense any claim brought against the Customer alleging that the Use of the Licenced Program Materials, Licensed Programs, Other Services and Software infringes the Intellectual Property Rights of a third party ("Intellectual Property Claim") and the Seller shall pay costs and damages awarded or agreed to in settlement of an Intellectual Property Claim provided that the Customer:
- 12.1.1 Furnishes the Seller with prompt written notice of any allegations of any allegations of infringement of which it is aware and shall not make any admissions without the Seller's prior written consent.
- 12.1.2 Provides the Seller with reasonable assistance in respect of the Intellectual Property Claim; and
- 12.1.3 Gives to the Seller the sole authority to defend or settle the Intellectual Property Claim.
- 12.2 If, in the Seller's reasonable opinion, the use of the Licenced Program Materials, Licensed Programs, Other Services and Software are or may become the subject of an Intellectual Property Claim then the Seller shall either (no refund will be made):
- 12.2.1 Obtain for the Customer the right to continue using the Licenced Program Materials, Licensed Programs, Other Services and Software which are the subject of the Intellectual Property Claim; or
- 12.2.2 Replace or, with the written consent of the Customer, modify the Licenced Program Materials, Licensed Programs, Other Services and Software which are the subject of the Intellectual Property Claim so they become non-infringing.
- 12.3 The Seller shall have no liability for any claims resulting from the Use of the Licenced Program Materials, Licensed Programs, Other Services and Software in combination with any equipment (other than the Equipment) or programs not supplied or approved by the Seller or any modification of any item of the Licenced Program Materials, Licensed Programs, Other Services and Software by a party other than the Seller or its authorised agent.
- 13.0 Warranties**
- 13.1 The Seller warrants that for 30 Days following the Acceptance date, the Licensed Program will provide the facilities and functions set out in the Specification when properly used.
- 13.2 The Seller shall not be liable under Term 13.1 if a failure to meet the warranties set out in that Term is caused by software other than our Software.
- 13.3 The Seller shall attempt itself and that its servants, agents and subcontractors take reasonable precautions to combat generally known viruses, spyware or other malware. However, the Seller cannot guarantee that the software is virus free.
- 13.4 When notifying a defect or error the Customer shall (so far as it is able) provide the Seller with a documented example of such defect or error.
- 13.5 The said warranties above shall be subject to the Customer complying with its obligations under the terms of this agreement and shall also be subject to the limits and exclusions of liability set out in Term 14. In

particular, the said warranties shall not apply to the extent that any defect in the Licensed Program arose or was exacerbated as a result of:

- 13.5.1 Incorrect use, operation or corruption of the Licensed Program Materials, Licensed Programs, Other Services and Software;
- 13.5.2 Any unauthorised modification or alteration of the Licensed Program Materials, Licensed Programs, Other Services and Software; or
- 13.5.3 Use of the Licensed Program Materials, Licensed Programs, Other Services and Software with other software or on Equipment with which it is incompatible.

13.6 To the extent permitted by applicable law, the Seller:

- 13.6.1 Disclaims all other warranties with respect to the Licensed Program Materials, Licensed Programs, Other Services and Software, either express or implied, including but not limited to any implied warranties relating to quality, fitness for any particular purpose or ability to achieve a particular result;
- 13.6.2 Makes no warranty that the Licensed Program are error free or that the use thereof will be uninterrupted and the Licensee acknowledges and agrees that the existence of such errors shall not constitute a breach of this agreement;
- 13.6.3 Does not give any warranty in respect of any third party products. The Seller will pass on to the Customer the benefit of any third party warranty supplied by a third party manufacturer or supplier.
- 13.6.4 Does not give any warranty that in relation to hosting of Software, Website Pages, applications, e mails, and additional Maintenance Services and Other Services the Seller is able to replace lost data or files.

13.7 To the extent permitted by applicable law, the Seller

- 13.7.1 Does not give any warranty that any information, resources or guidance provided in its Licensed Programs, Licensed Program Materials, Program Documentation or as part of any consultancy, training or education is up to date or reflects best practice and the Licensee acknowledges and agrees that the existence of errors or omissions shall not constitute a breach of this agreement. Any information, resources or guidance provided should not replace your local or other guidelines. The information should not be used as advice or to guide practice or treatment.
- 13.7.2 Does not give any warranty that any information, resources or guidance provided during consultancy, formal or informal education sessions and lectures is up to date or reflects best practice and the Licensee acknowledges and agrees that the existence of errors or omissions shall not constitute a breach of this agreement. Any information, resources or guidance provided should not replace the Customer's local or other guidelines. The information should not be used as advice or to guide practice or treatment.
- 13.7.3 Is not responsible for any information, resources, content or guidance provided by the Customer, or added into the Licensed Program Materials by the Customer or developed by the Customer in conjunction with the Seller.

13.8 If appropriate, as an additional service the Seller will apply "Fixes" to the software. The Seller will use its best endeavours to ensure that the "Fix" overcomes general problems and/or the problem caused by "Hackers" breaching the system but can give no guarantee that the "Fix" will in fact overcome a general problem or prevent a breach or future breach and the Seller shall not be liable for any loss or damage howsoever caused including economic loss, loss of profit, business revenue and goodwill.

14.0 Liability

- 14.1 The Seller shall, during the term of this agreement, maintain employer's liability, third party liability, product liability and professional negligence insurance cover in respect of its liabilities arising out of or connected with this agreement. The Seller's total liability under this Term shall be limited to the maximum provided under said insurance policies. The Seller shall on request supply copies of the relevant certificates of insurance to the Customer as evidence that such policies remain in force. The Seller undertakes to use reasonable commercial efforts to pursue claims under such insurance policies.
- 14.2 The Seller shall indemnify the Customer for personal injury or death caused by the negligence of its employees in connection with the performance of their duties under these Terms and Conditions; or by defects in any product supplied pursuant to these Terms and Conditions. The Seller's total liability under this Term shall be limited to the maximum provided under said insurance policies.
- 14.3 The Seller will indemnify the Customer for direct damage to tangible property caused by the negligence of its employees in connection with the performance of their duties under this agreement or by defects in any product supplied pursuant to this agreement. The Seller's total liability under this Term shall be limited to the total sum equal to £250 for any one event or series of connected events.
- 14.4 Save in respect of claims for death or personal injury arising from the Seller's negligence, in no event will the Seller be liable for any damages resulting from loss of data or use, lost profits, loss of anticipated savings, nor for any damages that are an indirect or secondary consequence of any act or omission of the Seller whether such damages were reasonably foreseeable or actually foreseen.
- 14.5 Except as provided above in the case of damage to tangible property, the Seller's maximum liability to the Customer under this agreement or otherwise for any cause whatsoever (whether in the form of the additional cost of remedial Services or otherwise) will be for direct costs and damages only and will be limited to the lesser of:
 - 14.5.1 The sum for which the Seller carries comprehensive insurance cover pursuant to Term 14.1 above; or
 - 14.5.2 A sum equivalent to the price paid to the Seller for the products or services that are the subject of the Customer's claim, covering the period of the last month that the product or service was provided.
- 14.6 The Parties acknowledge and agree that the limitations contained in this Term 14 are reasonable in the light of all the circumstances.
- 14.7 The Customer's statutory rights as a consumer (where the Customer is a consumer and not acting in the course of business) are not affected. All liability that is not expressly assumed in this agreement is excluded. These limitations will apply regardless of the form of action, whether under statute, in contract or tort including negligence or any other form of action. For the purposes of this clause, references to the "Seller" includes its employees, sub-contractors and suppliers who shall all have the benefit of the limits and exclusions of liability set out above in terms of the Contracts (Rights of Third Parties) Act 1999. Nothing in this agreement shall exclude or limit liability for fraudulent misrepresentation.
- 14.8 The Seller may provide information, guidance and resources on its Licensed Program Materials, Licensed Programs, Other Services and Software and in its Program Documentation. The Seller shall not be liable for any action, loss or omission of the Customer as a result of any information, resources and/or guidance on its Licensed Programs, Licensed Program Materials, Other Services and Software, any consultancy, training or education service provided or forming part of its Program Documentation.
- 14.9 The Seller shall provide information, guidance and resources as part of its consultancy services or as part of any training or education provided, either formal or informal. The Seller shall not be liable for any action, loss or omission of the Customer as a result of any information, resources and/or guidance as part of any consultancy services or as part of any training or education provided, either formal or informal.
- 14.10 The Seller shall not be liable for any action, medical decision, intervention or lack thereof undertaken by any person as a result of data, information, analysis or reports on its Licensed Programs, Licensed Program Materials, Other Services and Software, Program Documentation or as part of any consultancy, training or education service provided.
- 14.11 The Seller will not be held liable for any service that it provides which is reliant upon a third party.

15.0 Confidentiality

- 15.1 Both Parties undertake that, except as provided by Term 15.2 or as authorised in writing by the other Party, they shall at all times during the continuance of this agreement and after its termination keep confidential all Confidential Information and
 - 15.1.1 Not disclose any Confidential Information to any Other Person except at the written request of the Customer
 - 15.1.2 Not use any Confidential Information for any purpose other than as contemplated by this agreement;
 - 15.1.3 not make any copies of, record in any way or part with possession of any Confidential Information except as set out in 7.4, 7.5 and 15.6 ad 15.7 below and
 - 15.1.4 Ensure that (as applicable) none of its directors, officers, employees, agents or advisers does any act which, if done by that Party, would be a breach of the provisions of this Term 15.
- 15.2 Subject to Term 15.3, the Seller may disclose any Confidential Information to:
 - 15.2.1 Any of their sub-contractors, substitutes, or suppliers;
 - 15.2.2 Any party appointed to maintain the Equipment on which the Licensed Program Materials, Licensed Programs, Other Services and Software are being used (within the terms of the License);
 - 15.2.3 Any governmental or other authority or regulatory body; or
 - 15.2.3 Any of their employees or officers or those of any party described in Terms 15.2.1 to 15.2.3;
- 15.3 Disclosure under Term 15.2 may be made only to the extent that is necessary for the purposes contemplated by this Agreement, or as required by law. In each case the disclosing Party must first inform the recipient that the Confidential Information is confidential.
- 15.4 Each party to this agreement shall promptly notify the other party if it becomes aware of any breach of confidence by any person to whom it divulges all or any part of the Information and shall give the other party all reasonable assistance in connection with any proceedings which the other party may institute against such person for breach of confidence.
- 15.5 As part of this confidentiality policy, the Seller agrees not to disclose any/all information or data files supplied with, stored on, or recovered from Your Data except to employees, agents or affiliates of the Seller subject to confidentiality agreements or as required by law, without the consent of the client.
- 15.6 The Seller may use any Confidential Information for any purpose, or disclose it to any other party, where that Confidential Information is or becomes public knowledge through no fault of that Party.
- 15.7 Notwithstanding the foregoing, the Seller or its assignees may use Your Data for the purposes of conducting data analysis, together with such data as the Seller may obtain access to from other customers, and the customer grants the Seller the right to conduct such analysis and to publish the results of such analysis and to use the analysis to develop and deploy enhancements and improvements to and derivative works of the Licensed Program Materials, Licensed Programs, Other Services and Software provided no customer specific data is publicly attributed to the customer.
- 15.8 The provisions of this Term 15 shall continue in force in accordance with their terms, notwithstanding the termination of this agreement or Licence for any reason.

16.0 Termination

- 16.1 The minimum contract term is 2 years. The Customer or the Seller may terminate the Contract at any time after that date by giving at least 90 Days' prior written notice to the Seller.
- 16.2 The Seller may terminate the Contract forthwith on giving notice in writing to the Customer if:
 - 16.2.1 The Customer commits any serious breach of any term of this agreement and (in the case of a breach capable of being remedied) shall have failed, within 7 Days after the receipt of a request in writing from the Seller to do so, to remedy the breach.
 - 16.2.2 Where the Seller reasonably believes that Your Data or the Licensed Programme Materials content contains material that is threatening, defamatory, obscene, indecent, seditious, offensive, pornographic, abusive, liable to incite racial hatred, discriminatory, menacing, scandalous, inflammatory, blasphemous, in breach of confidence, in breach of privacy or which may cause annoyance or inconvenience or is illegal, or which is technically harmful (including without limitation, computer viruses, logic bombs, Trojan horses, worms, harmful components, corrupted data or other malicious software or harmful data or generally has poor security).
 - 16.2.3 Where the Seller reasonably believes that the Intellectual Property Rights of the Licensed Programme Materials is at risk or has been breached or the Customer has provided, made available, or allowed access or loaned, in whole or part, The Licensed Program Materials, Licensed Programs, Other Services and Software and Program Documentation to any third party or any Other Person.
- 16.3 The Seller may decide to discontinue the Services in response to unforeseen circumstances beyond our control or to comply with a legal requirement. If we do so, we'll give you reasonable prior notice so that you can access Your Data from our systems.
- 16.4 Upon the termination of the Contract, the Customer must immediately pay any sums due to the Seller under this Contract and shall immediately return to the Seller the Licensed Program Materials, Licensed Programs,

- Other Services and Software and cease all activities authorised by the Licence
- 16.5 The Seller reserves the right to invalidate any Customer's User names and passwords following termination of this agreement, removing access to its web based system and Licences Program Materials.
- 16.6 Notwithstanding the provisions of Term 16.4 and 16.5, the Customer may extract and store from the Licensed Program any data belonging to the Customer and store the same on separate Media for continuity purposes.
- 16.7 If the Customer shall become bankrupt or enter into any arrangement or composition with the Customer's creditors or being a Company shall enter into liquidation (other than a voluntary liquidation for the purpose of reconstruction or amalgamation) or has an administrative receiver or receiver appointed of its undertaking, or enters into an arrangement or composition for the benefit of creditors, or suffers any distress or execution to be levied on its Equipment, the Seller may in any such case terminate this agreement with immediate effect but without prejudice to any antecedent right or remedy of the Seller.
- 16.8 If the Customer starts using an alternative supplier to provide similar or the same services as those contracted from the Seller, the Seller may in any such case terminate this agreement with immediate effect but without prejudice to any antecedent right or remedy of the Seller.
- 16.9 No refund of any support or maintenance or hosting or associated Fees will be made to the Customer upon termination of the agreement by either the Seller to the Customer.
- 16.10 Any termination of the Contract or this Agreement (howsoever occasioned) shall not affect any accrued rights or liabilities of either Party nor shall it affect the coming into force or the continuance in force of any provision in this Agreement which is expressly or by implication intended to come into or continue in force on or after such termination.
- 17.0 Data Protection**
- 17.1 The Parties undertake to comply with the provisions of the Data Protection Act UK, EU Data protection directive 95/46/EC, ePrivacy Directive 2002/58/EC, GDPR 2018, and any related legislation in so far as the same relates to the provisions and obligations of this agreement.
- 17.2 The Customer's Data belongs to the Customer. These Terms do not give us any rights to Your Data except for the limited rights as laid out in 15 above.
- 17.3 The Seller does not supply or make available any Customer identifiable data to any third party except at the request of or with the written permission of the Customer, or as required to by law.
- 17.4 The Seller will employ appropriate technical and organisational measures to safeguard any Customer Information, including personal data, in Your Data.
- 18.0 Basis of Sale and Services**
- 18.1 The Seller's employees or agents are not authorised to make any representations concerning the Equipment and Services unless confirmed by the Seller in writing. The Customer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.
- 18.2 No variation to this agreement shall be binding unless agreed in writing between the Customer and the Seller or their authorised representatives.
- 18.3 Sales literature, Price lists and other documents issued by the Seller in relation to the Equipment and Services (including such on the Seller's website) are subject to alteration without notice and do not constitute offers to sell the Equipment which are capable of acceptance. An order placed by the Customer may not be withdrawn, cancelled or altered following to acceptance by the Seller and no Contract for the sale of the Equipment and Services shall be binding on the Seller unless the Seller has issued a quotation which is expressed to be an offer to sell the Equipment and Services or has accepted an order placed by the Customer by whichever is the earlier of:-
- 18.3.1 The Seller's written acceptance
- 18.3.2 Delivery of the Equipment
- 18.3.3 Or the Seller's invoice
- 18.4 Any typographical, clerical or other accidental errors or omissions in any sales literature, quotation, Price list, acceptance of offer, invoice or other document or information (including such on the Seller's website) issued by the Seller shall be subject to correction without any liability on the part of the Seller.
- 18.5 The Customer will pay for and the Seller will provide basic support for technical assistance in operating the Software via an online support center and by phone. The Seller will determine the fee for this support. An additional fee will be applicable for person to person support/training.
- 18.6 The Seller reserves the right to place their own logo and name on the Software and Equipment and include the Customer and Customer's testimonials in the Seller's portfolio and Marketing channels.
- 19.0 The Equipment and Licenced Programme Materials**
- 19.1 No order submitted by the Customer shall be deemed to be accepted by the Seller unless and until confirmed in writing by the Seller's authorised representative.
- 19.2 The Specification for the Equipment and Licenced Programme Materials shall be those set out in the Invoice unless varied expressly in the Customer's order (if accepted by the Seller). Equipment Illustrations, photographs or descriptions whether in catalogues, brochures, Price lists or other documents (including such on the Seller's website) issued by the Seller are intended as a guide only and shall not be binding on the Seller.
- 19.3 The Seller reserves the right to make any changes in the Equipment and Licenced Programme Materials Specification which do not materially affect their quality or performance.
- 19.4 No order which has been accepted by the Seller may be cancelled by the Customer except with the consent in writing of the Seller on the terms that the Customer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and Materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.
- 20.0 Delivery and Performance**
- 20.1 Delivery of the Equipment shall be made by the Seller arranging for delivery of the equipment to the location specified in the invoice.
- 20.2 Delivery of the Licenced Program Materials shall be the Seller providing the Customer with date access or usernames and passwords to the Licenced Programs or the Licenced Program Materials.
- 20.3 The Delivery Date is approximate only and time for delivery shall not be of the essence unless previously agreed by the Seller in writing. The Equipment and/or Licenced Program Materials may be delivered by the Seller in advance of the Delivery Date upon giving notice to the Customer.
- 20.4 If the Customer fails to take delivery of the Equipment and/or Licenced Program Materials or any part of them on the Delivery Date and/or fails to provide any instructions, documents, Licences, consents or authorisations required to enable the Equipment and/or Licenced Program Materials to be delivered on that date, the Seller shall be entitled upon given written notice to the Customer to store or arrange for the storage of the Equipment and/or Licenced Program Materials and then notwithstanding the provisions of Term 22, risk in the Equipment and/or Licenced Program Materials shall pass to the Customer, delivery shall be deemed to have taken place and the Customer shall pay to the Seller all costs and expenses including storage and insurance charges arising from such failure.
- 20.5 The Seller will not be responsible for errors in the data the Customer provides.
- 20.6 The Seller reserves the right to charge for work related to fixing errors if they are as a result of incorrect information provided by the customer or due to customer action.
- 21.0 Non-Delivery of Equipment, Licenced Program Materials and Services**
- 21.1 If the Seller fails to deliver the Equipment and/or Licenced Program Materials or Services within 90 business days of the agreed Delivery Date other than for reasons outside the Seller's reasonable control or the Customer's or its carrier's fault:-
- 21.1.1 If the Seller delivers the Equipment and/or Licenced Program Materials or Services at any time thereafter the Seller shall have no liability in respect of such late delivery;
- 21.1.2 If the Customer gives written notice to the Seller after the Delivery Date and the Seller fails to deliver the Equipment and/or Licenced Program Materials or Services within 90 Business Days after receiving such notice the Customer may cancel the order and the Seller shall have no liability.
- 22.0 Risk and Retention of Title**
- 22.1 Risk of damage to or loss of the Equipment and/or Licenced Program Materials shall pass to the Customer at:
- 22.1.1 In the case of Equipment to be delivered at the Seller's premises, the time when the Seller notifies the Customer that the Equipment is available for collection or actual delivery within the terms of Term 21.
- 22.1.2 In the case of Equipment to be delivered otherwise than at the Seller's premises, the time of delivery or, if the Customer wrongfully fails to take delivery of the Equipment, the time when the Seller has tendered delivery of the Equipment;
- 22.2 The Seller may, in accordance with the provisions of the Companies Act 1990, register any charge created by this Agreement.
- 22.3 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Equipment, which remain the property of the Seller.
- 22.4 The Seller reserves the right to repossess any Equipment and/or Licenced Program Materials in which the Seller retains title without notice. The Customer irrevocably authorises the Seller to enter the Customer's premises during normal business hours for the purpose of repossessing the Equipment and/or Licenced Program Materials in which the Seller retains title and inspecting the Equipment to ensure compliance with the storage and identification requirements of Term 20.3.
- 22.5 The Customer's right to possession of the Equipment or access to the Licenced Program Materials or Services in which the Seller maintains legal and beneficial title shall terminate if:
- 22.5.1 The Customer commits or permits any material breach of his obligations under this Agreement;
- 22.5.2 The Customer enters into a voluntary arrangement under Part I of the Insolvency Act 1986 or any other scheme or arrangement as made with his creditors;
- 22.5.3 The Customer is or becomes the subject of a bankruptcy order or takes advantage of any other statutory provision for the relief of insolvent debtors;
- 22.5.4 The Customer convenes any meeting of its creditors, enters into voluntary or compulsory liquidation, has a receiver, manager, administrator or administrative receiver appointed in respect of its assets or undertaking or any part thereof, any documents are filed with the court for the appointment of an administrator in respect of the Customer, notice of intention to appoint an administrator is given by the Customer or any of its directors or by a qualifying floating charge-holder (as defined in Schedule B-1 should be the 1986 Act), a resolution is passed or petition presented to any court for the winding up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer.
- 23.0 Defective Equipment**
- 23.1 If on delivery any of the Equipment is defective in any material respect and either the Customer lawfully refuses delivery of the defective Equipment or, if they are signed for on delivery "condition and contents unknown" the Customer gives written notice of such defect to the Seller within three business days of such delivery, the Seller shall replace the defective Equipment within 60 business days of receiving the Customer's notice;
- 23.2 No Equipment may be returned to the Seller without the prior consent in writing of the Seller. Subject thereto any Equipment returned which the Seller is satisfied was supplied subject to defects of quality or condition which would not be apparent on inspection shall be replaced free of charge or, at the Seller's sole discretion the Seller shall credit the Customer the Price of such defective Equipment but the Seller shall have no further liability to the Customer.
- 23.3 The Seller shall be under no liability in respect of any defect arising from fair wear and tear, or any wilful damage, negligence, subjection to normal conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration of the Equipment without the Seller's approval, or any other act or omission on the part of the Customer, its employees or agents or any third party.

- 23.4 Subject as expressly provided in this agreement, and except where the Equipment are sold under a consumer sale, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 23.5 The Customer shall be responsible to ensure that, except to the extent that instructions as to the use of the Equipment are contained in the packaging or labelling of the Equipment, any use of the Equipment by the Customer is in compliance with all applicable statutory provisions and that handling of the Equipment by the Customer is carried out in accordance with directions given by the Seller or any competent governmental or regulatory authority. The Customer will indemnify the Seller against any liability loss or damage which the Seller might suffer as a result of the Customer's failure to comply with this condition.
- 24.0 Customer's Default**
- 24.1 If the Customer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:-
- 24.1.1 Cancel the order or suspend any further deliveries of Equipment and/or access to the Licenced Program Materials and Services to the Customer;
- 24.1.2 Appropriate any payment made by the Customer for such of the Equipment and/or Licenced Program Materials and Services (or the Equipment supplied under any other Contract between the Customer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Customer); and
- This condition applies if:-
- 24.1.3 The Customer fails to perform or observe any of its obligations hereunder or is otherwise in breach of this agreement; or
- 24.1.4 The Customer becomes subject to an administration order or makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986 or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation; or
- 24.1.5 An encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer; or
- 24.1.6 The Customer ceases, or threatens to cease, to carry on business; or
- 24.1.7 The Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.
- 24.2 If the above condition applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the agreement or suspend any further deliveries under the agreement without any liability to the Customer, and if the Equipment and/or Licenced Program Materials have been delivered but not paid for the Price shall become immediately due and payable notwithstanding any previous arrangement to the contrary.
- 25.0 Customer's Obligations**
- 25.1 The Customer shall:
- 25.1.1 Operate the Licenced Program Materials, software, maintain data and any database in accordance with the Sellers instructions (written or verbal);
- 25.1.2 By arrangement, grant access to premises and/or Licenced Program Materials at all times for support and maintenance;
- 25.1.3 Make hardware and/or Licenced Program Materials accessible to the Seller's support staff, and when required enable logons or passwords required for such support staff;
- 25.1.4 Permit the Seller to install the current version of software from time to time when upgrades or fixes occur, to provide a reasonable level of assistance in implementation and testing;
- 25.1.5 Provide notice of intention to change hardware or operating system or data-feeds.
- 25.2 The Customer shall provide the Seller with reasonable direct and remote access to the Customer's equipment and/or Licenced Program Materials and the Software, and shall provide such reasonable assistance as the Seller may request, including, but not limited to, providing sample output and other diagnostic information.
- 26.0 Force Majeure**
- 26.1 Neither Party to this agreement shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, Internet Service Provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, epidemic or other natural disaster, acts of terrorism, acts of war, impossibility of use of public or private transport or telecommunications networks governmental action or any other event that is beyond the control of the Party in question.
- 26.2 If such circumstances continue for a continuous period of more than 12 months, either Party may terminate this agreement by written notice to the other Party.
- 27.0 No Agency or Partnership**
- This agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for herein.
- 28.0 Severance**
- If any provision of this agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from this agreement and rendered ineffective as far as possible without modifying the remaining provisions of this agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of this agreement.
- 29.0 Notices**
- 29.1 All notices under this agreement shall be in writing (mail or email) and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice.
- 29.2 Notices shall be deemed to have been duly given:
- 29.2.1 when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or
- 29.2.2 on the first business day, when sent, if transmitted by e-mail
- 29.2.3 on the tenth business day following mailing, if mailed by national ordinary mail, or airmail, postage prepaid;
- In each case notices shall be addressed to the most recent address or e-mail address notified to the other Party.
- 29.3 The Seller reserves the right to alter terms or conditions at any time and without notice.
- 30.0 Nature of the Agreement**
- 30.1 This agreement shall be binding upon, and inure to the benefit of, the parties and their respective successors and permitted assignees, and references to a party in this agreement shall include its successors and permitted assignees.
- 30.2 In this agreement references to a party include references to a person:
- 30.2.1 Who for the time being is entitled (by assignment, novation or otherwise) to that party's rights under this agreement (or any interest in those rights); or
- 30.2.2 Who, as administrator, liquidator or otherwise, is entitled to exercise those rights, and in particular those references include a person to whom those rights (or any interest in those rights) are transferred or pass as a result of a merger, division, reconstruction or other reorganisation involving that party. For this purpose, references to a party's rights under this agreement include any similar rights to which another person becomes entitled as a result of a novation of this agreement.
- 31.0 Change Control and Content Modification**
- 31.1 Some change to the software may be possible. If the customer identifies a requirement for a change, the Seller reserves the right to undertake the work or not.
- If the Seller agrees to the change, a Change Request will be sent to the customer detailing the change requirements. The Change can be by a written request or sent by e mail or by a telephone conversation between the parties. The Change Request shall state the effect such a change shall have on the Software, the Fee and the Price. The Seller shall use all reasonable endeavors to supply the necessary details within 30 working days from receipt of the Change Request or such other period as may be agreed.
- 31.2 The Seller will decide whether or not to implement the change. If the change is implemented, the amended Software, Fee, or Price shall then become the Software, Fee and Price for the purpose of this agreement
- 32.0 Service Level Guarantees and Suspension**
- 32.1 The Services and Maintenance Services and /or Licenced Program Materials, Licensed Programs, Other Services and Software may be suspended or suspended during peak times by the Seller without notice and without prejudice to the Seller's Rights of Termination under Term 16 in the event of
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- 32.1.1 Failure by the Customer to make any payment to be made to the Seller on its due date for payment.
- 32.1.2 If the Customer does or suffers anything to be done which jeopardises the service and/or Licenced Program Materials or any network to which it is from time to time connected.
- 32.2 The Seller may suspend the Licenced Program Materials, Licensed Programs, Other Services and Software and/or Services from time to time for necessary technical or security reasons and network upgrades.
- 32.3 The Seller uses a Hosting Company and may sub contract the provision of hosting, email Services and Other Services and reserves the right to suspend these Services immediately if the Customer is in breach of any of these terms.
- 32.4 No such suspension shall affect the liability of the Customer to pay charges and other amounts due to the Seller and without limitation, the License Fee and other Fees will continue to accrue.
- 32.5 The Seller will not be held liable for any Service that it provides which is reliant upon a third party.
- 32.6 The Seller uses a Hosting Company and Internet Service Provider to provide a hosting service to the Customers. Therefore their terms and conditions relating to provision of these Services will also apply as part of this agreement. More information can be obtained from the Seller. Some points include: no responsibility for any interruption of service and no liability for any loss of services, sales or any other form of loss; no refund of payments; reserving the right to alter terms or conditions at any time and without notice; the Customer fully indemnifying the Seller and the hosting company against liability (of any nature) which may arise from any aspect of design, hosting, software or application or other service.
- 33.0 Time of the Essence**
- 33.1 Time shall be of the essence in this agreement as regards any time, date or period mentioned in this agreement or subsequently substituted as a time, date or period by agreement in writing between the Parties.
- 33.2 In particular by not less than 10 days' notice to the Customer, the Seller may extend the times referred to in the invoice of any Planned Delivery Date(s), or time referred to in an email, the Notice providing for a replacement of the Planned Delivery Date or Dates.
- 34.0 Set-off**
- Where the Customer has incurred any liability to the Seller, whether under this agreement or otherwise, and whether such liability is liquidated or un-liquidated, the Seller may set off the amount of such liability against any sum that would otherwise be due to the Customer under this agreement.
- 35.0 Third Parties**
- Subject to Term 14.7, a person who is not a party to this agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement but this does not affect any right or remedy of a third party which exists or is available apart from such Act.

36.0 Law and Jurisdiction

- 36.1 This agreement (including any non-contractual matters and obligations arising there from or associated therewith) shall be governed by, and construed in accordance with, the laws of Ireland.
- 36.2 Any dispute, controversy, proceedings or claim between the Parties relating to this agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of Ireland save that:
- 36.2.1 The Seller shall have the right to sue to recover its Fees in any jurisdiction in which the Customer is operating or has assets, and
- 36.2.2 The Seller shall have the right to sue for breach of its intellectual property rights and other proprietary information and trade secrets ('IPR') (whether in connection with this agreement or otherwise) in any country where it believes that infringement or a breach of this agreement relating to its IPR might be taking place. For the avoidance of doubt, the place of performance of this agreement is agreed by the parties to be Ireland.
- 36.3 Any dispute which may arise between the parties concerning this agreement shall be determined as follows
- 36.3.1 If the dispute shall be of a technical nature relating to the functions or capabilities of the Licenced Program Materials or other technical service the Seller is providing or any similar or related matter then such a dispute shall be referred for final settlement to an expert nominated jointly by the parties or failing such nomination within 28 days, then;
- 36.3.2 In any other case the dispute shall be determined by the Small Claims Court or the High Court of Justice in Ireland and the parties submit to the exclusive jurisdiction of that Court for such purposes.

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