



Stalis

Your data, our duty.

**Careview® Licence, Support & Maintenance Agreement
for Careview® Products
at ...
for ... Support
reference: ... Support**

THIS AGREEMENT is dated from the day of 20...

By and between:

(1) ... whose registered office is ... ("Customer")

and

(2) STALIS LIMITED, incorporated and registered in England and Wales with company number 02585206 whose registered office is at Bloxham Mill Business Centre, Barford Road, Bloxham, Banbury, OX15 4FF ("Supplier").

Whereas

The Customer wishes to have a software licence and support for the Software products and the Supplier has agreed to provide a software licence and support and maintenance for such Software on the terms set out in this agreement.

It is Agreed that:

1 Interpretation

1.1 The definitions and rules of interpretation in this clause apply in this agreement and the Schedules to it.

Additional Service: the Support Service more particularly described in Schedule 3 which is to be provided by the Supplier to the Customer under clause 3.1 and clause 3.4.

Affiliate: either party or any business entity from time to time controlling, controlled by, or under common control with, either party.

Authorised Equipment: Computer equipment at the site that conforms to the minimum specification provided by the Supplier as set out in Schedule 8.

Authorised Users: Means Customer representatives or a person who is not a Customer representative but has nonetheless been agreed in writing between the parties to be an Authorised User.

Charges: the charges payable for the Services under this agreement, being (where the context so requires) each or any of the following:

- 1.1.1 the charges for the Standard Support Service set out in Part 2 of Schedule 2 (which charges also include the Updating Service);
- 1.1.2 the charges for the Additional Service set out in Schedule 3;
- 1.1.3 any charges agreed for Optional Services;
- 1.1.4 any charges agreed for New Versions; and
- 1.1.5 any Legacy Fees,

in each case as the same may be amended from time to time in accordance with the provisions of clause 9.7.

Client: [Client name] with which the Customer has a contract for the Customer to supply Software and Support and Maintenance services.

Commencement Date: The date on which the licence and support service begins or when the software is first used as a live system, whichever is sooner. The expected commencement date is

Confidential Information: has the meaning given in clause 15.

Contract Year: any 12-month period ending on any anniversary of the Commencement Date.

Control: a business entity shall be deemed to "control" another business entity if it owns, directly or indirectly, in excess of 50% of the outstanding voting securities or capital stock of such business entity or any other comparable equity or ownership interest with respect to a business entity other than a corporation OR as defined in section 1124 of the Corporation Tax Act 2010.

Critical Fault: a reproducible fault which substantially hinders or prevents the Customer from using a material part of the functionality of the software in question.

Customer Liaison Representative: the Customer shall nominate a manager to be available to liaise with, and respond to queries from, the Supplier Liaison Representative.

Database Management System: third party database software including but not limited to Microsoft SQL Server, InterSystems Cache, Oracle DBMS etc

Deliverables: any Documentation, Software, know-how or other works created or supplied by the Supplier (whether alone or jointly) in the course of providing the Services.

Documentation: the documents provided by the Supplier for the Software, in either printed text or machine-readable form, including the technical documentation, program specification and operations manual.

Fixed Term: the term stated in Schedule 2.

ISN: information standards notices issued and applicable to the Software.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and related rights, trade-marks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights to preserve the confidentiality of information (including without limitation know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered, and including without limitation all applications for (and rights to apply for and be granted), renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world.

Legacy Fees: the charges for the Legacy Obligations set out in Schedule 6.

Legacy Obligations: the obligations in respect of non-current versions of the Software which are set out in Schedule 6.

Maintenance Release: a release of the Software which corrects faults, adds functionality or otherwise amends or upgrades the Software, but which does not constitute a New Version.

Modification: any Maintenance Release or New Version which is acquired by the Customer.

New Version: any new version of the Software which from time to time is publicly marketed and offered for purchase by the Supplier in the course of its normal business, being a version which contains such significant differences from the previous versions as to be generally accepted in the marketplace as constituting a new product.

Non-Critical Fault: any reproducible fault in the Software other than a Critical Fault.

Optional Service: any of the Services listed in Part 2 of Schedule 4 and any other services that the Customer and the Supplier may from time to time agree shall be supplied to the Customer by the Supplier under the terms of this agreement.

Parties: The Supplier and the Customer, and "Party" shall mean either of them.

Service Cover Time: the standard times during which the Support and Maintenance Service is to be provided as specified in Part 3 of Schedule 2.

Service Levels: those standards of performance to be achieved by the Supplier in performing the Standard Support Service as set out in Part 3 of Schedule 2

Services: includes (as appropriate) the Standard Support Service, Additional Service and any Optional Services which are included within an order for Optional Services under clause 4.

Site: the premises at which the Software will be installed by the Supplier for the Customer as stated above or as notified to the Supplier by the Customer in writing prior to the installation.

Software: the products listed in Schedule 1 including manuals, documentation and any information provided by the Supplier to the Customer for use with that software and including any upgrades or corrected or customised materials provided to the Customer under this agreement.

Software Licence: the Software Licence granted the Customer in Schedule 7.

Standard Support Hours: the hours for which the Standard Support Service is provided as set out in Part 1 of Schedule 2.

Standard Support Service: the support service more particularly described in Part 1 of Schedule 2, which is to be provided by the Supplier to the Customer under clause 3.1 and clause 3.2.

Supplier Liaison Representative: the Supplier's nominated member of staff responsible for liaison with the Customer on all matters to do with this agreement is Emma Jackson or such other person as notified to the Customer from time to time.

Supplier Property: any and all copyright and other intellectual property owned or controlled by the Supplier that is supplied to the Customer in relation to the Software and this agreement.

Support Staff: those individuals who perform the Supplier's obligations under this agreement.

Supported Software: has the meaning set out in clause 2.1.

- 1.2 The headings in this licence shall not affect its interpretation. Except where the context otherwise requires, references to clauses and schedules are to clauses and schedules of this licence.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors or permitted assigns.
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established. Holding company and subsidiary mean a "holding company" and "subsidiary" as defined in section 1159 of the Companies Act 2006.
- 1.5 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.6 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.7 Unless the context otherwise requires references to the Supplier and the Customer include their permitted successors and assigns
- 1.8 References to "including" or "includes" shall be deemed to have the words "without limitation" inserted after them.
- 1.9 A reference to writing or written includes faxes and e-mail.
- 1.10 Unless the context otherwise requires, words in the singular shall include the plural and those in the plural include the singular.
- 1.11 If any conflict arises between the terms and conditions of this licence and any provision of any schedule, the terms and conditions of this licence shall prevail. If any conflict arises between this agreement and the Stalis Software Licence contained herein, the terms of this agreement shall prevail.

2 Supported Software

- 2.1 The Supported Software is:
 - 2.1.1 the Software;
 - 2.1.2 any Modification which is acquired by the Customer (whether under the Licence, this agreement or any other agreement between the Supplier and the Customer) during the course of the Licence and which accordingly becomes part of the software defined as the Software under the Licence; and
 - 2.1.3 any other software which the Supplier and Customer agree should be Supported Software for the purposes of this agreement including the software listed in Schedule 1.
- 2.2 In relation to Maintenance Releases:
 - 2.2.1 the Supplier shall from time to time make Maintenance Releases available to the Customer; and
 - 2.2.2 if the Customer fails to make arrangements for the installation of a Maintenance Release within one month of the Supplier's notifying the Customer that such Maintenance Release is available for installation, the Supplier may continue to provide their Services subject to the

- Legacy Obligations and payment of the Legacy Fee or terminate this agreement by giving one month's written notice to the Customer.
- 2.2.3 In relation to New Versions, if the Supplier releases a New Version and the Customer decides not to acquire and install such New Version, that decision shall not give rise to any right to terminate this agreement, nor shall it result in any adverse effect on the Services or the performance of the Supplier's obligations under this agreement. However, if the Supplier has released a New Version since the version which forms part of the Supported Software, and the Customer has not, within 12 months of the Supplier's having notified the Customer that a New Version is available, acquired and installed that New Version, the Supplier may continue to provide their Services subject to the Legacy Obligations and payment of the Legacy Fee or terminate this agreement by giving one month's written notice to the Customer given at any time after the expiry of such period. Pending any such termination the Supplier's obligations in respect of the Supported Software shall be reduced to the Legacy Obligations and the Charges shall be changed to the Legacy Fees.

3 The services

- 3.1 The Supplier shall supply, and the Customer shall take and pay for, the following Services:
- 3.1.1 the Standard Support Service as set out in Part 1 of Schedule 2;
 - 3.1.2 Additional Services as set out in Part 1 of Schedule 3; and
 - 3.1.3 such of the Optional Services as are included from time to time within an order for Optional Services agreed between the Supplier and the Customer under clause 4.
- 3.2 In relation to the Standard Support Service:
- 3.2.1 the Standard Support Service shall be provided during the Standard Support Hours and shall comprise:
 - 3.2.1.1 remote diagnosis and, where possible, correction of faults; and
 - 3.2.1.2 a telephone help desk to provide first-line technical support where remote access is not available;
 - 3.2.2 all as more particularly defined in Part 1 of Schedule 2.
 - 3.2.3 if additional support is required in any month it may be provided by the Supplier at its option at the rates set out in Part 2 of Schedule 2 (as varied from time to time in accordance with this agreement).
 - 3.2.4 the Standard Support Service shall meet the Service Levels set out in Part 3 of Schedule 2.
- 3.3 In relation to the Services:
- 3.3.1 the Supplier shall issue Modifications of the Software as and when required and in whatever form (including, in the case of Non-critical Faults, by way of a local fix or patch of the Software or a temporary by-pass solution) in the absolute discretion of the Supplier;
 - 3.3.2 the Services shall include the supply to the Customer of all revisions to the Documentation which are necessary in order to reflect any Modification acquired by the Customer;
 - 3.3.3 for the avoidance of doubt, the cost of this Service is included in the Charges payable for the Standard Support Service, but excludes any sum payable by the Customer in respect of the licence of a New Version; and
 - 3.3.4 once any Modification has been installed by the Customer, the Customer shall return all copies of the Software or any part of the Software which is superseded by that Modification.
- 3.4 In relation to the Additional Service this shall consist of updates necessary to implement all relevant ISN changes to the Software for the life of the contract. The Supplier reserves the right to charge for ISN updates where the changes required for ISN exceed more than 5 days effort per change.
- 3.5 The Supplier may, on prior notice to the Customer, make changes to the Services, provided such changes do not have a material adverse effect on the Customer's business operations.
- 3.6 The Supplier shall have no obligation to provide the Services where faults arise from:
- 3.6.1 misuse, incorrect use of or damage to the Software from whatever cause (other than any act or omission by the Supplier), including failure or fluctuation of electrical power;

- 3.6.2 failure to maintain the necessary environmental conditions for use of the Software;
 - 3.6.3 use of the Software in combination with any equipment or software not provided by the Supplier or not designated by the Supplier for use with any Modification forming part of the Supported Software, or any fault in any such equipment or software;
 - 3.6.4 relocation or installation of the Software by any person other than the Supplier or a person acting under the Supplier's instructions;
 - 3.6.5 any breach of the Customer's obligations under this agreement howsoever arising or having the Software maintained by a third party;
 - 3.6.6 any Modification not authorised by the Supplier; or
 - 3.6.7 operator error.
- 3.7 Unless otherwise defined in Part 1 of Schedule 2, the Service will not include support for:
- 3.7.1 Any Database Management System;
 - 3.7.2 Any operating system(s) installed on the server or workstations where Supplier systems are operational;
 - 3.7.3 Any Microsoft Desktop applications, e.g. Excel and Access, installed on workstations or the server where Supplier systems are operational; or
 - 3.7.4 Any tables, stored procedures and views that have been developed by the Customer unless otherwise stated.
- 3.8 Unless otherwise defined in Part 1 of Schedule 2 the Service will not include:
- 3.8.1 Visits to the Customer site, except where required to install enhanced or new software or as part of normal project or account management; or
 - 3.8.2 System upgrades and enhancements required to support changes to software mandated by changes of government requirement or other enhancements required by the Customer.

4 Orders for Optional Services

- 4.1 The Customer may from time to time request the Supplier to supply Optional Services of the type set out in Part 2 of Schedule 4 at the rates referred to in clause 9.2. The Supplier shall use its reasonable endeavours to comply with the Customer's request, but the Customer acknowledges that the Supplier's ability to supply the Optional Services shall depend on the availability of appropriate resources at the time in question.
- 4.2 Where the Supplier agrees to provide Optional Services, such agreement shall be embodied in an order for Optional Services. Each order for Optional Services shall be made under, and shall incorporate, the terms of this agreement.

5 Service Cover Time

- 5.1 Any additional dates of excluded cover for Service Cover Time will be notified by the Supplier to the Customer by email from the Supplier Liaison Representative to the Customer's Service Representative giving 8 weeks' notice. This will normally be applicable over the UK Christmas and New Year period.
- 5.2 If the Customer requires periods of additional cover, these can be made available at an additional charge to be agreed between the Supplier as Optional Services.

6 Authorised User

- 6.1 The Service will be available only to the Customer Liaison Representative via the Customer help desk.
- 6.2 The Customer will nominate a Customer Liaison Representative and advise the Supplier at the commencement of this agreement and advise of any changes to their Customer Liaison Representative nomination throughout the life of the agreement.
- 6.3 Only the nominated Customer Liaison Representative or an authorised substitute of the Customer organisation may access the Service within the Service Cover Time defined above.

7 Support Staff

- 7.1 The Supplier shall provide sufficient Support Staff to fulfil its obligations under the terms of this agreement. The Support Staff shall be suitably trained and experienced in the support and maintenance of the Supported Software.

8 Further terms relating to the Services

- 8.1 The Supplier's obligation to provide on-site services shall be restricted to the Site.
- 8.2 The Supplier shall ensure that, while on the Customer's premises the Support Staff and all other persons who enter such premises with the authority of the Supplier for the purpose of, or in connection with, this agreement or the provision of the Services, adhere to the Customer's security procedures and health and safety regulations, as from time to time notified to the Supplier or otherwise brought to the notice of the Supplier or such persons. The Customer may remove or refuse admission to any person who is, or has been, in material breach of such procedures and regulations. However, the Supplier shall incur no liability for any delay in performing or failure to perform its obligations under this agreement as a result of compliance with the terms of this clause 8.2.

9 Charges

- 9.1 In consideration of the Services (excluding for this purpose any Optional Services), the Customer shall pay the Charges set out in Part 2 of Schedule 2. These Charges shall be paid annually as agreed in Schedule 2 in advance by the Customer to the Supplier within 14 days of the date of the Supplier's invoice. Additional functionality and system changes and/or additional users connected to the system may result in additional support charges which will be agreed with the Customer at the time of authorisation of the work. These charges will be invoiced to the Customer and shall be paid to the Supplier within 14 days of the date of the Supplier's invoice.
- 9.2 Charges for any Optional Services and Additional Services to the Customer shall be agreed in writing before performance or supply by the Supplier, and shall be charged and invoiced to the Customer by the Supplier (and paid by the Customer within 14 days of the date of the Supplier's invoice) following acceptance by the Supplier of the Customer's written order for such Optional Service or Additional Service (as the case may be).
- 9.3 The Customer shall pay within 14 days of the date of the Supplier's invoice all costs (at the Supplier's then prevailing rates) and expenses incurred by the Supplier for work carried out by the Supplier in connection with any fault which is not covered by this agreement.
- 9.4 The Customer shall reimburse within 14 days of the date of the Supplier's invoice any travel or subsistence expenses incurred by the Supplier where such expenses are incurred wholly and exclusively for the purpose of providing on-site support as part of the Services, provided that any request for reimbursement is in the form of a proper invoice accompanied by appropriate receipts.
- 9.5 If the Customer fails to pay any amount payable by it under this agreement, the Supplier may charge the Customer interest on the overdue amount, payable by the Customer immediately on demand, from the due date up to the date of actual payment, after as well as before judgment, at the rate of 4% a year above the base rate for the time being of HSBC plc. Such interest shall accrue on a daily basis and be compounded quarterly. The Supplier may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998 and Late Payment of Commercial Debts Regulations 2002.
- 9.6 All amounts payable under this agreement shall be exclusive of VAT or relevant local sales tax (if any) which shall be paid at the rate and in the manner for the time being prescribed by law.
- 9.7 The Supplier may increase the Charges as from each anniversary of the date of this agreement. Any increase shall be notified to the Customer at least one month before such anniversary. Any percentage increase shall not exceed more than 2% more than the Retail Price Index published by the Office for National Statistics or its successor from time to time for the Contract Year (or the nearest publication dates to the commencement and expiry dates of the relevant Contract Year, spanning a 12 month period) and each subsequent Contract Year.
- 9.8 The Customer may not withhold payment of any sum by reason of any set-off of any claim or dispute with the Supplier whether relating to the quality or performance of the Services or otherwise.

10 Intellectual Property Rights

- 10.1 All Intellectual Property Rights in the Deliverables shall belong to the Supplier, and the Customer shall have no rights in respect of any of the Deliverables except as expressly granted under this agreement. The Customer shall do or procure to be done all such further acts and things and sign or procure the signature of all such other documents as the Supplier may from time to time require for the purpose of giving the Supplier the full benefit of the provisions of this clause 10.1.
- 10.2 The Supplier undertakes at its own expense to defend the Customer or, at its option, settle any claim or action brought against the Customer alleging that the use or possession of any of the Deliverables (or any part of them) infringes the UK Intellectual Property Rights of a third party (Claim) and shall be responsible for any reasonable losses, damages, costs (including legal fees) and expenses incurred by, or awarded against, the Customer as a result of or in connection with any such Claim. For the avoidance of doubt, clause 10.2 shall not apply where the Claim in question is attributable to possession, use, development, modification or maintenance of the Deliverables (or any part thereof) by the Customer other than in accordance with the terms of this agreement, use of the Deliverables in combination with any hardware or software not supplied or specified by the Supplier, if the infringement would have been avoided by the use of the Deliverables not so combined, or use of a non-current release of the Software.
- 10.3 Clause 10.2 is conditional on the Customer:
- 10.3.1 as soon as reasonably practicable, giving written notice of the Claim to the Supplier, specifying the nature of the Claim in reasonable detail;
 - 10.3.2 not making any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Supplier (such consent not to be unreasonably conditioned, withheld or delayed);
 - 10.3.3 giving the Supplier and its professional advisers at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Customer, so as to enable the Supplier and its professional advisers to examine them and to take copies (at the Supplier's expense) for the purpose of assessing the Claim; and
 - 10.3.4 subject to the Supplier providing security to the Customer to the Customer's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, taking such action as the Supplier may reasonably request to avoid, dispute, compromise or defend the Claim.
- 10.4 If any Claim is made, or in the Supplier's reasonable opinion is likely to be made, against the Customer, the Supplier may at its sole option and expense:
- 10.4.1 procure for the Customer the right to continue using, developing, modifying or maintaining the Deliverables (or any part of them) in accordance with the terms of this agreement;
 - 10.4.2 modify the Deliverables so that they cease to be infringing;
 - 10.4.3 replace the Deliverables with non-infringing works; or
 - 10.4.4 terminate this agreement immediately on notice to the Customer and repay to the Customer all sums which the Customer has paid to the Supplier under this agreement during the year in which the termination occurs, less a charge for the Services performed up to the date of termination.
- 10.5 Notwithstanding any other provision in this agreement, clause 10.2 shall not apply to the extent that any claim or action referred to in that clause arises directly or indirectly through the possession, use, development, modification or maintenance of any Open-Source Software incorporated into the Software or through the breach of any Third-Party Licence relating to any Open-Source Software so incorporated howsoever arising.
- 10.6 This clause 10 constitutes the Customer's exclusive remedy and the Supplier's only liability in respect of Claims and, for the avoidance of doubt, is subject to clause 18.1.

11 The Customer's responsibilities

- 11.1 Without prejudice to clause 8.1, the Customer shall provide the Supplier, the Support Staff and all other persons duly authorised by the Supplier with full, safe and uninterrupted access including remote access

to the Site, systems, facilities and the Software as may reasonably be required for the purpose of performing the Services, such access, except in the case of emergency or agreed out-of-hours downtime, to be within the Service Cover Time. Where the Services are to be performed at the Customer's premises, the Customer shall provide adequate working space and office facilities (including telephone) for use by the Support Staff and take reasonable care to ensure their health and safety. The Customer shall ensure that appropriate environmental conditions are maintained for the Supported Software and shall take all reasonable steps to ensure that the Supported Software is operated in a proper manner by the Customer's employees.

- 11.2 The Customer shall nominate a Customer Liaison Representative to liaise with and respond to queries from the Supplier.
- 11.3 The Customer shall:
 - 11.3.1 co-operate with the Supplier in performing the Services and provide any assistance or information as may reasonably be required by the Supplier, including in relation to the diagnosis of any faults;
 - 11.3.2 report faults via their Customer Liaison Representative as quickly and accurately as possible using the procedures as detailed in Part 1 of Schedule 5;
 - 11.3.3 provide all necessary information requested as part of the investigation as quickly as possible;
 - 11.3.4 not unreasonably withhold access to the installed system for Supplier to investigate faults;
 - 11.3.5 provide reasonable access to appropriate Customer staff and resources to enable Supplier to fulfil its obligations;
 - 11.3.6 advise Supplier of any changes to their Customer Liaison Representative;
 - 11.3.7 inform Supplier of any intention to increase the user base for the Supported Software listed in Schedule 1;
 - 11.3.8 inform Supplier of any intention to modify or enhance any element of the Supported Software or its infrastructure;
 - 11.3.9 ensure that regular back-ups of the database and any other housekeeping tasks that may be advised are undertaken;
 - 11.3.10 ensure that all required infrastructure software is licensed and maintained to the required version as may be notified by Supplier from time to time;
 - 11.3.11 not infringe Supplier copyright and intellectual property rights; and
 - 11.3.12 uninstall, or provide access to Supplier to uninstall all Supplier provided software on termination of this Agreement.
- 11.4 The Customer shall indemnify the Supplier against any losses, damages, costs (including legal fees) and expenses incurred by or awarded against the Supplier as a result of the Customer's breach of this agreement howsoever arising or any negligent or wrongful act of the Customer, its officers, employees, contractors or agents.

12 Meetings

- 12.1 For the duration of this agreement, the Customer Liaison Representative and such Support Staff as may from time to time be considered appropriate shall meet at least twice per year at a Customer office location and at a time to be agreed between the Customer Liaison Representative and the Supplier, for the purpose of discussing provision of the Services and any other appropriate matters. These meetings will be arranged by the Customer.

13 Non-solicitation

- 13.1 The Customer shall not, for the duration of this agreement, and for a period of six months following termination, directly or indirectly induce or attempt to induce any employee of the Supplier who has been engaged in the provision, receipt, review or management of the Services or otherwise in connection with this agreement to leave the employment of the Supplier.

14 Risk and title

- 14.1 Risk in, and title to, any media bearing any Software or Documentation or other information that may from time to time be supplied by the Supplier to the Customer shall pass to the Customer on acceptance by the Customer.

15 Confidentiality and publicity

- 15.1 Each party shall, during the term of this agreement and thereafter, keep confidential all, and shall not use for its own purposes (other than implementation of this agreement) nor without the prior written consent of the other disclose to any third party (except its professional advisors or as may be required by any law or any legal or regulatory authority) any, information of a confidential nature (including trade secrets and information of commercial value) which may become known to such party from the other party and which relates to the other party or any of its Affiliates (Confidential Information), unless such information is public knowledge or already known to such party at the time of disclosure, or subsequently becomes public knowledge other than by breach of this agreement, or subsequently comes lawfully into the possession of such party from a third party. Each party shall use its reasonable endeavours to prevent the unauthorised disclosure of any such information.
- 15.2 Each party shall notify the other party if any of its staff connected with the provision or receipt of the Services becomes aware of any unauthorised disclosure of any Confidential Information and shall afford reasonable assistance to the other party, at that other party's reasonable cost, in connection with any enforcement proceedings which that other party may elect to bring against any person.
- 15.3 The terms of this agreement may not be disclosed by the Customer (other than to its legal advisors) without the prior written consent of the Supplier.
- 15.4 The Supplier may refer to the Customer as being a Customer of the Supplier in customer reference lists and sales presentations, but shall not refer to the Customer in any advertising or press release without the prior written consent of the Customer.
- 15.5 The provisions of this clause 15 shall remain in full force and effect notwithstanding any termination of this agreement.

16 Data protection

- 16.1 The Parties shall comply with the UK Data Protection Act 2018, the General Data Protection Regulation (GDPR) (EU) 2016/679 and any other applicable data protection legislation and any best practice guidance issued by the ICO.
- 16.2 For the purposes of this agreement the parties agree that the Customer will be the Controller and the Supplier will be the Processor.
- 16.3 The Supplier also agrees to comply with any reasonable measures required by the Customer to ensure that the Customer's obligations to the Controller are met. Any such obligations are listed in Schedule 7 of this Agreement.
- 16.4 The Supplier shall only process the personal data received from the Customer, to the extent and in such manner as is necessary for the purposes of this Agreement and strictly in accordance with the express written authorisation and instructions of the Customer (which may be specific instructions or instructions of a general nature).
- 16.5 The Supplier shall ensure that all personnel who are to access and/or process any of the personal data are contractually obliged to keep the personal data confidential. The obligation to confidentiality shall continue after the termination of this Agreement.
- 16.6 The Supplier shall ensure that any data processing services rendered to the Customer are not performed from a home office or other remote location, unless the following guidelines are adhered to; Any form of sensitive work involving processing of data will be performed over VPN and a reputable public wifi. Connections to Supplier, Customer or N3 networks should only be performed using appropriately encrypted and password protected computers. Personal or public computers will not be used for these activities. If working in a public location, the Supplier will ensure that the computer is never left unattended, to avoid accidental loss or theft.

- 16.7 The Supplier shall notify the Customer of the point of contact for all issues related to data privacy and protection within the scope of this Agreement. Where the Supplier is mandated to assign a data protection officer such contact person shall be the data protection officer.
- 16.8 The Supplier shall, at the written request of the Customer, delete (or otherwise dispose of) the personal data or return it to the Customer in the format(s) reasonably requested by the Customer within a reasonable time after the earlier of the following:
- 16.8.1 the termination of this Agreement; or
 - 16.8.2 the processing of that Personal Data by the Supplier is no longer required for the performance of the Supplier's obligations under this Agreement.
- 16.9 Following the deletion, disposal, or return of the Personal Data, the Supplier shall delete (or otherwise dispose of) all further copies of the Personal Data that it holds, unless retention of such copies is required by law, in which case the Supplier shall inform the Customer of such requirement(s) in writing. Any legal or contractual lien on the processed data and associated data is hereby irrevocably excluded.
- 16.10 All Personal Data to be deleted or disposed of under this Agreement shall be deleted or disposed of using secure methods or as described in Schedule 7.
- 16.11 The Supplier shall notify the Customer immediately if it becomes aware of any form of Personal Data breach, including any unauthorised or unlawful processing, loss of, damage to, or destruction of any of the Personal Data.
- 16.12 The Supplier shall immediately inform the Customer if, in their opinion, an instruction violates the applicable law.
- 16.13 Enquiries by Data Subjects
- 16.13.1 The Supplier shall cooperate fully with the Customer and assist as required in relation to any subject access request, complaint, or other request, including by:
 - 16.13.1.1 providing the Customer with full details of the complaint or request;
 - 16.13.1.2 providing the necessary information and assistance in order to comply with a subject access request;
 - 16.13.1.3 providing the Customer with any Personal Data it holds in relation to a data subject (within the timescales required by the Customer); and
 - 16.13.1.4 providing the Customer with any other information requested by the Customer.
 - 16.13.2 The Supplier shall notify the Customer without undue delay if it receives:
 - 16.13.2.1 a subject access request from a data subject; or
 - 16.13.2.2 any other complaint or request relating to the processing of the personal data.
- 16.14 Further subcontracting
- 16.14.1 The Supplier shall not sub-contract any of its obligations or rights under this Agreement without the prior written consent of the Customer.
 - 16.14.2 In the event that the Supplier appoints a subcontractor (with the written consent of the Customer), the Supplier shall
 - 16.14.2.1 enter into a Sub-Processing Agreement with the subcontractor which shall impose upon the subcontractor the same obligations as are imposed upon the Supplier by this Agreement and which shall permit both the Supplier and the Customer to enforce those obligations. The Customer shall receive a copy of the agreement with subcontractor; and
 - 16.14.2.2 ensure that the subcontractor complies fully with its obligations under the Sub-Processing Agreement and the GDPR.
 - 16.14.3 In the event that a subcontractor fails to meet its obligations under any Sub-Processing Agreement, the Supplier shall remain fully liable to the Customer for failing to meet its obligations under this Agreement.
- 16.15 Data Transfer
- 16.15.1 When processing the Personal Data on behalf of the Customer, the Supplier shall:

- 16.15.2 not process the Personal Data outside the European Economic Area (all EU member states, plus Iceland, Liechtenstein, and Norway) ("EEA") without the prior written consent of the Customer. Where the Customer consents to such a transfer to a country that is outside of the EEA, the Supplier shall comply with the obligations set out in Chapter 5 of the GDPR by providing an adequate level of protection to any Personal Data that is transferred; and
- 16.15.3 not transfer any of the Personal Data to any third party without the written consent of the Customer and, in the event of such consent, the Personal Data shall be transferred strictly subject to the terms of a suitable agreement, as set out in clause 16.14 above.
- 16.16 The Customer shall not engage the Supplier without prior specific or general written authorisation from the Controller.
- 16.17 And the Customer must inform the Supplier immediately and fully of any instructions received by the Customer from the Controller regarding the processing of personal data by Supplier.
- 16.18 Subject to the limitations stated in clause 18, the Supplier shall be liable to the Customer for loss or corruption of any data or software owned by or under the control of the Customer, including loss or corruption resulting from the introduction of a virus, when such loss or corruption results from a wilful act or default of the Supplier. Such liability by the Supplier shall be subject to the Customer having exercised data security and data management procedures in accordance with good practice in the health industry or the information technology industry, as appropriate (including taking back-up copies of data as shall be reasonably necessary and appropriate to ensure security and continued operation of any system or any sub-system), to avoid such loss or corruption where possible and to mitigate the effects thereof.
- 16.19 In the event of loss or corruption of data or software owned by or under the control of the Customer, due to the wilful act or default of the Supplier, the Supplier shall render reasonable assistance, if so requested by the Customer, in returning such data or software to an operational state. If such loss or corruption of data is not a result of a wilful act or default of the Supplier, the Supplier may, should the Supplier agree to provide assistance, recover from the Customer all reasonable costs of rendering such assistance.

17 The Supplier's warranties

- 17.1 The Supplier represents and warrants to the Customer that:
 - 17.1.1 the Services will be performed:
 - 17.1.1.1 in accordance with all applicable laws and regulations; and
 - 17.1.1.2 with all reasonable skill and care;
 - 17.1.2 to the best of its knowledge and belief, the Deliverables will not infringe the UK Intellectual Property Rights of any third party; and
 - 17.1.3 at the date of this agreement, the Supplier has obtained and will maintain for the duration of this agreement all permissions, licences and consents necessary for the Supplier to perform the Services.
- 17.2 If, during the term of this agreement, the Supplier receives written notice from the Customer of any breach by the Supplier of the representations and warranties contained in clause 17.1.1, the Supplier shall, at its own option and expense, remedy that breach within a reasonable period following receipt of such notice, or terminate this agreement immediately on written notice to the Customer and repay to the Customer all sums which the Customer has paid to the Supplier under this agreement during the year in which the termination occurs, less a charge for the Services performed up to the date of termination. The Customer shall provide all information reasonably necessary to enable the Supplier to comply with its obligations under this clause 17.2. This clause sets out the Customer's sole remedy and the Supplier's entire liability for breach of clause 17.1.1.
- 17.3 No representation or warranty is given by the Supplier that all faults will be fixed, or will be fixed within a specified period of time.
- 17.4 All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this agreement or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose and the use of reasonable skill and care.

18 Limits of liability

18.1 Except as expressly stated in clause 18.2:

18.1.1 the Supplier shall not in any circumstances have any liability for any losses or damages which may be suffered by the Customer (or any person claiming under or through the Customer), whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which fall within any of the following categories:

18.1.1.1 special damage, even though the Supplier was aware of the circumstances in which such special damage could arise;

18.1.1.2 loss of profits;

18.1.1.3 loss of anticipated savings;

18.1.1.4 loss of business opportunity;

18.1.1.5 loss of or goodwill;

18.1.1.6 loss of, or damage to (including corruption of), data;

provided that this clause 18.1.1 shall not prevent claims for loss of or damage to the Customer's tangible property that fall within the terms of clause 18.1.3 or any other claims for direct financial loss that are not excluded by any of categories (i) to (vi) inclusive of this clause 18.1.1;

18.1.2 the Customer agrees that, in entering into this agreement, either it did not rely on any representations (whether written or oral) of any kind or of any person other than those expressly set out in this agreement or (if it did rely on any representations, whether written or oral, not expressly set out in this agreement) that it shall have no remedy in respect of such representations and (in either case) the Supplier shall not in any circumstances have any liability otherwise than in accordance with the express terms of this agreement; and

18.1.3 the total liability of the Supplier, whether in contract, tort (including negligence) or otherwise and whether in connection with this agreement or any collateral contract, shall in no circumstances exceed a sum equal to the Charges payable by the Customer in the Contract Year in which the liability arises.

18.2 The exclusions in clause 17.4 and clause 18.1 shall apply to the fullest extent permissible at law but the Supplier does not exclude liability for:

18.2.1 death or personal injury caused by the negligence of the Supplier, its officers, employees, contractors or agents;

18.2.2 fraud or fraudulent misrepresentation;

18.2.3 breach of the obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 Supply of the Goods and Services Act 1982; or

18.2.4 any other liability which cannot be excluded by law.

18.3 The Supplier will not be liable under this agreement for the following:

18.3.1 The effects of the installation of third party software by the Customer on the server or any connected workstations, other than those versions of software required to support the correct operation of the Supported Software

18.3.2 Software performance problems or failure caused by inadequate workstation or server disc space or processor capacity or local area network capacity

18.3.3 The effect of any enhancements to the Supported Software as listed in Schedule 1 or its infrastructure where this enhancement is not undertaken by Supplier

18.3.4 Any tables, stored procedures and views that have been developed by the Customer unless otherwise stated

18.3.5 Issues arising from Customer or third party software or hardware rebuilds of the server or connected workstations

18.3.6 Issues arising from the quality of any third party data which is used to update the Customer's database

18.3.7 The effects of Customer deletion or amendment of data using functions that do not form part of the Supported Software listed in Schedule 1

- 18.4 The Customer acknowledges that:
- 18.4.1 it is exclusively responsible for:
 - 18.4.1.1 reviewing any new Modifications in accordance with clause 2;
 - 18.4.1.2 ensuring that the staff of the Customer and its Affiliates are trained in the proper use and operation of the Software;
 - 18.4.1.3 ensuring the security, completeness and accuracy of all inputs and outputs;
 - 18.4.1.4 making regular backup copies of its data to ensure recovery of its data if the Software malfunctions; and
 - 18.4.1.5 the selection, use of and results obtained from any other programs, equipment, materials or services used in conjunction with the Software;
 - 18.4.2 the level of the Charges reflects the allocation of risk between the parties set out in clause 16.1 and clause 18; and
 - 18.4.3 it is in a better position than the Supplier to assess and manage its risk in relation to use of the Software.
- 18.5 All dates supplied by the Supplier for the delivery of the Modifications or the provision of Services shall be treated as approximate only. The Supplier shall not in any circumstances be liable for any loss or damage arising from any delay in delivery beyond such approximate dates.
- 18.6 The Customer shall indemnify the Supplier against any loss, liability or costs suffered by the Supplier due to any claim brought against the Supplier by any third party concerning the Customer or their employees or agents allowing improper access to data, providing incorrect data or infringing any third party's Intellectual Property Rights.
- 18.7 All references to the Supplier in this clause 18 shall, for the purposes of this clause only, be treated as including all employees, subcontractors and suppliers of the Supplier and its Affiliates, all of whom shall have the benefit of the exclusions and limitations of liability set out in this clause 18.

19 Assignment and subcontracting

- 19.1 The Customer shall not assign, novate, charge, subcontract or deal in any other manner with any or all of its rights and obligations under this agreement without the prior written consent of the Supplier (such consent not to be unreasonably withheld or delayed).
- 19.2 The Supplier may at any time assign, novate, charge, subcontract or deal in any other manner with any or all of its rights and obligations under this agreement, provided it gives written notice to the Customer.
- 19.3 Each party confirms it is acting on its own behalf and not for the benefit of any other person.
- 19.4 Notwithstanding clause 15, a party assigning any or all of its rights under this agreement may disclose to a proposed assignee any information in its possession that relates to this agreement or its subject matter, the negotiations relating to it and the other party which is reasonably necessary to disclose for the purposes of the proposed assignment, provided that no disclosure pursuant to this clause 19.4 shall be made until notice of the identity of the proposed assignee has been given to the other party.

20 Duration

- 20.1 Supply of the Services by the Supplier to the Customer shall commence on ... and, subject to termination in accordance with the provisions of this agreement, shall continue for the Fixed Term. After expiry of the Fixed Term, the supply of the Services shall (subject to any such termination) continue under this agreement from year to year until terminated by either the Supplier or the Customer on 180 days' prior written notice to the other to expire at the end of the current Contract Year of the term.

21 Termination

- 21.1 Without prejudice to any rights that have accrued under this agreement or any of its rights or remedies, either party may at any time terminate this agreement and/or the Support Services with immediate effect by giving written notice to the other party if:

- 21.1.1 the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
- 21.1.2 the other party commits a material breach of any term of this agreement (other than failure to pay any amounts due under this agreement) and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- 21.1.3 the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
- 21.1.4 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- 21.1.5 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 21.1.6 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 21.1.7 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party;
- 21.1.8 a floating charge holder over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- 21.1.9 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- 21.1.10 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- 21.1.11 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 21.1.4 to clause 21.1.10 (inclusive);
- 21.1.12 the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- 21.1.13 any warranty given in clause 16.1 is found to be untrue or misleading.
- 21.2 Either party may terminate this agreement in accordance with clause 20.
- 21.3 The Supplier may, without prejudice to its other rights or remedies, terminate this agreement immediately by notice to the Customer if the Customer:
 - 21.3.1 undergoes a change of Control;
 - 21.3.2 sells all of its assets or is merged or re-organised in circumstances where it is not the surviving entity; or
 - 21.3.3 disputes the ownership or validity of the Supplier's Intellectual Property Rights.
- 21.4 This agreement shall automatically terminate on termination or expiry of the Licence, and expiry or any termination of this agreement (however caused) shall terminate the Licence.

22 Effect of termination

- 22.1 Other than as set out in this agreement, neither party shall have any further obligation to the other under this agreement after its termination.
- 22.2 Any provision of this agreement which expressly or by implication is intended to come into or continue in force on or after termination of this agreement, including clauses 1, 10, 13, 15 to clause 17 and clause 18 and Schedules 1, 2, 3, 4, 5 and 6, shall remain in full force and effect.

- 22.3 Termination of this agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.
- 22.4 Notwithstanding its obligations in this clause 22, if a party is required by any law, regulation, or government or regulatory body to retain any documents or materials containing the other party's Confidential Information, it shall notify the other party in writing of such retention, giving details of the documents and/or materials that it must retain.
- 22.5 On termination of this agreement for any reason, the Customer's right to receive the Services shall cease automatically and each party shall as soon as reasonably practicable:
- 22.5.1 return, destroy or permanently erase (as directed in writing by the other party) any documents, handbooks, CD-ROMs or DVDs or other information or data provided to it by the other party containing, reflecting, incorporating or based on Confidential Information belonging to the other party. If required by the other party, it shall provide written evidence (in the form of a letter signed by its Head of IM&T or equivalent no later than [30] days after termination of this agreement that these have been destroyed and that it has not retained any copies of them (except for one copy that it may use for audit purposes only and subject to the confidentiality obligations in clause 15), provided that the Customer may retain copies of any Supplier Confidential Information incorporated into the Software;
 - 22.5.2 return all of the other party's equipment and materials, failing which, the other party may enter the relevant premises and take possession of them. Until these are returned or repossessed, the party in possession shall be solely responsible for their safe-keeping.
- 22.6 On termination of this agreement for any reason, the Supplier shall:
- 22.6.1 promptly refund such portion of the Charges as relates to the period after expiry or termination on a pro rata basis;
 - 22.6.2 as soon as reasonably practicable, vacate the Customer's premises leaving them clean and tidy and removing any goods, materials or equipment belonging to it. Any goods, materials or equipment that have not been removed after 30 days after termination of this agreement may be disposed of by the Customer as it thinks fit.
- 22.7 On termination of this agreement for any reason, the Customer shall immediately pay any outstanding unpaid invoices and interest due to the Supplier. The Supplier shall submit invoices for any Services that it has supplied, but for which no invoice has been submitted, and the Customer shall pay these invoices immediately on receipt.

23 Waiver

- 23.1 A waiver of any right under the Contract is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.
- 23.2 No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

24 Severance

- 24.1 If any provision of the Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 24.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

25 Entire Agreement

- 25.1 Each of the parties acknowledges and agrees that in entering into the Contract and the documents referred to in it or annexed to it, it does not rely on any statement, representation (whether innocent or negligent), assurance or warranty (Representation) (whether in writing or not) of any person (whether party to this agreement or not) other than as expressly set out in the Contract or those documents.

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

26 Assignment

- 26.1 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 26.2 The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract

27 No partnership or agency

- 27.1 Nothing in the Contract is intended to or shall operate to create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including without limitation the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

28 Third-party rights

- 28.1 The Contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns, and is not intended to benefit, or be enforceable by, anyone else.

29 Force majeure

- 29.1 Neither party shall in any circumstances be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure results from events, circumstances or causes beyond its reasonable control, and in such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations, provided that if the period of delay or non-performance continues for 180 days or more, the party not affected may terminate this agreement by giving 30 days' written notice to the other party.

30 Remedies

- 30.1 Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

31 Variation

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

32 Notices

- 32.1 Any notice given under this agreement shall be in writing and shall be delivered by hand, transmitted by fax, or sent by pre-paid first class post or recorded delivery post or email to the address of the party as set out at the beginning of this Agreement, or to such other address notified to the other parties.

The email addresses for notices for each party are as stated below (or as notified to the other party from time to time):

... (Customer Liaison Representative)

Support@stalis.com (Supplier Liaison Representative)

- 32.2 A notice delivered by hand is deemed to have been received when delivered (or if delivery is not in business hours, 9.00 am on the first Business Day following delivery). A correctly addressed notice sent by pre-paid first class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by fax to the fax number of the relevant party shall be deemed to have been received at the time of transmission. A notice sent by

email must contain a PDF of the notice as an attachment, identify in the subject line of the email that it is a formal notice under this contract and be sent to the email address stated above. The sender should retain a copy of the sent email showing a record of the time it was sent and the address as proof of sending.

- 32.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

33 Dispute resolution

- 33.1 It is the intention of the parties to settle amicably by negotiation all disagreements and differences of opinion on matters of performance, procedure and management arising out of this agreement. Accordingly, it is agreed that the procedure set out in this clause 33 shall be followed before the serving of written notice terminating this agreement, or in relation to any matter of dispute between the parties concerning performance, procedure or management.
- 33.2 If any disagreement or difference of opinion arises out of this agreement, the matter shall be disposed of as follows:
- 33.2.1 the Customer Liaison Representative and the Supplier Liaison Representative shall meet to attempt resolution. Should they not meet within 14 days of the date on which either party convenes a meeting to resolve the matter, or should they not be able to resolve the matter with 14 days of first meeting; then
 - 33.2.2 the matter shall promptly be referred by either party to the Head of IM&T or equivalent of the Customer and the Head of Client Services of the Supplier for immediate resolution.
- 33.3 If, within fourteen (14) days of the matter first having been referred to the highest level of escalation no agreement has been reached as to the matter in dispute, the dispute resolution process set out in this clause 33 shall be deemed to have been exhausted in respect of the matter in dispute, and each party shall be free to pursue the rights granted to it by this agreement in respect of such matter without further reference to the dispute resolution process.
- 33.4 For the avoidance of doubt, this clause 33 shall not prevent either party from seeking injunctive relief in the case of any breach or threatened breach by the other of any obligation of confidentiality or any infringement by the other of the first-named party's Intellectual Property Rights.

34 Governing law and jurisdiction

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

This Agreement has been entered into on the date stated at the beginning of it.

Signed by
 for and on behalf of STALIS LIMITED Authorised Signatory

Signed by [NAME OF DIRECTOR]

for and on behalf of ...

Director

Schedule 1 Supported Software

The following software will be supported under this Agreement:

Modules:

As delivered in accordance with the call-off agreement dated ... and including any Modification from time to time.

Schedule 2 Standard Support Service

Part 1. Description

- This Service will be provided for a Fixed Term of ... months from
- The Service will be available during the Standard Support Hours which are: 9.00 am to 5.00 pm Monday to Friday, except on days which are bank or public holidays in England.
- The Customer Liaison Representative will access the Service through the Web based automated help desk system. The procedures for this are included in Schedule 5. If the web based system is unavailable, telephone calls will be acceptable.
- All category code 1 (see table of definitions in Part 3 of Schedule 2) calls are considered as urgent and as such will be received telephonically or by email from the Customer Liaison Representative or their nominated representative. All category code 1 (Critical Fault) calls will be logged on the help desk system by the Supplier Support Centre.
- Where the Customer has a remote dial in facility available and the incident requires access to the installed software/database, the Customer Liaison Representative will be contacted to allow dial in to take place. The Customer will not unreasonably withhold dial in access.
- If the incident does not require a remote dial in or no remote dial in is available, the Supplier will advise the Customer Liaison Representative of what action is needed. In this case, where a software fix is required, the revised software will normally be despatched by Supplier to the Customer Liaison Representative by email or, where necessary, by the provision of an installation CD with instructions for installation. The Customer will be responsible for installing the supplied software.
- If the incident is dealt with by remote dial-in the Supplier will take the necessary action to correct the problem and advise the Customer Liaison Representative. Alternatively, the Supplier will advise the Customer Liaison Representative of what action should be taken.
- If a site visit is agreed to be necessary to investigate or rectify a problem that could have been dealt with via a remote dial up link, the travelling time and mileage involved will be chargeable, see Part 2 of Schedule 2 for details.

Part 2. Charges

The charges which will apply to this Agreement and for the service cover time are defined as:

Item	Annual Price £
Total	

Payment Terms:

Prices are in pounds sterling and exclusive of VAT where applicable.

The support payments for the Supported Software will be charged annually in advance.

Support charges are subject to review each year and the Retail Price Index for the previous year is used as a guide to change the costs.

Part 3. Service Levels

The following service levels are the Supplier's targets for dealing with reported incidents. The Supplier will use their reasonable endeavours to work within these levels. Figures in brackets are targets where no remote dial up access to a Customer site is available and where a site visit may be required.

Priority	Description	Respond within	Resolution Target
1 Critical	Total system outage, no users can access any software as listed in Schedule 1	15 mins	1 (3) working days
2 High	Software failure or function not working correctly affecting critical deadlines with no work around	15 mins	3 (5) working days
3 Medium	Software failure or function not working correctly not affecting critical deadlines or with work around.	2 hours	10 (15) working days
4 Low	Minor functional problem with work around or not affecting critical deadlines	8 hours	In next maintenance or patch release to be determined by Supplier
5 Queries/advice	These are calls which are not faults with the software as listed in Schedule 1, but where advice or guidance is being requested to assist with the development of a report.	Not app*	Not app*

Definition of an Incident

A perceived fault with the live software as listed in Schedule 1. If the fault reported is not on the live environment the above targets do not apply, however the Supplier will use reasonable endeavours to resolve the incidents within reasonable timeframes.

Incidents logged as priority 5 or which upon analysis are deemed to be training issues, consultancy or queries ("how to" questions) will not be subject to any service targets as listed above. However, the Supplier will use reasonable endeavours to respond within 2 working days.

Definition of resolution target

The resolution target time is calculated from the difference between date and time of raising of the incident to date and time of resolving the incident minus any time where the incident is not with the Supplier for resolution as recorded on the Help Desk system

Resolution times may be affected by:

- Contact or liaison with third party suppliers
- Time waiting for requested information
- Delays in NHS or Customer Information Networks

Escalation procedures

Incidents will normally be resolved between the Customer Liaison Representative and the member of the Supplier's support staff taking responsibility for the incident.

Where this is not possible, the following escalation procedure will apply:

- The hierarchy for the Customer to contact will be:
Head of Client Services
Head of Sales
Managing Director
- The hierarchy for the Supplier to contact will be:
Applications Project Manager or System Manager
Head of IM&T or equivalent
Director with responsibility for IM&T
Chief Executive

The Customer will agree escalation levels within their own organisation and advise the Supplier accordingly at the commencement of the contract.

Service Review Meetings

In accordance with Clause 12, Service Review meetings between the Supplier and the Customer are available through this Agreement and included in the Charges in Schedule 2 Part 2 (expenses for return mileage and any subsistence are chargeable).

The service review will as a minimum cover the previous period's performance including, but not limited to response and resolution time statistics and any other performance measures applicable under the Agreement.

Part 4. Charges for New Versions

Charges will be notified to the Customer on release of a New Version.

Schedule 3**Additional Services****Part 1.****Description**

This schedule is not applicable to this agreement and has been left blank intentionally.

Schedule 4 Optional Services

Part 2. Description

The following Optional Services may also be provided:

Consultancy and development work associated with change requests issued and agreed by the Customer. Any changes or enhancements made under this service will be supported under this Agreement but will incur additional costs to be agreed before the commencement of the work.

Schedule 5 Procedures for accessing the Supplier's support

Please refer to the Client User Guide provided separately.

Schedule 6 Legacy Fees & Obligations

Stalis will never delete Customer data as part of decommissioning and off boarding.

At the point of off boarding:

Stalis will provide the original data that was migrated into Careview in the form of tables which the Customer can then import into a SQL database or other data warehouse.

All Stalis software and associated IP will be deleted, access via N3 (and/or VPN) for support/technical assistance will be closed and access to the Stalis Help system and helpdesk will be terminated.

Stalis will either perform the removal of Stalis software and associated intellectual property or the Customer will complete this task and provide a signed certificate of conformity signed by a Customer Board member confirming that software has been removed.

The current standard rate for Off Boarding services is £2,000. Off boarding services will be charged at the standard rate applicable at the time of de-commissioning.

Schedule 7 Software Licence

1 Licence

- 1.1 Grant of licence.
 - 1.1.1 Licence to the Customer: The Supplier hereby grants to the Customer, and the Customer hereby accepts, a non-exclusive licence in the Supplier Property and the Software, but only:
 - 1.1.1.1 For use by the Client;
 - 1.1.1.2 upon the Authorised Equipment;
 - 1.1.1.3 using the Software in object code form;
 - 1.1.1.4 with access to, and use of the Software being limited to the Authorised Users and their staff;
 - 1.1.1.5 subject to, and in accordance with, the provisions of this Licence, but only for as long as this Licence continues in force.
- 1.2 Installation and support: The Parties will enter into the Support and Maintenance Agreement forthwith on entering into this Licence.
- 1.3 Copying: The Customer may make only so many copies of the Software as are reasonably necessary for operational security and use. Such copies and the media on which they are stored shall be the property of the Supplier and the Customer shall ensure that all such copies bear the Supplier's proprietary notices. The licence granted under Clause 1.1 shall apply to all such copies as it applies to the materials provided by the Supplier to the Customer under this Licence.
- 1.4 Security: The Customer shall during the continuance of this Licence:
 - 1.4.1 effect and maintain adequate security measures to safeguard the Software from access or use by any unauthorised person;
 - 1.4.2 retain the Software and all copies thereof under the Customer's effective control; and
 - 1.4.3 maintain a full and accurate record of the Customer's copying and disclosure of the Software and shall produce such record to the Supplier on request from time to time.
- 1.5 Decompilation etc.
 - 1.5.1 Except to the extent and in the circumstances expressly required to be permitted by the Supplier by law, the Customer shall not alter, modify, adapt or translate the whole or any part of the Software in any way whatever nor permit the whole or any part thereof to be combined with or become incorporated in any other computer programs, nor decompile, disassemble or reverse engineer the same nor attempt to do any of such things.
 - 1.5.2 To the extent that local law grants the Customer the right to decompile the Software in order to obtain information necessary to render them interoperable with other computer programs used by the Customer, the Supplier hereby undertakes to make that information readily available to the Customer. The Supplier shall have the right to impose reasonable conditions such as a reasonable fee for doing so. In order to ensure that the Customer receives the appropriate information, the Customer must first give the Supplier sufficient details of the Customer's objectives and the other software concerned. Requests for the appropriate information should be given by notice to the Supplier in accordance with the Support and Maintenance Agreement.
- 1.6 The Customer shall ensure that the conditions of this licence are passed on to the Client.

2 Payments

- 2.1 In consideration of the licence granted by the Supplier under this Agreement, the Customer shall pay to the Supplier the support fees set out in the Support and Maintenance Agreement.

3 Warranties and liability

- 3.1 The Supplier warrants that

- 3.1.1 The Software conform in all material respects to the description as set out in Schedule 1, and will, provided the Software is used in accordance with the instructions contained in the supplied manuals and documentation and other instructions provided by the Supplier from time to time, perform in accordance with the description as set out in Schedule 2 at the Commencement Date;
 - 3.1.2 its right to license the Software is free and unencumbered and that it has the right, power and authority to license the same upon the terms and conditions of this Licence; and
 - 3.1.3 the disks or other media provided by the Supplier upon which the Software is stored will, for a period of 90 days from the Commencement Date be free from defects in materials, design and workmanship.
- 3.2 The Supplier shall have no liability or obligations under the warranties set out in Clause 3.1.1 and 3.1.3 other than to remedy breaches thereof by the provision of maintenance services in accordance with the Support and Maintenance Agreement. The Supplier may remedy any breach of Clause 3.1.2 by obtaining for the Customer the right to use the Software or by providing replacement software of equivalent specification that complies with Clause 3.1.2. If the Supplier shall fail to remedy any breach of the said warranties as aforesaid then the Supplier shall be liable to the Customer for any direct loss and damage suffered by the Customer as a result of such failure (subject to clauses 3.5 to 3.7) provided that the Customer shall have given the Suppliers written notice of the breach in question no later than the expiration or termination of the Support and Maintenance Agreement.
- 3.3 The Customer accepts and the Supplier acknowledges that this Licence does not set out any warranty in respect of the Software other than Clause 3.1 and that save as expressly provided for in this Agreement any condition or warranty implied by law as to the quality or fitness for purpose of the Software or as to any services provided hereunder in relation to the Software is hereby excluded to the fullest extent permitted by law. For the avoidance of doubt, the Supplier gives no warranty, except as may be expressly provided in clause 3.1, in respect of:
 - 3.3.1 any failure of the Software to operate due to changes in the operating environment or in any operating system as the same are set out in Schedules 1 and 8 after the Commencement Date;
 - 3.3.2 any failure of the functions provided by the Software to meet the Supplier's requirements or those of any user or to operate in combination with any hardware or other software (other than in each case that expressly identified in Schedules 1 and 8) which may be selected for use by the Supplier or any user.
- 3.4 The Customer acknowledges and accepts:
 - 3.4.1 that the Supplier has not produced the Software to meet the Customer's own specification or that of any user;
 - 3.4.2 that prior to the date of this Licence the Customer has evaluated the Software;
 - 3.4.3 that the Software cannot be tested in every possible combination and operating environment and that it is not possible to produce economically (if at all) computer programs known to be error-free or which operate in an uninterrupted manner and that not all errors are necessarily capable of rectification.
- 3.5 Nothing in this Licence shall exclude liability for death or personal injury or for damage to property resulting from the negligence of either party, its employees, agents or its sub-contractors provided that liability for property damage shall not exceed the sum of UK £5,000,000 (five million pounds) in respect of any one claim or series of connected claims arising from the same event.
- 3.6 Neither Party shall be liable to the other party for any indirect or consequential loss, damage or expense of any kind whatsoever arising out of or in connection with the Software or this Licence whether arising in contract, tort, negligence, breach of statutory duty or otherwise.
- 3.7 Subject always to clause 3.5 and 3.6, the Supplier's liability in contract, tort, negligence, breach of statutory duty or otherwise with respect to any claim arising in respect of its acts or omissions under or in connection with this Licence shall be limited to the sums received by the Supplier for the Software at the date of the claim relating to such act or omission or UK£250,000 (two hundred and fifty thousand pounds) whichever is the lesser.

- 3.8 Each party ("Indemnifying Party") shall indemnify the other party and their respective officers, employees, agents and representatives (the "Indemnitees") against all third party Claims which may be asserted against or suffered by any of the Indemnitees and which relate to the use of the Software, by or on behalf of the Indemnifying Party or subsequently by any third party, including without limitation claims based on product liability laws.
- 3.9 For the purposes of this clause 3, "Claims" shall mean all demands, claims and liability (whether criminal or civil, in contract tort or otherwise) for losses, damages, legal costs and other expenses of any nature whatsoever

4 Termination

- 4.1 This Licence and the licence granted hereunder shall come into effect on the Commencement Date and, unless terminated in accordance with the provisions of this Licence, shall continue while a Support and Maintenance Agreement is in place.
- 4.2 Upon termination (for whatever reason) of this Licence:
- 4.2.1 The Customer shall return to the Supplier no later than 30 days thereafter, or destroy (if the Supplier so instructs) the Software, documentation, technical information and any other data supplied to the Customer by the Supplier during the continuance of this Licence and all and any copies made of the whole or any part of the same and the Customer shall furnish the Supplier with a certificate certifying that the same has been done; and
 - 4.2.2 all licences granted hereunder shall automatically terminate;
 - 4.2.3 the provisions of Clauses 1.5 and 3 shall continue in force; and
 - 4.2.4 subject to the foregoing provisions of this Clause 4.2, and except for any accrued rights, neither Party shall have any further obligation to the other under or in connection with this Licence.

Schedule 8

Authorised Equipment Specification