

ARC EMS MedTech :- Software Agreement

The Nine Software Company Limited
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Parties

- (1) **Nine Software Company Limited** incorporated and registered in England and Wales with company number **07655762** whose registered office is at 180 New Bridge Street, Newcastle Upon Tyne, Tyne and Wear. United Kingdom NE1 2TE (**Supplier**);
- (2) **<Customer Name>** of **<Address and Postcode>**. (**Customer**).

Background

The Supplier is the legal and beneficial owner and licensor of the Software (as defined below) and is willing to license the Customer to use such Software.

It is agreed

1. Interpretation

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

Commencement Date	the date on which this Licence is signed by both parties.
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;
Fee	the licence fee payable by the Customer to the Supplier under clause 4;
Initial Term (Non-GCloud)	the period of thirty six (36) months from the Commencement Date, and renewals there after.
Initial Term (GCloud)	the period of twenty four (24) months from the Commencement Date, with an optional twelve (12) month extension and renewals there after.
Intellectual Property Rights	all patents, copyrights, design rights, trademarks, service marks, trade secrets, know-how, database rights and other rights in the nature of intellectual property rights (whether registered or unregistered) and all applications for the same, anywhere in the world;

Maintenance Agreement	the maintenance agreement for the support and maintenance of the Software by the Supplier as executed by the Supplier and the Customer from time to time;
Maintenance Release	release of the Software that corrects faults, adds functionality or otherwise amends or upgrades the Software, but which does not constitute a New Version;
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;
Purpose	the input, management and processing of incident, medical and patient information and integration to third party applications;
Site	the premises from which the Customer carries out its business as notified to the Supplier in writing from time to time;
Software	the ARC EMS MedTech system developed by Supplier that is used for The Purpose including any Maintenance Release incorporating changes requested by the Customer or user base of the solution which is under a Maintenance Agreement during the subsistence of this Licence.

- 1.2 The headings in this Licence do 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 Unless the context otherwise requires:
- 1.3.1 references to the Supplier and the Customer include their permitted successors and assigns;

- 1.3.2 references to statutory provisions include those statutory provisions as amended or re-enacted;
- 1.3.3 references to one gender includes a reference to the other genders; and
- 1.3.4 references to "including" or "includes" shall be deemed to have the words "without limitation" inserted after them.
- 1.4 In the case of conflict or ambiguity between any provision contained in the body of this Licence and any provision contained in the schedules or appendices, the provision in the body of this Licence shall take precedence.
- 1.5 Words in the singular include the plural and those in the plural include the singular.
- 1.6 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.
2. **Delivery and Installation**
- 2.1 The Supplier shall deliver one copy of the Software on CD-ROM, disk, USB device or electronic download (such format of delivery to be confirmed by the Supplier) to the Customer's Site within 21 days of signature of this Licence. Risk in any tangible media on which the Software is delivered shall pass on delivery.
- 2.2 The Customer shall be deemed to have accepted the Software at the point that the Customer commences operational use of the Software.
- 2.3 Unless otherwise agreed between the parties, the Customer shall be responsible for installation of the Software on the Customer's equipment. The Supplier may at its discretion install the Software at the Customer's request at such cost to the Customer as is notified by the Supplier to the Customer from time to time.
3. **Licence**
- 3.1 In consideration of the Fee paid by the Customer to the Supplier, receipt of which the Supplier hereby acknowledges, the Supplier grants to the Customer a non-exclusive licence for up to **<insert figure>** registered users with update permissions, commencing on and including the date of this Licence, to use the Software for The Purpose in accordance with the system parameters.

- 3.2 The Customer may not use the Software other than as specified in clause 3.1 without the prior written consent of the Supplier, and the Customer acknowledges that additional fees may be payable on any change of use approved by the Supplier.
- 3.3 The Customer may make as many backup copies of the Software as may be necessary for its lawful use. The Customer shall record the number and location of all copies of the Software and take steps to prevent unauthorised copying.
- 3.4 The Customer acknowledges that due to the nature of its content the Software will require updates and as such accept a Maintenance Release when it is made available. Failure to accept such an update, and continued use of the Software shall be at the Customer's sole risk.
- 3.5 Except as expressly stated in this clause 3, the Customer has no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the Software in whole or in part except to the extent that any reduction of the Software to human readable form (whether by reverse engineering, decompilation or disassembly) is necessary for the purposes of integrating the operation of the Software with the operation of other software or systems used by the Customer, unless the Supplier is prepared to carry out such action at a reasonable commercial fee or has provided the information necessary to achieve such integration within a reasonable period, and the Customer shall request the Supplier to carry out such action or to provide such information (and shall meet the Supplier's reasonable costs in providing that information) before undertaking any such reduction.
- 3.6 The Customer may not use any such information provided by the Supplier or obtained by the Customer during any such reduction permitted under clause 3.5 to create any software whose expression is substantially similar to that of the Software nor use such information in any manner which would be restricted by any copyright subsisting in it.
- 3.7 The Customer shall not:
- 3.7.1 sub-license, assign or novate the benefit or burden of this Licence in whole or in part;
 - 3.7.2 allow the Software to become the subject of any charge, lien or encumbrance; and
 - 3.7.3 deal in any other manner with any or all of its rights and obligations under this Licence;
- without the prior written consent of the Supplier, such consent not to be unreasonably withheld or delayed.

- 3.8 The Supplier may at any time sub-license, assign, novate, charge or deal in any other manner with any or all of its rights and obligations under this Licence, provided it gives written notice to the Customer.
- 3.9 Each party confirms it is acting on its own behalf and not for the benefit of any other person.
- 3.10 The Customer shall:
- 3.10.1 ensure that the number of persons using the Software does not exceed the agreed amount.
 - 3.10.2 procure that its users shall comply with the terms of this Licence and/or the terms of any end user licence notified by the Supplier to the Customer;
 - 3.10.3 keep a complete and accurate record of the Customer's copying and disclosure of the Software and its users, and produce such record to the Supplier on request from time to time;
 - 3.10.4 notify the Supplier as soon as it becomes aware of any unauthorized use of the Software by any person;
 - 3.10.5 ensure that any data uploaded by the Customer or their public users into the Software including but not limited to items such as documents, spreadsheets, images and CSVs will be free of viruses and inappropriate and illegal materials and the Customer agrees that the Supplier shall not be liable for any resulting damage caused by such documents; and
 - 3.10.6 indemnify the Supplier against all losses incurred directly and indirectly by the Supplier by any breach of clause 3.10.5.
- 3.11 The Customer shall permit the Supplier to inspect and have access to any premises (and to the computer equipment located there) at or on which the Software is being kept or used, and have access to any records kept in connection with this Licence, for the purposes of ensuring that the Customer is complying with the terms of this Licence, provided that the Supplier provides reasonable advance notice to the Customer of such inspections, which shall take place at reasonable times.
4. **Fees**
- 4.1 The Customer shall pay to the Supplier an Annual fee along with a set up fee and any further agreed fees for services as stated in the pricing document on signature of this agreement /

acceptance of the quotation. This is based on a minimum term as set out earlier in this document.

- 4.2 The fees are shown in the Pricing Document;
- 4.3 All sums payable under this Licence are exclusive of VAT or any relevant local sales taxes, for which the Customer shall be responsible.
- 4.4 If the Customer fails to pay any amount payable by it under this Licence 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 8% per annum above the base rate for the time being of the Bank of England. 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.

5. **Confidentiality and Publicity**

- 5.1 Each party shall, during the term of this Licence and thereafter, keep confidential all, and shall not use for its own purposes (other than implementation of this Licence) 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, without limitation, 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, unless that 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 Licence, 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.
- 5.2 The terms of this Licence are confidential and may not be disclosed by the Customer without the prior written consent of the Supplier.

6. **Supplier's Warranties**

- 6.1 The Supplier warrants that the Software will conform in all material respects to the Specification for a period of 90 days from the date of this Licence (**Warranty Period**). If, within the Warranty

Period, the Customer notifies the Supplier in writing of any defect or fault in the Software in consequence of which it fails to conform in all material respects to the Specification, and such defect or fault does not result from the Customer, or anyone acting with the authority of the Customer, having amended the Software or used it outside the terms of this Licence for a purpose or in a context other than the purpose or context for which it was designed or in combination with any other software not provided by the Supplier, or it has not been loaded onto Supplier-specified or suitably configured equipment, the Supplier shall, at the Supplier's sole option, do one of the following:

- 6.1.1 repair the Software;
- 6.1.2 replace the Software; or
- 6.1.3 terminate this Licence immediately by notice in writing to the Customer and refund any of the Fee paid by the Customer as at the date of termination (less a reasonable sum in respect of the Customer's use of the Software to the date of termination) on return of the Software and all copies thereof,

provided the Customer provides all the information that may be necessary to assist the Supplier in resolving the defect or fault, including a documented example of any defect or fault, or sufficient information to enable the Supplier to re-create the defect or fault.

- 6.2 The Supplier does not warrant that the use of the Software will be uninterrupted or error-free.
- 6.3 The Customer accepts responsibility for the selection of the Software to achieve its intended results and use of the Software and acknowledges that the Software has not been developed to meet the individual requirements of the Customer.
- 6.4 All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this Licence or any collateral contract, whether by statute, common law or otherwise, are hereby excluded to the fullest extent permitted by law, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.

7. Limits of Liability

- 7.1 Except as expressly stated in clause 7.2:
 - 7.1.1 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:

- 7.1.1.1 special damage even if the Supplier was aware of the circumstances in which such special damage could arise;
- 7.1.1.2 loss of profits;
- 7.1.1.3 loss of anticipated savings;
- 7.1.1.4 loss of business opportunity;
- 7.1.1.5 loss of goodwill;
- 7.1.1.6 loss or corruption of data,

provided that this clause 7.1.1 shall not prevent claims for loss of or damage to the Customer's tangible property that fall within the terms of clause 7.1.2 or any other claims for direct financial loss that are not excluded by any of the categories set out at clauses 7.1.1.1 to 7.1.1.6 inclusive of this clause 7.1.1;

7.1.2 the Supplier shall have no liability in respect of any loss arising from the Customer's failure to use the Software in accordance with the Documentation or for any loss incurred by the Customer as a result of the Customer's misdiagnosis (whether as a result of the Customer's failure to use the Software in accordance with the Documentation or otherwise);

7.1.3 the total liability of the Supplier, whether in contract, tort (including negligence) or otherwise and whether in connection with this Licence or any collateral contract, shall in no circumstances exceed a sum equal to the Fee; and

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

7.2 The exclusions in clause 6.4 and clause 7.1 shall apply to the fullest extent permissible at law, but the Supplier does not exclude liability for:

- 7.2.1 death or personal injury caused by the negligence of the Supplier, its officers, employees, contractors or agents;
 - 7.2.2 fraud or fraudulent misrepresentation;
 - 7.2.3 breach of the obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
 - 7.2.4 any other liability which may not be excluded by law.
- 7.3 All dates supplied by the Supplier for the delivery of the Software 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.
- 7.4 All references to the Supplier in this clause 7 shall, for the purposes of this clause and clause 16 only, be treated as including all employees, subcontractors and suppliers of the Supplier, all of whom shall have the benefit of the exclusions and limitations of liability set out in this clause, in accordance with clause 16.

8. Intellectual Property Rights

The Customer acknowledges that all Intellectual Property Rights in the Software belongs and shall belong to the Supplier, and the Customer shall have no rights in or to the Software other than the right to use it in accordance with the terms of this Licence.

9. Duration and Termination

- 9.1 Subject to clause 9.2 this Licence shall commence on the Commencement Date and continue in force for the Initial Term and shall continue in force thereafter until terminated by either party giving at least 12 months' notice in writing to terminate to the other, such notice to terminate no earlier than the last day of the Initial Term .
- 9.2 Without prejudice to any rights that have accrued under this Licence or any of its rights or remedies, the Supplier may at any time during the Initial Term of thereafter terminate this Licence with effect by giving 60 Days written notice to the Customer if:
- 9.2.1 the Customer fails to pay any correct amount due under this Licence on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;

- 9.2.2 the Customer commits a material breach of any term of this Licence (other than failure to pay any amounts due under this Licence) 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;
 - 9.2.3 the Customer 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 (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
 - 9.2.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that the Customer (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that the Customer with one or more other companies or the solvent reconstruction of the Customer;
 - 9.2.5 any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clauses 9.2.3 and 9.2.4; or
 - 9.2.6 the Customer suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.
- 9.3 Termination by either party in accordance with the rights contained in this clause 9 shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.
- 9.4 On termination for any reason:
- 9.4.1 all rights granted to the Customer under this Licence shall cease;
 - 9.4.2 the Customer shall cease all activities authorised by this Licence;
 - 9.4.3 the Customer shall immediately pay to the Supplier any sums due to the Supplier under this Licence; and
 - 9.4.4 the Customer shall immediately destroy or return to the Supplier (at the Supplier's option) all copies of the Software then in its possession, custody or control and, in the case of destruction, certify to the Supplier that it has done so.
- 9.5 Any provision of this Licence which expressly or by implication is intended to come into or continue in force on or after termination of this Licence including clause 1, clause 5, clause 6, clause 7, clause 9, and Schedule 1 shall remain in full force and effect.

10. **Waiver**

No failure or delay by a party to exercise any right or remedy provided under this Licence 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.

11. **Remedies**

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

12. **Entire Agreement**

12.1 This Licence, the schedules and the documents annexed as appendices to this Licence or otherwise referred to herein contain the whole agreement between the parties relating to the subject matter hereof and supersede all prior agreements, arrangements and understandings between the parties relating to that subject matter.

12.2 Each party acknowledges that, in entering into this Licence and the documents annexed to it, it does not rely on any statement, representation, assurance or warranty (whether it was made negligently or innocently) of any person (whether a party to this Licence or not) **(Representation)** other than as expressly set out in this Licence or those documents.

12.3 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 this Licence.

13. **Variation**

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

14. **Severance**

14.1 If any court or competent authority finds that any provision of this Licence (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Licence shall not be affected.

14.2 If any invalid, unenforceable or illegal provision of this Licence would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

15. **Counterparts**

This Licence may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Licence, but all the counterparts shall together constitute the same Licence.

16. **Third-party Rights**

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

17. **No Partnership or Agency**

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

18. **Force Majeure**

Neither party shall in any circumstances be in breach of this Licence nor liable for delay in performing, or failure to perform, any of its obligations under this Licence if such delay or failure results from events, circumstances or causes beyond its reasonable control, and in such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed provided that if the period of delay or non-performance continues for 4 weeks, the party not affected may terminate this Licence by giving 14 days' written notice to the other party.

19. **Notices**

19.1 Any notice required to be given under this Licence shall be in writing and shall be delivered personally, or sent by pre-paid first-class post or recorded delivery or by commercial courier, to each party required to receive the notice as set out below:

19.1.1 **The Nine Software Company Limited:** Andy Walton, 180 New Bridge Street,
Newcastle Upon Tyne, Tyne and Wear. United Kingdom NE1 2TE;

19.1.2 **<Customer>:** <Customer contact details and address>.

or as otherwise specified by the relevant party by notice in writing to each other party.

19.2 Any notice shall be deemed to have been duly received:

- 19.2.1 if delivered personally, when left at the address and for the contact referred to in this clause;
- 19.2.2 if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting; or
- 19.2.3 if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
- 19.3 A notice required to be given under this Licence shall not be validly given if sent by e-mail.
- 19.4 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
20. **Governing Law and Jurisdiction**
- 20.1 This Licence 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.
- 20.2 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 Licence or its subject matter or formation (including non-contractual disputes or claims).

Executed in the manner set out below on the date hereof.

Signed by

Name:

.....
(signature of authorised signatory)

Position:

Date:

for and on behalf of

Signed by

Name:

.....
(signature of authorised signatory)

Position:

Date:

for and on behalf of **The Nine Software Company Limited**