



ILLYSystems

LINKS CarePath

Standard Terms and Conditions

Between

ILLY Systems Ltd

And

Client Name

Contract No CN/XXX001

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TERMS AND CONDITIONS FOR THE SUPPLY OF SOFTWARE LICENCES, HOSTING AND SUPPORT SERVICES

This agreement is made between:

<Client name> whose registered office <address>

(“Client”)

and

ILLY Systems Ltd of 11 Hoxton Square, London N1 6NU (“ILLY”)

Whereas

- a) ILLY develops, licenses and provides hosted access to the Applications described herein in its capacity as an Application Service Provider (ASP)
- b) The Client wishes to access the Applications described herein as hosted by ILLY under a non-exclusive Licence, from a remote location in return for the fees and subject to the terms and conditions of this agreement.

Signed for on behalf of ILLY Systems Ltd	Signed on behalf of the Client
Name:	Name:
Title:	Title:
Signature:	Signature:
Date:	Date:

1. Definitions

“**Acceptance Date**” means the date, determined in accordance with clause 4.4. of the Consultancy Schedule, on which the bespoke Software/ Project and/or Materials is accepted by the Client.

“**Affiliates**” means any company, which is owned or controlled, either directly or indirectly, by the client.

“**Agreement**” means this agreement together with the Schedules, as may be amended from time to time.

“**Application(s)**” means the selected hosted software application(s) provided by ILLY which shall be available to the Client, as set out in Schedule B.

“**ASP Infrastructure**” means the computer hardware, firmware, software and communications infrastructure, which is used to facilitate access to the hosted Application by the Client.

“**Commencement Date**” means the date of this Agreement, which is the xx xx xxxx.

“**Confidential Information**” means any confidential information or any other information relating to the other Party’s technology, technical processes, business affairs or finances or any such information relating to a subsidiary, supplier, customer or client of the other Party.

“**Consultancy Schedule**” means Schedule A detailing Consultancy services to be provided to the Client attached hereto.

“**Consultancy Services**” means the Consultancy services specified in the Consultancy Schedule.

“**Consultancy Services Fee**” means the fee for the Consultancy Services specified in the Consultancy Terms.

“**Consultancy Terms**” means the terms and conditions which relate to the Consultancy Services specified in Schedule A.

“**Client Data**” means any data belonging to the Client or to third parties and used by the Client under licence which is created using the Application(s) or otherwise stored in the ASP Infrastructure in connection with the Agreement, including personal data or confidential information.

“**Day**” shall mean the normal working hours of 09:00 to 17:00.

“**Data**” means any information or data provided by or on behalf of the Client, or used or accessed by or on behalf of ILLY in connection with the Agreement, including personal data or confidential information.

“**Data Loss Event**” any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.

“**Data Protection Legislation**” means all applicable legislation in force from time to time in the United Kingdom applicable to data protection and privacy including, but not limited to, the UK GDPR; the Data Protection Act 2018 (and regulations made thereunder); and the Privacy and Electronic Communications Regulations 2003 as amended.

“**Escrow Agreement**” means the escrow agreement attached hereto at Schedule D.

“**Equipment**” shall mean the minimum hardware requirements to run the current version of the Licensed Software as published from time to time.

“**Exit Plan**” means the plan set out in Schedule E governing how the Data held on the Software or Program is to be migrated or transferred to the Client or to a new provider on expiry or termination of the Agreement.

“**Go Live**” means processing of live data by the Client.

“**Hosting**” means the service provided by ILLY including hardware, software and communications infrastructure which is used to facilitate access to the licensed Application.

“**Hosting Fee**” means the fee for the Hosting service as specified in the Licence Schedule.

“**Hosting Location**” means the location at which the Equipment is to be hosted as detailed in Schedule B.

- “Hosting and Support Services”** means the hosting and support services as set out in Schedule C of the Agreement.
- “ILLY Materials”** means any Materials in respect of which ownership of the intellectual property rights is retained by ILLY as specified in the Consultancy Schedule.
- “Initial Period”** means the period of 36 months from the Commencement Date.
- “Licence”** means the licence granted to the Client pursuant to clause 22.
- “Licence Fee”** means the fee for the Software as specified in the Licence Schedule.
- “Licence Schedule”** means schedule B to this Agreement confirming the type of licence to be granted to the Client and any conditions applicable to the licence.
- “Location”** means the location for which the Software and/or ILLY Materials is licensed as specified in the Licence Schedule.
- “Maintenance Schedule”, “Maintenance Services Fee”, “Maintenance Services Fee” and “Maintenance Terms”** refer to bespoke software development.
- “Maintenance Schedule”** means the schedule to this Agreement detailing maintenance services to be provided to the Client under bespoke development, as required.
- “Maintenance Services”** means the maintenance services contained in a Maintenance Schedule for bespoke development.
- “Maintenance Services Fee”** means the fee for the Maintenance Services as specified in the Maintenance Terms in the Maintenance Schedule.
- “Maintenance Terms”** means the terms and conditions relating to the Maintenance Services specified in the clause 19.
- “Materials”** means any materials, including software, to be developed by ILLY for the Client in carrying out the Consultancy Services.
- “Party” or “Parties”** means the Client and ILLY.
- “Protective Measures”** appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.
- “Representative”** means the key contact person for a party as notified to the other party in accordance with clause 31.1. and 31.2. as applicable who shall be responsible for that party in relation to all matters arising in connection with this Agreement and who shall be deemed to have full power and authority to make decisions relating to the day to day matters associated with this Agreement.
- “Roll-out”** means processing of live transaction data by or on behalf of the Client.
- “Scheduled Downtime”** means those times when ILLY notifies the Client of system unavailability (either due to routine maintenance, system upgrades or similar).
- “Services”** means one or more of the following, which have been procured by the Client: Consultancy Services described in Schedule A, Maintenance Services described in the Maintenance Schedule, Licences as described in Schedule B and Hosting and Support Services as described in Schedule C.
- “Service Level Agreement”** – SLA means the support services to be provided to the Client for “Standard ILLY Software” as contained in Schedule C.
- “Service Level Agreement Fee”, “SLA Fee”** means the fee for the SLA as specified in the Licence Schedule.
- “Software” or “Program”** means the software in object code only as specified in a Licence Schedule together with any updates, enhancements or fixes supplied under the Maintenance Services or Service Level Agreement.
- “Software Fault”** means a material defect in the Software that causes it to fail to function substantially in accordance with the then current version of the Specification.
- “Source Code”** means the source code in machine and eye readable form of the Software and ILLY Materials to which it relates in the computer language in which it was written.

"Specification" means the specification of the bespoke Software describing the facilities and functions thereof contained within Attachment 2.

"Standard ILLY Software" means any ILLY product, which has not been written as bespoke software development to a "Specification".

"UAT" means the user acceptance test process performed pursuant to clause 4. of the Consultancy Schedule for any bespoke software.

"UK GDPR" means Regulation (EU) 2016/679 General Data Protection Regulation as it forms part of the law of England and Wales, Scotland, and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018 and amended by the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019.

"Users" means an employee of the Client who shall, from time to time, access the Applications through the ASP Infrastructure.

The terms, "personal data", "data subject", "data controller", "data processor", and "personal data breach" shall have the meaning defined in Article 4 of the UK GDPR

2. Background and Services

2.1. ILLY has agreed to supply and the Client has agreed to purchase the following:

- a. Software Licences for ILLY Standard Software (to be known as LINKS CarePath);
- b. Hosting Services
- c. Service Level Agreement

2.1.1 Optional services available for bespoke software are

- a. Consultancy Services
- b. Maintenance Services

on the following terms

2.2. In the event of any conflict between these documents, the provisions of the specific terms for each Schedule shall prevail.

2.3. The Term shall be the Initial Period plus any additional period(s) of extension exercisable by the Client unless otherwise terminated in accordance to Clause 4.2. or 29. of this Agreement.

2.4. During any extension of the Term, the respective obligations of the Parties shall continue in full force and effect until the expiry of the Term.

3. Applicability and Law

3.1. These terms shall apply to the Agreement between the Client and ILLY, subject to any amendments agreed in writing by both parties, to the entire exclusion of any other express conditions.

3.2. The Agreement shall be governed and construed by the laws of England and the parties agree to submit to the exclusive jurisdiction of the English Courts.

3.3. All correspondence shall be in the English Language.

3.4. A reference to any Act of Parliament or to any other legislative instrument shall include a reference to any consolidated or amendment or re-enactment of it.

4. Termination and Cancellation

4.1. Either party may terminate the whole of this Agreement forthwith on giving notice in writing to the other party if:

- 4.1.1. The other party commits any material breach of any term of this Agreement and (in case of a breach capable of being remedied) shall have failed, within 30 days after the receipt of a request in writing from the non-defaulting party so to do, to

remedy the breach (such request to contain a warning of the non-defaulting party's intention to terminate);

- 4.1.2. Either party shall have a receiver or administrative receiver appointed of it or over any part of its undertaking or assets or shall pass a resolution for winding up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction shall make an order to that effect or if either party shall enter into any voluntary arrangement with its creditors or shall become subject to an administration order, is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or shall cease to carry on business.
- 4.2. Either party may cancel this Agreement after the Initial Period, giving 90 days; notice in writing to the other Party.
- 4.3. In the event of a termination of this Agreement, any fees or prepayments for Service Level Agreements, Licences, and Hosting paid by the Client to ILLY are non-refundable.

5. Payment

- 5.1. The Consultancy Service Fee, Maintenance Service Fee, Hosting Fee, Service Level Agreement Fee and Licence Fee shall be charged to the Client in accordance with their respective payment terms set out in Schedules A and B and C.
- 5.2. The Maintenance Service Fee, Consultancy Service Fee, Licence Fees, Hosting Fee, Service Level Agreement Fee and any additional charges payable under this Agreement are exclusive of value added tax and exclusive of any other taxes or duties which are specified in the relevant Schedule which shall be paid by the Client at the rate and in the manner for the time being prescribed by law.
- 5.3. ILLY shall be entitled to review and vary its standard fees and charges for its services applicable under this Agreement from time to time but not more than once a year by giving the Client not less than 30 days prior written notice but ILLY acknowledged and agrees that any variation of ILLY's fees and charges shall be reasonable.
- 5.4. All fees or charges payable by the Client under this Agreement shall be paid within 30 days after the receipt by the Client of ILLY's correctly submitted invoice thereof.
- 5.5. If any sum payable under this Agreement is not paid on the due date then (without prejudice to ILLY's other rights and remedies) ILLY reserves the right:
 - 5.5.1. to charge interest on such sum on a day to day basis (as well as before any judgement) from the date or last date for payment thereof to the date of actual payment (both dates inclusive) at the rate of 8% above the base rate of Bank of England from time to time in force. Interest shall be paid on demand by ILLY provided always that before charging interest, ILLY shall notify the Client in writing of its intention to do so and allow a further seven days for payment; and/or
 - 5.5.2. to suspend the provision of the Services in respect of which sums due and payable have not been paid during any period when any sums due under this Agreement are outstanding.
- 5.6. If the Client disputes any invoice, the Client shall notify ILLY in writing within 5 working days of receipt of the invoice stating the reason for the dispute. The Client shall pay the portion of the invoice not in dispute in accordance with clause 5.4. Any dispute over invoiced amounts that cannot be resolved within ten (10) working days after presentation of the invoice by direct negotiation between the parties shall be resolved in accordance with Clause 26. - Governing Law and Disputes.

- 5.7. Clause 5.5. shall not apply in respect of any non-payment by the due date which is pursuant to clause 5.6. save where it is later determined that the disputed invoice had been correctly submitted.

6. Force Majeure

- 6.1. Subject to clause 6.3, no delay or failure in performance by either party hereto shall constitute default hereunder or give rise to any claim for damages or loss including anticipated profits if such delay or failure is caused by Force Majeure. Unless otherwise instructed by the Client, ILLY shall recommence performance as soon as possible after the Force Majeure has ceased.
- 6.2. Force Majeure shall mean an occurrence beyond the control and without the fault or negligence of the party affected and which the said party is unable to prevent or provide against by the exercise of reasonable diligence including, but not limited to:- acts of God or the public enemy; expropriation or confiscation of facilities; any form of Government intervention; war, hostilities, rebellion, terrorist activity, local or national emergency, sabotage or riots; floods, unusually severe weather condition which could not reasonably have been anticipated; fires, explosions or other catastrophes; national or district strikes or any other concerted acts of workmen or other similar occurrences.
- 6.3. In the event that the Force Majeure event exceeds a period of [3 months] either party may terminate this Agreement without further liability to the other.

7. Confidentiality

Confidentiality in the Software

- 7.1. Subject to clause 27, the Client undertakes to treat as confidential and keep secret all information contained or embodied in the Services, Software and ILLY Materials to be provided by ILLY to the Client under or pursuant to this Agreement together with all information conveyed to the Client by training excluding any information which is or comes into the public domain other than in breach of this Agreement and any information relating to the Materials in respect of which ownership has passed to the Client (hereinafter collectively referred to as “the Information”).
- 7.2. The Client shall not without prior written consent of ILLY (such consent not to be unreasonably withheld or delayed) divulge any part of the Information to any person except:
- 7.2.1. The Client’s own employees or representatives and then only to those employees or representatives who need to know the same;
- 7.2.2. The Clients auditors, HM Inspector of Taxes, HM Customs and Excise and any other persons or bodies having a right duty or obligation to know the business of the Client and then only in pursuance of such right duty or obligation.
- 7.3. The Client undertakes to ensure that the persons and bodies mentioned in paragraphs 7.2.1. and 7.2.2. are made aware prior to the disclosure of any part of the Information that the same is confidential and that they owe a duty of confidence to ILLY. The Client shall indemnify ILLY against any loss or damage, which ILLY may sustain or incur as a result of the Client failing to comply with such undertaking.
- 7.4. The Client shall promptly notify ILLY if it becomes aware of any breach of confidence and shall give ILLY all reasonable assistance in connection with any proceedings, which ILLY may institute against such person for breach of confidence.

Mutual Confidentiality Obligations

- 7.5 The Parties agree to treat as secret and confidential and not at any time for any reason to disclose or permit to be disclosed to any person (other than those Personnel who have a reasonable need to know the same) or otherwise make use of the other Party’s Confidential Information where knowledge or details of the Confidential Information were received prior to or during this period of this Agreement and provided that this shall not apply to Confidential Information (or any part of it) which:

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- 7.5.1 is in the public domain (otherwise than in breach of this Agreement); or
 - 7.5.2 was rightfully in the possession of the recipient prior to commencement of the negotiations leading to the execution of this Agreement; or
 - 7.5.3 is communicated or disclosed to a party by a third party lawfully in possession thereof and entitled so to disclose as required by law
- 7.6 Each of the parties agrees to take all reasonable steps to procure that its employees, agents and subcontractors comply with the provisions of clause 7.5.
- 7.7 Confidential Information shall remain the property of the disclosing party.
- 7.8 Upon termination of this Agreement for whatever reason each of the parties will, on receipt of a written request from the other, deliver up to the other all working papers or other material and copies containing Confidential Information provided to it pursuant to this Agreement.
- 7.9 The parties shall ensure that their employees, agents and subcontractors are aware of and comply with the confidentiality and non-disclosure provisions contained in this clause and the receiving party shall indemnify the disclosing party against any loss or damage, which the disclosing party may sustain or incur as a result of breach of confidence by any such persons.
- 7.10 ILLY agrees not to refer to the Client, or to the existence or subject matter of this Agreement, in any marketing or publicity material produced by or for ILLY (or other communications of similar nature) without the Client's prior written consent (such consent not to be unreasonably withheld or delayed).
- 7.11 Notwithstanding any other term of this Agreement, but provided that the Client shall have first consulted ILLY on the redaction of any commercially sensitive or confidential information (as such terms are defined in the Freedom of Information Act 2000), the Contractor hereby gives its consent for the Authority to publish this Agreement and its Schedules in its entirety, including from time to time agreed changes to the Agreement, to the general public in whatever form the Authority decides.

Survival

- 7.12 The provisions of this clause 7. shall survive the expiration or termination of this Agreement.

8. Non Solicitation

- 8.1. During the continuance of the provision of any Services and for a period of 12 months following termination of such Services, the parties hereby undertake not to employ, sub-contract or otherwise engage employees engaged by the other during the provision of the relevant Services.

9. Intellectual Property Rights

- 9.1. All intellectual property rights in the Software and any ILLY Materials (including without limitation all enhancements, upgrades, and modifications thereto) are and shall remain the property of ILLY and shall be returned to ILLY forthwith on termination of this Agreement for whatever reason.
- 9.2. The Client shall notify ILLY immediately if the Client becomes aware of any unauthorised use of the whole or part of the Software and ILLY Materials by any person.
- 9.3. All intellectual property rights including copyright and all other rights of a like nature in any works conceived or made by ILLY pursuant to the Consultancy Services shall remain the property of ILLY. The Client and its Affiliates are hereby licensed to use [LINKS CarePath] for their internal business use.
- 9.4. ILLY hereby indemnifies the Client against any and all losses, costs, damages and expenses incurred by the Client arising out of or resulting from any claim that the Software and any ILLY Materials or other materials or services provided hereunder infringe the intellectual property or proprietary rights of any third party.
- 9.5. Subject to Clause 9.6. all Intellectual Property Rights subsisting in Client Data are and shall remain the property of the Client.

- 9.6. Certain Client Data may belong to third parties. In such cases, the Client warrants that all such Client Data is used with the consent of the relevant third party.

10. Warranties

- 10.1. ILLY warrants that for the Warranty Period (as defined in Clause 10.5.) any bespoke Software that is developed by ILLY for the Client, and for ILLY Materials and all new releases thereof will on the Commencement Date and for the Term:
- 10.1.1. Provide the facilities and functions set out in any process design and any written specification and any mutually agreed variations or enhancements thereto, pursuant to clause 3. of the Consultancy Schedule, furnished to the Client by ILLY in connection with this Agreement.
 - 10.1.2. The Software and/or Material have year 2000 conformity as defined in British Standards Institute "Definition of Year 2000 Conformity Requirements".
- 10.2. ILLY further warrants that:
- 10.2.1. It will provide the Consultancy Services and Maintenance Services with reasonable care and skill and diligence required in accordance with the best practice and standards prevailing in ILLY's industry and will do so with all due speed, subject to any changes agreed under the Change Request procedure set out in Attachment A to the Consultancy Schedule;
 - 10.2.2. It has the experience and capability to carry out the Consultancy Services and Maintenance Services in accordance with the provisions of this Agreement and in accordance with generally acceptable professional standards using personnel appropriately skilled and experienced in the performance of the tasks assigned to them;
 - 10.2.3. It will, under the Maintenance Services, rectify all defects and errors in the Software in accordance with the Maintenance Terms.
- 10.3. Subject to clause 10.5, if ILLY received written notice from the Client of any breach of the warranty given at clause 10.2. above, then ILLY shall at its own expense remedy the matter constituting the breach by re-performing the Maintenance or Consultancy services (as appropriate).
- 10.4. Subject to Clause 9.4. above, the warranties contained in clauses 10.1. and 10.2. shall be the extent of ILLY's liability in respect of the Software and/or Materials and the Documentation and the Consultancy and Maintenance Services and all warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise are hereby excluded to the fullest extent permitted by law;
- 10.5. ILLY shall have no liability or obligations under clause 10.1.1. unless it shall have received written notice of the defect or error in question within 90 days after the successful completion of UATs (which shall be the "Warranty Period" for the purposes of such clauses). In relation to the clause 10.1.2 liability shall survive for the life of the Agreement which shall be the "Warranty Period" for the purposes only of clause 10.1.2.
- 10.6. The warranties contained in clauses 10.1. and 10.2. shall be subject to:
- 10.6.1. The Client having used the Software and or Materials in accordance with the instructions of ILLY;
 - 10.6.2. There having been made no alterations to the Software and/or Materials by any person other than ILLY or someone authorised by ILLY to make such alterations.
- 10.7. Further, warranties in clauses 10.1. and 10.2. will not apply, if the:
- 10.7.1. repair is required as a result of causes other than ordinary use including without limitation accident, hazard, misuse, or failure or fluctuation of

electric power, air conditioning, humidity control, or other environmental conditions;

- 10.7.2. the breach of warranty or occurrences of a Software Fault is due to the failure of any data, equipment, software, operating environment or other material used by the Client to be Year 2000 compliant.
- 10.8. When notifying a defect or error the Client shall (so far as it is able) provide ILLY with a documented example of such a defect or error.
- 10.9. The Client acknowledges that the Software has been prepared to meet the Client's individual requirements and that it is therefore the responsibility of the Client to ensure that the facilities and functions described in the Specification meet its requirements. ILLY shall not be liable for any failure of the Software to provide any facility or function not specified in the Specification or any mutually agreed variations or enhancements thereto.
- 10.10. ILLY does not warrant that the functions of the Software and/or Material will be uninterrupted or completely error or bug free although ILLY will use all reasonable endeavours to ensure that the Software and Materials contains no viruses at the time of delivery of the Software and/or Materials and will implement any error or bug rectification as soon as reasonably possible in line with the Maintenance Terms.

11. Limitation of Liability

- 11.1. Nothing in this Agreement excludes or limits the liability of ILLY for fraudulent misrepresentation or for death or personal injury caused by the negligence of ILLY.
- 11.2. Client and ILLY will not be liable for any of the following losses which may arise by reason of any breach of the express terms of this Agreement or (to the extent that they have not been excluded by clause 10.4.) any implied warranty, condition or other term, any representations or any duty of any kind imposed on Client or ILLY by operation of law:
 - 11.2.1. Any loss of anticipated profits or expected future business;
 - 11.2.2. Damage to reputation or goodwill;
 - 11.2.3. Subject to clause 7, 9.4, 9.5, 11.1, 28. and 29. of this Agreement any damages costs or expenses payable by the Client to any party;
 - 11.2.4. Loss of any order or contract; and/or:
- 11.3. Any consequential loss of any kind.
- 11.4. Notwithstanding any other provision of this Agreement ILLY confirms that it has and will retain in force throughout the term of this agreement public liability insurance with a reputable company for a sum of not less than £5,000,000.

12. Assignment

- 12.1. Neither party shall be entitled to transfer or sub-contract any or all of its obligations under this Agreement without the prior written consent of the other (such consent not to be unreasonably withheld or delayed).

13. Notices

- 13.1. Any demand, notice or communication shall be deemed to have been duly served:

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- 13.1.1. If delivered by hand, when left at the proper address for service (except that where such delivery is not a working day service shall be deemed to occur on the next following working day).
- 13.1.2. If given or made by prepaid first class post, two working days after being posted.
- 13.1.3. If transmitted by fax or email when a successful transmission report or return receipt is generated.
- 13.2. Any demand notice or communication shall be made in writing to the recipient at its registered office, or such other address as may be notified in writing from time to time.

14. Waiver

- 14.1. Failure to exercise or delay in exercising on the part of either party any right, power or privilege of that party under this Agreement shall not in any circumstances operate as a waiver thereof nor shall any single or partial exercise of any right, power, or privilege in any circumstances preclude any other or further exercise thereof of any other right, power or privilege.
- 14.2. Any waiver or breach of any of the terms hereof or of any default hereunder shall not be deemed a waiver of any subsequent breach and shall in no way affect the other terms of the Agreement.

15. Headings

- 15.1. The headings to the clauses of this Agreement shall not affect the construction of this Agreement.

16. Severability

- 16.1. If any part of this Agreement is found by a court of competent jurisdiction or other competent authority to be invalid, unlawful or unenforceable, then such part shall be severed from the remainder of this Agreement which will continue to be valid and enforceable to the fullest extent permitted by law.

17. Joint and Several

- 17.1. All agreements on the part of either of the parties which comprise more than one person or entity shall be joint and several and the neuter singular gender throughout this Agreement shall include genders and the plural, and the successors in title to the parties.

18. Consultancy, Maintenance, Hosting and Support Services

- 18.1. ILLY shall, in consideration of the payment of the respective fees and charges in respect of each of the respective Services, provide to the Client:
 - 18.1.1. the Consultancy Services in accordance with the Consultancy Terms in Schedule A;
 - 18.1.2. the Maintenance Services in relation to any bespoke development that the Client may, from time to time require in accordance with the provisions of Clause 19;
 - 18.1.3. the Hosting Services in accordance with the provision of Clause 20; and
 - 18.1.4. support Service as set out in Schedule C.
- 18.2. ILLY shall take all reasonable care to ensure that in the performance of this Agreement it does not unnecessarily interfere with the operation of the Client, its employees or any other contractor engaged by the Client. ILLY shall give the Client reasonable notice of any anticipated shutdown of or interference with the Client's operations or computer system and no such shutdown or interference shall take place without the prior written consent of Client.
- 18.3. The Client shall notify ILLY in writing of its reasonable standard rules and regulations, which, upon receipt, ILLY shall be required to observe and obey. ILLY agrees to procure that its employees, agents and subcontractors, when they are engaged in activities on any premises of the Client whether in performance of its obligations hereunder or otherwise, shall comply with such rules and regulations.

- 18.4. ILLY will keep an up-to-date log online of all outstanding issues and problems relating to the Software and ILLY Materials and will use all reasonable endeavours to solve any such issues and problems as quickly as possible and advise the Client frequently of progress in solving such issues and problems in accordance with the Service Levels.

19. Maintenance Services

- 19.1. The Maintenance Services shall (if required by the Client) commence on the “Acceptance Date and shall continue for the duration of the Agreement.
- 19.2. In consideration of the Maintenance Services (if required by the Client) the Client shall pay the Maintenance Services Fee yearly in advance as specified. The Maintenance Service Fee for the Initial Period shall be 15% of the development costs of any bespoke software. The Maintenance Services Fee shall be invoiced by ILLY on or after the Acceptance Date. For subsequent years, the Maintenance Service Fee shall be the same as the prior year, subject to any increase made under clause 5.3. plus 15% of the development cost of any enhancements to the original bespoke software during the year.
- 19.3. The Maintenance Services will be provided only in relation to the Software and ILLY Materials.
- 19.4. The following services are not provided within the Maintenance Services and if provided by ILLY during the course of this Agreement shall be charged for separately:
- 19.4.1. Support of other software, components, objects, accessories and systems not supplied by ILLY;
 - 19.4.2. Rectification of lost or corrupted data arising for any reason other than ILLY’s own negligence;
 - 19.4.3. Diagnosis and/or rectification of problems not caused by or related to the Software or ILLY Materials;
 - 19.4.4. ILLY shall not be liable to the Client for any loss arising out of any failure by the Client to keep full and up-to-date security copies of the software and data it uses in accordance with best computing practice.
- 19.5. ILLY shall make an additional charge at its then prevailing rates for any services outside the Maintenance Services which ILLY agrees to provide at the request of the Client.
- 19.6. During the continuance of the provision of Maintenance Services, the Client will:
- 19.6.1. ensure that the Software is used in a proper manner by competent trained employees only or by persons under their supervision;
 - 19.6.2. keep full security copies of the Software and of the Client's databases and computer records in accordance with best computing practice;
 - 19.6.3. not alter or modify the Software in any way whatever nor permit the Software to be combined with any other programs to form a combined work;
 - 19.6.4. not request, permit or authorise anyone other than ILLY to provide any maintenance services in respect of the Software;
 - 19.6.5. co-operate fully with ILLY's personnel in the diagnosis of any error or defect in the Software by making screen prints and providing full details as to the error or defects identified in the operation of the Software;
 - 19.6.6. make available to ILLY free of charge all information facilities and services reasonably required by ILLY to enable ILLY to perform the Maintenance Services including without limitation computer runs, core dumps, printouts, data preparation to the extent that such information is not already in ILLY’s possession;
 - 19.6.7. provide such telecommunication facilities as are reasonably required by ILLY for testing and diagnostic purposes at the Client’s expense.

20. Hosting Services

- 20.1. With effect from the Commencement date, ILLY will provide the Client on a non-exclusive basis for the duration of the Term of this Agreement and in accordance with the terms and conditions of this agreement Hosting and Support Services.
- 20.2. ILLY shall procure, install and configure the hosting equipment to provide access to the Licensed Application on the ASP Infrastructure.
- 20.3. ILLY shall provide access to the Applications through the ASP Infrastructure and shall use its best and reasonable endeavours to ensure that such access is available, without interruption, 24 hours a day, 7 days a week, 365 days a year. This undertaking shall be subject to Scheduled Downtime as notified from time to time.
- 20.4. ILLY shall perform periodic back-ups, provide routine and emergency data recovery, and management of the archiving process. The back-up schedule shall include at least weekly full back-ups and daily incremental back-ups. In the event of data loss, ILLY shall provide recovery services to try to restore the most recent back-up.
- 20.5. ILLY will employ offsite daily backups.
- 20.6. ILLY shall be responsible for all maintenance and upgrades to the ASP Infrastructure, which may from time to time be required.
- 20.7. The Applications to which the Client shall have access are detailed in Schedule B.
- 20.8. Unless maintenance is corrective in nature, ILLY shall provide at least 5 Business Days' notice of any maintenance which may affect the Client's use of the Service. ILLY shall use its best and reasonable endeavours to provide as much notice as possible in the case of corrective maintenance, however advance notice may not always be possible.
- 20.9. Where maintenance will disrupt the Service, ILLY shall aim to complete all necessary work within the service levels detailed in the Schedule C.
- 20.10. Whenever possible, ILLY shall provide a workaround solution to the Client to enable the Client's continued use of the Service or to enable use that is as close to normal as is possible under the prevailing circumstances.
- 20.11. ILLY will use all reasonable efforts to provide the Hosting and Support Services in accordance with the Service Levels detailed in Schedule C.
- 20.12. The Client is exclusively responsible for its use of the Service, including the conduct of individual Users and must ensure that all use is in accordance with this Agreement. The Client shall notify ILLY immediately of any breaches of this Agreement by any Users.
- 20.13. Access to the Applications is only permitted through ILLY's Secure SSL website, via the ASP Infrastructure. Under no circumstances may the Client download, store, reproduce or redistribute the Applications or any other part of the ASP Infrastructure, without first obtaining the express written permission of ILLY.
- 20.14. The Client's use of the Service shall be subject to the following limitations:
 - 20.14.1. The Client may not use or redistribute the Applications or the ASP Infrastructure for the purpose of conducting the business of an Application Service Provider;
 - 20.14.2. The Client may not redistribute or reproduce the Applications or the ASP Infrastructure through any network; and
 - 20.14.3. The Client may not allow any unauthorised third party to access the Applications or the ASP Infrastructure.
- 20.15. Neither the Client, nor anyone on their behalf may, in the absence of written consent from ILLY:
 - 20.15.1. Make changes of any kind to the Applications or the ASP Infrastructure; or
 - 20.15.2. Attempt to correct any fault or perceived fault in the Applications or the ASP Infrastructure.

21. Escrow

- 21.1. This clause will only be effective if the Client has indicated they wish to enter into an Escrow Agreement:
- 21.2. ILLY shall within 28 days of the Commencement Date deposit, at its costs, one copy of the Source Code and one copy of the documentation supplied with it within a secure storage at the National Computing Centre. Release of Source Code shall be subject to the terms of the Escrow Agreement, attached hereto as Schedule D.
- 21.3. The Client and ILLY agree to enter into the confirmation agreement in the form attached hereto as Schedule D - the Escrow Agreement.
- 21.4. ILLY undertakes to maintain the copy of the Source Code and documentation supplied with it at a version level consistent with the version level of the Software and/or ILLY Materials as then installed and operated by the Client.

22. Software Licences

- 22.1. ILLY hereby grants to the Client a non-exclusive, non-transferable licence to use the Software and Program(s) on the Equipment and for the period specified in Clause 6 Schedule B.

23. Equal Opportunities

- 23.1. ILLY has adopted a policy to comply with the requirements of the Equality Act 2010 and any amendments thereto and shall not treat one individual or group of people less favourably than others because of colour, race, nationality, ethnic origin, religion, faith or belief, gender, sexual orientation, disability or age and, further, shall seek to promote equality among its personnel and generally.
- 23.2. ILLY sets out its equal opportunities policy:
 - 23.2.1. in instructions to those concerned with recruitment, training and promotion;
 - 23.2.2. in documents available to its personnel, recognized trade unions or other representative groups of its personnel;
 - 23.2.3. in advertisements and other literature.
- 23.3. ILLY shall take all reasonable steps to ensure that its personnel engaged in the performance of the services associated with this Contract do not act towards either members of the public or the Clients' personnel in a manner that could amount to harassment on any of the grounds mentioned in this clause.

24. Health and Safety

- 24.1. ILLY shall at all times (and without prejudice to any other obligation in this Contract) comply with all requirements in respect of health and safety including but not limited to those arising under the Health and Safety at Work etc. Act 1974 and regulations made thereunder including but not limited to the Construction (Design and Management) Regulations 1994.

25. Statutory

- 25.1. ILLY shall at all times (and without prejudice to any other obligation in this, Contract) comply with all requirements arising under any Act of Parliament or any provision of European Community law of direct effect on the Client.

26. Governing Law & Disputes

- 26.1. If any dispute arises out of this Agreement which cannot be amicably settled between the Parties then the Parties will attempt to settle such dispute by mediation in accordance with the Centre for Effective Dispute Resolution Model Mediation Procedure current at the date of referral. Neither Party will commence any legal proceedings or (where applicable) arbitration in

relation to any dispute arising out of this Agreement until they have attempted to settle it by mediation and that mediation has terminated.

- 26.2. Subject to the terms set out in Clause 26.1. the Parties irrevocably submit to the exclusive jurisdiction of the English courts; the Agreement shall be governed by and construed in accordance with the laws of England.

27. Freedom of Information

- 27.1. ILLY acknowledges and accepts that the Client is bound by the Freedom of Information Act 2000 (“FOIA”) and the Environmental Information Regulations 2004 (“EIR”).
- 27.2. In the event that the Client receives a request in connection with this Agreement under the FOIA or the EIR, ILLY shall assist and cooperate with the Client at no additional charge and within such timescales as the Client may reasonably specify to enable the Client to meet any requests for information in relation to this Agreement which are made to the Client.
- 27.3. The Client will wherever reasonably practical consult with ILLY before disclosing information that relates to ILLY, however ILLY acknowledges that the Client is responsible for determining at its absolute discretion whether the information requested is exempt from disclosure under the FOIA or the EIR.

28. Human Rights

- 28.1. ILLY shall in the performance of the Agreement comply with the provisions of the Human Rights Act 1998 in all respects as if it were a public body within the meaning of the Act. ILLY shall indemnify or keep indemnified the Client against all actions, claims, demands, proceedings, damages, loss, costs, charges and expenses whatsoever in respect of any breach by ILLY of this Clause.

29. Business Ethics and Anti Corruption Regulations

- 29.1. ILLY warrants to the Client that all financial statements and invoices given to the Client under this or any other Agreement will properly reflect all activities and transactions made or undertaken by ILLY under this Agreement and that financial statements and invoices may be relied upon as being accurate and complete in any further recording or reporting to the Client.
- 29.2. ILLY will notify the Client of any error in any statement, application or invoice and correct the same in writing, promptly upon discovery of such error.
- 29.3. ILLY shall at all times comply with the Bribery Act 2010 as amended from time to time.
- 29.4. Any breach of Clause 29.3. shall be regarded as a fundamental breach of this Agreement allowing the Client to terminate the Agreement with immediate effect and/or recover from ILLY any costs, expenses or damages that the Client incurs as a result of such breach by ILLY. Further, the Client may not enter into any contract of a similar or different nature to this Agreement with ILLY.

30. Exit Management

- 30.1. The parties have agreed, in consideration of the payment of the Charges for delivery of the data as set out in Schedule E, an Exit Plan which the parties shall implement in the event that the Agreement expires or is terminated earlier either in whole or any part of the Services and the Client requires that Services either in whole or in part be undertaken by the Client or transferred to another provider.
- 30.2. ILLY agrees that it shall co-operate fully with the Client in managing such exit in line with the Exit Plan and the requirements of the Client – in particular as to the migration of Client Data to an alternative system or provider. Where requested by the Client, ILLY shall also co-operate with the alternative provider.

31. Contract Management

- 31.1. ILLY shall within 7 days of the Commencement Date notify the Client in writing the identity of and full contact details for its Representative. ILLY may change its Representative at any time upon written notice to the Client.
- 31.2. The Client will within 7 days of the Commencement Date notify the Client in writing the identity of and full contact details for its Representative. The Client may change its Representative at any time upon written notice to the ILLY.
- 31.3. Each party shall procure that its Representative shall be available for meetings with the other party's Representative at all reasonable times for the purpose of addressing issues arising in connection with the Services.

32. Data Protection

- 32.1. The Parties agree that with respect to their rights and obligations under this Agreement and for the purposes of the Data Protection Legislation that the Client is the "Data Controller" and that ILLY is the "Data Processor" to the extent that it is providing an Application Hosting service for the licensed software on the ASP Infrastructure.

32.2. ILLY shall:

- 32.2.1. only undertake processing of "Personal Data" (as defined in the Data Protection Legislation) in accordance with the Client's policies, including - but not limited to - data protection, information security and retention of personal data and instructions from the Client (which may be specific instructions or instructions of a general nature as set out in this Agreement or as otherwise notified by the Client to ILLY during the Term);
- 32.2.2. only undertake processing of Personal Data to the extent, and in such manner, as is necessary for the provision of the Services, or as is required by law or any regulatory body with the necessary jurisdiction;
- 32.2.3. implement appropriate Protective Measures to protect the Personal Data against any Data Loss Event Data Protection Legislation, provided that such measures shall be appropriate to the harm which might result from any Data Loss Event and having regard to: the nature and sensitivity of the Personal Data which is to be protected; the state of technological development and the cost of implementing any measures;
- 32.2.4. take all reasonable steps to ensure the reliability of any of its Personnel who have access to the Personal Data, including carrying out adequate security checks on those Personnel;
- 32.2.5. ensure that all of its Personnel who legitimately require access to the Personal Data to carry out their duties are informed of the confidential nature of the Personal Data, are subject to appropriate confidentiality undertakings and comply with the obligations set out in this section;
- 32.2.6. ensure that none of its Personnel publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Client;
- 32.2.7. not transfer the Personal Data to any Personnel involved in the provision of the Services without first obtaining the written consent of the Client;
- 32.2.8. notify the Client without undue delay and in any event within 24 hours if it:

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- a) receives a request from any individual to have access to their Personal Data;
- b) receives a request to rectify, block or erase any Personal Data;
- c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
- e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- f) becomes aware of a Data Loss Event.

ILLY's obligation to notify under clause 32.2.8 shall include the provision of further information to the Client in phases, as details become available.

32.2.9. provide the Client with full cooperation and assistance in relation to any complaint or request made in relation to the Personal Data, including (without limitation) by:

- a) providing the Client with full details of the complaint or request;
- b) complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Client's instructions;
- c) providing the Client with any Personal Data it holds in relation to an individual (within the timescales required by the Client); and
- d) providing the Client with any information requested by the Client.

32.2.10. permit the Client or its officers (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit ILLY's data processing activities (and/or those of its Personnel) and comply with all reasonable requests or directions by the Client to enable the Client to verify and/or procure that ILLY is in full compliance with its obligations under this Agreement;

32.2.11. provide a written description of the technical and organisational methods employed by ILLY for processing Personal Data (within the timescales required by the Client); and

32.2.12. not process Personal Data outside the European Economic Area as referred to in the Data Protection Legislation without the prior written consent of the Client and, where the Client consents to a transfer, to comply with:

- a) the obligations of a Data Controller under the Eighth Principle set out in Schedule 1 of the Data Protection Act 2018 and Article 46 of the GDPR by providing an adequate level of protection for any Personal Data that is transferred; and
- b) any reasonable instructions notified to it by the Client.

32.2.13 provide the Client with such assistance as is requested by the Client following any Data Loss Event.

32.3 ILLY shall allow the Client to monitor ILLY's compliance with its obligations in this section in relation to Personal Data from time to time in such manner and to such extent as the Client deems appropriate.

32.4 ILLY shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Agreement in such a way as to cause the Client to suffer any loss or damage.

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- 32.5 ILLY shall notify the Client without any undue delay (and in any event no later than 24 hours) upon becoming aware of a Personal Data Breach, providing the Client with sufficient information to allow the Client to report or inform Data Subjects of the Personal Data Breach under the Data Protection Legislation.
- 32.6 At the written direction of the Client ILLY shall delete or return Personal Data (and any copies of it) to the Client on termination of the Agreement unless the Contractor is required by law to retain the Personal Data.
- 32.7 ILLY shall maintain complete and accurate records and information to demonstrate its compliance with this clause.
- 32.8 ILLY shall provide all reasonable assistance to the Client in the preparation of any Data Protection Impact Assessment prior to commencing any processing.
- 32.9 At the Client's request, ILLY shall assist the Client in populating a schedule of data processing which shall include: the subject matter of each data processing activity; the duration of the processing; the nature and the purposes of the processing; the type of Personal Data; the categories of Data Subject; and Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data.

33. Effects of Termination

- 33.1 Upon the termination of this Agreement for any reason:
- 33.2 Any sum owing by either Party to the other under any of the provisions of this Agreement shall become immediately due and payable;
- 33.3 All Clauses which, either expressly or by their nature, relate to the period after the expiry or termination of this Agreement shall remain In full force and effect;
- 33.4 Termination shall not affect or prejudice any right to damages or other remedy which the terminating Party may have in respect of the event giving rise to the termination or any other right to damages or other remedy which any Party may have in respect of any breach of this Agreement which existed at or before the date of termination;
- 33.5 Subject as provided in this Clause 33 and except in respect of any accrued rights neither Party shall be under any further obligation to the other; and
- 33.6 Each Party shall (except to the extent referred to in Clause 7) immediately cease to use, either directly or indirectly, any Confidential Information, and shall immediately return to the other Party any documents in its possession or control which contain or record any Confidential Information.
- 33.7 Within seven days following the date of termination the Client shall at the option of ILLY return or destroy all copies, forms and parts of the Program and documentation which are covered by this Licence and shall certify to ILLY in writing that this has been done.

34. Audit

- 34.1 ILLY shall keep and maintain until six years after the Agreement has been completed, or as long a period as may be agreed between the Parties, full and accurate records of the Agreement including the Services provided under it, all expenditure reimbursed by the Client, and all payments made by the Client. ILLY shall on request afford the Client or the Client's representatives such access to those records as may be required by the Client in connection with the Agreement.

Schedule A - Consultancy – for bespoke software development

Attachments to this Consultancy Schedule:

Attachment A: Change Control Mechanism

1. Consultancy Services Fee

As part of the total solution ILLY will provide, as the parties may agree, Consultancy Services in relation to the bespoke development of the Licensed Software.

Consultancy Services shall comprise, but not be limited to, project management, implementation and technical consultancy services.

The fee for the Consultancy Services shall be ILLY's daily man rates, which are as follows:

Description	Rate
Project Manager	
Senior Analyst Programmer	
Training (up to 8 delegates)	

Rates set out above assume that the Consultancy Services are provided during usual working hours on a working day. If the Consultancy Services are required outside these hours then the above rates shall be increased in accordance with the following uplift:

- for weekends and public holidays are; Saturdays one and a half times standard daily rate, Sundays and Public holidays two times the standard daily rate.

As part of the Consultancy Services ILLY will provide such technical and product training to the Client's project team as is deemed necessary by the Client to ensure that they are competent in use and operation of the Software and/or ILLY Materials as detailed in the Schedule B.

2. Special Conditions

ILLY shall retain ownership of all intellectual property rights including copyright and all other rights of a like nature in any Software, Materials or other works conceived, originated or made by ILLY pursuant to the Consultancy Services as currently defined.

3. Specification Change Management

- 3.1. If at any time the Client wishes to vary all or any part of the Specification or requirements then the Client shall provide ILLY with full written particulars of such alterations and with such information as ILLY may reasonably require.
- 3.2. ILLY shall then submit to Client as soon as reasonably practicable a full written quotation for such variations specifying what - changes (if any) that will be required to the price and the implementation plan and what variations will be required to the system operating instructions.
- 3.3. Upon receipt of such quotation Client may elect either:
 - a) to accept such quotation and the changes and variations submitted by ILLY and Client shall thereupon issue a System Change Request in the format as set out in Attachment A below of the Consultancy Service Schedule or
 - b) to withdraw the proposed variation request.
- 3.4. ILLY shall not make any variations to any matter or thing to be done or provided under this Agreement unless Client shall have issued a System Change Request duly executed by Client's Authorised Signatory.

4. Implementation and Acceptance Testing

- 4.1. ILLY undertakes to perform its obligations under this Agreement. The Client undertakes to give all reasonable assistance to ILLY to enable ILLY to fulfil its obligations under this clause.

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- 4.2. The Client undertakes to commence UATs as soon as reasonably practicable after delivery by ILLY of a version of the system which ILLY has demonstrated to Client's reasonable satisfaction that the Software and/or Materials are in ILLY's reasonable opinion, capable of passing UAT's. The Client undertakes to notify ILLY of the start date and planned end date of the UATs.
- 4.3. If the UATs are completed satisfactorily, the Client shall accept the relevant part of the Software and/or Materials by signing forthwith a UAT acceptance certificate which shall be dated the day on which the relevant UAT was completed.
- 4.4. The Acceptance Date shall be:
 - 4.4.1. The date specified in the acceptance certificate referred to in clause 4.3 or deemed to be the earlier of:
 - 4.4.1.1. the date which is 60 days from the date on which the Software and/or Materials was made available by ILLY pursuant to clause 4.2. above provided that ILLY has not received written notification from the Client that the Software and/or Materials have not passed the UAT and detailing the errors found;
 - 4.4.1.2. The actual Roll-out date in the event that the Client elects to effect Roll-out of the Software and/or Materials prior to either of the dates referred to in clauses 4.4.1 above and 4.2. above;
 - 4.4.1.3. In the event that the Client elects to effect Roll-out of the Software prior to completion of UAT then such Software or part thereof shall be deemed to have been accepted.
- 4.5. Licence Fees for Standard ILLY Software become payable on Acceptance Date as per clause 5. of the main contract above.

Attachment A – System Change Request

ILLY Systems Ltd 11 Hoxton Square London N1 6NU		
Reference No:	Reference No:	
Title:		
Priority:		
Change Estimate _____ Man days £ _____		

This quotation is valid for 30 days from date of estimate

	Name	Date	Signature
Initiator			
Authorisation			
Estimator			
Acceptance			
Function / Program (s) Affected:			
System Version:			
Business Case:			
Description of Change:			

Documents Attached:
Special Conditions:

Schedule B – Licence Information for either standard or bespoke software

In accordance with the provisions of Clause 22. of the Agreement ILLY grants to the Client a non-exclusive, non-transferable licence to use the following Software:

1. Title or Description of “Program (s)” or “Standard ILLY Software” or “Application”

LINKS CarePath

LINKS Manager

and including any replacements, modifications or additions to the programs including NDTMS changes

2. Client Details - Location

<Client address>

Invoicing Details

Invoice email address:	<Email address>
Invoice address:	
Purchase order number:	[purchase number]

3. Licence Restrictions and Special Conditions:

- a. The Client shall use the Software at the Location and for the current internal business purposes of the Client for which the Software is required;
- b. ILLY shall retain ownership of the intellectual property rights including copyright and all other rights of a like nature in any Software, Materials or other works conceived, originated or made by ILLY pursuant to this Agreement;
- c. The Client hereby undertakes not to alter or modify the whole or any part of the Software and/or ILLY Materials in any way whatever nor to permit the whole or any part of the Software and/or ILLY Materials to be combined with or become incorporated in any other programs nor decompile, disassemble or reverse engineer the same nor attempt to do any of such things except as permitted by law;
- d. The Client shall use the Software under a non-exclusive, non transferrable licence as set out in this Agreement;
- e. The Client has been granted a Licence for a total of xx named users;
- f. In addition to the Client and within the Licences granted in Clause 3.e. above, the following organisations will be granted access under this Licence for work for the Client:

Service	Access type (Read / Write)

Any changes to the above list must be communicated to the Contracts Department of ILLY at the registered address

4. Make, Type of Equipment, Technical Environment

The System(s) are to be hosted by ILLY and will be in line the current Server Specification for each application and volume requirements details therein for the number of licenses.

5. Hosting Location

The System is to be hosted by ILLY.

6. Period of Licence

[36 months] until terminated under clause **Error! Reference source not found.** of the terms.

7. Licence Charges – “Licence Fee”

7.1. Ongoing Annual Charges:

Are due on “Go live” and subject to any increase made under clause 5.3

Description	Annual Cost	Payment due
Total (ex VAT)		

7.2. Release of updates to software

Charges for any technical work required by ILLY to release software updates to the Client’s LIVE and UAT environments will be advised annually.

7.3. Upgrading Licences

When moving from one user band to another, the upgrade fee payable will be the difference between the two user bands at the current prevailing rates. Upgrade fees become payable at time of taking out the upgrade. The fee payable for the upgrade will be calculated on a pro-rata basis. For subsequent years, the full license fee for the particular user band will become payable.

A Change Control Note will be issued for any amendments to the number of Licences detailed within this schedule.

7.4. Data Migration - Call off Charges

Additional data migration using ILLY’s Common Data Interchange Format (CIF) for new services coming into LINKS CarePath is £2,500 per NDTMS reporting service. The CIF migration includes the Latest NDTMS Data Set and Tier 2 service data.

8. Training

Please note any additional training will be charged at the standard daily rates:

Description	Rate
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Additional training is available per day for up to eight delegates	
Additional attendee	

The following cancellation charges will apply to any training that is cancelled:

Less than 7 working days' notice – Full charge will apply.

9. Other Charges

9.1. Expenses

Where ILLY is required to attend the Client's premises to discharge its obligations under this Licence whether for training, meetings or support the Client will reimburse travel and subsistence expenses incurred at the following rates:

Item	Cost Basis
Travel by train from ILLY's Registered Office	Standard class return rail ticket
Travel by car from ILLY's Office	Mileage rate 45 pence per mile (in line with HMRC guideline as amended from time to time)
Taxi	as necessary
Sustenance – Lunch	£5.00
Sustenance – Dinner	£30.00
Accommodation	£90.00

The following cancellation charges will apply to any expenses where any meeting is cancelled:

Less than 7 working days' notice – Full charge will apply.

9.2. Ad-hoc work requests

Where ILLY is requested to undertake any additional work for the client (such as consultancy days, workshops, custom reports etc.) these will be charged at the following rates:

Description	Rate
Project Manager	
Senior Analyst Programmer	

10. Terms of Payment

10.1. Period of payment from receipt of an undisputed invoice - 30 calendar days.

10.2. The rate of interest to be charged by the Contractor to the Client in the event of delays in payment of an undisputed invoice shall be 8% per annum above the base rate of the Bank of England. This is as per the Late Payment of Commercial Debt (Interest) Act of 2002 as amended from time to time.

11. Related documents

11.1.

Schedule C – Hosting and Support Services

Service Level Agreement

1. Overview

The annual SLA Fee will include the following services:

- Application Support for all listed LINKS applications
- Standard telephone support during core hours 9:00 to 17:00 UK time
- 24 hour online call logging and tracking – **ILLY Jira Service Desk**
- Onsite support where resolutions cannot be achieved remotely. On site visits will be charged at the published rates
- Monthly Housekeeping on servers to ensure databases, log files etc. are not full to capacity. Where Client is hosting, access permissions will need to be agreed for this.

2. Availability of standard telephone support

ILLY Systems Cover Mon. – Fri.	9:00 to 17:00 (UK time)*
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3. Contacts

ILLY Systems Mon. – Fri.	020 7749 2255
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* Excluding UK Bank Holidays

4. LINKS Applications covered by this Service Level Agreement

Software	Hosting Location
LINKS CarePath	ILLY is hosting

5. Application Owner

Application	Designated Business Support Contacts
LINKS CarePath	[Contact name]

6. Performance Management

Assumptions	The System is being hosted by ILLY
Service Availability	24 hours, subject to “Scheduled Downtime” “ Scheduled Downtime ” means those times when ILLY notifies the Client of system unavailability (either due to routine maintenance, system upgrades or similar). ILLY will give the Client at least 24 hour’s notice of such downtime
Volumes:	Number of Users: up to xx number of named users
Backups Requirements	Backups will be managed by ILLY in line with the industry standard best practice

7. Categories of Software Faults

All faults will be logged with ILLY by the designated business support contacts. A priority will be allocated to each call.

Fault priorities will be as follows:

High – System out of service – a serious fault that prevents Client’s use of the Software, (i.e. system down and no processing possible)

Medium - a serious problem but continued use of the Software is still possible. 100% processing not possible

Low – A minor or cosmetic problem, continued use of the Software is still possible

Where possible faults will be resolved over the telephone or via the remote link. Where this cannot resolve the problem, an onsite visit will be arranged

8. Responses

Following the report of a Software Fault, ILLY will provide one of the following responses

- Error located and fixed
- Error located but not immediately repairable (with an estimated date for completion of the fix and/or a suitable work around)
- Error not reproducible
- Fault identified but not an error in the Software
- Fault to be rectified in the next release

9. Action Timetable

Response Time	The time between the problem being reported to ILLY by the Client and an acknowledgement from ILLY to the Client that the problem has been received, the description of the problem has been understood and an investigation scheduled.
Recovery Time	The time from when the call is logged within which ILLY will endeavour to establish a work around for the problem or agree a solution to continue operation
Resolution Time	The time within which ILLY will endeavour to identify a permanent solution to the problem

Priority	Response Time	Recovery Time	Resolution Time
High	1 hour	1 day	2 working day
Medium	24 hours	N/A	1 week
Low	5 days	N/A	To be agreed - next release of software (if programming fix required)

The action timetable and escalation procedures relating to **High Priority** Software Faults is as follows:

Action	Description
1.	Immediate Start on fault tracing and replication

2.	Analyse impact of fix
3.	Start on programming fix as soon as fault is traced
4.	Provision of a workaround or temporary fix if applicable and possible
5.	Continued work through to completion of either Action 3 or 4 to enable processing
6.	Progress report within 4 hours of problem being reported
7.	Escalation of problem to the Director if either Action 3 or 4 is not completed within 8 hours

10. Operations

EOD Processing	There are no specific End of Day or overnight processes
Fault Resolution	All faults and problems to be reported via ILLY Jira Service Desk web portal.
Critical Business Periods	None

Special Service Arrangements	None
Change control	Changes to any component of the production environment by ILLY may only be made via the Change Control procedure as set out in Clause 14 of this schedule. All changes must be approved through this change mechanism.
Liability	The Client will sign off all software releases only after Acceptance Testing has been performed and will take responsibility for sanctioning all releases of software. The Client is liable for all software released through this change control procedure.

11. Disaster Recovery

Resilience / Fallback	As ILLY is hosting the Application, ILLY will manage the resilience ASP Infrastructure In the event of a disaster, the server is covered by 24 x 7 maintenance Contract. The system will be restored to the last backup taken and will be managed by ILLY.
Disaster Recover:	Should any of the above situations arise, the Client will be kept informed by ILLY.

12. Performance Reporting and Quality Review

Service Performance and Measurement Reporting	“Downtime” means a period during which there is total loss of service from system and is calculated from the time of notification of the fault and ends when the service is restored “Scheduled Downtime” means those times when ILLY notifies the Client of system unavailability (either due to routine maintenance,
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	system upgrades or similar). ILLY will give the Client at least 24 hours notice of such downtime “Excess downtime” means “Downtime” exceeding the Recovery Time of service following notification by the Client of high priority faults. Service performance against the requirements defined herein will be reported on a 6 monthly basis
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13. Other

Remote Access	Not required as Application is being hosted by ILLY
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14. Change Control Procedure

All changes to the production system will be made in accordance with the change control procedures agreed between the Client and ILLY.

15. Matrix of Responsibilities

The responsibilities of ILLY under this agreement are follows:

Tasks	ILLY	Client	Location*
Database Server Software			ILLY
• Upgrade/install system software – SQL Server	✓		
• System software technical support	✓		
• Software licence administration	✓		
• System Administration	✓		
• System Security management	✓		
• System Housekeeping	✓		
• Capacity Planning	✓		
• Performance monitoring and tuning	✓		
• Disk backups and archiving	✓		
• Database Administration	✓		
• Database Restore	✓		

Database Server Hardware			ILLY
• Hardware installation / upgrade	✓		
• System maintenance scheduling	✓		
• Hardware monitoring Intra-day	✓		
• Hardware fault correction	✓		
• Management and store of backup media	✓		

Client Workstations			CLIENT
• System software technical support		✓	
• Software licence administration		✓	

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• System Administration		✓	
• System Security management		✓	
• System Housekeeping		✓	
• Capacity Planning		✓	
• Disk backups and archiving		✓	

Citrix Hardware / Software (If Used)			Not required
• Installation / upgrade		✓	
• System maintenance scheduling		✓	
• Monitoring Intra-day		✓	
• Hardware / Software fault correction		✓	
• Management and store of backup media		✓	

Network			CLIENT SITE
• Upgrade / Install network software		✓	
• Technical support and administration		✓	
• Network fault/problem correction		✓	
• Performance management		✓	

LINKS Application			ILLY
• Application installation / upgrade	✓	S	
• Application fault correction	✓		
• Application performance tuning	✓	S	
• Application housekeeping	✓		
• Application support	✓		
Key: ✓ - Ownership of task S – Supporting role			

* To be agreed with Client depending on whether Servers are located at ILLY or Client site

16. On site visits

On-site visits will generally only take place in the following circumstances:

- ILLY staff have attended on-site by prior arrangement with the client in order to support their staff
- ILLY staff have been required to attend on-site to diagnose and/or resolve system faults which are subsequently shown to have arisen from factors outside the control of ILLY

In the former case, the fees to be charged will be agreed in advance with an authorised representative of the system owner. In the latter case, the ILLY staff will advise the client at the time the number of hours which they intend to book as chargeable.

Charges arising from the development of enhancements to the system are dealt with by Section 3 of Schedule A to the Terms and Conditions between ILLY and the client.

Attachment 2 Specification

There is no bespoke development being undertaken with this agreement.

Schedule D – Escrow Agreement

Schedule E - Exit Plan

The parties acknowledge that, at commencement of this Agreement, it is not possible to agree a specific Exit Plan as the complexity of data migration will be variable depending on the scope and extent of what data is required to be migrated, the format and requirements of new provider.

To facilitate data migration, ILLY agrees that it will host a joint parties workshop to examine and understand the data required to be extracted, the format and requirements of the new provider, the outcome of which workshop will determine the scope of the Exit Plan and ILLY's charges in performance of its obligations under Clause 30 of this Agreement.