

1. INTERPRETATION

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

Affiliate: includes third parties to whom the Customer is providing access to the Software.

Customer: Insert here

Fee: the licence fee payable by the Customer to the Supplier.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and related rights, trade marks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, including all applications for (and rights to apply for and be granted), renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world.

Licence: the licence granted under clause 2.

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

Modification: any Maintenance Release or New Version.

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.

Supplier: Advice Infrastructure Ltd, 22 Montrose Street, Glasgow, G1 1RE.

Software: the computer program known as FORT (Fast Online Referral Tracking) and all user documentation (including online documentation and webinars) in respect of such programs and any Modification which is acquired by the Customer during the subsistence of this licence.

Source Code Materials: the source code of the Software and all technical information and documents required to enable the Customer to modify and operate the Software.

2. LICENCE AND DURATION

2.1 The Supplier grants to the Customer and its Affiliates a non-exclusive licence:

- (a) to use the Software;
- (b) the Customer and its Affiliates can only use the Software to provide services within the Customer's statutory boundaries under the Local Government etc (Scotland) Act 1994 and any future re-enactments or amendments thereof.

- (c) Use of the Software must be in accordance with the operating procedures agreed separately with the Customer before the Software is made available for use by the Customer and its Affiliates.
- (d) This Customer is responsible for contracting with the agreed Hosting Provider.
- (e) The Supplier will coordinate with the Hosting Provider as necessary to ensure the customer has access to the Software.

2.2 In relation to scope of use:

- (a) the Customer shall have no right to copy, adapt, reverse engineer, decompile, disassemble or modify the Software in whole or in part except:
 - (i) as provided in this clause 2;
 - (ii) as permitted by law; or
 - (iii) to the extent that such action is legitimately required for the purposes of integrating the operation of the Software with the operation of other software or systems used by the Customer or any Affiliate.

2.3 In relation to assignment and sub-licensing:

- (a) the Customer shall not grant sub-licences.
- (b) the Customer shall not:
 - (i) sub-license, assign or novate the benefit or burden of this licence in whole or in part;

2.4 The Supplier may at any time 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. MAINTENANCE RELEASES

3.1 The Supplier will provide the Customer with all Maintenance Releases generally made available to its customers. The Supplier warrants that no Maintenance Release will adversely affect the then existing facilities or functions of the Software.

4. SUPPLIER'S WARRANTIES

4.1 The Supplier warrants that:

it has the right to enter into this licence and to grant to the Customer a licence or sub-licence to use the Software as contemplated by this licence.

5. LIMITATION OF LIABILITY

- 5.1 Neither party shall in any circumstances have any liability for any losses or damages which may be suffered by the other or any Affiliate or any Divested Entity of the other (or any person claiming under or through the same), whether the same are suffered directly or indirectly or are immediate or consequential, which fall within any of the following categories:
- (a) special damage even though that party was aware of the circumstances in which such special damage could arise;
 - (b) loss of profits;
 - (c) loss of anticipated savings;
 - (d) loss of business opportunity and management time;
 - (e) loss of goodwill,
- 5.2 The total liability of the Customer, whether in contract, delict (including negligence) or otherwise and whether in connection with this licence or any collateral contract, shall in no circumstances exceed a sum equal to annual licence fee for the software.
- 5.3 The exclusions in clause 5.1 shall apply to the fullest extent permissible at law but neither party excludes any liability for death or personal injury caused by its negligence, or the negligence of its employees or agents, or for fraud or fraudulent misrepresentation or the deliberate default or wilful misconduct of that party, its employees or agents or subcontractors.

6. INTELLECTUAL PROPERTY RIGHTS

- 6.1 All Intellectual Property Rights in the Software and any Modification belong, and shall belong, to the Supplier.

7. TERMINATION

- 7.1 In relation to termination:
- (a) this licence may be terminated only:
 - (i) by the Customer at any time by one month's written notice to the Supplier;
 - (ii) by the Supplier immediately by written notice to the Customer if the Customer fails to pay the licence fee or is in material or persistent breach of this licence agreement and either that breach is incapable of remedy or the Customer shall have failed to remedy that breach within 30 days after receiving written notice requiring it to remedy that breach;
 - (b) termination of this licence by either party shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.

- 7.2 Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

8. ENTIRE AGREEMENT

- 8.1 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.

- 8.2 Each party acknowledges that, in entering into this agreement, it does not rely on any statement, representation, assurance or warranty (whether it was made negligently or innocently) of any person other than as expressly set out in this agreement.

9. VARIATION

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

10. EXPERT DETERMINATION

- 10.1 Any technical dispute, including interpretation of the Specification or relating to the functions or capabilities of the Software, shall be referred for final settlement to an expert agreed by the parties or, if not agreed within 14 days of either party's written request to the other, as determined, at the written request of either party, by the President of the British Computer Society. Such expert shall be deemed to act as an expert and not as an arbitrator. The expert's decision shall, in the absence of manifest error, be final and binding on the parties.
- 10.2 The parties are entitled to make submissions to the expert [including oral submissions] and will provide (or procure that others provide) the expert with such assistance and documents as the expert reasonably requires for the purpose of reaching a decision.
- 10.3 Each party shall bear its own costs in relation to the reference to the expert. The expert's fees and any costs properly incurred by him in arriving at his determination (including any fees and costs of any advisers appointed by the expert) shall be borne by the parties equally or in such other proportions as the expert shall direct.

11. GOVERNING LAW AND JURISDICTION

- 11.1 Subject to clause 10, 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 Scotland.

