



G-Cloud 15

Software Licence and Services
Agreement



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This Agreement is dated

Parties:

- (1) Ethical Technology Limited (registered company number 2208123) whose registered office is at 37 Millstone Lane, Leicester, LE1 5JN ("the Company"); and
- (2) [X] [X] whose Registered office is at [X] ("the Licensee")

BACKGROUND: The Licensee wishes to license the Licensed Programs (as defined in this Agreement) and engage the Company to provide the Services (as defined in this Agreement) and the Company has agreed to grant the Licensee a non-exclusive licence to use the Licensed Programs and to provide the Services to the Licensee on the terms and conditions of this Agreement.

AGREEMENT: On signature of this Agreement and in consideration of payment to the Company of the Fees as defined in this Agreement the Company agrees to license the Licensed Programs and provide the Services to the Licensee on the terms and conditions set out in the Schedules to this Agreement which are duly incorporated into this Agreement.

Signed duly authorised for and on behalf
of **Ethical Technology Limited**

Signature:

Name:

Position:

Signed duly authorised for and on behalf
of **[X]**

Signature:

Name:

Position:

Address Ethitec, 37 Millstone Lane, Leicester, LE1 5JN
Tel. 0116 247 0806
Registered No. 2208213
Website www.ethitec.com
Email sales@ethitec.com

SCHEDULE 1

TERMS AND CONDITIONS

1. DEFINITIONS

In this Agreement unless the context otherwise requires the following words on the left have the meanings accorded to them on the right:

Actual Delivery Date	the date the Licensed Programs and/or any New Release is made available by the Company to the Licensee;
Additional Charges	the charges at the Company's rates from time to time for work undertaken on a time and materials basis and any other charges in addition to the Fees;
Additional Location(s)	the additional site(s) shown in Schedule 2 Part 5 (if any) for which a Licence Fee has been paid, as may be amended from time to time;
Bespoke Software	Software the Licensee specifically requests the Company to develop;
Data	the data in any format that is uploaded or delivered or made available to the Company by the Licensee or retrieved from the Licensee by the Company through the use of the Services;
Data Protection Laws	any and all applicable rules of law, statutes, statutory instruments, directives, regulations, orders applicable to the protection of Personal Data which has effect in the United Kingdom from time to time, including the Data Protection Act 1998 and, from the date on which it enters into force, the General Data Protection Regulation;
Divestment Date	the date on which the Divested Unit is divested;
Divestment Period	the period commencing on the Divestment Date and expiring 4 months later;
Divested Unit	any subsidiary, division or department of the Licensee, which was, immediately prior to the Divestment Date, entitled to the benefit of the Licence under this Agreement and which, as of the Divestment Date, is either acquired by a legal entity other than the Licensee or a subsidiary, division or department of the Licensee or is itself constituted as a separate legal entity;
Equipment	the computer hardware and operating systems identified by type and specification in Schedule 2 Part 1 on or with which the Licensed Programs are intended to operate;
Fees	the Initial Implementation Fee, the Licence Fee, the Support and Maintenance Fee, and the Host Fee as applicable;
Hardware	the hardware to be supplied by the Company as set out in Schedule 2 Part 2;
Host Fee	the fee for the Hosted Services set out in Schedule 2 Part 3;

Hosted Services	Use of the Licensed Programs hosted by the Company or its subcontractor in accordance with the terms of this Agreement;
Implementation Services	the implementation services to be provided by the Company as set out in Schedule 2 Part 7;
Initial Implementation Fee	the initial fee for the Implementation Services, the Hardware and Training as set out in Schedule 2 Part 3;
Intellectual Property Rights	means (a) all intellectual property including inventions, rights in inventions, patents, designs (registered or unregistered), trade marks (registered or unregistered), all patent, trade mark and design right applications, all confidential information, know how, copyright and database rights, (b) all accrued rights of action in relation to each right referred to in (a) above, all rights to sue for past infringements of such rights, rights to sue for passing-off, and all rights to claim and retain damages or an account of profits, all rights to apply for, prosecute and obtain trade mark, copyright, design right, patent and/or other protection in any part of the world in relation to all or any of the rights in (a) above and inventions including the right to apply for renewals, revivals and/or extensions of such rights, all rights of priority derived from such rights or from which such rights are derived and (c) all other rights of a similar nature in each and every part of the world whether subsisting before, at or after the date of this Agreement;
Liability	all actions, awards, costs, claims, damages, losses (including without limitation any direct or indirect consequential losses), demands, expenses, loss of profits, loss of reputation, judgments, penalties and proceedings and any other losses and/or liabilities;
Licence Fee	the fee for the licence to access the Licensed Programs set out in Schedule 2 Part 3;
Licensed Programs	the software programs and databases in object code only identified in Schedule 2 Part 4 including any New Release issued and any Bespoke Software;
Licensed Program Materials	the Licensed Programs and the Program Documentation;
Location	the delivery address specified in the Schedule 2 Part 5;
New Release	a new release of a Licensed Program made generally available by the Company to its customers from time to time and identified as such by the release identifier included in that release of the Licensed Program;
New Version	in relation to any Licensed Program, a new version (identified as such by the version identifier included in that version of the Licensed Program) which when compared with the existing version contains material new functionality or new modules or incorporates internal restructuring;

Parties	the Company and the Licensee and “Party” shall refer to either of the Company or the Licensee as appropriate;
Program Documentation	the instruction manuals, user guides and other information relating to the Licensed Programs made available from time to time during this Agreement by the Company at its discretion to the Licensee in either printed or machine readable form;
Purpose	<i>[in relation to ELMS2 is the management of the Licensee’s provision of its integrated community equipment, wheelchairs and other healthcare and/or social care supplies by the Users at the Location and/or Additional Locations solely for the Licensee’s internal business purposes;]</i> <i>[in relation to Tiara9 is the management of the clinical information provided to or generated by the Licensee in relation to its patients including patient referrals, waiting lists, appointments, care plans, clinical records and discharge summaries by the Users at the Location and/or Additional Location[s] solely for the Licensee’s internal business purposes;]</i>
Renewal Date	the date the Support and Maintenance is renewable each year as set out in Schedule 2 Part 7;
Requested Delivery Date	the date the Licensed Program Materials are requested by the Licensee to be made available, as set out in Schedule 2 Part 6;
Services	such of the Implementation Services, the Support and Maintenance, Training, and the Hosted Services as are set out in Schedule 2 Part 7;
Source Code	program source code, specifications and all other materials and documents necessary to enable a reasonably skilled programmer to understand and maintain the Licensed Programs without reference to any other person or documentation whether in eye-readable or machine readable form;
Support and Maintenance	the support and maintenance services set out in Schedule 2 Part 7;
Support and Maintenance Fee	the periodic fee set out in Schedule 2 Part 3 as varied pursuant to clause 3.5 in respect of the Support and Maintenance payable in accordance with Clause 3.2;
Third Party Hosting Provider	any third party to which the Company subcontracts the provision of the Hosted Services;
Third Party Software	software owned by a third party and used within the Licensed Programs;
Training	the initial training to be undertaken by the Company with respect to the Licensed Programs and specified in Schedule 2 Part 7 and any additional training provided by the Company for the Licensee from time to time at the Licensee's request and for the Additional Charges;
Use	the use of the Licensed Programs and/or (where in machine readable form) the Program Documentation by storing, loading, accessing and/or

running the Licensed Programs on or with the Equipment to process instructions in the Licensed Programs or (as the case may be) the Program Documentation for the Purpose; and

User a current employee of the Licensee [***named or otherwise identified to the Company***][***of the profession[s] set out in Schedule 2 Part 3***] for whom a Licence Fee has been paid.

2 GRANT OF LICENCE AND PROVISION OF SERVICES

2.1 In consideration of and conditional on the payment by the Licensee to the Company of the Licence Fee and the Initial Implementation Fee in accordance with Clause 3 the Company:

2.1.1 grants to the Licensee a non-exclusive, non-transferable licence for the number of Users set out in Schedule 2 Part 3 to concurrently Use the Licensed Programs (and where appropriate the Program Documentation) on or with the Equipment at the Location and Additional Locations and to possess and refer to the Program Documentation for Use of the Licensed Programs all in accordance with and subject to the terms of this Agreement; and

2.1.2 provides the Services upon the terms of this Agreement.

2.2 Except as expressly permitted by this Agreement the Licensee shall not use the Licensed Program Materials with any equipment or operating systems other than the Equipment, nor for any purpose other than the Purpose nor at any location other than the Location and Additional Locations.

2.3 The licence in clause 2.1.1 shall extend to any New Release from the Actual Delivery Date to the Licensee of the same and all terms and conditions of this Agreement shall apply to such New Release as if the same were incorporated within the definition of Licensed Programs.

2.4 In the event that any Divested Unit wishes to Use the Licensed Programs after the Divestment Date then during this Agreement the Licensee may continue to provide remote access to the Licensed Programs in accordance with this Agreement to the employees of the Divested Unit who were Users immediately prior to the Divestment Date for the Divestment Period provided that:

2.4.1 such Divested Unit is not acquired by or merges with and/or does not operate as a competitor of the Company;

2.4.2 all access to and use of the Licensed Programs shall be subject to the terms and conditions of this Agreement and the prior consent of the owners of all Intellectual Property Rights in all Third Party Software;

2.4.3 such Divested Unit shall agree in advance of the Divestment Date in writing with the Company to comply with the terms and conditions of this Agreement as if such Divested Unit was the Licensee under this Agreement; and

2.4.4 for the Divestment Period the Licensee agrees to be responsible for and to indemnify the Company and keep it indemnified from and against any and all Liability arising out of or in connection with any action or inaction of such Divested Unit that would be deemed to constitute a breach of the terms of this Agreement had such Divested Unit been the Licensee under this Agreement.

2.5 Should the Licensee require any of its employees, in excess of the Users licensed under this Agreement, to have Use of the Licensed Program Materials such additional employees shall be entitled to Use the Licensed Program Materials under the terms of this Agreement on and from the

date the Licensee pays to the Company the additional licence fees agreed by the Company and from that date the additional user or users shall be included and referred to under this Agreement as a User.

- 2.6 The Licensee acknowledges that all Intellectual Property Rights whatsoever in any materials created developed amended and otherwise provided by the Company (including, without limitation, any Bespoke Software) shall vest in and at all times remain the property of the Company and/or its licensors.

3. FEES

- 3.1 The payment terms are as set out in Schedule 2, Part 3.

- 3.2 The Initial Implementation Fee shall include, where applicable, the cost of:

- 3.2.1 the availability of the Licensed Program Materials;
- 3.2.2 the provision of the Implementation Services;
- 3.2.3 the provision of the initial Training set out in Schedule 2 Part 7;
- 3.2.4 the provision of the Hardware; and
- 3.2.5 the provision of the Hosting Services.

- 3.3 Subsequent Host Fees are invoiced and payable annually in advance. Payment must be received prior to the renewal date of the Hosted Services. Should the Company be subject to any increased fees in relation to the Hosted Services, it reserves the right to pass on these costs to the Licensee at any time and Licensee shall pay such fees upon demand.

- 3.4 The Support and Maintenance Fee is payable annually in advance the first payment being due on the Actual Delivery Date and each subsequent payment within 30 days of receipt of the Company's invoice for the same. All other Fees and all Additional Charges are payable in accordance with the payment terms in Schedule 2 Part 3 or otherwise agreed between the Parties from time to time.

- 3.5 The Company is entitled to vary the Support and Maintenance Fee to take into account such matters as inflation, increases in the Retail Price Index, increases in base costs, and any new functionality but not more than once in every successive period of 12 months upon giving not less than 14 days' notice to the Licensee.

- 3.6 All Fees and other sums payable under this Agreement are exclusive of UK Value Added Tax and/or equivalent taxes which will be added and payable by the Licensee at the applicable rate and all sums due shall be paid without set-off, counter claims, withholding or deduction.

- 3.7 If the payment of sums due under this Agreement is not made when due the Company without prejudice to any of its rights, shall be entitled to:

- 3.7.1 charge interest (both before and after judgment) on the outstanding amount at the rate of 4 per cent per annum above the Company's bank's base rate from the due date until the outstanding amount is paid compounded with monthly rests; and/or
- 3.7.2 suspend the Licence and/or suspend and/or withhold any Services.

4. HARDWARE (WHERE SUPPLIED AS PART OF THIS AGREEMENT)

- 4.1 The Company acknowledges and agrees that on delivery to the Licensee the Hardware is compatible for the operation and functionality of the Licensed Programs.

- 4.2 Risk in the Hardware shall pass to the Licensee upon delivery to the Location and Additional Location(s) and ownership of the Hardware shall pass to the Licensee on payment in full to the Company of the Initial Implementation Fee.
- 4.3 Until ownership of the Hardware has passed to the Licensee the Licensee shall:
- 4.3.1 hold the Hardware on a fiduciary basis as bailee for the Company and ensure it is identifiable as owned by the Company;
 - 4.3.2 upon request by the Company deliver up the Hardware to the Company and in default the Company, its employees and/or agents may enter upon any premises owned occupied or controlled by the Licensee to recover and repossess the Hardware; and
 - 4.3.3 not pledge or charge the Hardware and shall insure the Hardware to full market value against all normal risks.
5. **BESPOKE SOFTWARE (WHERE SUPPLIED AS PART OF THIS AGREEMENT)**
- 5.1 In the event that the Company is requested by the Licensee to develop Bespoke Software the following shall apply:
- 5.1.1 the Licensee and the Company shall confirm what functionality the Bespoke Software is to achieve prior to the Company undertaking any software development work;
 - 5.1.2 in the absence of agreement to the contrary, the Licensee shall pay Additional Charges for development of all Bespoke Software;
 - 5.1.3 if the Licensee requests a change to the agreed functionality of any Bespoke Software the Company may deliver to the Licensee a written proposal setting out the Additional Charges which the Company proposes to make as a result of the change request and the change shall be effected if the Licensee agrees such changes and Additional Charges.
 - 5.1.4 if the Company does not agree to comply with the change request made by the Licensee or if agreement cannot be reached as to any Additional Charges payable the Licensee may either:
 - 5.1.4.1 withdraw its request; or
 - 5.1.4.2 terminate this Agreement in so far only as it relates to development of the Bespoke Software without further Liability to the Company except for any Additional Charges payable for the work done to the date of such termination.
- 5.2 The Company shall grant the Licensee a non-exclusive, non-transferable, licence to use the Bespoke Software in accordance with the terms of the Licence granted to the Licensee pursuant to clause 2.1.1 and on the terms of this Agreement.
- 5.3 In the event that the Licensee terminates this Agreement as it relates to development of Bespoke Software, after placing an order with the Company for the same, the Company may apply the following charges:
- 5.3.1 a time charge rounded up to whole days at the Company's full current day rate before any prepayment discount (unless payment has been received in which case the invoiced prepaid rate will be used) to cover all time spent on planning, managing and producing any Bespoke Software specified in the order; and an additional 10% charge for the management and administrative overhead of processing both the order and the cancellation, and the rescheduling of resources. All charges will be calculated on the day following receipt by the Company in writing of a notice of cancellation from the Licensee and an invoice or credit note

will be raised to reflect the balance of charges outstanding taking into account any invoices already raised. Any invoice raised will be immediately payable.

6 DELIVERY

- 6.1 The Company shall use its reasonable endeavours to make the Licensed Program Materials available on the Requested Delivery Date or as soon thereafter as is possible.
- 6.2 Subject to clause 6.2 and 20, if the Company fails to deliver the Licensed Program Materials within 30 days of the Requested Delivery Date or any revised delivery dates reached by prior agreement with the Licensee, the Licensee shall be entitled after consultation with the Company to specify upon 30 days' prior written notice to the Company such revised delivery date as it shall in its reasonable opinion think fit.
- 6.3 The Licensee acknowledges that the Company's ability to meet its obligations under this Agreement may depend on the Licensee and/or a third party likewise meeting its obligations. Consequently in so far as the Company is prevented from fulfilling any of its obligations as a result of a delay or act or omission by the Licensee it shall not be liable to the Licensee for such failure and shall be entitled to a commensurate extension of time and to the extent the Company incurs additional cost as a result of the Licensee's delay, act or omission the Company shall be entitled to recovery of all reasonable additional costs incurred as a result of the Licensee's delay, act or omission.
- 6.4 Onsite visits (for such purposes as installation, Training or consultancy) booked and then cancelled by the Licensee will, in addition to clause 6.5, attract the following charges:
- 6.4.1 cancelled with more than 30 days' notice, nil;
 - 6.4.2 cancelled with 15 to 30 days' notice 10%;
 - 6.4.3 cancelled with 8 to 14 days' notice, 25%;
 - 6.4.4 cancelled with 2 to 7 days' notice, 50%;
 - 6.4.5 cancelled with less than 2 days' notice 100%.

The parties confirm that these liquidated damages are reasonable and proportionate to protect Company's legitimate interest in performance.

- 6.5 Any expenses incurred by the Company relating to the provision of any onsite visits such as costs and expenses, including but not limited to travel, subsistence and accommodation expenses will be payable by the Licensee.

7. SUPPORT AND MAINTENANCE, HOSTED SERVICES AND MANAGED SERVICES

- 7.1 In consideration of and conditional on payment of the relevant Support and Maintenance Fee and with effect from the Actual Delivery Date for the duration of this Agreement the Company shall provide in respect of each of the Licensed Programs such Support and Maintenance as shall be indicated in Schedule 2 Part 7.
- 7.2 The Licensee will fully co-operate with the Company in diagnosing and correcting any fault in the Licensed Programs and will ensure that all Equipment is at all times connected to such telecommunications facilities and a suitable modem or other interface to enable the Company to access the Equipment to provide remote diagnostics testing and/or solutions for any fault or error reported by the Licensee in the Licensed Programs and to undertake inspections and preventative maintenance where the Company reasonably deems this to be appropriate. The Licensee will allow the Company, its employees, agents and /or sub-contractors access to the Location and/or the Additional Location(s) at times to be agreed between the Parties to perform its obligations under this Agreement.

- 7.3 In addition to the Support and Maintenance Fee the Licensee shall reimburse all expenses reasonably and properly incurred by the Company in the performance of the Support and Maintenance at any Location and/or Additional Location(s) including but not limited to travel, subsistence and accommodation expenses and will also pay all expenses reasonably and properly incurred by the Company in the performance of the Training and any additional services. The Company's policy on expenses is set out in Schedule 2 Part 3. Such expenses will be recharged at cost plus VAT which shall be additionally payable by the Licensee. The Company shall maintain adequate records of such expenses and, at the Licensee's reasonable request, produce copies of the same for inspection. Such expenses may be invoiced monthly in arrears detailing the nature of the expense incurred and the person who incurred such expense, separately from the Support and Maintenance Fee. The Company will agree with the Licensee in advance the nature and scope of such expenses.
- 7.4 The Parties agree that when the Company's staff, including its agents and sub-contractors, are present on the Licensee's premises they shall be fully appraised by the Licensee of all rules, regulations and policies relating to the health and safety of personnel on those premises.
- 7.5 Each of the Parties agree that for the period until the expiry of twelve months after termination of this Agreement it shall not without the prior written agreement of the other Party knowingly employ or engage on any basis or offer such employment or engagement to any staff of the other Party who have been associated with the implementation of the Licensed Programs or the provision of the Support and Maintenance except where the same follows a response to a general public advertisement.
- 7.6 Support and Maintenance shall not include the diagnosis and rectification of any fault resulting from:
- 7.6.1 The mis-Use, improper use, operation or neglect of either the Licensed Program Materials, the Hardware or the equipment on which the Licensed Programs are installed;
 - 7.6.2 unauthorised merger of the Licensed Programs (in whole or in part) with any other software;
 - 7.6.3 the use of the Licensed Programs on equipment other than the Hardware or Equipment;
 - 7.6.4 the failure by the Licensee to implement recommendations in respect of or solutions to faults previously advised by the Company;
 - 7.6.5 any repair, adjustment, alteration or modification of the Licensed Programs by any person other than the Company without the Company's prior written consent;
 - 7.6.6 any breach by the Licensee of any of its obligations under any maintenance agreement in respect of the equipment on which the Licensed Programs are installed;
 - 7.6.7 the use of the Licensed Programs for any purpose other than the Purpose and/or for a purpose for which they were not designed;
 - 7.6.8 non-compliance with the Licensee's obligations contained in Clause 9;
 - 7.6.9 causes beyond the reasonable control of the Company;
 - 7.6.10 failure to operate proper and efficient back up and data recovery procedures (unless this service is provided by the Company as part of the Hosted Services); and/or
 - 7.6.11 maintenance (or lack of) of any software or databases other than the Licensed Programs.
- 7.7 If the Company provides Support and Maintenance for any fault that results from any of the circumstances described in Clause 7.6 above, the Licensee shall pay all reasonable Additional Charges for the same payable monthly in arrears within 30 days of invoice.
- 7.8 If the Licensee accepts and uses any New Release or New Version, the Company's Support and Maintenance obligations will apply to such New Release as if the New Release or New Version

were defined as a Licensed Program. The Company reserves the right to charge additional support and maintenance fees should the Licensee not accept the latest New Release or New Version.

- 7.9 In consideration of and conditional on payment of the Host Fee the Company shall provide (whether itself or through a Third Party Hosting Provider) the Hosted Services to the Licensee on the terms of this Agreement.
- 7.10 The Company shall ensure that access to the Hosted Services complies with the Service Levels set out in Schedule 2 Part 7 paragraph 4 and shall wherever reasonably practicable give the Licensee at least 10 days' prior written notice of all scheduled interruptions to the Hosted Services.
- 7.11 The Company reserves the right to suspend or terminate the Hosted Services if the Licensee is in breach of this Agreement and/or there is an attack on the systems and software used to provide the Hosted Services and/or the Company or the Third Party Hosting Provider is required by law or a government body to suspend such services and/or there is another reason to believe that suspension of the Hosted Services is necessary to protect other users of such services.

8 TRAINING

- 8.1 In consideration and conditional upon payment of the Initial Implementation Fee, the Company shall provide to the Licensee the initial Training as agreed to be included in the Initial Implementation Fee and set out in Schedule 2 Part 7.
- 8.2 Any additional Training requested by the Licensee shall be provided by the Company for Additional Charges payable within 30 days of invoice.
- 8.3 If the Licensee does not have any Training provided to it and the Company in its absolute discretion considers that the Support and Maintenance being requested by the Licensee results from lack of Training, the Company may require the Licensee to undertake Training provided by the Company for Additional Charges. If the Licensee refuses to take up such Training then the Company shall have no further obligation to provide the Support and Maintenance.

9 LICENSEE'S OBLIGATIONS

- 9.1 During this Agreement, the Licensee shall not:
- 9.1.1 modify, translate, create or attempt to create derivative copies of the Licensed Program Materials (or the systems or software used to provide the Hosted Services), in whole or in part;
 - 9.1.2 reverse engineer, decompile, disassemble or otherwise reduce the object code of the Licensed Program (or the systems or software used to provide the Hosted Services) to Source Code form unless permitted by law; or
 - 9.1.3 distribute, sub-licence, assign, share, timeshare, sell, rent, lease, transmit, grant a security, place in trust or otherwise transfer the Licensed Program Materials (or the systems or software used to provide the Hosted Services).
- 9.2 During this Agreement, the Licensee shall:
- 9.2.1 use the Licensed Programs only on such equipment that conforms with the Company's technical prerequisites;
 - 9.2.2 provide an adequate working environment for use by the Company's personnel during site visits, including use of telephone and office consumables;
 - 9.2.3 make available to the Company such information as may be necessary to enable the Company to conduct telephone diagnosis and in addition, such programs, operations manuals and information to enable the Company to perform its obligations; and

- 9.2.4 maintain a capability to receive remote support;
- 9.2.5 only issue user names and passwords to the Users for the purposes of accessing the Licensed Programs and Services and acknowledges and agrees that it is solely responsible for procuring and paying for access to the internet to enable them to Use the Licensed Programs and Services.
- 9.2.6 procure all third party rights and licences in and to all Data as reasonably required to enable it to Use the Licensed Programs and for the Company to provide the Services.
- 9.3 The Licensee warrants that:
- 9.3.1 it owns all rights in the Data necessary for the Company to carry out its obligations pursuant to this Agreement;
- 9.3.2 the Data and the processing of the Data does not and will not contravene or breach any applicable law, regulation, code of practice, or directive including, without limitation, consumer or trade regulation or Data Protection Laws; and
- 9.3.3 the Data does not and will not infringe any Intellectual Property Rights or other rights of any third parties nor are they obscene, defamatory, libelous or slanderous, nor will they cause injury to, invade the privacy of or otherwise violate other rights of any person.
- 9.4 The Licensee shall provide that no unauthorised access to and/or use is made of the Licensed Program Materials. The Licensee shall be liable for all access to and the use of the Licensed Program Materials by its employees, any persons it authorises to do so, any person it has given access to the Licensed Program Materials and any person who gains access to the Licensed Program Materials as a result of the Licensee's failure to use reasonable security precautions even if such access and/or use was not authorised by the Licensee.
- 9.5 The Licensee shall inform the Company immediately if it has any reason to believe that the user name and password of any User has become known to any individuals and/or third parties not authorised to use them and if the Licensed Programs are being or are likely to be used in an unauthorised way.
- 9.5.1 The Licensee shall indemnify the Company and keep it indemnified against all Liability arising out of or in connection with any action or claim that the Data or the processing of such Data constitutes inappropriate content or infringes the rights of any third party. This clause shall survive termination.

10. PROPERTY AND CONFIDENTIALITY IN THE LICENSED PROGRAM MATERIALS

- 10.1 The Licensee acknowledges and agrees that the Licensed Program Materials contain confidential information proprietary to the Company and all Intellectual Property Rights in the Licensed Program Materials are and shall remain the exclusive property of the Company or its licensors.
- 10.2 The Licensee shall not and shall not procure, enable or allow anyone else to:
- 10.2.1 except as provided in Clause 11 below make back-up copies of the Licensed Program Materials;
- 10.2.2 itself or by any third party, alter or modify the whole or any part of the Licensed Program Materials nor merge any part of any Licensed Program with any other software nor, except to the extent and in the circumstances expressly permitted by law, create derivative works from or reverse engineer or decompile or disassemble the Licensed Programs or attempt to do any of these things;
- 10.2.3 separate components of the Licensed Programs without being separately licensed by the Company;

- 10.2.4 assign, transfer, sell, lease, rent, charge or otherwise deal in or encumber the Licensed Program Materials or use the Licensed Program Materials on behalf of any third party or make them available to any third party;
 - 10.2.5 remove or alter or obscure or add to any copyright, trade mark or proprietary notice on or within any of the Licensed Program Materials;
 - 10.2.6 recreate or attempt to recreate the Licensed Program Materials; or
 - 10.2.7 use or permit use of the Licensed Program Materials in any way that prejudices the Company's legitimate interests or conflicts with the normal exploitation of the Licensed Programs.
- 10.3 The Licensee shall:
- 10.3.1 keep confidential and effect and maintain all security measures to safeguard the Licensed Program Materials and limit access to the same to the Users;
 - 10.3.2 reproduce on any copy (whether in machine readable or human readable form) of the Licensed Program Materials the Company's copyright and trade mark notices;
 - 10.3.3 maintain an accurate up-to-date written record of the number of copies of the Licensed Program Materials and their location and all user names and passwords or other identifiers of the Users and upon request provide such record to the Company;
 - 10.3.4 notify the Company immediately if the Licensee becomes aware of any unauthorised use of the whole or any part of the Licensed Program Materials by any third party; and
 - 10.3.5 without prejudice to the foregoing take all such other reasonable steps as shall from time to time be necessary to protect the confidential information and Intellectual Property Rights of the Company in the Licensed Program Materials.
- 10.4 The Licensee shall inform all relevant employees, agents and sub-contractors that the Licensed Program Materials constitute confidential information of the Company and that all Intellectual Property Rights in the same are the property of the Company and its licensors and the Licensee shall take all such steps as shall be necessary to ensure compliance by its employees agents and sub-contractors with the provisions of this Clause 10.
- 11. USE ON NON-RECOMMENDED EQUIPMENT AND RELOCATION OF THE EQUIPMENT**
- 11.1 If the Equipment upon which the Licensed Programs are installed is for any reason inoperable the Licensee is entitled without extra charge to Use the Licensed Programs on such alternative equipment under the control of the Licensee as the Company shall approve (such approval not to be unreasonably withheld or delayed) until such time as the Equipment becomes operable which fact shall be promptly notified to the Company.
- 11.2 The Licensee shall not be entitled to replace the Equipment or permanently transfer the Licensed Program Materials from the Equipment on which the Licensed Programs are installed without the prior written consent of the Company (such consent not to be unreasonably withheld or delayed) and any attempt by the Licensee to do so will be at the Licensee's sole risk and the Company reserves the right to charge Additional Charges for any Support and Maintenance it is obliged to provide as a result.
- 12. WARRANTIES**
- 12.1 Subject to the exceptions set out in Clause 12.3 and the limitations of liability in Clause 14 the Company warrants that:
- 12.1.1 the Licensed Programs will be properly installed and provided they are operated in accordance with the Company's instructions by appropriately skilled, trained, qualified and experienced personnel, the Licensed Programs will at the time of

installation perform in accordance with Program Documentation existing at the Actual Delivery Date; and

- 12.1.2 it will perform the Services with all reasonable professional care and skill in accordance with software industry standards and the terms of this Agreement.
- 12.2 Subject to Clause 12.3 the Company shall remedy any breach of the warranties set out in Clause 12.1 above by the provision of standard Support and Maintenance free of charge until such breach is cured.
- 12.3 The Company does not warrant that the Licensed Programs are free of minor errors nor that Use of the Licensed Programs will meet the Licensee's requirements nor that the operation of the Licensed Programs (and where in machine-readable form the Program Documentation) will be uninterrupted or error free.
- 12.4 Except as expressly stated in this Agreement all conditions, warranties, terms and undertakings express or implied, statutory or otherwise, in respect of the Licensed Program Materials and the provision of the Services are hereby excluded to the extent permitted by law.
- 12.5 Each Party warrants that it has the full capacity and authority to enter into this Agreement and that it is executed by a duly authorised representative of it.
- 12.6 The Company shall use reasonable endeavours to transfer to the Licensee the benefit of any warranty or guarantee given in respect of the Hardware subject to any burdens and/or conditions attached to such warranty or guarantee.

13. LIMITATION OF LIABILITY

- 13.1 The Company does not exclude or limit its Liability for death or personal injury caused by its negligence, its fraud or any other Liability which it is not permitted to exclude or limit as a matter of law.
- 13.2 Subject to clause 13.1 the Company's Liability shall be limited as stated below:
- 13.2.1 for any one claim or series of linked claims resulting in direct loss of or damage to tangible property of the Licensee shall not exceed £5,000,000;
- 13.2.2 the total aggregate Liability of the Company under this Agreement for any direct loss or damage other than to tangible property shall not exceed the aggregate of the Initial Implementation Fee and Support and Maintenance Fee paid in the period of 12 months immediately preceding the claim.
- 13.3 Subject to 13.1 the Company shall not be liable for the Licensee's:
- 13.3.1 loss of profits, or loss of business, or loss of revenue, or loss of goodwill, or loss of anticipated savings; and/or
- 13.3.2 pure economic loss; and/or
- 13.3.3 irrecoverable damage to data and/or loss of use and/or corruption of data; and/or
- 13.3.4 indirect or consequential loss or damage.
- 13.4 If a number of defaults give rise substantially to the same loss then they shall be regarded as giving rise to only one claim under this Agreement.
- 13.5 The Licensee shall afford a reasonable opportunity to the Company (following notification of the default) in which to remedy any default.
- 13.6 Except in the case of Liability arising under Clause 13.1 the Company shall not have Liability to the Licensee unless it has been served notice of the same by the Licensee within 6 months of

the date the Licensee became aware of the circumstances giving rise to the Liability or the date when it ought reasonably to have become so aware.

13.7 If for any reason the exclusion of liability in clause 13.3 above is void or unenforceable, in whole or in part the Company's total Liability for all loss or damage under this Agreement shall be as provided in clause 13.2.

13.8 Each of the limitations and/or exclusions in this Agreement shall be deemed to be repeated and apply as a separate provision for each of:

13.8.1 liability in contract (including fundamental breach);

13.8.2 liability in tort (including negligence);

13.8.3 liability for breach of statutory duty; and/or

13.8.4 liability for breach of common law and/or any other legal basis

except that any clauses or sub-clauses placing financial caps on Liability shall apply once in respect of all of the liabilities.

14. INTELLECTUAL PROPERTY RIGHTS INDEMNITY

14.1 The Company warrants that the Licensed Program Materials (excluding Third Party Software for which no warranty is given) do not infringe the intellectual property rights of any third party.

14.2 Subject to clause 13, the Company shall indemnify the Licensee against all damages (excluding consequential damages), costs, charges and expenses arising from or incurred by reason of any infringement or alleged infringement of copyright or any other intellectual property right in consequence of the authorised use or possession of the Licensed Program Materials (excluding Third Party Software for which no indemnity is given) by the Licensee under this Agreement, subject to the following:

14.2.1 the Licensee shall promptly notify the Company in writing of any alleged infringement of which it has notice;

14.2.2 the Licensee makes no admissions without the Company's prior written consent;

14.2.3 the Licensee, at the Company's request and expense shall allow the Company to conduct all negotiations and/or litigation and/or settle any claim. The Licensee shall give the Company all reasonable assistance. The costs incurred or recovered in such negotiations or settled claim shall be for the Company's account; and

14.2.4 the Company shall not be liable in any event to the Licensee for any such infringement or alleged infringement to the extent it results from Data or information supplied, used or inserted by the Licensee in or with the Licensed Program Materials.

14.3 If at any time an allegation of infringement of copyright or any other intellectual property right is made in respect of the Licensed Program Materials, or if in the Company's reasonable opinion such an allegation is likely to be made, or a court of competent jurisdiction determines that the Licensed Program Materials do infringe any third party's copyright or other intellectual property right then the Company may at its own expense modify or replace the Licensed Program Materials so as to avoid the infringement (provided the modified software or replacement does not entail a material deterioration in performance or functionality) or shall procure the right for the Licensee to continue to use the Licensed Program Materials.

14.4 If the solutions offered in Clause 15.3 cannot be achieved, either party may terminate this Agreement immediately upon written notice.

15. ESCROW

- 15.1 If requested by the Licensee at any time during this Agreement, the Company shall, at the Licensee's cost and as soon as reasonably practicable, enter into the NCC Escrow International Limited standard multi-licensee agreement (the Source Code Escrow Agreement).
- 15.2 If the Source Code is ever released to the Licensee pursuant to such Source Code Escrow Agreement, the Licensee shall be entitled to use the Source Code to support and maintain the Licensed Programs for its internal business management only but not to enhance the Licensed Programs or develop them and the Source Code and all use of it shall be subject to the terms of this Agreement.

16. CONFIDENTIALITY

- 16.1 Each Party hereto undertakes to the other to keep confidential all information (written or oral) concerning the business and affairs and technology of the other that it shall have obtained, created or received as a result of the discussions leading to or the entering into of this Agreement except that which is:
- 16.1.1 trivial or obvious;
 - 16.1.2 already in its possession other than under an obligation of confidence owed to the other Party as a result of a breach of this clause or any obligation of confidence; or
 - 16.1.3 in the public domain other than as a result of a breach of this clause or any confidence obligation.
- 16.2 Each Party undertakes to the other to take all such steps as shall from time to time be necessary to ensure compliance with the provisions of Clause 17.1 above by its employees, agents and sub-contractors.

17. DATA PROTECTION

- 17.1 The terms Data Controller, Data Processor, Data Subject, Personal Data and Processing shall have the meaning given to them in under Data Protection Laws.
- 17.2 Each party shall:
- 17.2.1 comply with all Data Protection Laws;
 - 17.2.2 co-operate with any regulatory authority for data processing; and
 - 17.2.3 keep such records of processing of Customer Personal Data as required under Data Protection Laws.
- 17.3 The Parties each acknowledge that the Data may include Personal Data (as further detailed in schedule 2 part 7 paragraph 5) and that the Company may, as part of the Services, be a Data Processor in respect of such Personal Data and the Licensee shall be the Data Controller.
- 17.4 The Company agrees that it shall:
- 17.4.1 Process the Personal Data strictly in accordance with Data Protection Laws, the terms of this Agreement and the Licensee's instructions from time to time unless otherwise required by law or any regulatory body (in which case the Company shall, where permitted, inform the Licensee of that legal requirement before Processing);
 - 17.4.2 in a manner consistent with the Act, implement appropriate technical and organisational measures to protect the rights of the Data Subject and safeguard such personal Data from unauthorised or unlawful processing or accidental loss, destruction or damage, and that having regard to the state of technological development and the cost of implementing any measures, such measures shall ensure a level of security appropriate

- to the harm that might result from unauthorised or unlawful processing or accidental loss, destruction or damage and to the nature of such data to be protected;
- 17.4.3 ensure that each of its employees, agents and subcontractors are made aware of its obligations under this clause with regard to the security and protection of such personal Data and take such reasonable steps to maintain the levels of security and protection provided for in this clause;
- 17.4.4 not divulge such personal Data whether directly or indirectly to any person, firm or company or otherwise without the express prior written consent of the Licensee except to those of its employees, agents and subcontractors who are engaged in the processing of such personal Data and are subject to the binding obligations referred to in clause 17.4.3 or except as may be required by any law or regulation;
- 17.4.5 notify the Licensee without undue delay on becoming aware of a personal data breach and cooperate with the Licensee to resolve such issue;
- 17.4.6 not process or transfer such Personal Data outside of the European Economic Area except as permitted under Data Protection Laws (or as otherwise authorised by the Licensee); and
- 17.4.7 promptly notify the Licensee of any breach or potential breach of this clause or if it otherwise has reason to consider that there has been a Personal Data breach and cooperate with the Licensee to resolve such issue;
- 17.4.8 provide such assistance as the Licensee may require to allow it to inform a regulatory authority or Data Subject of a Personal Data breach, to conduct a data protection impact assessment or to consult with a regulatory authority regarding the Processing of Personal Data;
- 17.4.9 at the Licensee's expense, provide such assistance as the Licensee may reasonably require to assist it to comply with its obligations to keep the Personal Data secure, allow it to inform a regulatory authority or data subject of a personal data breach, conduct a data protection impact assessment, consult with a regulatory authority regarding the processing of Personal Data and/or respond to requests made by data subjects pursuant to Data Protection Laws;
- 17.4.10 from time to time on request provide details of its Processing activities in respect of the Personal Data, including the address of all locations where such Processing takes place, and allow its data processing facilities, procedures and documentation which relate to the Processing of the Personal Data to be inspected (on reasonable written notice during its normal business hours and subject to any reasonable requirements or restrictions that the Company may impose to safeguard the personal data it holds on behalf of other clients and/or avoid unreasonable disruption to the Company's business) by the Licensee, a representative of the Licensee or a regulatory body in order to ascertain compliance with Data Protection Law and the terms of this Agreement; and
- 17.4.11 on termination of this Agreement return (or, at the Licensee's discretion, delete) all Data processed on behalf of the Licensee pursuant to this Agreement and delete any copies, save to the extent retention is required by law..
- 17.5 The Licensee acknowledges that the Company is reliant on the Licensee for direction as to the extent to which the Company is entitled to use and process the Personal Data held by the Licensee. Consequently, the Company shall not be liable for any claim brought by a Data Subject arising from any act, default or omission by the Company, to the extent that such act, default or omission resulted directly from the Licensee's instructions.

- 17.6 The Licensee authorises the Company to appoint sub-processors from time to time provided that the Company shall notify the Licensee of any intended changes concerning the addition or replacement of other sub-processors and shall impose upon any sub-processor (and procure any sub-processor's compliance with) the terms of this clause 17 as if the processing being carried out by the sub-processor was being carried out by the Company (and the Company shall be liable for the acts and omissions of such sub-processors as if they were the Company's own acts and omissions under this Agreement).
- 17.7 The Licensee warrants and represents that:
- 17.7.1 all Personal Data has been lawfully obtained and retained by Licensee (or its nominated third party) and it has the right to allow the Company to process all Personal Data as part of the Services and the rights to license the Company to receive and use the Personal Data it holds, as contemplated by this Agreement; and
 - 17.7.2 all necessary consents and data processing notices have been provided in relation to the processing of the Personal Data;
 - 17.7.3 all such Personal Data is necessary, accurate and up-to-date;
 - 17.7.4 it will not do or omit to do anything which will place the Company in breach of any Data Protection Laws;
 - 17.7.5 it will only process personal data in accordance with the relevant principles under the Data Protection Laws; and
 - 17.7.6 any processing of the Data by the Company in accordance with clause 17.4.1 shall not contravene any Data Protection Laws or infringe the rights of the data subject or any third party.
- 17.8 Without prejudice to any other right or remedy the Company may have, the Licensee shall indemnify, keep indemnified and hold the Company harmless against all claims, demands, penalties, fines, actions, costs, expenses, losses and damages suffered or incurred by or awarded against the Company arising from or in connection any breach by the Licensee of this clause 17, as a result of the processing the Personal Data in accordance with clause 17.4.1 and/or any breach of Data Protection Laws by the Licensee whether or not such matters were foreseeable or foreseen at the date of this agreement.

18. FREEDOM OF INFORMATION ACT

- 18.1 The information set out in Schedule 2 Part 3, and any financial information provided about the Company to the Licensee and the functionality of the Licensed Programs is commercially sensitive and/or confidential to the Company. Any disclosure of this information to a third party would adversely affect the commercial interests of the Company and it may bring a claim for breach of confidence if this information is disclosed to a third party. It is the Company's view that all financial information will remain confidential for a period of at least 3 years from the date of this Agreement.
- 18.2 If the Licensee receives a request under the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2000 which may require the disclosure by it of any information it holds relating to the Company (whether or not such information is confidential information), the Licensee shall immediately notify the Company of:
- 18.2.1 the request;
 - 18.2.2 the Licensee's opinion as to whether or not any information relating to the Company might be disclosed;
 - 18.2.3 whether the Licensee considers the information should be disclosed by law; and

18.2.4 whether (and, if so, when) the Licensee intends to make the disclosure.

The Licensee also agrees to keep the Company informed as to the progression of the request.

18.3 If the Licensee requires the Company's assistance in dealing with a request the Licensee may receive under the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2000, the Licensee agrees to pay the Company its reasonable costs incurred in assisting, including payment for both personnel time spent in providing the assistance and any disbursements and expenses the Company incurs.

18.4 The Licensee warrants that it will apply any and all exemptions available to the identified information before disclosing it. The Licensee indemnifies the Company and shall keep it indemnified for any loss or damage which the Company might suffer as a result of the Licensee making an unnecessary disclosure.

19. TERMINATION

19.1 This Agreement may be terminated:

19.1.1 by either Party upon giving the other Party not less than 3 months' prior notice in writing;

19.1.2 immediately by the Company if the Licensee fails to pay any sum due within 28 days of a written request to pay the same;

19.1.3 by the Licensee upon giving the Company three months' notice in writing from the date any variation of the Support and Maintenance Fee by the Company pursuant to clause 3.5 is implemented;

19.1.4 by the Company upon giving the Licensee no less than three months' notice in writing that it is no longer commercially feasible to support anything other than the recent releases or versions of the Licensed Products;

19.1.5 immediately by either Party by notice in writing if the other commits any material breach of any terms of this Agreement and which (in the case of a breach capable of being remedied) is not remedied within 28 days of a written request to remedy the same; and

19.1.6 immediately by either Party if the other is, or is deemed to be, unable to pay its debts as they fall due or is insolvent, suspends making payments on any debts or announces an intention to do so, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness by reason of actual or anticipated financial difficulties, has a moratorium declared in respect of any of its indebtedness, ceases or threatens to cease to carry on business, applies for an interim order under Section 252 Insolvency Act 1986 or has a bankruptcy petition presented against it, has appointed in respect of it or any of its assets a liquidator, trustee in bankruptcy, judicial custodian, supervisor, compulsory manager, receiver, administrative receiver, administrator or similar officer (in each case whether out of court or otherwise), pledges or charges any goods which remain the property of the other Party, takes or suffers any similar action in any jurisdiction or any step is taken (including, without limitation, the making of an application or the giving of any notice) by it or by any other person in respect of any of these circumstances.

19.2 Any termination of this Agreement shall be without prejudice to any other rights or remedies to which a Party may be entitled at law and shall not affect any accrued rights or liabilities of either Party nor the coming into or continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

- 19.3 Immediately upon termination, all licences granted pursuant to this Agreement shall terminate and the Licensee shall at the Company's option either return or destroy any and all copies of the Licensed Program Materials in its possession or control and a duly authorised officer of the Licensee shall certify in writing to the Company that the Licensee has complied with such obligation provided that the Licensee shall be entitled for a period of 2 years from the date of termination to keep one copy of the Licensed Program Materials free of charge in a fire-proof enclosure for archival purposes only. If the Licensee uses any of the Licensed Programs other than for archival purposes it shall immediately become liable to pay to the Company its then current fees for the use of the Licensed Program Materials or any equivalent software then licensed in substitution for the Licensed Programs.
- 19.4 If the Licensee requires any handover services following termination it shall request the same prior to termination of this Agreement and the Company shall use reasonable endeavours to provide the same subject to payment of Additional Charges for the same.
- 19.5 Neither party shall take any action, directly or indirectly, whether on their own account or through any intermediary that would constitute an offence under or breach of:
- 19.5.1 the Bribery Act 2010 as amended from time to time; or
 - 19.5.2 any other applicable anti-bribery laws or regulations anywhere in the world;
- and each party shall procure that none of its officers, employees, agents, representatives, contractors, or other persons acting with the authority of that Party or otherwise performing services for on behalf of that Party shall take any such action.
- 19.6 It is noted and agreed that any breach of clause 19.5 shall be a material breach which is incapable of remedy thereby entitling the Party not in breach to terminate this Agreement immediately.
- 19.7 During this Agreement each Party shall cooperate fully with the other in any investigation of any conduct prohibited under clause 19.5 and this clause shall survive termination of this Agreement.

20. FORCE MAJEURE

- 20.1 Neither Party shall be liable for any breach of its obligations hereunder resulting from causes beyond its reasonable control including but not limited to fire, strikes, insurrection or riots, embargoes, container shortages, wrecks or delays in transportation, inability to obtain supplies and/or utilities, utility disruption and/or requirements or regulations of any civil or military authority (an 'Event of Force Majeure').
- 20.2 Each Party agrees to give notice immediately to the other on becoming aware of an Event of Force Majeure such notice to contain details of the circumstances giving rise to the Event of Force Majeure.
- 20.3 If a default due to an Event of Force Majeure shall continue for more than 12 weeks then the Party not in default shall be entitled to terminate this Agreement. Neither Party shall have any liability to the other in respect of the termination of this Agreement as a result of an Event of Force Majeure.

21. WAIVER

The waiver by either Party of a breach or default of any of the provisions of this Agreement by the other Party shall not be construed as a waiver of any succeeding breach of the same or other provisions nor shall any delay or omission on the part of either Party to exercise or avail itself of any right power or privilege that it has or may have operate as a waiver of any breach or default by the other Party.

22. NOTICES

Any notice request instruction or other document to be given shall be delivered or sent by first class post or by facsimile transmission or by e-mail (such a facsimile or email transmission to be

confirmed by letter posted within 12 hours) to the address or to the facsimile number of the other party set out in this Agreement (or such other address or numbers as may have been notified) and any such notice or other document shall be deemed to have been served (if delivered) at the time of delivery (if sent by post) upon the expiration of 48 hours after posting and (if sent by facsimile transmission or e-mail) upon the expiration of 12 hours after dispatch.

Notices to the Company:

E-mail Address

admin@ethitec.com

Notices to the Licensee:

Email Address:

[X]

23. INVALIDITY AND SEVERABILITY

If any part of this Agreement is held to be void or unenforceable that part shall be struck out and the remainder of this Agreement shall remain in full force and effect. The parties hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic legal and commercial objectives of the invalid or unenforceable provision.

24. ENTIRE AGREEMENT

24.1 This Agreement contains the whole agreement between the parties and it supersedes any prior written or oral agreement between them and is not affected by any other promise, representation, warranty, usage, custom or course of dealing. The parties confirm that they have not entered into this Agreement on the basis of any representation that is not expressly incorporated into this Agreement. Nothing in this Agreement shall exclude liability for any fraudulent statement or act made prior to the date of this Agreement.

24.2 The Licensee accepts that the Licensed Program Materials were not designed and produced to its individual requirements and that it was responsible for their selection and acceptance.

25. ASSIGNMENT AND SUB-LICENSING

25.1 The Licensee shall not be entitled to assign or otherwise transfer this Agreement nor any of its rights or obligations nor sub-license the use (in whole or in part) of the Licensed Program Materials without the prior written consent of the Company.

25.2 The Company shall be entitled to assign or otherwise transfer this Agreement to sub-contract its obligations.

26. HEADINGS

Headings to clauses in this Agreement are for the purpose of information and identification only and shall not be construed as forming part of this agreement.

27. DISPUTE RESOLUTION

27.1 In the event of any disagreement or dispute between the Parties in relation to the performance of this Agreement, the Parties shall first endeavour to resolve it by referring it to the Contract Manager for the Licensee and the Operations Manager for the Company. If they are unable to agree, the Parties may refer the disagreement to their immediate line managers.

27.2 If these persons are unable to reach agreement within four weeks of the dispute being referred to them, the Parties may seek to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure but nothing shall preclude either Party from issuing legal proceedings under clause 28.

Address	Ethitec, 37 Millstone Lane, Leicester, LE1 5JN
Tel.	0116 247 0806
Registered No.	2208213
Website	www.ethitec.com
Email	sales@ethitec.com

28. LAW

This Agreement, its formation and all claims arising out of it including all contractual claims shall be governed by and construed in accordance with English law and the parties hereto agree to submit to the non-exclusive jurisdiction of the English courts in relation to all disputes arising out of or in relation to this Agreement including all non-contractual claims.

SCHEDULE 2**Part 1 - Equipment**

Browser Client – (for users accessing ELMS2 / Tiara9 via a browser)

Hardware and Operating System

Any PC which runs Internet Explorer version 11 or above to the user's satisfaction
--

Part 2 - Hardware**Part 3 - Fees****ELMS for Integrated Community Equipment Services**

Based on a minimum four year term, the price of ELMS2 for a Community Equipment Service will be **£18,750 per year**.

This price includes:

- ELMS2 Core Module with 5 concurrent users
- ELMS2 Online Ordering Module (unlimited users)
- ELMS2app (unlimited users)
- Postcode Anywhere integration
- Pre go-live set-up and consultancy

Optional / Additional System License and Module Pricing

Multi Store Module	£ 1,360 <i>per annum per additional main store</i>
Base Wheelchair Services Module	£ 1,675 <i>per annum</i>
Clinical Module	£ 1,255 <i>per annum</i>
Appointments Module	£ 1,255 <i>per annum</i>
Route Optimisation Module	£ 840 <i>per annum</i>
Additional Concurrent User Licenses	£315 <i>per annum</i>

ELMS for Wheelchair Services**Included as standard**

Based on a minimum four year term, the price of ELMS2 for a Wheelchair Service will be **£14,815 per year**. This price includes

- ELMS2 Core Module with 5 concurrent users
- ELMS2 Appointments Module
- ELMS2 Clinicians Module
- Postcode Anywhere integration
- Pre go-live set-up and consultancy

Optional / Additional System License and Module Pricing

Multi Store Module	£ 1,360 <i>per annum per additional main store</i>
Self Check-In Module	£ 355 <i>per annum</i>
ELMS2 Clinical App	£750 <i>per annum</i>
Route Optimisation Module	£840 <i>per annum</i>
Additional Concurrent User Licenses	£230 <i>per annum</i>

Tiara9**Included as standard**

Based on a minimum four year term, the price of Tiara9 will be **£14,750 per year**. This price includes

- Tiara9 Core Module with 5 concurrent users for a Single Profession
- Tiara9 Referrals Module
- Tiara9 Appointments Module
- Postcode Anywhere integration
- Pre go-live set-up and consultancy

Optional / Additional System License and Module Pricing

Core system - multiple professions license	£2,825 per annum
Multi-Disciplinary Module	£1,885 per annum
Self check-in module	£355 per annum
Additional Concurrent User Licenses	£85 per annum
Tiara9 Clinical App (per profession)	£750 per annum
Tiara9 Clinical App (per site if multi-profession)	£1,875 per annum

Expenses

Travel, Mileage and Subsistence – Included in stated day rates within M25.
Payable at department's standard rates outside of the M25.

Payment terms

Invoiced annually, in advance.

Payment due 30 days from of date of invoice.

Part 4 Licensed Programs

[X]

Part 5 Location and Additional Locations (where applicable)

[X]

Part 6 Requested Delivery Date**Part 7 Services**

Ethitec's experienced staff are available to provide a range of additional services. This includes data migration work, training, consultancy, integration work, bespoke development work, and go-live handholding. Any such work will be based on the following day rate:

Remote Work (e.g data migration, development consultancy, training)	<i>£820 per day</i>
Consultancy on-site (e.g training, handholding)	<i>£930 per day</i>

Please do contact our sales team for a precise quotation regarding the expected services required before go-live.. Customers typically purchase 10-25 days of services from us, (depending on the system, modules purchased, service size, integration requirements, and data migration requirements).

Once a customer is live on ELMS2 / Tiara9, additional services can be purchased as required throughout the contract term based on these day rates.

Please note that a single Additional Service pool day is credited to your account on an annual basis (typically used for upgrade awareness training).

1. Support and Maintenance**1.1 Support and Maintenance shall comprise the following:****Standard Services**

- 1.1.1 the provision of a telephone, email and facsimile help desk in order to give advice and functional clarification (but not training) on the operation of the Licensed Programs.
- 1.1.2 the diagnosis remotely of possible faults in the Licensed Programs and the rectification of such faults that interrupt the operation of the Licensed Programs or produce an output that is clearly

- incorrect by the issue of a patch and the making of all necessary consequential amendments (if any) to the Program Documentation;
- 1.1.3 the supply of New Releases of the Licensed Products as may be made from time to time. These New Releases to be supplied at cost of media, shipping and, where requested by the Licensee installation;
- 1.1.4 on receipt of a help desk call, engineers will establish the details of the problem or issue, and ascertain whether this relates to a previously notified help desk call. If so, the engineer will update the caller with the status of the fix / resolution path. If it is a new incident, the engineer will register the call on the help desk management system, and establish the priority with the caller in accordance with our standard response targets within Maintenance Hours:

Level	Priority	Follow Up Period	Target Resolution Period
1	Critical	1 hour	1 working day
2	Urgent	2 hours	2 working days
3	Needed	1 working day	1 week
4	Query	1 week	negotiated
5	Not yet known	negotiated	negotiated

Silver Service

- 1.1.5 the provision of the following enhanced maintenance and support services
- 1.1.5.1 the installation time associated with one New Release per annum to a maximum of 1.5 days chargeable time and one additional day of the Company's service.
- 1.2 In the event that the Company does not produce a New Release in any one year during which this Agreement runs, the time of 1.5 days associated with any New Release may be rolled over to the next year. In the event that the Company produces a New Release but the Licensee fails to accept it, the installation time in respect of that New Release and with respect to the Company's services, unused in one year may at the Company's discretion be carried forward to the next year.
- 1.3 Support and Maintenance shall be maintained between the hours of 9am and 5pm English Time Monday through Friday (excluding English bank and other public holidays) "Maintenance Hours".
- 1.4 Where a problem is preventing continuation of the Use of the Licensed Programs or a major part of them the Company will use reasonable endeavours to assign an engineer to the problem straight away and in any case within 8 working hours.
- 1.5 **Renewal:** After the minimum three year term (36 months), customers can choose to extend their use of our software for a further 12 months, based on their current annual fees, less 15%
2. **Hosted Services**
- 2.1 The Service Levels are those set out by the Company's providers from time to time.

3. Personal Data -

Nature and purpose of the processing	Providing services, including support to the Licensee in its use of the Licensed Programs
Type of personal data (where appropriate)	Name, address, contact details, physical and/or mental health records
Categories of data subjects (where appropriate)	Recipients of health care services and/or recipients of equipment loans
Sub-processors	N/A

Part 8 - Program documentation

Program documentation will be provided relevant to the system and modules chosen.