

ECONSENT SOFTWARE SERVICES AGREEMENT

This Services Agreement and any Appendices hereto (the "Agreement") is made on the date of the last Party's signature as set forth below ("Effective Date") between:

Magentus Software Limited a company incorporated in England under number 8746973 with registered address of Second Floor, 75 Farringdon Road, London, EC1M 3JK ("**Magentus**"), and

[Customer Name], registered at [Customer Address] ("**Customer**").

1. BACKGROUND & INTERPRETATION

- 1.1. Magentus has the right to licence, sublicense, operate, market, promote , distribute, sell and support eConsent.
- 1.2. All defined terms in this Agreement shall have the meanings ascribed to them in section 1.4 of this Agreement, unless expressly defined elsewhere within this Agreement.
- 1.3. Where there is any conflict between the terms in the main part of this Agreement, including the schedules, and the terms of any document referred to in this Agreement, the terms of the main part of this Agreement and the schedules shall prevail. The terms of a schedule shall prevail over the terms of the main part of this Agreement and any other document.
- 1.4. Definitions:

Confidential Information means, in respect of the Discloser, information of every kind and form (including written and oral) that is treated or designated by the Discloser as confidential, or that would reasonably be regarded as confidential, and which is disclosed by the Discloser or otherwise comes to the knowledge of the Recipient in connection with this Agreement, but excludes information that:

is disclosed to the Recipient on a non-confidential basis by a third party who is entitled to do so;

was already lawfully in the Recipient's possession without any obligation of confidentiality before the disclosure;

was independently developed by the Recipient without reference to any Confidential Information of the Discloser; or

is or becomes generally available to the public other than by reason of a breach of this Agreement or any breach of confidence.

To avoid doubt, the terms of this Agreement, and information regarding the eConsent Software, is Confidential Information of Magentus.

Change Control Process means the written procedure agreed between the parties for managing changes to this Agreement, which shall include:

written change requests setting out the nature and scope of the proposed changes;
impact assessment detailing the effects of the proposed changes on the services, obligations, and performance under this Agreement;
cost and time implications including any additional charges, delays, or resource requirements resulting from the proposed changes;
approval process requiring written consent from both parties before any changes can

be implemented; and
documentation requirements ensuring that all approved changes are properly recorded and incorporated into this Agreement through appropriate amendments or addenda.

Data Loss Event means any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach

Data Protection Legislation means the General Data Protection Regulations and Data Protection Act 2018, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of Personal Data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner

Data Subject Access Request means a request made by a Data Subject in accordance with a request made by a Data Subject in accordance with UK and EU current Data Protection Legislation to access his or her Personal Data

Fault means a repeatable error in the Software such that the Software does not meet the standards required of this Agreement;

Intellectual Property Rights or "IPR" means rights, title and interest in inventions (whether patentable or not and whether or not patent protection has been applied for and granted), improvements, developments, discoveries, patents, utility models, petty patents, confidential information, know-how, trade secrets, trademarks, logos, processes, registered designs, design rights, and all other designs (whether registerable or not), mask work rights, semi-conductor topography rights, rights in databases in a transferable format, moral rights, copyright (including copyright in programs) and all other rights or forms of protection (whether or not registerable and including applications for registration), of a similar nature or having a broadly equivalent effect anywhere in the world

Personal Data means as defined by Data Protection Law

Services means the Software (Schedule 1), the Support Services (Schedule 2) and the Implementation and Testing (Schedule 3)

Software means the software described in Schedule A (Software)

Support Services means the support services detailed in Schedule 2 (Support Services)

2. OBLIGATIONS OF THE PARTIES

- 2.1. Magentus shall provide the Services and fulfil all its other obligations under the Agreement.
- 2.2. The Customer shall pay Magentus the Charges and perform its responsibilities under this Agreement.

3. LICENSE AND INTELLECTUAL PROPERTY RIGHTS

- 3.1. Subject to the provisions of this Agreement, Magentus grants to the Customer a perpetual non-exclusive, non-transferable (subject to the rights of assignment set out in this Agreement), irrevocable except upon termination in accordance with this Agreement licence to the Software, and subject to the limitations in this Agreement. The licence granted hereunder is granted solely

to the Customer (and not, by implication or otherwise, to any parent, subsidiary or affiliate of such person or entity) and does not allow for any sub-licencing.

- 3.2. Customer shall not modify, enhance, prepare derivative works or otherwise alter the Software; or otherwise translate, decipher, decrypt, disassemble, reverse engineer or otherwise attempt to discover the source code or any internal data files of any portion of the Software (including third party embedded software); or copy, reproduce, sell, distribute, licence, rent or otherwise allow access to the Software.
- 3.3. Customer hereby acknowledges and agrees that title and all interests and rights of ownership (including goodwill) in and to the Software and trademarks are and remain with, and shall be the sole and exclusive property of, Magentus .
- 3.4. Other than the licence expressly granted under this Agreement, neither party grants any licence of, right in or makes any assignment of any of its Intellectual Property Rights.
- 3.5. Customer shall not obtain support for the Software from any party (including the Customer) other than Magentus.

4. CONFIDENTIALITY AND PERSONAL DATA

Confidentiality

- 4.1. In respect of any Confidential Information it may receive from the other party ("the Discloser") and subject always to the remainder of this clause 4.1, each party ("the Recipient") undertakes to:
 - 4.1.1. keep the Confidential Information confidential by employing commercially reasonable precautions, and at least those precautions which it employs to protect its own confidential information, and shall only use such Confidential Information for the purposes for which it was so disclosed or came into its possession under the Agreement; and
 - 4.1.2. not to disclose any Confidential Information to any third party (other than as specifically stated within this Clause 3 or permitted elsewhere pursuant to this Agreement) without the prior written consent of the other Party.
- 4.2. The provisions of this clause 4 shall not apply to any Confidential Information which:
 - (a) is in or enters the public domain other than by breach of the Agreement or other act or omissions of the Recipient;
 - (b) is obtained by a third party who is lawfully authorised to disclose such information; or
 - (c) is authorised for release by the prior written consent of the Discloser; or
 - (d) the disclosure of which is required to ensure the compliance of the Customer with the Freedom of Information Act 2000 (the FOIA).
- 4.3. Nothing in this clause 4 shall prevent the Recipient from disclosing Confidential Information where it is required to do so by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable law or, where the Contractor is the Recipient, to the Contractor's immediate or ultimate holding company provided that the Contractor procures that such holding company complies with this clause 3 as if any reference to the Contractor in this clause 3 were a reference to such holding company.
- 4.4. Nothing in this Clause 4 shall be deemed or construed to prevent each party from disclosing any Confidential Information obtained from any other to any employee, agent or sub-contractor engaged by the disclosing party who needs to know such Confidential Information in connection with the Agreement provided that the disclosing party shall have obtained from the employee, agent or sub-contractor prior to any disclosure a signed confidentiality undertaking on substantially the same terms as are contained in this Clause 4.

Personal Data

- 4.5. It is generally anticipated that the Customer shall act as a Controller (as defined in the Data Protection Legislation) in relation to Personal Data processed in connection with the performance of this Agreement (such as the personnel data incidentally accessed by Magentus in providing the support provided under this Agreement), and Magentus shall act as a Processor, and in those circumstances where Magentus acts as the Customer's Processor clauses 4.7 to 4.15 shall apply.
- 4.6. Magentus shall notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation.
- 4.7. The parties acknowledge their respective duties under the Data Protection Legislation and shall give each other all reasonable assistance as appropriate or necessary to enable each other to comply with those duties.
- 4.8. Magentus shall in relation to any Personal Data processed in connection with its obligations under this Agreement:
- (a) comply with all stipulated obligations which a Controller is required to impose on a Processor under Article 28(3) GDPR, which shall be deemed to be incorporated in this Agreement in full;
 - (b) Process the Personal Data only in accordance with this Agreement, unless Magentus is required to do otherwise by law. If it is so required Magentus shall promptly notify the Customer before processing the Personal Data unless prohibited by law;
 - (c) ensure that it has in place Protective Measures in accordance with appropriate technical and organisational measures, in order to protect against a Data Loss Event having taken account of the:
 - nature of the data to be protected;
 - harm that might result from a Data Loss Event;
 - state of technological development; and
 - cost of implementing any measures.
- 4.9. Magentus shall notify the Customer immediately if it:
- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
 - (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 Customer 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.

- 4.10. Taking into account the nature of the Processing, Magentus shall provide the Customer with assistance in relation to either party's obligations under the Data Protection Legislation and any complaint, communication including by promptly providing:
- (a) the Customer with full details and copies of the complaint, communication or request;
 - (b) such assistance as is reasonably requested by the Customer to enable the Customer to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - (c) the Customer, at its request, with any Personal Data Magentus holds in relation to a Data Subject;
 - (d) such assistance as is requested by the Customer following any Data Loss Event;
 - (e) such assistance as is requested by the Customer with respect to any request from the Information Commissioner's Office, or any consultation by the Customer with the Information Commissioner's Office.
- 4.11. Before permitting any subcontractor of Magentus to Process Personal Data related to this Agreement, Magentus must:
- (a) notify the Customer in writing of the intended sub-contractor and Processing;
 - (b) obtain the written consent of the Customer.
- 4.12. For the avoidance of doubt, Magentus shall remain fully liable for all acts and omissions of any sub-contractor that they appoint to Process Personal Data on their behalf in relation to this Agreement.
- 4.13. Data Breach Notification. In the event of a Personal Data breach, Magentus shall notify the Customer within 24 hours of becoming aware of the breach and shall provide:
- (a) description of the breach;
 - (b) categories and approximate number of data subjects affected;
 - (c) likely consequences; and
 - (d) measures taken or proposed to address the breach.

5. FEES AND PAYMENT

- 5.1. The Customer shall pay Magentus the Charges and any other valid charges that may become due, according to the payment schedule contained in Schedule 4.
- 5.2. The Customer shall pay all valid invoices within thirty (30) days of the date of such invoice. Where an undisputed amount remains unpaid after thirty (30) days then interest shall accrue on such amount at the rate of 4% above the Bank of England base rate.
- 5.3. Where any undisputed amount remains unpaid for a period of sixty (60) days then Magentus shall have the right to suspend the Services.
- 5.4. The Customer shall pay Magentus, in addition to the Charges and any other valid charges, a sum equal to the value added tax and any other applicable taxes chargeable on the value of goods supplied and services performed under the Agreement at the date of invoice. The Agreement shall, upon request, provide such information as may be reasonably required by the Customer regarding the amount of value added tax charged on invoices submitted.

6. TERM AND TERMINATION

- 6.1. This Agreement commences on the Effective Date and, unless terminated earlier in accordance with the terms of this Agreement, will remain in effect for the number of years stated in the Order Form.
- 6.2. Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate the Agreement without liability to the other if:
 - 6.2.1. the other party commits a material breach of any of the terms of this Agreement and (if such a breach is remediable) fails to remedy that breach within thirty (30) days of that party being notified in writing of the breach; or
 - 6.2.2. an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order of such other party; or
 - 6.2.3. an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of such other party, or notice of intention to appoint an administrator is given by such other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or
 - 6.2.4. a receiver is appointed of any of the other party's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of such other party, or if any other person takes possession of or sells such other party's assets; or
 - 6.2.5. the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way, or becomes bankrupt; or
 - 6.2.6. the other party ceases, or threatens to cease, to trade; or
 - 6.2.7. the other party takes or suffers any similar or analogous action to any of the foregoing in any jurisdiction in consequence of debt.

Effect of Termination

- 6.3. Upon termination of this Agreement, each party shall at the other party's option return or destroy all Confidential Information of the other party (including copies of the Software).
- 6.4. Upon expiration or termination of this Agreement for any reason, those provisions of the Agreement, which by their nature are intended to survive, including clauses 3 (Intellectual Property), 4 (Confidentiality and Personal Data), 5 (Fees for services provided), 7 (Limitation of Liability), 8.7 (Compliance with Law), 8.11-8.13 (Dispute Resolution and Governing Law), and 8.14 (Entire Agreement), will survive in accordance with their terms. Termination will not prejudice either party to require performance of any obligation due at the time of termination.

7. LIMITATION OF LIABILITY

- 7.1. Nothing in this Agreement excludes the liability of either Party:
 - 7.1.1. for death or personal injury caused by a Party's negligence; or
 - 7.1.2. for fraud or fraudulent misrepresentation.
- 7.2. Magentus's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in

connection with the performance or contemplated performance of this Agreement shall be limited to the amount actually paid by the Customer to Magentus under this Agreement in the twelve (12) months preceding the date on which the claim arose.

7.3. Exclusions:

Neither party shall be liable to the other for any indirect, consequential, or special loss or damage, or any loss (whether direct or indirect) of revenue, anticipated savings, business opportunity, goodwill (or any injury to reputation), in each case, arising out of or in connection with this Agreement.

8. GENERAL

8.1. Insurance. Each party shall maintain such public liability insurance (including without limitation workers compensation, employer's liability, comprehensive general liability, product liability and property damage insurance) as will adequately protect the other party in the event of any liability arising under this Agreement and, upon one party's reasonable request, the other party will provide the requesting party with evidence of such insurance.

8.2. Warranties. Each party warrants that:

8.2.1. it has the full power to enter into and perform this Agreement and undertake its obligations as set out within this Agreement;

8.2.2. it will perform its obligations under this Agreement exercising reasonable care and skill and will use all reasonable endeavours to achieve the objectives of the Agreement.

8.3. Variation. To the extent that either Party wishes to make any change to this Agreement, the

Parties shall agree to discuss and implement any change in accordance with an agreed change control process. No amendment shall be made to this Agreement unless done so in writing by an authorised representative of both parties.

8.4. Assignment. This Agreement is personal to the parties and shall not be assignable by either party without the prior written consent of the other party. Notwithstanding the foregoing, either party may assign its rights and obligations under this Agreement without the other party's consent: (i) to an affiliate; (ii) in connection with a merger, acquisition, corporate reorganization or other sale of all or substantially all of its shares or assets of its business. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors and permitted assigns.

8.5. Severability. If any provision of the Agreement is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if the Agreement had been executed with the invalid provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Agreement, the parties shall immediately commence good faith negotiation to remedy such invalidity

8.6. Waiver. No delay, neglect or forbearance on the part of either Party in enforcing any provision of this Agreement shall be deemed to be a waiver or in any way prejudice its rights under this Agreement. No waiver or amendment by either Party shall be effective unless made by authorised persons of the Party in writing and no waiver by either Party of a breach of this Agreement shall constitute a waiver of any subsequent breach. If any provision of this Agreement shall be held by a court of competent jurisdiction or a regulator to be invalid or voidable such provision shall be struck out and the remainder shall stand in full force and effect

8.7. Compliance with Law. Each party shall at all times during the Term comply in all material respects with all applicable laws, legislation, rules, regulations, governmental requirements and industry standards with respect to the Licensed Products and the performance by each party of

its obligations hereunder.

- 8.8. Notices. Except as otherwise provided herein, all notices shall be in writing and shall be deemed to be delivered when received if sent by certified mail, postage prepaid, return receipt requested, by nationally recognized overnight courier, or by telecopier. All notices shall be directed to the parties at the following respective addresses set forth below or to such other address as either party may, from time to time, designate by notice to the other party:

If to Magentus:

Head of Legal
Second Floor
75 Farringdon Road
London
EC1M 3JY

If to Customer:

[Customer Name and Address to be completed upon execution]

No notice, approval, acceptance, waiver, consent or other communication by the Customer or Magentus shall be valid unless made in writing and executed on behalf of the party sending the communication by the Authorised Officer

- 8.9. Independent Contractor. The parties are and shall be independent contractors to one another, and nothing herein shall be deemed to cause this Agreement to create an agency, partnership, or joint venture between the parties. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between Magentus and the Customer. Neither party shall provide, or be responsible for, any fringe benefits, including health insurance benefits, paid vacation, or any other employee benefits, for the benefit of the other party's employees.
- 8.10. Force Majeure. Neither Party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure results from events, circumstances or causes beyond its reasonable control, provided that such events could not have been reasonably foreseen or prevented by the affected party, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of Magentus or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations (as agreed in writing between the Parties), provided that if the period of delay or non-performance continues beyond such agreed extension, the party not affected may terminate this Agreement by giving ten (10) days written notice to the other Party.

Relief under this Clause shall not be given unless a party intending to claim relief has, by written notice to the other party as soon as practicable after becoming aware of the event of Force Majeure or, if later, of the failure to perform, informed the other party that it intends to claim relief. Such notice shall contain such relevant information relating to such failure as is available

- 8.11. Dispute Resolution. If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it ("Dispute") then, except as expressly provided in this Agreement, the parties shall follow the dispute resolution procedure set out in this clause:

8.11.1. either party shall give to the other written notice of the Dispute, setting out its nature and full particulars ("Dispute Notice"), together with relevant supporting documentation.

On service of the Dispute Notice the CEO of Customer and Managing Director of Magentus who shall attempt in good faith to resolve it; and

- 8.11.2. if the CEO of Customer and Managing Director of Magentus are for any reason unable to resolve the Dispute within thirty (30) days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing ("ADR notice") to the other party requesting mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than sixty (60) days after the date of the ADR notice. Unless otherwise agreed by the parties, the place of mediation shall be nominated by the mediator.
- 8.12. The commencement of mediation shall not prevent the parties commencing or continuing court proceedings.
- 8.13. Governing Law and Remedies. The parties expressly acknowledge that the laws of England and Wales will govern the relationship between the parties and the parties submit to the non-exclusive jurisdiction of the English courts. Except as expressly set forth in this Agreement, the exercise by either party of any of its remedies under this Agreement will be without prejudice to its other remedies under this Agreement or otherwise.
- 8.14. Entire Agreement. This Agreement, any exhibits or attachments hereto, constitutes the complete and exclusive understanding and agreement between the parties regarding its subject matter and supersedes all prior or contemporaneous agreements or understandings, whether written or oral, relating to its subject matter. Any waiver, modification or amendment of any provision of this Agreement will be effective only if in writing and signed by duly authorized representatives of each party.
- 8.15. Counterparts. This Agreement may be executed by original or facsimile signatures and in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date:

Magentus Software Limited:

Name
Title
Date

Customer:

Name
Title
Date

SCHEDULE 1
SOFTWARE

SCHEDULE 2

SUPPORT SERVICES

General

- 1.1 Magentus shall provide Software support remotely from the Magentus site, between the hours of 09.00 and 17.00 ("Core Hours"), excluding public and bank holidays in England).
- 1.2 [insert and additional/weekend support]
- 1.3 Magentus shall be responsible for the correction of demonstrable and repeatable failures and errors in the Software, or where the Software is not performing as originally intended ("Fault" and "Faults")
- 1.4 A Fault shall be resolved when the Software is performing in accordance with the standards and requirements of this Agreement ("Resolved").
- 1.5 Magentus shall determine at its sole discretion whether or not a Customer site visit is required to resolve a Fault. Where Magentus determines that a Customer site visit is required, the Customer shall promptly provide Magentus access to such site. Where Magentus have to make a visit to a Customer site where they would have been otherwise able to resolve the Fault remotely but are being prevented to by the Customer, then Magentus shall be entitled to charge for such visit on a time and materials basis.
- 1.6 The Customer shall report a Fault by contacting the Magentus telephone support line during the Core Hours, and Magentus shall log Fault on the Magentus Fault logging system, which shall contain the Customer details. Magentus shall assign a unique number to the Customer, and the Customer must quote this when requiring updates regarding the Fault.
- 1.7 At the time of logging a Fault, Magentus shall allocate a Severity Level in accordance with paragraph 1.8 below.
- 1.8 Escalation of Severity Levels is invoked when Severity Level Target times are exceeded (see Schedule Three to this agreement) or the Severity Level of a Fault is increased by Magentus .
- 1.9 Access to Customers' systems is through a secure remote connection and it is the responsibility of the Customer to provide all necessary equipment and activities at the Customer in order to affect the link.
- 1.10 Faults which have been logged by Magentus with the Customer representative as they are waiting testing by the Customer will be automatically closed by Magentus after 5 working days if no action is taken by the Customer. The Customer will be notified in writing (email or fax) of when the testing period starts and ends.
- 1.11 Severity Levels are allocated to each Fault by Magentus, at the time that the Customer initially reports such, in accordance with the following guidance contained in paragraph 2.1 to this Schedule 2.

2 Severity Level Targets

- 2.1 Magentus shall use reasonable endeavours to resolve each Fault in accordance with the following fix times, all fix times shall only apply during the Core Hours and shall be measured from the time that the Customer reports a Fault in accordance with this Agreement:

Severity Level	Severity Level Description	Target Fix Time
1	Software not available	4 hours
2	Software preventing normal day-to-day use with a major impact on all users	12 hours
3	Inconvenient but Software is available and affecting a minor number of all users	7 working days
4	No impact on performance or functionality	Next available software release

Where a Fault is referred back to the Customer for further information, in order for Magentus to resolve the Fault, then the time taken for such referral and receipt of required information shall be excluded from the Fix Time. Where such information is not received within fourteen (14) days, then the Fault shall be closed and shall be deemed to be resolved.

3. ESCALATION PROCEDURE & EVENT MANAGEMENT

- 3.1 If a fault alters in priority to either a Severity Level 1 or 2, it is automatically escalated to the Support team leader.
- 3.2 Magentus will offer the Customer a regular service review meeting, to discuss performance against the Fix Times and the Support Services generally and matters of escalation shall also be discussed at such review.

4. MAGENTUS SOFTWARE DISASTER RECOVERY ON SERVER

- 4.1 Magentus shall provide disaster recovery of the Software or data corruption including data loss, fire, flood or denial of access to site or system.
- 4.2 In the event of a disaster, Magentus undertakes to support the Customer in restoring data from the Customer's own backup tapes onto hardware sourced by the Customer. Magentus will also supply such staff and technical resources required to produce a working system as quickly as possible, at no material additional cost to the Customer.
- 4.3 Magentus will work with the Customer to resolve any Magentus related technical requirements at no additional material costs to the Contractor.

SCHEDULE 3 IMPLEMENTATION AND TESTING

1. Implementation

Magentus shall install the Software in accordance with this Schedule 3, and shall ensure a governance structure is in place to effectively manage the project, working closely with and communicating with the Customer in all aspects of the implementation of the Managed Services including but not limited to issues, risks, slippages.

1.1 Outline Implementation Plan

The parties agree that the outline implementation plan is as detailed within Appendix 1 to this Schedule 3.

1.2 Detailed Implementation Plan

1.2.1 Magentus will develop a detailed implementation plan, based on the Outline Implementation Plan, and which should be sufficiently detailed as is necessary to manage the implementation process effectively. The Supplier shall ensure that the Detailed Implementation Plan incorporates all of the Milestones and Milestone Dates set out in and is otherwise consistent with the Outline Implementation Plan and includes (as a minimum) the proposed timescales in respect of the following:

- 1.2.1.1 Critical activities in order to successfully complete the implementation;
- 1.2.1.2 Training and roll-out activities;
- 1.2.1.3 A plan of all the steps required to implement the Milestones including which party is responsible and the necessary timescales, and the resources required to be provided by each party.

1.2.2 Where there are tasks and activities to be performed by the Customer that are dependent upon Magentus (i) completing its own tasks and activities; and/or (ii) providing information, documentation or other items to the Customer, Magentus shall ensure that it has so completed its own tasks and activities and/or provided the information, documentation or other items to the Customer sufficiently well in advance to afford the Customer a reasonable opportunity to and enable the Customer to perform its own tasks and activities. Magentus shall not be entitled to any performance or other relief where it fails to fully comply with this provision and therefore any of the Milestones are not achieved.

1.2.3 The Customer shall have the right, at any time, to review any documentation produced by Magentus in relation to the development of the Detailed Implementation Plan (which Implementation Plan shall, once finalised, then superseded the Outline Implementation Plan and be the plan pursuant to which the Supplier must implement the Managed Services.

1.2.4 Once the content of the Detailed Implementation Plan is approved by the Customer, Magentus shall monitor the performance against the Detailed Implementation Plan and shall maintain and update it on a regular basis if appropriate. Save for any amendments which are of a type identified and notified by the Customer (at the Customer's discretion)

to Magentus in writing as not requiring approval, any material amendments to the Detailed Implementation Plan shall be subject to the Change Control Procedure (and for the avoidance of doubt any amendments to elements of the Detailed Implementation Plan which reflect the contents of the Outline Implementation Plan shall be deemed to be material amendments) provided that in no circumstances shall Magentus alter or attempt to alter any Milestone Date. Until such time as the updated Detailed Implementation Plan is approved by the Customer, the Detailed Implementation Plan then existing (that is to say prior to the update) shall apply.

1.3 Failure To Achieve Milestones

- 1.3.1 If, at any time, Magentus becomes aware that it will not (or is unlikely to) achieve any Milestone by the Milestone Date, it shall as soon as reasonably practicable notify the Customer of the fact of the delay and summarise the reasons for it. Magentus shall, as soon as possible and in any event not later than 10 Working Days after the initial notification, give the Customer full details in writing of the reasons and consequences of the delay, and whether the Supplier claims that the delay is due to an act or omission of the Customer.
- 1.3.2 Where Magentus is responsible for the delay, then Magentus shall submit a plan for the remediation of the delay to the Milestone when it becomes aware that it will fail to achieve the Milestone Date ("Correction Plan").
- 1.3.3 The Correction Plan shall identify the issues arising out of the delay and the steps that the Supplier proposes to take to achieve the Milestone in accordance with this Contract and the Supplier shall be responsible for Achieving the Milestone in accordance with the Correction Plan.
- 1.3.4 If Magentus would have been able to achieve the Milestone by its Milestone Date (or by a revised Milestone Date agreed pursuant to the Contract), but has failed to do so as a result of an act or omission of the Customer, then Supplier will be entitled to:
 - 1.3.4.1 An extensions of time in order to manage such delay; and
 - 1.3.4.2 Be entitled to recover the unavoidable additional costs associated with the delay; and
 - 1.3.4.3 Not be in breach of this Order and have no liability for the delay; and
 - 1.3.4.4 Consult with the Customer in order to reschedule the Milestones and agree a revised Implementation Plan.
- 1.3.5 The Customer shall not delay unreasonably when considering and determining the effect of a delay under this Schedule 3, in agreeing a change as a result, or agreeing alternative timescales.

2 Testing

The purpose of Testing is to provide assurance that the Software meets the Customers requirements as set out within this Agreement

2.1 Testing Overview

- 2.1.1 Magentus shall ensure that the necessary testing has been carried out by Magentus, prior to the Software being installed into a Customer test environment, to ensure that the Software materially meets the requirements of the Agreement.

- 2.1.2 Prior to Magentus being able to install the Software into the Customer test environment, the Customer must make available to Environment and the parties shall confirm that the Environment meets the requirements of the specification contained in this Schedule 3 [to be provided for each contract].
- 2.1.3 The Customer shall carry out its own testing of the Software by way of out all 'user acceptance' to ensure that the Software meets the specification. Where the Customer identifies issues during such testing, the Customer shall notify Magentus immediately in writing and Magentus shall, within five (5) days, resolve such issue to ensure that the Software conforms to the requirements of the specification.
- 2.1.4 Magentus shall support the Customer testing by providing generic test scripts, which the Customer may adapt in order to ensure that it is confident it has carried out full user acceptance testing and that the Software conforms to the requirements of this Agreement.
- 2.1.5 Magentus will ensure that the appropriate governance is in place in order to effectively manage the implementation, in accordance with the implementation plan and that communication is proactive. The parties agree to address and risks, issue and delays in a timely manner.
- 2.1.6 Any issues regarding testing and implementation of the Software shall be initially escalated through the respective project management teams.

2.2 Milestone Achievement

- 2.2.1 Magentus shall notify the Customer in writing each time it achieves a Milestone. Where the Customer, acting reasonably, considers that such Milestone has not been achieved then the parties shall discuss in good faith the reasons for this and, acting reasonably, any additional work required of the Supplier in order to achieve such Milestone.
- 2.2.2 Magentus shall notify the Customer in writing each time it achieves a Milestone. Where the Customer, acting reasonably, considers that such Milestone has not been achieved then the parties shall discuss in good faith the reasons for this and, acting reasonably, any additional work required of the Supplier in order to achieve such Milestone.

2.3 Test Strategy

- 2.3.1 Unless otherwise agreed, Magentus shall develop with the Customer a test strategy as part of the Implementation Plan, which shall include:
 - 2.3.1.1 an overview of how testing will be conducted in relation to the Implementation Plan;
 - 2.3.1.2 the process to be used to capture and record test results and the categorisation of test issues;
 - 2.3.1.3 the method for mapping the expected test results to the Acceptance Criteria;
 - 2.3.1.4 the procedure to be followed should a deliverable fail to satisfy the test criteria or produce unexpected results including a procedure for the resolution of test issues;

2.3.1.5 the procedure to be followed to sign off each Milestone;

2.3.1.6 a high-level identification of the resources required for testing of each party, including facilities, infrastructure, personnel and Customer and/or third party involvement in the conduct of the Tests.

2.4 Test Issue Classification

2.4.1 Test issue priorities shall be assessed in accordance with the following table:

Priority 1	Severity: prevents a critical element of the Managed Services and/or the Supplier Software from functioning or being performed which has a direct or indirect impact on patients and/or end users.
Priority 2	Severity: all elements of the Managed Services and/or the Supplier Software can still function with acceptable reasonable workaround; however functionality or performance is severely impacted.
Priority 3	Severity: all elements of the Managed Services and/or the Supplier Software can still function with an acceptable reasonable workaround agreed by the parties; however required functionality or performance is materially impacted.
Priority 4	Severity: all elements of the Managed Services and/or the Supplier Software can still function, however there is minor functionality/performance impact.
Priority 5	Severity: all elements of the Managed Services and/or the Supplier Software can still function, however there are minor cosmetic defects with no functional impact and with no impact on patients or clinical services.

Appendix 1 – Outline Implementation Plan

[milestones to be populated depending on modules]

Milestone	Milestone Acceptance Criteria	Milestone Date	Responsibility

SCHEDULE 4

CUSTOMER RESPONSIBILITIES

Where the Customer fails to meet its responsibilities as further detailed in this Schedule 3 and elsewhere in this Agreement, then Magentus will be relieved of its obligations under this Agreement to the extent that such failure by the Customer results in a failure by Magentus, or additional cost to, Magentus:

- i) Customer shall provide the required access in order for Magentus to remotely support the Software, and in a timely manner, and provide all required connectivity in order for the Software to be used by the Customer (including any peripheral devices);
- ii) Customer shall complete all activities set out in implementation plans, in a timely manner and in accordance with such plans;
- iii) Customer shall prepare test scripts for all required testing, and carry out testing, in a timely manner
- iv) Where Magentus determines that a Customer site visit is required to resolve a Fault then the Customer shall allow such access;
- v) The Customer shall provide first line support, and ensure that it has the available system manager resource to provide initial support to end users calls logged in respect of the Software and shall be available during the Core Hours, and such resource shall be capable of providing end user training in respect of the Software, testing of upgrades, allocation and renewal of passwords, monitor the system console log and relay any abnormalities to Magentus for action ;
- vi) The information required by Magentus, for each Fault, must be provided in order for Magentus to resolve a Fault;
- vii) Perform back-ups and check these are successful, with appropriate on and offsite copies in order to facilitate the restoration of data;
- viii) control all backup media and replace backup media within manufacturers guidelines for media usage;
- ix) Maintain system logs and diaries.

Schedule 5

Charges