



Software Licence Terms

The Supplier agrees to licence the Software to the Customer on the terms of the Licence, to the exclusion of any other terms or conditions that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

The Customer's attention is drawn in particular to clauses 2.3, 2.4, 3.2, 6.2, 6.4 and 7.

1. Definitions

Documentation	the documents provided by the Supplier for the Software, in either printed text or machine-readable form, including the technical documentation, program specification and operations manual;
Intellectual Property Rights	all patents, copyrights, design rights, trademarks, service marks, trade secrets, know-how, database rights and other rights in the nature of intellectual property rights (whether registered or unregistered) and all applications for the same, anywhere in the world;
Licence Start Date	means the earlier to occur of: (i) the date on which the Supplier successfully completes the installation of the Software, or where the Customer notifies the Supplier of non-compliance with the Warranty in accordance with clause 3.4, means the date on which the Customer accepts the Software in accordance with clause 3.5; or (ii) the Longstop Date as defined in clause 3.3;
Maintenance Release	a release of the Software that corrects faults, adds functionality or otherwise amends or upgrades the Software, but which does not constitute a New Version;
New Version	any new version of the Software which from time to time is publicly marketed and offered for purchase by the Supplier in the course of its normal business, being a version which contains such significant differences from the previous versions as to be generally accepted in the marketplace as constituting a new product;
Software	the program for the capture and assessment of information, and any Maintenance Release which is acquired by the Customer during the subsistence of this Licence; and
Term	in the case of a first licence, means a period of one year (365 days) from the Licence Start Date, or in the case of a licence renewal, means a period of one year (365 days) from the Licence Renewal Date specified in the Supplier's renewal notice.

Any terms which are capitalised but not defined in these licence terms shall have the meanings given in the Supplier's quotation or renewal notice (as applicable).

2. Licence and Support

- 2.1 The Supplier grants to the Customer a non-exclusive licence for the Permitted Users to use the Software and Documentation for the Term for the purpose of computerised monitoring of the growth of children in accordance with the Documentation.
- 2.2 The Customer acknowledges that all Intellectual Property Rights in the Software and Documentation belong to the Supplier, and the Customer shall have no rights in or to the Software other than the right to use it in accordance with this Licence.
- 2.3 Software Support services shall be provided in accordance with the details and service levels set out in the Supplier's quotation or renewal notice (as applicable), using reasonable skill and care. Timings specified in the service levels are targets, and Supplier shall not in any circumstances be liable for any loss or damage arising from any failure to meet such timings.
- 2.4 In the event our Software Support partner ceases to provide the Software Support services at any time for any reason, the Supplier shall be entitled to suspend the Support Services without liability until a replacement partner is appointed.
- 2.5 The Customer shall provide such co-operation, support, advice and access to systems as the Supplier (or its subcontractors) reasonably require to provide the Software Support and installation services.

3. Installation

- 3.1 The Supplier shall install the Software by the method specified in the Supplier's quotation.
- 3.2 The parties shall agree an installation date (**Scheduled Installation Date**). All dates supplied by the Supplier for the installation of the Software shall be treated as approximate only. The Supplier shall not in any circumstances be liable for any loss or damage arising from any delay in delivery beyond such approximate dates.
- 3.3 In advance of the Scheduled Installation Date, the Customer shall ensure it has completed all system-readiness actions notified to it by the Supplier. If the Customer has not completed the required actions and/or facilitated installation of the Software within 90 days from the Scheduled Installation Date (**Longstop Date**), the Licence shall be deemed to have commenced on the Longstop Date.
- 3.4 The Customer shall test the Software following installation and notify the Supplier within 10 Business Days from installation of any non-compliance with the Warranty (as defined in clause 6.1). If no notice of non-compliance is given within such time period, the Customer shall be deemed to have accepted the Software. If the Software does not comply with the Warranty and such non-compliance has been notified to the Supplier within the required time period, the Supplier shall correct the issue within 20 Business Days of such notice (**Remedy Period**). If the Software still does not comply with the Warranty after the Remedy Period and such non-compliance has been notified to the Supplier within 10 Business Days from expiry of the Remedy Period, the Supplier shall correct the issue within 20 Business Days of such notice.
- 3.5 If the Customer commences live use of the Software, it shall be deemed to have accepted the Software.

4. Licence Terms

- 4.1 The Customer may not use the Software other than as specified in clause 2.1 without the prior written consent of the Supplier, and the Customer acknowledges that additional fees may be payable on any change of use approved by the Supplier.
- 4.2 The Customer may make as many backup copies of the Software as may be necessary for its lawful use. The Customer shall record the number and location of all copies of the Software and take steps to prevent unauthorised copying.



- 4.3 The Customer acknowledges that due to the nature of its content the Software will reduce in effectiveness over time and agrees that where a Maintenance Release is offered to the Customer and the Customer declines to obtain such an update, any such continued use of the Software shall be at the Customer's sole risk.
- 4.4 Except as expressly stated in this clause 4, the Customer has no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the Software in whole or in part except to the extent that any reduction of the Software to human readable form (whether by reverse engineering, decompilation or disassembly) is necessary for the purposes of integrating the operation of the Software with the operation of other software or systems used by the Customer, unless the Supplier is prepared to carry out such action at a reasonable commercial fee or has provided the information necessary to achieve such integration within a reasonable period, and the Customer shall request the Supplier to carry out such action or to provide such information (and shall meet the Supplier's reasonable costs in providing that information) before undertaking any such reduction.
- 4.5 The Customer may not use any such information provided by the Supplier or obtained by the Customer during any such reduction permitted under clause 4.4 to create any software whose expression is substantially similar to that of the Software nor use such information in any manner which would be restricted by any copyright subsisting in it.
- 4.6 The Customer shall not:
- 4.6.1 sub-license, assign or novate the benefit or burden of this Licence in whole or in part;
 - 4.6.2 allow the Software to become the subject of any charge, lien or encumbrance; and
 - 4.6.3 deal in any other manner with any or all of its rights and obligations under this Licence;
- without the prior written consent of the Supplier, such consent not to be unreasonably withheld or delayed.
- 4.7 The Customer shall:
- 4.7.1 ensure that the number of persons using the Software does not exceed the Permitted Users;
 - 4.7.2 procure that its users shall comply with the terms of this Licence and/or the terms of any end user licence notified by the Supplier to the Customer;
 - 4.7.3 keep a complete and accurate record of the Customer's copying and disclosure of the Software and its users, and produce such record to the Supplier on request from time to time; and
 - 4.7.4 notify the Supplier as soon as it becomes aware of any unauthorised use of the Software by any person.
- 4.8 The Customer shall permit the Supplier to inspect and have access to any premises (and to the computer equipment located there) at, and any systems and servers on, which the Software is being kept or used, and have access to any records kept in connection with this Licence, for the purposes of ensuring that the Customer is complying with the terms of this Licence, provided that the Supplier provides reasonable advance notice to the Customer of such inspections, which shall take place at reasonable times.
5. **Fees**
- 5.1 The Customer shall pay to the Supplier the Annual Licence Fee on the due date notified to it by the Supplier, using the payment details provided by the Supplier.
- 5.2 All sums payable under this Licence are exclusive of VAT or any relevant local sales taxes, for which the Customer shall be responsible.
- 5.3 If the Customer fails to pay any amount payable by it under this Licence the Supplier may charge the Customer interest on the overdue amount from the due date up to the date of actual payment, after as well as before judgment, at the rate of 8% per annum above the base rate for the time being of the Bank of England. Such interest shall accrue on a daily basis and be compounded quarterly.
6. **Supplier's Warranties**
- 6.1 The Supplier warrants that the Software will conform in all material respects to the Specification and be free from defects which have a material adverse effect on the functionality or performance of the Software (**Warranty**). If, during the Term, the Customer notifies the Supplier in writing of any defect or fault in the Software in consequence of which it fails to conform in all material respects to the Specification, and such defect or fault does not result from the Customer, or anyone acting with the authority of the Customer, having amended the Software or used it outside the terms of this Licence for a purpose or in a context other than the purpose or context for which it was designed or in combination with any other software not provided by the Supplier, or it has not been loaded onto Supplier-specified or suitably configured equipment or systems, the Supplier shall at its sole option, do one of the following:
- 6.1.1 repair the Software;
 - 6.1.2 replace the Software; or
 - 6.1.3 terminate this Licence immediately by notice in writing to the Customer and refund any of the Annual Licence Fee paid by the Customer as at the date of termination (less a reasonable sum in respect of the Customer's use of the Software to the date of termination) on return of the Software and all copies thereof,
- provided the Customer provides all the information that may be necessary to assist the Supplier in resolving the defect or fault, including a documented example of any defect or fault, or sufficient information to enable the Supplier to re-create the defect or fault.
- 6.2 To the maximum extent permitted by applicable law the Supplier gives no warranty of satisfactory quality or fitness for purpose, and does not warrant that the use of the Software will be uninterrupted or error-free.
- 6.3 The Customer accepts responsibility for the selection of the Software to achieve its intended results and use of the Software and acknowledges that the Software has not been developed to meet the individual requirements of the Customer.
- 6.4 The Supplier gives no warranty that the Software does not infringe the Intellectual Property Rights of third parties, but where any infringement is found, the Supplier shall at its sole option, do one of the following:
- 6.4.1 modify the Software so that it does not infringe; or
 - 6.4.2 terminate this Licence immediately by notice in writing to the Customer and refund any of the Annual Licence Fee paid by the Customer as at the date of termination (less a reasonable sum in respect of the Customer's use of the Software to the date of termination) on return of the Software and all copies thereof,
- provided that no act or omission of the Customer has caused or contributed to the infringement, and provided that the Customer provides to the Supplier all the information it has regarding any claims of infringement.
7. **Limits of Liability**
- 7.1 The Supplier shall not in any circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Licence for: (i) loss of profits, sales, business, or



revenue; (ii) business interruption; (iii) loss of anticipated savings; (iv) wasted expenditure; (v) loss or corruption of data or information; (vi) loss of business opportunity, goodwill or reputation; or (vii) any special, indirect or consequential loss, damage, charges or expenses.

- 7.2 The Supplier shall have no liability in respect of any loss arising from the Customer's failure to use the Software in accordance with the Documentation or for any loss incurred by the Customer as a result of the Customer's misdiagnosis (whether as a result of the Customer's failure to use the Software in accordance with the Documentation or otherwise).
- 7.3 The total liability of the Supplier for all claims arising during or relating to the relevant Term, whether in contract, tort (including negligence) or otherwise under or in connection with this Licence shall in no circumstances exceed a sum equal to the Annual Licence Fee for that Term.
- 7.4 The Customer agrees that, in entering into this Licence, it did not rely on any representations (whether written or oral) of any kind other than those expressly set out in this Licence.
- 7.5 The Supplier does not exclude liability for death or personal injury caused by the Supplier's negligence, fraud or fraudulent misrepresentation, or any other liability which may not be excluded by law.

8. Data Protection

The data protection terms in the Annex apply to this Licence.

9. Termination

- 9.1 This Licence shall expire at the end of the Term unless it is renewed by the Customer placing a purchase order or paying the Annual Licence Fee in response to the Supplier's renewal notice.
- 9.2 Either party may at any time terminate this Licence with immediate effect by giving written notice to the other party if the other party commits a material breach of any term of this Licence (including but not limited to any failure to pay any amounts due under this Licence) and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so.
- 9.3 On termination for any reason:
- 9.3.1 all rights granted to the Customer under this Licence shall cease;
 - 9.3.2 the Customer shall cease all activities authorised by this Licence;
 - 9.3.3 the Customer shall immediately pay to the Supplier any sums due to the Supplier under this Licence; and
 - 9.3.4 the Customer shall immediately destroy or return to the Supplier (at the Supplier's option) all copies of the Software then in its possession, custody or control and, in the case of destruction, certify to the Supplier that it has done so.
- 9.4 Termination by either party in accordance with the rights contained in this clause 9 shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.
- 9.5 Any provision of this Licence which expressly or by implication is intended to come into or continue in force on or after termination of this Licence shall remain in full force and effect.

10. General Provisions

- 10.1 Each party shall, during the term of this Licence and thereafter, keep confidential all, and shall not use for its own purposes (other than implementation of this Licence) nor without the prior written consent of the other disclose to any third party (except its professional advisors or as may be required by any law or any legal or regulatory authority) information of a confidential nature (including, without limitation, trade secrets, information of commercial value and the terms of this Licence) which may become known to such party from the other party and which relates to the other party, unless that information is public knowledge or already known to such party at the time of disclosure, or subsequently becomes public knowledge other than by breach of this Licence, or subsequently comes lawfully into the possession of such party from a third party.
- 10.2 No failure or delay by a party to exercise any right or remedy provided under this Licence or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 10.3 Except as expressly provided in this Licence, the rights and remedies provided under this Licence are in addition to, and not exclusive of, any rights or remedies provided by law.
- 10.4 This Licence constitutes the whole agreement between the parties relating to the subject matter hereof and supersedes all prior agreements, arrangements and understandings between the parties relating to that subject matter.
- 10.5 No variation of this Licence shall be effective unless it is in writing and signed by the parties.
- 10.6 The Supplier may subcontract all or part of its obligations under this Licence, without notice to the Customer.
- 10.7 The Supplier may at any time sub-license, assign, novate, charge or deal in any other manner with any or all of its rights and obligations under this Licence, provided it gives written notice to the Customer.
- 10.8 If any court or competent authority finds that any provision of this Licence (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Licence shall not be affected.
- 10.9 A person who is not a party to this Licence shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Licence.
- 10.10 Neither party shall in any circumstances be in breach of this Licence nor liable for delay in performing, or failure to perform, any of its obligations under this Licence if such delay or failure results from events, circumstances or causes beyond its reasonable control, and in such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed provided that if the period of delay or non-performance continues for 4 weeks, either party may terminate this Licence by giving 14 days' written notice to the other party.
- 10.11 Notices shall be sent in writing to the address for each party as set out in this Licence. Notices shall be delivered:
- 10.11.1 personally, in which case it shall be deemed delivered when left at the address specified;
 - 10.11.2 by pre-paid first-class post or recorded delivery, in which case it shall be deemed delivered at 9.00 am on the second Business Day after posting; or
 - 10.11.3 by commercial courier, in which case it shall be deemed delivered on the date and at the time that the courier's delivery receipt is signed.
- 10.12 This Licence, its subject matter and its formation (and any non-contractual disputes or claims) are governed by English law. The parties each irrevocably agree to the exclusive jurisdiction of the courts of England and Wales.