



SUBSCRIPTION AGREEMENT

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THIS AGREEMENT is dated [_____]

PARTIES

- (1) FIVIUM LIMITED incorporated and registered in England and Wales with company number 05775733 whose registered office is at 16 Great Queen Street, Covent Garden, London WC2B 5AH **Supplier**
- (2) [Customer Name] whose registered office is at [Registered Address] **Customer**

BACKGROUND

- (A) The Supplier has developed certain software applications and platforms which it makes available to subscribers via the internet on a pay-per-use basis for the purpose of case management and reporting.
- (B) The Customer wishes to use the Supplier's service for purpose of assisting in the running of a case management system.
- (C) The Supplier has agreed to provide and the Customer has agreed to take and pay for the Supplier's service subject to the terms and conditions of this agreement.

AGREED TERMS

1. INTERPRETATION

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

Additional Services: those services additional to the Services which are more particularly described in the accompanying Order Form.

Authorised Users: those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services and the Documentation, as further described in clause 2.

Business Day: any day which is not a Saturday, Sunday or public holiday in the UK.

Case Volume Subscriptions: the case volume subscriptions purchased by the Customer pursuant to clause 9.1 which entitle Authorised Users to access and use the Services and the Documentation in accordance with this agreement.

Confidential Information: information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 11.5.

Core Business Hours: the hours indicated in the Service Definition for the provision of support by the Supplier.

Customer Data: the data inputted by the Customer, Authorised Users, or the Supplier on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services.

Data Protection Legislation: (i) from 25 May 2018 until the GDPR is no longer directly applicable in the UK, the General Data Protection Regulation ((EU) 2016/679), the Data Protection Act 2018 and any national implementing laws, regulations and

secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 2018.

Documentation: the document made available to the Customer by the Supplier from time to time which sets out a description of the Services and the user instructions for the Services.

Effective Date: the date of this agreement.

Order Agreement Date: the date stated on any order form for which the Services or Additional Services on that Order Form are deemed to be agreed by both parties.

Order Form: any order form for Subscription or Additional Services referencing this Subscription Agreement and agreed by Customer and Supplier. Agreement may be deemed by signature of both parties or explicit exchange of email confirmation.

Personal Data: has the same meaning as in the Data Protection Legislation.

Service Definition: the documents identified at Schedule 3.

Service Levels: those service levels set out in the Service Definition

Services: the subscription services as described in the Service Definition allowing access to the Software and provided by the Supplier to the Customer under this agreement.

Software: the eCase software provided online by the Supplier as part of the Services.

Subscription Fees: the subscription fees payable by the Customer to the Supplier for the Case Volume Subscriptions, as set out in the Order Form.

Subscription Term: the contractual period, detailed on the accompanying Order Form, that the Service will be supplied.

Support Services Policy: the Supplier's policy for providing support in relation to the Services as described in the Service Definition.

Virus: any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.

- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Words in the singular shall include the plural and vice versa.
- 1.6 A reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.8 A reference to writing or written includes e-mail.
- 1.9 References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule to this agreement.

2. CASE VOLUME SUBSCRIPTIONS

- 2.1 Subject to the Customer purchasing the Case Volume Subscriptions in accordance with clause 9.1 and the Service Definition, and subject to the Customer's compliance with the restrictions set out in this clause 2 and with all the other terms and conditions of this agreement, the Supplier hereby grants to the Customer a non-exclusive, non-transferable right to permit the Authorised Users to use the Services and the Documentation during the Subscription Term solely for the Customer's internal business operations. Use for internal business operations refers to use only for the purposes of processing the Customer's own data and excludes processing the data of any third party or sharing, whether for valuable consideration or not, access to the Services with any third party to enable that third party to process its or another's data.
- 2.2 In relation to the Authorised Users, the Customer undertakes that:
 - (a) It shall permit only its Authorised Users to have access to the Software and to make use of the Services;
 - (b) it will not allow or suffer access to the Services or to the Software by any person who is not an Authorised User and in particular will not allow or suffer any such access by any person who is employed by or works for anyone other than the Customer;
 - (c) each Authorised User shall keep a secure password for his use of the Services and Documentation, that such password shall be changed no less frequently than 6 (six) monthly and that each Authorised User shall keep his password confidential;
 - (d) it shall permit the Supplier to audit the Services in order to establish the use being made of the Services by the Authorised Users and to establish whether the use being made of the Services is in accordance with this Agreement. Such audit may be conducted no more than once per quarter, at the Supplier's expense, and this right shall be exercised with reasonable prior notice, in such

a manner as not substantially to interfere with the Customer's normal conduct of business;

- (e) if any of the audits referred to in clause 2.2(d) reveals that any password has been provided to any individual who is not an Authorised User, then without prejudice to the Supplier's other rights, the Supplier may without liability promptly disable such access by that individual and the Supplier shall not permit any further access by any such individual to the Services;
- (f) if the Customer's actual usage of the Services is such that the Customer has exceeded the usage paid for and thereby underpaid Subscription Fees by reference to the Subscription Fees set out in the Order Form, then without prejudice to the Supplier's other rights, the Customer shall pay to the Supplier an amount equal to such underpayment as calculated in accordance with the prices set out in the accompanying Order Form within 30 (thirty) Business Days of the date of the relevant audit; and
- (g) if the Customer has been processing the data of a third party not included in the definition of Customer at the head of this Agreement, the Customer shall pay for such additional processing as if the third party were an additional party to this Agreement and subject to the rates set out in the accompanying Order Form.

2.3 The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:

- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- (b) facilitates illegal activity;
- (c) depicts sexually explicit images;
- (d) promotes unlawful violence;
- (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
- (f) in a manner that is otherwise illegal or causes damage or injury to any person or property;

and the Supplier reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.

2.4 The Customer shall not:

- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:
 - (i) and except to the extent expressly permitted under this agreement, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all

or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or

- (ii) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
 - (b) access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or
 - (c) use the Services and/or Documentation to provide services to third parties; or
 - (d) subject to clause 19.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users, or
 - (e) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 2.
- 2.5 The Customer shall prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify the Supplier.
- 2.6 The rights provided under this clause 2 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer, or to any other agencies, departments or bodies of central or local government.
- 3. ADDITIONAL SERVICES**
- 3.1 The Customer may purchase Additional Services from the Supplier which shall be supplied according to the terms set out in Schedule 1 and charges detailed in an accompanying Order Form.
- 4. SERVICES**
- 4.1 The Supplier shall, during the Subscription Term, provide the Services and make available the Documentation to the Customer on and subject to the terms of this agreement.
- 4.2 At the commencement of the Services, the parties shall follow the agreed On-boarding plan and the Supplier shall use its commercially reasonable endeavours to comply with any dates in that On-boarding plan. Where any user acceptance tests are indicated in the On-boarding plan, then the user must indicate any areas of non-compliance within 5 (five) working days of the time indicated for completion of those tests, otherwise acceptance will be deemed. Use of the Services or any part of them in a live environment shall be deemed to be acceptance for all purposes. Testing is only permitted to have regard to the material conformity of the Services to the Service

Definition and no other criteria shall be permitted for the running of tests or for rejecting the Services.

- 4.3 The Supplier shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:
- (a) planned maintenance carried out during the maintenance window agreed by the parties;
 - (b) unscheduled maintenance performed outside Normal Business Hours, provided that the Supplier has used reasonable endeavours to give the Customer at least 6 Normal Business Hours' notice in advance;
 - (c) any suspension or withdrawal of service at any time imposed by the Supplier's infrastructure hosting provider.
- 4.4 The Supplier will, as part of the Services and at no additional cost to the Customer, provide the Customer with the Supplier's standard customer support services during Core Business Hours in accordance with the Supplier's Support Services Policy as set out in the Service Definition.
- 4.5 The Supplier will use its reasonable endeavours to identify service improvement opportunities and will monitor its systems to ensure that, so far as reasonably practicable, it meets the service levels set out in the Service Definition.
- 4.6 The Supplier is responsible for providing the Services only up to the boundaries of its own network, and accepts no responsibility whatsoever for failures or degradation to the Services of any sort caused or contributed to by transmission over the internet or any network which is not under the Supplier's direct control.
- 4.7 Subject to any specific permissions in Schedule 3 enabling the Supplier to make variations to any element of the Service Definition, either party may request the other for a change to the Services.
- (a) On receipt of such a request from the Customer, the Supplier shall provide an impact assessment which shall include the estimated timescales for implementing the change, and changes to the Subscription Fees and such other charges as are to be made for implementing the change. The Customer shall have the opportunity to accept or reject the impact assessment;
 - (b) If the request is made by the Supplier, the Supplier shall at the same time supply to the Customer an impact assessment which shall include the estimated timescales for implementing the change, and changes to the Subscription Fees and such other charges as are to be made for implementing the change. The Customer shall have 15 (fifteen) working days to accept or reject the impact assessment and the absence of any response within that period shall be taken to be irrevocable assent to the change.

- 4.8 Nothing in clause 4 shall be taken to limit the Supplier's rights to provide security patches, bug fixes or regular updates in the ordinary course of providing the service according to the Service Definition.
- 4.9 In the event of an emergency, the Supplier will use its commercially reasonable efforts to secure the Customer's agreement to any changes, but if this is not practicable, the Supplier may introduce without the Customer's agreement such changes as are necessary to deal with the emergency. The parties will use their respective reasonable endeavours to record such changes as part of the change control procedure in clause 4.7. The Customer shall be responsible for any reasonable additional charges consequent on any emergency change made necessary by the Customer's act or omission or any breach by the Customer of any of the terms of this Agreement.

5. CUSTOMER DATA

- 5.1 The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data. In particular, the Customer is solely responsible for ensuring that it is entitled to enter into this Agreement and that it has legal right to transfer Personal Data to the Supplier for the purposes of processing by the Supplier. It is further the Customer's sole responsibility to ensure that the relevant third parties whose Personal Data are to be processed under this Agreement have received appropriate notices and have given their consent where necessary, or that some other ground exists under the Data Protection Legislation to permit transfer to and processing of such Personal Data by the Supplier.
- 5.2 Both parties will comply with the Data Protection Legislation insofar as it applies to them. Nothing in this agreement shall be taken as relieving a party from its obligations under the Data Protection Legislation.
- 5.3 For the purposes of the Data Protection Legislation, the Customer is the controller and the Supplier is the processor, as those (or equivalent) terms are defined in the Data Protection Legislation.
- 5.4 Without prejudice to clause 5.2, the Supplier shall, in relation to Personal Data to be processed under this Agreement:
- (a) process such Personal Data only in accordance with the terms of this Agreement and in accordance with the instructions given by the Customer and for this purpose;
 - (b) ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, such measures to be in accordance with the Data Protection Legislation;
 - (c) ensure that all personnel who have access to and/or process Personal Data are obliged by legally enforceable contractual terms to keep the Personal Data

confidential (which may be achieved by reliance on a general provision relating to confidentiality contained in an employment contract or contract for services);

- (d) ensure that all personnel who have access to and/or process Personal Data have received training appropriate to their function with regard to the Supplier's obligations under the Data Protection Legislation;
- (e) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Customer has been obtained (and it shall be the Customer's sole responsibility to ensure that it is permitted by the Data Protection Legislation to give consent to such Personal Data being transferred outside the European Economic Area);
- (f) assist the Customer, at the Customer's request, in responding to any request from a data subject with regard to his or her Personal Data or in responding to any supervisory or regulatory authority;
- (g) ensure compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (h) notify the Customer without undue delay on becoming aware of a Personal Data breach;
- (i) at the Customer's written direction, delete or return Personal Data and all copies thereof to the Customer on termination of this Agreement except to the extent that the Supplier is required by law to maintain copies of Personal Data or to the extent that such Personal Data appears on backup copies and it is not practicable to delete them individually (provided that the Supplier shall still take appropriate measures to maintain the security of such backup copies);
- (j) maintain complete and accurate records and information to demonstrate its compliance with this clause 5.

5.5 The Customer hereby consents to the Supplier using the services of the third parties identified in the Service Definition as a third-party processor of Personal Data under this Agreement. This includes, but is not limited to datacentre providers. The Supplier confirms that it has entered into an appropriate written agreement with such third party processors complying with Data Protection Legislation substantially on that third party processor's standard terms of business. The Supplier shall not use the services of any other third party processors or change the third party processor(s) without seeking the prior written consent of the Customer, such consent not to be unreasonably withheld or delayed.

5.6 The Customer is solely responsible for the validity and consequences of all instructions it gives under this clause 5 or otherwise with regard to Personal Data and it shall indemnify the Supplier against any claims, liabilities or loss, damage or expenses

whatsoever imposed on or incurred by the Supplier consequent on carrying out the Customer's instructions.

- 5.7 Where the Supplier becomes or is threatened with claims or liability in respect of a data subject in respect of Personal Data processed under this Agreement, whether such liability is to the data subject or to some other third party including a supervisory or regulatory authority, the Customer will reimburse the Supplier for any such claims or liability including any loss, damage, costs or expenses incurred by or imposed on the Supplier to the extent that the Customer is responsible for causing any such claims or liability, loss, damage, costs or expenses including where the Supplier has carried out the general or specific instructions of the Customer for the processing of Personal Data or the security measures to be taken with regard to Personal Data.
- 5.8 The Subscription Fees cover the provision of the Services on a "business as usual" basis covering the provision of the Services as described in the Service Definition. Where the Supplier provides further or other services, such as by following the general or specific instructions given by the Customer, or by becoming involved in additional activities such as those described in clause 5.4(f), the Customer shall reimburse the Supplier for its additional costs and expenses, to be charged at the Supplier's standard rates (where applicable) or otherwise at reasonable rates.
- 5.9 The Supplier shall follow its archiving procedures for Customer Data as set out in the Service Definition. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by the Supplier in accordance with the archiving procedure described in the Service Definition. The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by the Supplier to perform services specifically related to Customer Data maintenance and back-up).
- 5.10 Without prejudice to any other provision in this Clause 5, the Supplier shall, and shall take reasonable steps to procure that all sub-contractors shall, comply at all times with the Data Protection Legislation and shall not do or omit to do anything that could cause Customer to breach any of its applicable obligations under the Data Protection Legislation.

6. THIRD PARTY PROVIDERS

- 6.1 The Customer acknowledges that the Services may enable or assist it to access via a hyperlink the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. The Supplier makes no representation or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any

transaction completed via any third-party website is between the Customer and the relevant third party, and not the Supplier. The Supplier recommends that the Customer refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. The Supplier does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.

7. SUPPLIER'S OBLIGATIONS

7.1 The Supplier undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.

7.2 The undertaking at clause 7.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to the Supplier's instructions, or modification or alteration of the Services by any party other than the Supplier or the Supplier's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, Supplier will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 7.1. Notwithstanding the foregoing, the Supplier:

- (a) does not warrant that the Customer's use of the Services will be uninterrupted or error-free; or that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements; and
- (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

7.3 This agreement shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this agreement.

7.4 The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this agreement.

8. CUSTOMER'S OBLIGATIONS

8.1 The Customer shall:

- (a) provide the Supplier with:
 - (i) all necessary co-operation in relation to this agreement; and

- (ii) all necessary access to such information as may be required by the Supplier;

in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;

- (b) comply with all applicable laws and regulations with respect to its activities under this agreement;
- (c) carry out all other Customer responsibilities set out in this agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;
- (d) ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of this agreement and shall be responsible for any Authorised User's breach of this agreement;
- (e) ensure that all Authorised Users undertake the required training for use of the Services and further ensure that new Authorised Users receive the required training at the Supplier's normal rates for such training prior to being permitted to use the Services;
- (f) obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under this agreement, including without limitation the Services;
- (g) ensure that its network and systems are adequate to ensure proper usage of the Services and do not include any elements such as are notified to the Customer from time to time by the Supplier; and
- (h) be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the network as indicated as applicable to the Customer in the Service Definition, and the Customer shall be solely responsible for all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

8.2 If the Customer is in breach of any of its obligations in clause 8.1 above and such breach causes the Supplier additional cost or expense, then the Supplier may charge for such additional cost or expense. In particular, the Supplier may charge for any additional support required by the Customer as a result of its failure to comply with clause 8.1(e).

8.3 The Supplier shall not be liable for the degradation to the Services suffered by the Customer's failure to comply with clause 8.1(g) and in particular the Service Levels shall not apply in the event of any breach by the Customer of clause 8.1(g).

9. CHARGES AND PAYMENT

9.1 The Customer shall pay the Subscription Fees to the Supplier for the Case Volume Subscriptions in accordance with this clause 9 and the accompanying Order Form. The

Supplier may increase any or all the Subscription Fees in the accompanying Order Form or Service Definition at each 12 (twelve) month interval after the commencement of the Subscription Term by reference to the greater of 2% *per annum* or the actual rise in the Consumer Prices Index in the previous 12 (twelve) months.

- 9.2 The Supplier shall, as from the date of the accompanying Order Form, invoice the Customer based on the payment profile detailed on the accompanying Order Form. The Customer shall settle such invoice in full without set-off or deduction within 30 (thirty) days of receipt of the invoice.
- 9.3 If the Supplier has not received payment within 30 (thirty) days after the due date, and without prejudice to any other rights and remedies of the Supplier:
 - (a) the Supplier may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Services and the Supplier shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
 - (b) interest shall accrue on such due amounts at an annual rate equal to 3% over the then current base lending rate of the Supplier's bankers in the UK at the date the relevant invoice was issued, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 9.4 All amounts and fees stated or referred to in this agreement:
 - (a) shall be payable in pounds sterling;
 - (b) are non-cancellable and non-refundable;
 - (c) are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.
- 9.5 If, at any time whilst using the Services, the Customer exceeds the amount of disk storage space or specified in the Documentation, the Supplier shall charge the Customer, and the Customer shall pay, the Supplier's then current excess data storage fees. The Supplier's excess data storage fees current as at the Order Agreement Date are set out in the Service Definition. If the Customer exceeds the amount of disk storage space or exceeds the Case Volume Subscriptions band specified in the accompanying Order Form or the Service Definition, the Supplier shall not be liable to the Customer for any degradation in performance caused thereby and in particular shall not be liable for any failure to achieve Service Levels.

10. PROPRIETARY RIGHTS

- 10.1 The Supplier and/or its licensors will own all intellectual property rights in the Software, the Services and the Documentation. The Supplier grants to the Customer a licence to use the Supplier's and/or its licensors Software, the Services and the Documentation in accordance with the terms of this agreement. This agreement, including any Additional Services such as configuration and/or development delivered

under this agreement, does not grant the Customer any rights to, or in, patents, copyrights, database right, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Software, the Services or the Documentation.

- 10.2 The Supplier confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this agreement.

11. CONFIDENTIALITY

- 11.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this agreement. A party's Confidential Information shall not be deemed to include information that:

- (a) is or becomes publicly known other than through any act or omission of the receiving party;
- (b) was in the other party's lawful possession before the disclosure;
- (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
- (d) is independently developed by the receiving party, which independent development can be shown by written evidence; or
- (e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

- 11.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this agreement.

- 11.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this agreement.

- 11.4 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.

- 11.5 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute the Supplier's Confidential Information.

- 11.6 The Supplier acknowledges that the Customer Data is the Confidential Information of the Customer.

- 11.7 This clause 11 is without prejudice to the provisions of clause 5 above dealing with Personal Data and shall survive termination of this agreement, however arising.

12. INDEMNITY

- 12.1 The Customer shall defend, indemnify and hold harmless the Supplier against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services and/or Documentation, provided that:
- (a) the Customer is given prompt notice of any such claim;
 - (b) the Supplier provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
 - (c) the Customer is given sole authority to defend or settle the claim.
- 12.2 The Supplier shall defend the Customer, its officers, directors and employees against any claim that the Services or Documentation infringes any United Kingdom patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:
- (a) the Supplier is given prompt notice of any such claim;
 - (b) the Customer provides reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Supplier's expense; and
 - (c) the Supplier is given sole authority to defend or settle the claim.
- 12.3 In the defence or settlement of any claim, the Supplier may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this agreement on 2 Business Days' notice to the Customer without any additional liability or obligation to pay compensation or other additional costs to the Customer.
- 12.4 In no event shall the Supplier, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:
- (a) a modification of the Services or Documentation by anyone other than the Supplier; or
 - (b) the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by the Supplier; or
 - (c) the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from the Supplier or any appropriate authority.
- 12.5 The foregoing states the Customer's sole and exclusive rights and remedies, and the Supplier's (including the Supplier's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

13. LIMITATION OF LIABILITY

13.1 This clause 13 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer:

- (a) arising under or in connection with this agreement;
- (b) in respect of any use made by the Customer of the Software, the Services and Documentation or any part of them; and
- (c) in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with this agreement.

13.2 Except as expressly and specifically provided in this agreement:

- (a) the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Customer, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Customer in connection with the Services, or any actions taken by the Supplier at the Customer's direction;
- (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this agreement; and
- (c) the Services and the Documentation are provided to the Customer on an "as is" basis.

13.3 Nothing in this agreement excludes the liability of the Supplier:

- (a) for death or personal injury caused by the Supplier's negligence; or
- (b) for fraud or fraudulent misrepresentation.

13.4 Subject to clause 13.2 and clause 13.3:

- (a) the Supplier shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any other type of loss or damage if it is special, indirect or consequential loss, costs, damages, charges or expenses however arising under this agreement; and
- (b) the Supplier's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall be limited to the total Subscription Fees paid for the Case Volume Subscriptions during the 12 months immediately preceding the date on which any claim arose or, in the first 12 (twelve) months of this agreement,

shall be equal to the first month's Subscription Fees multiplied by 12 (twelve).

- (c) The Supplier's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise for all claims whatsoever arising shall not exceed the total of the Subscription Fees paid as at the time when any claim is made provided that in the first 12 (twelve) months of this agreement, the Supplier's liability for all claims shall be equal to the first month's Subscription Fees multiplied by 12 (twelve).

14. TERM AND TERMINATION

14.1 This agreement shall, unless otherwise terminated as provided in this clause 14, commence on the Effective Date and shall continue for the Subscription Term as set out in the accompanying Order Form and any subsequent Order Forms.

14.2 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate this agreement without liability to the other if:

- (a) 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 30 days of that party being notified in writing of the breach; or
- (b) 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 in relation to the other party; or
- (c) 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 the other party, or notice of intention to appoint an administrator is given by the 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
- (d) 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 the other party, or if any other person takes possession of or sells the other party's assets; or
- (e) 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
- (f) the other party ceases, or threatens to cease, to trade; or
- (g) the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

14.3 On termination of this agreement for any reason:

- (a) all licences granted under this agreement shall immediately terminate;

- (b) each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;
- (c) The Supplier shall make available for electronic transfer the then most recent version of the Customer Data in an XML format within 10 working days of the effective date of termination or expiry of this agreement, howsoever caused, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination or expiry of the agreement (whether or not due at the date of termination). After this period the supplier may destroy or otherwise dispose of any Customer Data in its possession; and
- (d) the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.

15. FORCE MAJEURE

The Supplier shall have no liability to the Customer under this agreement if it is prevented from or delayed in performing its obligations under this agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier 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, provided that the Customer is notified of such an event and its expected duration.

16. WAIVER

- 16.1 A waiver of any right under this agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.
- 16.2 Unless specifically provided otherwise, rights arising under this agreement are cumulative and do not exclude rights provided by law.

17. SEVERANCE

- 17.1 If any provision (or part of a provision) of this agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 17.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

18. ENTIRE AGREEMENT

- 18.1 This agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.
- 18.2 Each of the parties acknowledges and agrees that in entering into this agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this agreement or not) relating to the subject matter of this agreement, other than as expressly set out in this agreement.

19. ASSIGNMENT

- 19.1 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.
- 19.2 The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

20. NO PARTNERSHIP OR AGENCY

Nothing in this agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

21. THIRD PARTY RIGHTS

This agreement does not confer any rights on any person or party (other than the parties to this agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

22. PUBLICITY

- 22.1 Provided that the Supplier does not breach any provision concerning confidential information or any other provision expressly prohibiting publicity, then the Supplier may refer publicly to the fact of this Agreement and its work in material made available publicly to third parties, such as by referring to it on the Supplier's website or in any online or hard copy marketing material it makes available to third parties.

23. NOTICES

- 23.1 Any notice required to be given under this agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the

other party at its address set out in this agreement, or such other address as may have been notified by that party for such purposes.

- 23.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post.

24. GOVERNING LAW AND JURISDICTION

- 24.1 This agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by, and construed in accordance with, the law of England.

- 24.2 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This agreement has been entered into on the date stated at the beginning of it.

This agreement has been entered into on the date stated at the beginning of it.

Signed by for and on behalf of **Supplier**

Name

Title

Signature

Signed by for and on behalf of **Customer**

Name

Title

Signature

Schedule 1 Terms of Additional Services

25. ADDITIONAL SERVICES

- 25.1 Clauses 25.1 to 25.15 within Schedule 1 shall be applicable if the Supplier provides Additional Services to the Customer.
- 25.2 With effect from the Order Agreement Date of the accompanying Order Form and in consideration of the payment of the Additional Services Fees set out in the Order Form, the Supplier shall provide the Additional Services.
- 25.3 The Additional Services shall be specified in writing and shall continue for the period specified unless or until terminated in accordance with Clause 25.14.
- 25.4 The Customer will assist the Supplier by providing the Supplier with access to such of its premises and facilities together with any information or assistance which the Supplier may reasonably require for the performance of the Additional Services.
- 25.5 The Customer shall ensure that there are in place all necessary licences and permissions needed to allow the Supplier and its employees, consultants and sub-contractors to access and use all premises, facilities, computer systems, materials, information and other items as may be appropriate for the performance of the Additional Services in connection with this Agreement.
- 25.6 Each Party shall appoint an authorised representative who shall have responsibility for the day to day operation of the Additional Services.
- 25.7 If the Customer requests variation to the Additional Services, the Supplier shall consider such request and, if such request is acceptable to the Supplier, notify the Customer in writing of its acceptance of the variation to the Additional Services and the charges payable by the Customer.
- 25.8 In performing the Additional Services, the Supplier shall use reasonable endeavours not to interfere with the operations of the Customer.
- 25.9 In providing the Additional Services the Supplier will exercise such level of skill, care and diligence as would be expected from an organisation involved in the provision of services of a nature similar to the Additional Services.
- 25.10 The Supplier warrants that the Additional Services shall be performed by employees or subcontractors of suitable qualifications, skills and experience.
- 25.11 Charges for Additional Services shall be payable by the Customer in accordance with Clause 9.2 of the Subscription Agreement.

- 25.12 The Customer shall reimburse all reasonable expenses which have been approved by the Customer and incurred by the Supplier in the provision of the Additional Services in accordance with Clause 9.2 of the Subscription Agreement.
- 25.13 The Customer shall provide five (5) business days' notice of the cancellation of Additional Service prior their agreed delivery date. Where the Supplier is not notified in writing of the cancellation within the notice period, the Supplier reserves the right to charge the Customer for the full fees and incurred expenses of the cancelled Additional Services.
- 25.14 The Supplier shall, upon ninety (90) days' written notice to the Customer and with the agreement of the parties (such agreement not to be unreasonably withheld), be entitled to vary the Additional Charges.
- 25.15 The Supplier provides Additional Services Monday to Friday between 8:00AM and 6:00PM, not exceeding 37.5 hours and exclusive of UK public holidays, unless previously agreed in writing between the Supplier and the Customer. Any overtime (over 37.5 hours) will be charged at two (2) times the pro-rata rate per hour worked. If work is required over a weekend or UK public holiday, this must be agreed in writing and will be charged at two (2) times the daily rate.

Schedule 2 Privacy and Security Policy

As part of the Services, if required, the Supplier will provide to the Customer a template RMADS document detailing compliance with the SPF v8.0 Mandatory Requirement 8 and providing a reasonable level of detail concerning the technical risk assessment of the Services. The Supplier will maintain the template RMADS on an annual basis, including penetration testing. This does not include a Business Impact Analysis or a Privacy Impact Assessment in respect of the Customer Data. If the Customer should require any further assessment beyond the template RMADS, the Supplier will provide a reasonable level of assistance, but beyond this, the Customer must request Additional Services from the Supplier, which will be supplied at the Supplier's standard rates.

It is the Customer's responsibility to select the correct Network Access Method in the Service Definition.

The Supplier will ensure that all staff having administrative, support or development access to the Live environment hold a current BPSS clearance or SC clearance as appropriate.

The Customer shall be solely responsible for the management of password access by the Authorised Users and shall report any security incident to the Supplier as soon as reasonably practicable. The Supplier shall not be liable for the consequences of any security breach resulting from any failure by the Customer to maintain the security of passwords by Authorised Users, including the failure by an individual Authorised User to maintain proper security of his or her password.

The Supplier retains the right to disable the access of any Authorised User in the event of any lapse in security regarding that Authorised User's password howsoever caused.

Schedule 3 Service Definition

The Services are described in either (a) the accompanying Order Form(s) executed by the parties (including any Service Definition document(s) referred to therein) or (b) in any Service Definition document agreed by the parties for the purposes of this agreement. The Service Definition is subject to change according to clause 4.7 or below.

The Supplier may vary any element contained in this Service Definition at its discretion and at any time. Such variations may consist of additions, deletions or changes. However, the Supplier will not make any such variation if it will lead to a failure on the Supplier's part to be able to comply with the Service Levels in the Service Definition document. If any variation will lead to a failure to comply with those Service Levels, the Supplier will give the Customer at least 30 days' written notice of the proposed variation the effect on the Service Levels: if the Customer fails to object to such notice within the notice period given, then the Supplier shall be entitled to make the variation as notified and the Service Levels shall be altered as set out in the Supplier's notification. If the Customer objects within the notice period, the Parties shall agree such alternative variation as is reasonable having regard to the change anticipated to the Service Levels and to the Subscription Fees.