

## Terms and Conditions

### 1 Interpretation

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

**Applicable Legislation:** the EU Falsified Medicines Directive (FMD) [Directive 2011/62/EU] and all related and applicable legislation relating thereto

**Business:** the business of the Customer being the wholesaler, distributor and/or dispenser of prescription medicines or carrying out any activities that are liable to require FMD compliance in line with the Applicable legislation

**Commencement Date:** the date on which this agreement becomes effective, as specified in the Agreement Details

**Completion Date:** the estimated date specified by EU Delegated Regulation 2016/161 by which implementation of the Directive is required to start in all Member States, including the UK, being 9<sup>th</sup> February 2019 and accordingly the latest estimated date for the release of the Software from the sandbox environment (as authorised by the applicable regulator) and into the commencement of Live Operation; any such date may be amended pursuant to clause 7.4

**Confidential Information:** information of commercial value, in whatever form or medium, disclosed by one party to the other party, including commercial or technical know-how, technology, information pertaining to business operations and strategies, and information pertaining to customers, pricing and marketing and, for clarity, including (in the case of the Supplier's information) information relating to the Software or any of its constituent parts, the Source Code relating to the Software or any such parts

**Control:** the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the general management of the company, and controls, controlled and the expression change of control shall be construed accordingly

**Customer Representative:** a person duly authorised by the Customer to act on its behalf for the purposes of this agreement and identified to the Supplier by written notice from the Customer

**Data Protection Legislation:** up to but excluding 25 May 2018, the Data Protection Act 1998 and thereafter (i) unless and until the GDPR is no longer directly applicable in the UK, the General Data Protection Regulation ((EU) 2016/679) 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 1998

**Defect:** an error in the Software that causes it to fail to operate substantially in accordance with the relevant Specification

**Dispute Resolution Procedure:** the procedure for dealing with disputes under this agreement as set out in clause 33

**Documentation:** the operating manuals, user instruction manuals, technical literature and all other related materials in human-readable or machine-readable forms supplied by the Supplier as specified in the Agreement Details

**Fees:** the aggregate fees for the Licence and the Services, as specified in the Agreement Details

**Escrow:** if applicable, the deposit with, and retention by the

Escrow Agent of, the Source Code Materials

**Escrow Agent:** the NCC Group

**Escrow Agreement:** if applicable, the agreement for Escrow between the Supplier, the Escrow Agent and the Customer

**Implementation Period:** the period over which the Software shall be further developed by the Supplier and delivered, implemented and tested by the Customer prior to being Ready for Service and Live Operation

**Implementation Plan:** the time schedule and sequence of events for bringing the Software into Live Operation to be set out in a plan to be agreed between the parties in writing and which may subsequently be varied in accordance with clause 7.4

**Initial Acceptance Date:** the date on which the Customer is deemed to have accepted the Software under clause 6

**Initial Acceptance Test(s)(ing):** the tests to be undertaken by the Customer pursuant to clause 4 as defined by the Supplier from time to time in writing

**Initial Term:** the initial term of this agreement as set out in clause 3.1

**Integration Services:** the integration services to be supplied by the Supplier (if any) during the Implementation Period as set out in the Implementation Plan

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world, including the right to sue for and recover damages for past infringements

**Licence:** the licence granted under clause 3.1

**Licence Start Date:** shall be as set out in the Agreement Details

**Live Operation:** the date on which the Software moves from the sandbox environment to the live environment provided by SecurMed and Arvato, across the Supplier's customer base or, as applicable, the date on which the Software goes into Live Operation for the Customer

**Maintenance Release:** 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:** a new version of the Software released by the Supplier after the Ready for Service Acceptance Date which provides additional or improved functionality or performance

**Normal Working Hours:** the hours 8 am to 6 pm GMT, Monday to Friday, except English Bank Holidays

**Personal Data:** data subject to protection under Data Protection Law in any jurisdiction

**Ready for Service** installed, tested and having passed or deemed to have passed the Ready for Service Acceptance Tests under clause 7.7

**Ready for Service Acceptance Date:** the date on which the Software is Ready for Service

**Ready for Service Acceptance Testing:** the Ready for Service tests to be undertaken by the Customer pursuant to clause 7.7 as defined by the Supplier from time to time in writing

**Services** the services to be provided by the Supplier under this agreement, including the Integration Services and the Support Services

**Site(s):** the location of the shop(s), store(s), or warehouse(s) at which the Supplier Software is to be used as specified in the Agreement Details, such list may be amended by agreement in writing between the parties from time to time subject to the payment of any applicable Fee

**Software:** the software program proprietary to the Supplier, currently known as FMD Connect, brief details of which are set out in the Agreement Details, including the applicable applications, which is to be provided to the Customer, together with any Maintenance Releases and New Versions

**Source Code:** the source code of the software to which it relates, in the language in which the software was written, together with all related flow charts and technical documentation, all of a level sufficient to enable the Customer's development personnel to understand, develop and maintain that Software

**Specification:** the specification of the Software contained in or otherwise referred to in the Agreement Details

**Supplied Equipment:** means any hardware to be supplied by the Supplier as specified in the Agreement Details

**Support Commencement Date:** shall be the same as the Licence Start Date or such other date as may be specified in the Agreement Details

**Support Services:** the support and maintenance services to be provided by the Supplier under this agreement including as set out in the Agreement Details

**Support Staff:** those officers, employees, agents or subcontractors of the Supplier connected with this agreement, including those individuals who perform the Supplier's obligations under this agreement

**Users:** the employees and agents of the Customer who use the Software at the Site; and

**VAT:** value added tax chargeable under the Value Added Tax Act 1994 and any similar additional tax and any similar additional tax or any other similar turnover, sales or purchase tax or duty levied in any other jurisdiction.

- 1.2 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.3 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.4 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment, and includes any subordinate legislation for the time being in force made under it.
- 1.5 Clause headings do not affect the interpretation of this agreement. Except where a contrary intention appears, a

reference to a clause is a reference to a clause of this agreement.

- 1.6 Writing or written includes e-mail, except where expressly provided to the contrary.
- 1.7 Any documents referred to in this agreement, form an integral part of this agreement and any reference to this agreement means this agreement together with all documents referred to, and such amendments in writing as may subsequently be agreed between the parties.
- 1.8 If any conflict arises between the terms and conditions of this agreement and any provision of any Agreement Details, the Agreement Details shall prevail.

## 2 Scope and Fees

- 2.1 In consideration for the payment of the Fees, the Supplier:
  - 2.1.1 shall, subject to the Customer providing all applicable requested information, on-board the Customer with the applicable governing body; and
  - 2.1.2 grants the Licence and shall supply the Software, the Documentation, the Services and any Supplied Equipment to the Customer in accordance with this agreement.

## 3 Software Licence

- 3.1 The Supplier grants to the Customer a non-exclusive Licence to use the Software and the Documentation at the Site(s) only from the Licence Start Date and for a period of twelve (12) months from 9 January 2019 ("Initial Term"). The Licence shall automatically continue at the end of the Initial Term for a further period of twelve (12) months and at the end of each Extended Term for further successive periods of twelve (12) months ("Extended Term(s)").
- 3.2 Subject to any early termination rights pursuant to clause 22, either party may terminate the Licence by giving the other at least 6 months' prior written notice, such notice not to be served within the Initial Term and not to expire before the end of any Extended Term. The Fees payable for each successive Extended Term shall, unless otherwise agreed, be the Supplier's generally available list price at the date of such renewal occurring. Where after the Licence Start Date the Customer requests add-on software to the Licence, such add-on software shall be licensed to the Customer on a pro-rata basis for the applicable remaining Initial Term or Extended Term(s) as the case may be.
- 3.3 In relation to scope of use:
  - 3.3.1 The Software may be used only by Users at the Site, except as follows:
    - (a) if the Customer transfers the whole of the Business permanently to another site, the Software may be used at the new site by the Users, provided that the Supplier is informed in writing of the change of site a minimum of three months before use of the Software commences at the new site (such notice shall be required to enable the Supplier to change the Customer's certification with the applicable governing body as required); or
    - (b) if the Site becomes temporarily unusable due to flood, fire or similar damage, or an emergency situation, the Software may be used at an alternative site until the Site is again usable, provided that the Customer gives the Supplier notice of such alternative site and the on-boarding process with the applicable governing body permits such use.
  - 3.3.2 for the purposes of clause 3.1 use of the Software shall be restricted to use of the Software in object code form (unless otherwise agreed) for the purpose of enabling the Customer to comply with the Applicable Legislation in connection with the normal business purposes of the Customer (which shall not

- include allowing the use of the Software by, or for the benefit of, any third party.
- 3.3.3 the Customer may make such 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.
- 3.3.4 except as expressly stated in this clause 3, or as expressly permitted by the Supplier in writing for the purposes of integration only, 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.
- 3.4 The Customer may not use any such information provided by the Supplier or obtained by the Customer during any such reduction permitted under clause 3.3.4 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.
- 3.5 The Customer shall not:
- 3.5.1 sub-license, assign or novate the benefit or burden of the Licence in whole or in part;
- 3.5.2 allow the Software to become the subject of any charge, lien or encumbrance;
- 3.5.3 give access to the Software through any network of computers to users who are not employees or agents of the Customer and not located at the Site (save that the Customer may access the Software via a tablet locked to the IP address of the base computer at the Site); and
- 3.5.4 deal in any other manner with any or all of its rights and obligations under this agreement,
- without the prior written consent of the Supplier, such consent not to be unreasonably withheld or delayed.
- 3.6 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 the Licence, provided it gives written notice to the Customer.
- 3.7 Notwithstanding clause 15, a party assigning any or all of its rights under this agreement may disclose to a proposed assignee any information in its possession that relates to this agreement or its subject matter, the negotiations relating to it and the other party which is reasonably necessary to disclose for the purposes of the proposed assignment, provided that no disclosure pursuant to this clause 3.7 shall be made until notice of the identity of the proposed assignee has been given to the other party.
- 3.8 The Customer shall:
- 3.8.1 ensure that the Software is installed on equipment meeting the minimum specification for hardware specified by the Supplier from time to time;
- 3.8.2 notify the Supplier as soon as it becomes aware of any unauthorised use of the Software by any person;
- 3.8.3 pay for broadening the scope of the licences granted under this Licence to cover the unauthorised use, an amount equal to the fees which the Supplier would have levied (in accordance with its normal commercial terms then current) had it licensed any such unauthorised use on the date when such use commenced together with interest at the rate provided for in clause 8.3, from such date to the date of payment.
- 3.9 The Customer shall permit the Supplier to inspect and have access to any premises (and to the computer equipment located there) at or 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.
- 4 Software delivery, initial acceptance and installation
- 4.1 Subject to successful on-boarding in accordance with clause 2.1.1, the Supplier's receipt of any initial payment as set out in the Agreement Details and any delivery of the Integration Services, the Supplier shall make available one copy (per Site) of the Software electronically for downloading by the Customer at the relevant Site within 14 days of the date of successful on-boarding.
- 4.2 The Customer shall install the Software on its hardware meeting at least the minimum specification for hardware specified by the Supplier from time to time. Each party shall use all reasonable endeavours to test and develop the Software to make it ready for Live Operation.
- 4.3 Notwithstanding the foregoing, within seven days of installation the Customer shall carry out the Initial Acceptance Testing. The Initial Acceptance Tests shall be started as soon as reasonably possible after installation and shall run during Normal Working Hours. The Customer shall give the Supplier at least 24 hours' notice of the start of the Initial Acceptance Tests, and permit the Supplier to observe all or any part of the testing.
- 4.4 If the Software fails to pass the Initial Acceptance Tests, the Customer shall, within 7 days from the completion of the Initial Acceptance Tests or any part of these tests, provide a written notice to this effect, giving details of such failure(s). The Supplier shall remedy the Defects and/or deficiencies and the relevant test(s) shall be repeated within a reasonable time.
- 4.5 If the Software fails in some material respect to pass any repeated Initial Acceptance Tests within four weeks from the date of its second submission to the Initial Acceptance Tests, then the Customer shall fix a new date for carrying out further tests on the Software on the same terms and conditions. If the Software fails such further tests then the Customer may:
- 4.5.1 request further repeat tests under this clause 4.5; or
- 4.5.2 commence Live Operation subject to such change of acceptance criteria and/or reduction in the Fees as, after taking into account all the relevant circumstances, is reasonable.
- 5 Documentation
- 5.1 The Supplier shall provide or make available to the Customer, from time to time, the Documentation containing sufficient up-to-date information for the proper use of the Software. Such Documentation shall be provided or made available in electronic form.
- 5.2 The Customer may provide copies of the Documentation to any third party who needs to know the information contained in it, provided that such third party first enters into a confidentiality obligation at least as onerous as provided in clause 15 below.
- 6 Initial Acceptance

- 6.1 Initial Acceptance of the Software shall be deemed to have occurred on whichever is the earliest of:
- 6.1.1 the expiry of five days after the completion of all the Initial Acceptance Tests, unless the Customer has given any written notice under clause 4.4;
  - 6.1.2 the expiry of ten days after delivery of the Software if the Initial Acceptance Tests have not started, or have not been pursued with due diligence; or
  - 6.1.3 the pilot or Live Operation of the Software by the Customer in the normal course of the Business.
- 7 Integration Services (if applicable)
- 7.1 Where requested, the Supplier shall provide Integration Services. Both parties shall perform their obligations in respect of Integration Services under this agreement in accordance with the Implementation Plan.
  - 7.2 The Supplier shall carry out the Integration Services with reasonable diligence and with reasonable skill and expertise.
  - 7.3 The Supplier shall use reasonable endeavours to complete the Integration Services in each stage of the Implementation Plan by the date specified in the Implementation Plan, subject to clause 7.4.
  - 7.4 The Supplier shall extend the timetable of any one or more of the stages in the Implementation Plan if one of more of the following events occurs:
    - 7.4.1 the Completion Date is varied by the applicable governing body;
    - 7.4.2 the applicable governing body fails for any reason to authorise the release of the Software, or any Customer's application of the Software, into Live Operation;
    - 7.4.3 a force majeure event occurs as described in clause 31;
    - 7.4.4 a delay is caused in whole or in part by an action or omission of the Customer or its employees, agents or third-party contractors or by any supplier of the end-to-end IT solution, including without limitation SecurMed UK or Arvato Systems.
  - 7.5 If the Supplier is entitled to an extension of time under clause 7.4 it shall give written notice to the Customer not later than seven days after the beginning of the event. Such notice shall specify the event relied on and where applicable shall estimate the probable extent of the delay. The Implementation Plan shall be deemed amended accordingly
  - 7.6 During the Implementation Period the Customer shall provide all such cooperation and assistance requested by the Supplier to achieve Live Operation, including the proper performance of its obligations set out in the Implementation Plan in accordance with any timescales set out therein or as otherwise varied pursuant to clause 7.4 above.
  - 7.7 The Supplier shall (if applicable) deliver to the Customer any Maintenance Release available as a result of the Integration Services or any applicable testing. The Customer shall install, test and accept such Maintenance Release pursuant to any instructions of the Supplier and the provisions of clauses 4 and 6 above (as if such Ready for Service Acceptance Testing and Ready for Service Acceptance were Initial Acceptance Testing and Initial Acceptance).
  - 7.8 Time shall not be of the essence regarding any date set out in the Implementation Plan, including the Completion Date.
- 8 Payment
- 8.1 The Customer shall make the payments of the amounts set out in the Agreement Details in accordance with the Agreement Details. For the avoidance of doubt and unless otherwise agreed, any fees for the Supplied Equipment shall be due and payable in advance and the Licence and support fees shall be due and payable monthly in advance by direct debit. Any fees paid as a deposit or setup fee to the Supplier as part of this agreement shall not be refundable to the Customer in any circumstances. The Supplier shall submit invoices in accordance with the Agreement Details. Save as otherwise provided, the Customer shall make payment of each invoice by the due date stated in that invoice or within 30 days of receipt of the invoice, whichever is later.
- 8.2 The Fees for the Licence and the Support Services payable for the Initial Term shall be fixed. The Fees and all other payments stated in this agreement are net of tax. The Customer shall, in addition, pay to the Supplier the amount of any tax, duty or assessment, including any applicable VAT, which the Supplier is obliged to pay and/or collect from the Customer in respect of any supply under the agreement (other than tax on the Supplier's income).
- 8.3 If the Customer fails to make any payment due to the Supplier under this agreement by the due date for payment, then, without limiting the Supplier's remedies under clause 22, the Supplier may with immediate effect suspend the Licence and the Support Services until such time as the payment is made in full, cleared funds and the Customer shall pay interest on the overdue amount at the rate of 4% per annum above HSBC's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 9 Ownership
- 9.1 The Intellectual Property Rights in the Software are, and shall remain, the property of the Supplier, and the Supplier reserves the right to grant a licence to use such Software to any other party or parties.
  - 9.2 The Software and the Documentation are the property of the Supplier and the Customer acquires no rights in or to the Software or the Documentation other than those expressly granted by this agreement.
  - 9.3 The Customer shall use reasonable endeavours to prevent any infringement of the Supplier's Intellectual Property Rights in the Software and shall promptly report to the Supplier any such infringement that comes to its attention. In particular, the Customer shall:
    - 9.3.1 ensure that each User, before starting to use the Software, is made aware that the Software is proprietary to the Supplier and that it may only be used and copied in accordance with this agreement; and
    - 9.3.2 not permit third parties to have access to the Software without the prior written consent of the Supplier, who may require that such third party executes a written confidentiality agreement before being given access to the Software.
- 10 Support Services
- 10.1 The Supplier shall supply the Customer with all Maintenance Releases generally made available to its customers in machine-readable form together with related amendments to the Documentation. The Supplier may make such Maintenance Releases available for downloading over the internet and will promptly notify the Customer when such downloads are available.
  - 10.2 The Customer shall install all Maintenance Releases as soon as reasonably practicable after receipt.
  - 10.3 The Supplier shall notify the Customer promptly in writing of the issue of any New Version, specifying the following:

- 10.3.1 the charge for delivery of the New Version; of any changes made to the end to end IT solution provided by SecurMed and/or Arvato (or any applicable third party).
- 10.3.2 the licence fee payable for the New Version;
- 10.3.3 in what way the New Version differs from the previous version in terms of functionality, performance and compatibility.
- 10.4 Nothing in this agreement shall oblige the Customer to take any New Version save where any such New Version is issued as a result of any changes made to the end to end IT solution provided by SecurMed and/or Arvato. The Customer acknowledges that where a New Version is issued as a result of any changes made to the end to end IT solution provided by SecurMed and/or Arvato, and the Customer fails to take such New Version, then the Supplier shall not be liable for any failure of the Software to function in accordance with this agreement.
- 10.5 The Supplier shall provide maintenance and support in accordance with this agreement. The Customer may purchase enhanced support services separately at the Supplier's then current rates.
- 10.6 The Supplier shall ensure that support is available by telephone, e-mail or on-line chat during Normal Working Hours to provide assistance to the Customer in respect of the following:
- 10.6.1 remedying Defects in the Software; and
- 10.6.2 providing advice on the use of the Software.
- 10.7 The Supplier shall use reasonable endeavours to correct Defects notified to it by the Customer in a timely manner appropriate to the seriousness of the circumstances in accordance with the following procedure:
- 10.7.1 the Customer shall promptly notify the Supplier of all Defects. Where such notification is made orally, the Customer shall provide written confirmation (which may be sent by e-mail) of the notification within two working days;
- 10.7.2 the Supplier shall acknowledge receipt of the notification and shall determine, in consultation with the Customer, how seriously the Defect affects the Customer's operations;
- 10.7.3 if a notified Defect halts or substantially impairs the Customer's operations which use the Software, the Supplier shall:
- (a) start work on correcting the Defect within four Normal Working Hours of receipt of such notification;
- (b) use all reasonable efforts to correct the Defect as soon as possible; and
- (c) keep the Customer informed of progress towards correction of the Defect.
- 10.7.4 if a notified Defect, while not halting or substantially impairing the Customer's operations, causes those operations to become significantly slowed or causes substantial inconvenience, the Supplier shall commence work on correcting the Defect within 48 hours of receipt of such notification and shall use all reasonable efforts to correct the Defect as soon as possible; and
- 10.7.5 in the case of Defects other than those specified in clause 10.7.3 and clause 10.7.4, the Supplier shall start work on correcting the Defect as soon as the Supplier's workload allows and shall use commercially reasonable efforts to correct the Defect.
- 10.8 For the avoidance of doubt, after the commencement of Live Operation, the Supplier shall have no liability under this agreement for any failure of the Software to function in accordance with this agreement where such failure is the result
- 10.9 The Supplier may at its option provide the Customer with a dashboard function for the production by the Customer of reports.
- 10.10 In the event that the Applicable Legislation and its associated verification processes and systems are superseded by UK legislation and/or alternative verification systems in anticipation of or related to Brexit (being the date that the UK ceases to be a member of the EU or, where a transition period has been agreed, the date on which that transition period expires) the Supplier shall use its reasonable endeavours to issue a New Version capable of integration with the new end to end IT solution, in accordance with a timetable set by the Supplier at the relevant time. Any such New Version shall be subject to the delivery, initial acceptance, installation and Documentation provisions set out in clauses 4 to 6 above and any Integration Services requirements as set out in clause 7 above.
- 10.11 Where the circumstances set out in clause 10.10 arise and (i) there is no workable FMD repository available for the end to end solution; and (ii) the Customer and the Supplier agree that the Software has become redundant as a result, either party may terminate this agreement without liability to the other.
- 11 Support services: Customer's obligations
- 11.1 During the term in which the Support Services are to be provided under clause 21.3, the Customer shall not, without the Supplier's prior written approval, allow any person other than a representative of the Supplier to modify, repair or maintain any part of the Software.
- 11.2 The Customer shall co-operate with the Supplier in any manner reasonably required by the Supplier in order to carry out the Services, including provision of information and data, making available suitably qualified employees and contractors of the Customer and, subject to the Supplier's compliance with the Customer's normal security requirements as notified to the Supplier from time to time in writing:
- 11.2.1 provide access to the Customer's systems for the purpose of carrying out diagnostics and correction of Defects, provided that system access shall be direct or remote, at the Customer's option, and that, in the latter case, such access will be subject to the Supplier's compliance with any additional requirements for security and encryption techniques or software which may from time to time be specified by the Supplier.
- 11.2.2 provide such further access for the Support Staff to the Site as is necessary to carry out the Supplier's obligations under this agreement. The Customer shall obtain for the Supplier all permissions necessary to obtain such access.
- 11.2.3 when the Support Staff are working on the Site, provide facilities and supplies reasonably required by the Supplier, such as power and computer consumables.
- 11.3 The Customer shall, at its own expense, provide the equipment necessary at the Site to enable the access referred to in clause 11.2.1, but all other costs and expenses for such access shall be borne by the Supplier.
- 11.4 The Customer shall comply, as soon as reasonably practicable, with all the Supplier's reasonable requests for information or assistance.
- 12 Escrow
- 12.1 Where the Customer and the Supplier agree to place the Software in Escrow, the Supplier and the Customer mutually undertake to sign the Escrow Agreement promptly following signature of this licence. The Supplier additionally undertakes to procure that the Escrow Agent signs the Escrow Agreement.

- 12.2 The Supplier and the Customer mutually undertake to abide by the terms of the Escrow Agreement and acknowledge that for the purposes of the Escrow Agreement:
- 12.2.1 the Source Code Materials shall constitute the Material;
- 12.2.2 this Licence shall constitute the Licence Agreement; and
- 12.2.3 the Software shall constitute the Package.
- 13 Supplied Equipment
- 13.1 The Supplier shall provide any Supplied Equipment to the Customer as set out in the Agreement Details. The Fees shall include the Supplier's charges for delivering the Supplied Equipment to the Site(s).
- 13.2 The Supplied Equipment shall be at the risk of the Supplier until delivery to the Customer at the Site(s). The Supplier shall off-load the Supplied Equipment at the Customer's risk. The Customer shall be deemed to have accepted the Supplied Equipment on delivery unless the Customer has highlighted it as damaged or faulty during delivery.
- 13.3 Ownership of the Supplier Equipment shall pass to the Customer on the later of completion of delivery (including off-loading), or when the Supplier has received in full in cleared funds all sums due to it in respect of the Supplied Equipment.
- 13.4 The Supplier supplies the Supplied Equipment on a re-sale basis and the Supplier gives no warranties and accepts no liability regarding the Supplied Equipment and offers no services or support in respect of the same. Notwithstanding the foregoing the Supplier shall use its reasonable endeavours to pass on to the Customer the benefit of any warranties that it receives from the Supplied Equipment manufacturer.
- 14 Project management
- 14.1 No later than five days after the Commencement Date, the Customer shall notify the Supplier of the name and qualifications of the person appointed as the Customer Representative.
- 14.2 The Supplier shall appoint a representative who shall have the responsibility and commensurate authority for the overall progress of the Software and the Services and to whom all questions regarding this agreement can be referred. The name and qualifications of the appointed individual shall be notified in writing to the Customer Representative.
- 14.3 The Customer Representative shall co-operate with the Supplier and shall attend meetings scheduled by the Project Manager at reasonable intervals to advise and assist the Supplier on all matters relating to this agreement.
- 15 Confidentiality and publicity
- 15.1 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 or governing body, or by SecurMed or Arvato) any Confidential Information 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. Each party shall use its reasonable endeavours to prevent the unauthorised disclosure of any such information.
- 15.2 The Customer hereby consents to the Supplier naming the Customer as a user of the Software. Subject to the foregoing,
- no party shall make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 15.3 Any data uploaded by the Customer (or derived from the same) may be used and made available by the Supplier in an aggregated, anonymised or pseudonymised form only for any purpose.
- 15.4 This clause 15 shall remain in full force and effect, despite any termination of the Licence or this agreement.
- 16 Data protection
- 16.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 16 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 16.2 The parties acknowledge that the Software shall not use, process or store any Personal Data. Notwithstanding the foregoing, if the Supplier processes any Personal Data on the Customer's behalf when performing its obligations under this agreement, the Customer is the data controller and the Supplier is the data processor for the purposes of the Data Protection Legislation (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation).
- 16.3 Without prejudice to the generality of clause 16.1, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this agreement:
- 16.3.1 process that Personal Data only on the written instructions of the Customer unless the Supplier is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Supplier to process Personal Data (Applicable Laws). Where the Supplier is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Customer;
- 16.3.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Supplier, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it).
- 16.3.3 not transfer any Personal Data outside of the EEA unless the following conditions are fulfilled:
- (a) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;
- (b) the data subject has enforceable rights and effective legal remedies;

- (c) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred;
- (d) the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- 16.3.4 assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 16.3.5 notify the Customer without undue delay on becoming aware of a Personal Data breach;
- 16.3.6 at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the agreement unless required by Applicable Law to store the Personal Data; and
- 16.3.7 maintain complete and accurate records and information to demonstrate its compliance with this clause 16.
- 17 Export
- 17.1 The Customer shall not in any circumstances export, directly or indirectly, any technical data acquired from the Supplier under this agreement (or any products, including software, incorporating any such data) in breach of any applicable laws or regulations (Export Control Laws), including United States export laws and regulations, to any country for which the United States or any other government or any agency thereof at the time of export requires an export licence or other governmental approval without first obtaining such licence or approval.
- 17.2 The Customer undertakes:
- 17.2.1 contractually to oblige any third party to whom it discloses or transfers any such data or products to make an undertaking to it in similar terms to the one set out above; and
- 17.2.2 if requested, to provide the Supplier with any reasonable assistance, at the reasonable cost of the other party, to enable it to perform any activity required by any competent government or agency in any relevant jurisdiction for the purpose of compliance with any Export Control Laws.
- 18 Warranties
- 18.1 The Supplier warrants that the Software and Documentation are proprietary to the Supplier and that it has the right to license all UK Intellectual Property Rights in and to the Software and Documentation to the Customer, and to provide the Services to the Customer.
- 18.2 The Supplier warrants that the Software will when properly used in accordance with the Supplier's directions (and subject always to the end to end IT solution provided by third parties not changing) conform in all material respects to the Specification for a period of 90 days from the commencement of Live Operation (Warranty Period). If, within the Warranty Period, 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 a change in the end to end IT solution provided by third parties or 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, the Supplier shall, at the Supplier's option, do one of the following:
- 18.2.1 repair the Software; or
- 18.2.2 replace the Software
- 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.
- 18.3 The Supplier does not warrant that the use of the Software will be uninterrupted or error-free or that it will operate in conjunction with any hardware items or software products other than with those that are identified in the Documentation as being compatible with the Software.
- 18.4 The Customer accepts responsibility for the selection of the Software to achieve its intended results and acknowledges that the Software has not been developed to meet the individual requirements of the Customer.
- 18.5 All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this Licence or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.
- 18.6 The Supplier warrants and represents that:
- 18.6.1 none of the Maintenance Releases, New Versions and Documentation supplied by the Supplier under this agreement infringes the UK Intellectual Property Rights of any third party;
- 18.6.2 it will perform the Support Services in a reliable and professional manner.
- 18.7 The sole remedies for breach of the warranties in clause 18.6.1 and clause 18.6.2 are set out in clause 19.
- 18.8 The Supplier does not warrant or guarantee that it will be able to rectify all Defects, nor that any Defect which does not materially affect the Customer's operations using the Software will be corrected before the issue of the next Maintenance Release.
- 18.9 Any unauthorised modifications, use or improper installation of the Software by, or on behalf of, the Customer shall render all the Supplier's warranties and obligations under this agreement null and void.
- 18.10 The Supplier shall not be obliged to rectify any particular Defect if attempts to rectify such Defect other than normal recovery or diagnostic procedures have been made by the Customer's personnel or third parties without the permission of the Supplier.
- 18.11 Each party warrants that it has full capacity and authority, and all necessary licences, permits and consents to enter into and perform this agreement and that those signing this agreement are duly authorised to bind the party for whom they sign.
- 19 Intellectual Property Rights
- 19.1 The Supplier undertakes at its own expense to defend the Customer or, at its option, settle any claim or action brought against the Customer alleging that the possession or use of the Software (or any part thereof) in accordance with the terms of this licence infringes the UK Intellectual Property Rights of a third party (Claim) and shall be responsible for any reasonable losses, damages, costs (including legal fees) and expenses incurred by or awarded against the Customer as a result of or in connection with any such Claim. For the avoidance of doubt, this clause 19.1 shall not apply where the Claim in question is attributable to possession or use of the Software (or any part

- thereof) by the Customer other than in accordance with the terms of this licence, use of the Software in combination with any hardware or software not supplied or specified by the Supplier if the infringement would have been avoided by the use of the Software not so combined, or use of a non-current release of the Software.
- 19.2 If any third party makes a Claim, or notifies an intention to make a Claim against the Customer, the Supplier's obligations under clause 19.1 are conditional on the Customer:
- 19.2.1 as soon as reasonably practicable, giving written notice of the Claim to the Supplier, specifying the nature of the Claim in reasonable detail;
- 19.2.2 not making any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Supplier (such consent not to be unreasonably conditioned, withheld or delayed);
- 19.2.3 giving the Supplier and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Customer, so as to enable the Supplier and its professional advisers to examine them and to take copies (at the Supplier's expense) for the purpose of assessing the Claim; and
- 19.2.4 subject to the Supplier providing security to the Customer to the Customer's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, taking such action as the Supplier may reasonably request to avoid, dispute, compromise or defend the Claim.
- 19.3 If any Claim is made, or in the Supplier's reasonable opinion is likely to be made, against the Customer, the Supplier may at its sole option and expense:
- 19.3.1 procure for the Customer the right to continue to use the Software (or any part thereof) in accordance with the terms of this Licence; or
- 19.3.2 modify the Software so that it ceases to be infringing; or
- 19.3.3 replace the Software with non-infringing software.
- provided that if the Supplier modifies or replaces the Software, the modified or replacement Software must comply with the warranties contained in clause 18.1 and the Customer shall have the same rights in respect thereof as it would have had under those clauses had the references to the date of this Licence been references to the date on which such modification or replacement was made.
- 19.4 This clause 19 constitutes the Customer's exclusive remedy and the Supplier's only liability in respect of Claims and, for the avoidance of doubt, is subject to clause 20.1.
- 20 Limitation of liability
- 20.1 Except as expressly stated in clause 20.2:
- 20.1.1 the Supplier shall not in any circumstances have any liability for any losses or damages which may be suffered by the Customer (or any person claiming under or through the Customer), whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which fall within any of the following categories:
- (a) special damage even if the Supplier was aware of the circumstances in which such special damage could arise;
- (b) loss of profits;
- (c) loss of anticipated savings;
- (d) loss of business opportunity;
- (e) loss of goodwill;
- (f) loss or corruption of data.
- 20.1.2 the total liability of the Supplier, whether in contract, tort (including negligence) or otherwise and whether in connection with this licence or any collateral contract, shall in no circumstances exceed a sum equal to the Fee; and
- 20.1.3 the Customer agrees that, in entering into this agreement, either it did not rely on any representations (whether written or oral) of any kind or of any person other than those expressly set out in this Licence or (if it did rely on any representations, whether written or oral, not expressly set out in this Licence) that it shall have no remedy in respect of such representations and (in either case) the Supplier shall have no liability in any circumstances otherwise than in accordance with the express terms of this Licence.
- 20.2 The exclusions in clause 18.5 and clause 20.1 shall apply to the fullest extent permissible at law, but the Supplier does not exclude liability for:
- 20.2.1 death or personal injury caused by the negligence of the Supplier, its officers, employees, contractors or agents;
- 20.2.2 fraud or fraudulent misrepresentation;
- 20.2.3 breach of the obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- 20.2.4 any other liability which may not be excluded by law.
- 21 Duration
- 21.1 This agreement shall commence on the Commencement Date.
- 21.2 The Licence shall continue for the period set out in clauses 3.1 and 3.2, unless terminated earlier in accordance with clause 22.
- 21.3 The Support Services shall continue for the period of the Licence, unless terminated earlier in accordance with clause 22.
- 22 Termination
- 22.1 Without prejudice to any rights that have accrued under this agreement or any of its rights or remedies, either party may at any time terminate this agreement and/or the Support Services with immediate effect by giving written notice (such notice not to be given by email) to the other party if:
- 22.1.1 the other party commits a material breach of any term of this agreement (other than failure to pay any amounts due under this agreement) 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;
- 22.1.2 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- 22.1.3 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other

- party with one or more other companies or the solvent reconstruction of that other party;
- 22.1.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 22.1.5 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party;
- 22.1.6 the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- 22.1.7 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- 22.1.8 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- 22.1.9 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 22.1.2 to clause 22.1.8 (inclusive); or
- 22.1.10 the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.
- 22.2 Either party may terminate this agreement in accordance with clause 10.11 and clause 31.
- 22.3 The Customer may terminate the Support Services at the same time as terminating the Licence in accordance with the provisions of clause 3.2.
- 22.4 The Supplier may terminate this agreement at any time, or at its option suspend the Licence and the Support Services, where the Customer fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment.
- 22.5 On termination of the Licence, the Customer shall either return to the Supplier or, at the Supplier's option, destroy all material copies of the Software and Documentation, and shall ensure that any copies of the Software on hard discs or other storage means associated with any computer equipment owned or controlled by the Customer are permanently deleted.
- 22.6 Any provision of this agreement which expressly or by implication is intended to come into or continue in force on or after termination of this agreement, including clause 9, clause 15 to clause 17, clause 19 to clause 20, and clause 22 shall remain in full force and effect.
- 22.7 Termination of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination.
- 22.8 Notwithstanding its obligations in this clause 22, if a party is required by any law, regulation, or government or regulatory body to retain any documents or materials containing the other party's Confidential Information, it shall notify the other party in writing of such retention, giving details of the documents and/or materials that it must retain.
- 22.9 On termination of this agreement for any reason, each party shall as soon as reasonably practicable:
- 22.9.1 return, destroy or permanently erase (as directed in writing by the other party and, where relevant, in accordance with clause 16.3.6 any documents, handbooks, CD-ROMs or DVDs or other information or data provided to it by the other party containing, reflecting, incorporating or based on Confidential Information belonging to the other party. If required by the other party, it shall provide written evidence (in the form of a letter signed by an authorised officer of the company) no later than 30 days after termination of this agreement that these have been destroyed and that it has not retained any copies of them (except for one copy that it may use for audit purposes only and subject to the confidentiality obligations in clause 15), provided that the Customer may retain copies of any Supplier Confidential Information incorporated into the Software or to the extent necessary to allow it to make full use of the Services and any Software;
- 22.9.2 permanently delete any proprietary software belonging to the other party and not the subject of a current licence granted by the other party from its IT network and hard disks or other storage means associated with any computer equipment owned or controlled by the other party. Each party shall provide written confirmation (in the form of a letter signed by an authorised officer of the company no later than 30 days after termination of this agreement that this software has been deleted;
- 22.9.3 return all of the other party's equipment and materials, failing which, the other party may enter the relevant premises and take possession of them, provided, regarding the Customer's rights under this clause 22.9.3, that the Customer has (if appropriate) paid the Supplier in full for such equipment and materials. Until these are returned or repossessed, the party in possession shall be solely responsible for their safe-keeping.
- 22.10 On termination of this agreement for any reason, the Customer shall immediately pay any outstanding undisputed unpaid invoices and interest due to the Supplier. The Supplier shall submit invoices for any Services that it has supplied, but for which no invoice has been submitted, and the Customer shall pay these invoices immediately on receipt.
- 23 Waiver
- No failure or delay by a party to exercise any right or remedy provided under this agreement 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.
- 24 Rights and remedies
- Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.
- 25 Entire agreement
- 25.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 25.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.
- 26 Variation

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).	32.4 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
27 <u>Severance</u>	33 <u>Dispute resolution</u>
27.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.	33.1 Any dispute which may arise between the parties concerning this agreement shall be determined as provided in this clause 33.
27.2 If any provision or part-provision of this agreement is deemed deleted under clause 27.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.	33.2 For the purpose of this clause 33, a dispute shall be deemed to have arisen when one party serves on the other a notice in writing stating the nature of the dispute.
28 <u>Counterparts</u>	33.3 Unless this agreement has already been terminated by the date of the notice of dispute, the Supplier shall, in every case, continue with the Work with all due diligence regardless of the nature of the dispute and the Customer shall continue to make payments (excluding any disputed sums) in accordance with this agreement.
This agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.	33.4 After service of the notice of dispute, the following procedure shall be followed by the parties (all periods specified in this clause 33.4 shall be extendable by mutual agreement):
29 <u>Third-party rights</u>	33.4.1 within two days, the Supplier's representative and the Customer Representative shall meet to attempt to settle the dispute;
No person other than a party to this agreement shall have any rights to enforce any term of this agreement.	33.4.2 if the Supplier's representative and the Customer Representative are unable to reach a settlement within seven days from the date of service of the notice, the managing directors of each of the parties shall meet within the following seven days to attempt to settle the dispute; and
30 <u>No partnership or agency</u>	33.4.3 if no settlement results from the meeting specified in clause 33.4.2, for the following 28 days the parties shall attempt to settle the dispute by mediation by an independent mediator, with costs to be shared equally between the parties.
30.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.	33.5 If no settlement is reached under clause 33.4:
30.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.	33.5.1 if the dispute is of a technical nature concerning the Specification or any similar or related matter then such dispute shall be referred for arbitration. The arbitrator's decision shall (in the absence of clerical or manifest error) be final and binding on the parties and his or her fees for so acting shall be borne by the parties in equal shares unless he determines that the conduct of either party is such that such party should bear all of such fees;
31 <u>Force majeure</u>	33.5.2 in the case of a dispute over purely legal issues, or where disposition of the legal issues would dispose of all other issues in dispute, the matter shall be brought before the English High Court in the most expeditious manner possible, and the parties agree to co-operate in the speedy conduct of such legal proceedings; and
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 result from events, circumstances or causes beyond its reasonable control. In such circumstances, the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 180 days, the party not affected may terminate this agreement by giving 30 days' written notice to the affected party.	33.5.3 in any other case, the dispute shall be determined by the English High Court and the parties submit to the exclusive jurisdiction of such court for such purposes.
32 <u>Notices</u>	34 <u>Governing law</u>
32.1 Any notice required to be given under this agreement, shall be in writing and shall be delivered personally, or sent by pre-paid first-class post or recorded delivery or by commercial courier, to each the Representative of the party required to receive the notice as set out in the Agreement Details or as otherwise specified by the relevant party by notice in writing to each other party.	This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
32.2 Any notice shall be deemed to have been duly received:	35 <u>Jurisdiction</u>
32.2.1 if delivered personally, when left at the address and for the contact referred to in this clause;	The parties irrevocably agree that the courts of England and Wales shall 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 claim.
32.2.2 if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting; or	
32.2.3 if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.	
32.3 A notice required to be given under this agreement shall not be validly given if sent by e-mail.	

