

Software Licence Agreement

18 February 2019

Servelec Social Care is the owner of a Software package and under the terms of a Contract with the Customer, Servelec Social Care has agreed to grant to the Customer a Licence to Use the Software as described in the Contract subject to the terms of this Licence.

1. DEFINITIONS

- 1.1 “Software” means the Servelec Social Care proprietary software products, which includes any computer software, online or electronic documentation, as identified by, or referred to under this Licence or the Contract including Modifications, which are acquired by the Licensee during the subsistence of this Licence or the Contract.
- 1.2 “Contract” means the Contract entered into between Servelec Social Care and the Customer for the supply of the Software.
- 1.3 “Customer” means the company, public body or organisation with whom Servelec Social Care entered into the Contract and by whom the Software shall be used.
- 1.4 “Specification” means the functional design specification provided by Servelec Social Care under the Contract.
- 1.5 “Documentation” means ancillary documentation supplied by Servelec Social Care in electronic or hard copy format.
- 1.6 “Effective Date” means the earlier of the date of delivery to the Customer’s site as defined in the Contract or the date on which the Software is used by or on behalf of the Customer.
- 1.7 “Licence Period” means the period commencing from the Effective Date and enduring in perpetuity thereafter until the date upon which the Customer ceases to have any formal support or maintenance agreement in place with a member of Servelec Social Care’s Group.
- 1.8 “Group” in relation to a company means that company; and each and any subsidiary or holding company of that company; and each and any subsidiary of a holding company of that company. The terms “holding company” and “subsidiary” are defined in section 1159 of the Companies Act 2006).
- 1.9 “Use” means utilisation of the Software (in object code form) on the Customer’s system for the purpose of processing the Customer’s data in the course of its normal business activities. “Use” shall be construed in all circumstances as being subject to the restrictions set out in 3.2 (below). The terms “Using” and “Used” shall be construed accordingly.

“Modification” means any change, addition or amendment to, or upgrade or new version of the Software.

2. CUSTOMER'S RIGHTS IN THE SOFTWARE

- 2.1 Notwithstanding any description of or reference to the Customer's rights as a purchaser of the Software the Customer's rights in the Software and the Documentation shall take effect only as a Licensee on the terms contained in this Licence and those contained in the Contract. Except where this Licence expressly provides otherwise, in the event of any conflict or ambiguity between the terms of this Licence and the terms of the Contract, the former shall take precedence.

3. LICENCE

- 3.1 Servelec Social Care grants to the Customer, subject to the payment of the Licence Fee included in the Contract, with effect from the Effective Date and the Licensee accepts a non-exclusive and non-transferable Licence to Use (as herein defined) the Software and the Documentation for the Licence Period and will provide, on the Effective Date, one copy of the Software together with the necessary documentation to install and use the same, subject to the conditions herein contained.

3.2

- i. The number of users authorised to Use the Software is as specified in the Contract;
- ii. The Customer shall not copy or reproduce in any way the whole or any part of the Software in machine or eye readable form, except that the Customer may maintain not more than two copies of the Software in machine readable form on removable media for normal operational security and back-up purposes and this licence applies to such copies as it applies to ascertain or list the source programs comprising the Software. The Customer shall only make such copies of the Documentation as are reasonably necessary
- iii. The Customer shall not share, communicate or allow access to the Software and/or the Documentation and/or any copy, translation, adaptation or Modifications thereof or any information relating thereto to any third party without Servelec Social Care's prior written consent;
- iv. The Customer will supervise and control the use of Software in accordance with the terms of this Licence;
- v. The Customer recognises that any and all of the trade marks, trade names, copyrights, patents and other intellectual property rights used or embodied in or in connection with the Software and/or the Documentation shall remain vested solely in Servelec Social Care's Group and the Customer shall not during or at any time after the expiry or termination of this Licence in any way question or dispute the ownership by Servelec Social Care's Group of any such rights and no attempt shall be made by the Customer to sub-licence, rent, lease, assign, or in any way allow any third party to have access to the Software and/or the Documentation. The Customer shall ensure that any third party access to the Software and/or Documentation is allowed solely to the extent necessary to permit the Customer to comply with legal or regulatory requirements (including, but not limited to, audit);
- vi. The Customer shall make no attempt to modify, amend, alter or in any way interfere with the Software (except to the extent specified in sub-clause 3 (vii) below) and the Customer shall not attempt to modify, amend or alter the Documentation except where the Contract has made provision for the same.
- vii. The Customer shall be permitted to configure the Software only to such an extent as is specified in the instruction manuals relating to the Software as being necessary to configure the general purposes nature of the Software to a specific application. Where such configuration is made by or on behalf of the Customer, the warranty relating to the Software contained in this Licence shall not cover such configuration nor any malfunction of the Software arising from said configuration or its cumulative effects;

- viii. The Customer acknowledges that the Software and the Documentation are provided and disclosed to the Customer in confidence and agrees to hold the same in confidence and not to disclose them or any part of them to any person other than such of its employees (as are subject to obligations in favour of the Customer to hold the same in confidence) and/or other third parties but only to the extent such disclosure is required to enable the Customer to comply with legal or regulatory requirements (including, but not limited to audit);
- ix. All data within the system must only be entered/modified/deleted using the Software as provided. Inappropriate modification of the data is not permitted. Servelec Social Care shall not be responsible for the resolution of incidents, which arise as a result of such inappropriate modification; the rectification of such incidents shall be chargeable. For the avoidance of doubt, inappropriate modification means modification of data using any other means than through the use of the Software provided by Servelec Social Care.
- x. In the event that the Software is not hosted by Servelec Social Care:
 - A The Customer will use the Software only at the address or addresses specified in the Contract;
 - B The Customer shall maintain accurate records of the location in which the Software has been installed by Servelec Social Care ("the Hosted Location"); in the event that the Customer wishes to change the Hosted Location, the Customer must seek Servelec Social Care's written consent in advance of the move; and
 - C Upon request, the Customer shall give Servelec Social Care access to the records to the extent required to establish the Customer's proper Use of the Software.

The Customer shall ensure that its employees, servants or agents are made aware of and comply with the provisions of this Clause 3.

4. WARRANTIES AND INDEMNITIES

- 4.1 Servelec Social Care warrants its right to supply the Software under this Licence and that there is nothing to prohibit Servelec Social Care from granting this Licence to the Customer. Servelec Social Care will correct all errors notified to it in writing during the warranty period, defined in the Contract, which cause the Software to fail to operate in accordance with the Specification where such errors are due to faulty design or workmanship on the part of Servelec Social Care. Where no warranty period is defined in the Contract then the warranty shall endure for 90 days from the Effective Date.
- 4.2 This warranty shall not apply to errors, which are attributable to factors outside Servelec Social Care's control, which affect the performance of the Software. In the event that Servelec Social Care is required to rectify such an error, any reasonable costs incurred by Servelec Social Care in so doing will be recharged to the Customer.
- 4.3 Subject to the all other provisions in this clause 4, all conditions, warranties and representations expressed or implied by statute, common law or otherwise in relation to the Software are hereby excluded and Servelec Social Care shall be under no liability to the Customer for any loss, damage or injury, direct to or indirect, resulting from the use of the Software and materials relating thereto, faulty workmanship or otherwise howsoever arising and whether or not caused by Servelec Social Care's negligence, its employees or agents.
- 4.4 Servelec Social Care does not exclude liability for death or personal injury caused by its negligence or the negligence of its employees or agents; nor for fraud or fraudulent misrepresentation nor any other liabilities that cannot be excluded under English statutory law.

- 4.5 Subject to clause 4.4 above, Servelec Social Care's total liability for all losses, costs, damages and/or other liabilities (whether arising in contract, tort (including negligence) or otherwise) shall be limited to the figure stipulated in the Contract (whether expressed as a monetary value or as a percentage of charges/prices stipulated in the Contract). Where no such limitation of liability is expressed in the Contract, Servelec Social Care's total liability for all losses, costs, damages and/or other liabilities howsoever arising under this Licence shall be limited to the value of the Licence charges (as specified in the Contract).
- 4.6 Subject to clause 4.4 above, Servelec Social Care shall not be liable for any financial or economic loss, loss of profit, loss of contract, loss of production, loss of use, loss of data, indirect or consequential loss whether arising from breach of contract, tort or breach of statutory duty or howsoever caused.

5. TERMINATION

- 5.1 This Licence shall terminate at close of business on the last day of the Licence Period.
- 5.2 During the Licence Period, either party shall have the right to terminate this Licence for any of the following reasons:
- i. if either party breaches any of the conditions contained in this Licence and fails to remedy the breach to the satisfaction of the other party within 14 days of notification, in writing, that such a breach has occurred;
 - ii. if either party becomes bankrupt or makes any arrangement with its creditors or if an order is made or resolution passed for the liquidation, winding-up or dissolution of that party or if a Receiver should be appointed.
 - iii. if 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 5.2(iii) above.
- 5.3 Upon and after the termination of this Licence, the Customer shall:
- i. forthwith cease to Use the Software otherwise than for the purpose of retrieving data stored in the Software at the date of termination under the supervision of Servelec Social Care and the Customer shall promptly (where installed at the Customer's premises or a third party hosting provider employed by the Customer) remove all of the Software and information relating thereto;
 - ii. immediately delete any electronically held Documentation in its possession which relates in any way to the Software;
 - iii. return any copies of Documentation that was provided to it by Servelec Social Care;
 - iv. allow Servelec Social Care to have reasonable access to any of its business premises to enable Servelec Social Care to verify that the Customer is complying with its obligations on termination, subject always to existing security arrangements;
 - v. continue to be bound by the obligation of confidentiality contained in clause 3.2(viii).

6. FORCE MAJEURE

- 6.1 Neither party shall be under any liability pursuant hereto in respect of anything which apart from this provision may constitute breach of this Licence arising by reason of force majeure namely circumstances beyond the control of such party which shall include (but which shall not be limited to) acts of God, perils of the sea or air, fire, flood, drought, explosion, sabotage, accident, embargo, war, riot, civil commotion including acts of local government and parliamentary authority, labour disputes of whatever nature and for whatever cause arising.

7. ASSIGNMENT

- 7.1 This Licence shall not be assignable by either party save that the Customer may with the consent of Servelec Social Care assign the whole benefit and burden of this Licence to a member of the Customer's Group.

8. WAIVER

- 8.1 The failure or neglect by either party to enforce at any time any of the provisions hereof shall not be construed nor shall be deemed to be a waiver of such party's rights hereunder nor in any way effect the validity of the whole or any part of this Licence nor prejudice such party's right to take subsequent action.

9. SEVERABILITY

- 9.1 If any of the terms, conditions or provisions contained in this Licence shall be determined invalid, unlawful or unenforceable to any extent such term or condition or provision shall be severed from the remaining terms, conditions and provisions, which shall continue to be valid to the fullest extent permitted by law.

10. LAW

- 10.1 This Licence shall be governed by and interpreted in accordance with the laws of England, and except insofar as already subject thereto the parties hereby prorogate the jurisdictions of the English courts.