



ccubesolutions

OITUK Ltd.: Software License Agreement

THIS AGREEMENT is made effective this ____ day of _____, 2014 between OITUK Limited, trading as CCube Solutions (SUPPLIER) with its principal place of business at 13 Diamond Court, Opal Drive, Milton Keynes MK15 0DU, and _____ (CUSTOMER), a _____ NHS Trust, with an office at _____. SUPPLIER and CUSTOMER are the "parties" to this Agreement.

WHEREAS CUSTOMER wishes to secure rights to purchase non-exclusive, non-transferable, perpetual licenses to use certain of the Software Product(s) and

WHEREAS, SUPPLIER wishes to provide such non-exclusive, non-transferable, perpetual licenses to permit CUSTOMER's use of certain of the Software Product(s) pursuant to the terms and conditions of this Agreement,

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained and intending to be legally bound hereby, the parties hereto agree as follows:

1. Definitions

a. Product: The term "Product" shall mean collectively the Licensed Software and Licensed Documentation (as hereinafter defined).

b. Licensed Software: The term "Licensed Software" shall mean the software in object code form, in the form and content existing as of the date of this Agreement. The term "Licensed Software" shall include all Core Products and optional modules, and any updates, revisions, and enhancements supplied by SUPPLIER.

c. Licensed Documentation: The term "Licensed Documentation" shall mean all documentation, other than the Licensed Software, related to the Licensed Software.

d. CUSTOMER: The term "CUSTOMER" shall mean << insert customer name>> and its divisions, subsidiaries, and affiliates in << customer address>>.

2. License Options

a. **Concurrent User Access Option:** CUSTOMER may, at its option, choose to license the Product(s) for Concurrent User access and use. A Concurrent User shall mean any workstation connected to the single licensed instance of SUPPLIER database tables, accessed through the SUPPLIER Native Windows client software or through a web browser, where the SUPPLIER software stores the index information. The Concurrent User Access option requires CUSTOMER to license SUPPLIER system users on a count/specific number basis, and access is restricted to the

number/actual count of Concurrent Users licensed to access the single instance of database tables. Any SUPPLIER Native Windows Client window or Web Browser item active shall be considered a logged-in Concurrent User. Under this option, SUPPLIER grants CUSTOMER, pursuant to the terms and conditions of this Agreement, a perpetual, non-exclusive, non-transferable license to use the Licensed Software in accordance with the following Licensed Rights: (1) CUSTOMER will be licensed to implement the Licensed Software for one, live production system to run against one instance of database tables with Concurrent User Access; (2) CUSTOMER may copy the Licensed Software for one instance of a development and testing environment running against one instance of development and testing database tables with Concurrent User Access; and (3) CUSTOMER may copy the Licensed Software for one instance of back-up and disaster recovery environment/purposes, running against one instance of back-up and disaster recovery database tables with Concurrent User Access.

b. Enterprise Unlimited User Option: Customer may, at its option, choose to license the Product(s) for Enterprise Unlimited User access and use. Under this option SUPPLIER grants CUSTOMER, pursuant to the terms and conditions of this Agreement, perpetual, non-exclusive, non-transferable licenses to use the Licensed Software according to the following Licensed Rights: (1) CUSTOMER will be licensed to implement the Licensed Software for one, live production system to run against one instance of database tables with Unlimited User Access; (2) CUSTOMER may copy the Licensed Software for one instance of a development and testing environment running against one instance of development and testing database tables with Unlimited User Access; and (3) CUSTOMER may copy the Licensed Software for one instance of back-up and disaster recovery environment/purposes, running against one instance of back-up and disaster recovery database tables with Unlimited User Access.

- d. CUSTOMER agrees to use the Licensed Software only on the computer equipment at the CUSTOMER's place of business and shall not transfer title or any other interest in the Product(s), except as otherwise provided herein under Article 16, (c).
- e. CUSTOMER agrees to use the Product(s) only in the course of CUSTOMER's own business enterprises, including granting CUSTOMER clients access to information and data stored by CUSTOMER in the SUPPLIER repository. However, CUSTOMER may not use the Product(s) for a service bureau application where CUSTOMER is paid to process data relating to any third party.
- f. CUSTOMER specifically agrees that each of the terms and conditions of this, Section 2, License are material, and the demonstrable failure of the CUSTOMER to comply with these terms and conditions shall constitute sufficient cause for SUPPLIER to terminate this Agreement.

3. Software License Fees

a. In consideration for the License granted by SUPPLIER under this Agreement, CUSTOMER shall pay SUPPLIER as agreed.

b. Payment Terms: The payment schedule, as specified in Schedule B, applies to the one-time payment of the License Fees for the software being purchased by

CUSTOMER from SUPPLIER, hereunder. This one time payment of the License Fees shall be remitted per the designated Terms And Conditions specified in Schedule B. SUPPLIER Professional Services Fees, required by CUSTOMER, shall be billed per the rates and specified in a corresponding Project Plan to be drafted as an Addendum to this Agreement. All amounts not paid within thirty (30) days from the date of the invoice shall bear interest at the rate of one and one-half (1-1/2%) percent per month, from the date due until paid. Failure of CUSTOMER to remit any portion of specified and designated fees, when a payment is due, shall constitute sufficient cause for SUPPLIER to terminate this Agreement.

c. Travel, Lodging, and Meal Expenses shall be billed separately in accordance with the "Travel And Expense Billing Schedule" and the designated Terms And Conditions shall apply. All amounts not paid within thirty (30) days from the date of the invoice shall bear interest at the rate of one and one-half (1 1/2%) percent per month, from the date due until paid.

4. Delivery, Installation, Testing, and Acceptance

a. **Delivery:** SUPPLIER shall deliver the Product(s) to CUSTOMER within thirty <<insert agreed time period>> business days of CUSTOMER's request.

b. **Installation:** Any installation, training, and on site support services time incurred by SUPPLIER shall be billed in accordance with the fee schedule

c. **Acceptance:** Acceptance shall occur when the features and functionality as "Deliverables" are verified by CUSTOMER. CUSTOMER expressly agrees, to the best of CUSTOMER's ability, that CUSTOMER will verify to SUPPLIER acceptance of the deliverables specified in << document listing test criteria>> within <, agreed time>> days upon completion of SUPPLIER's installation and training services for any project, made part hereof, via an Addendum to this Agreement. All deliverable features and functionality are required to function and operate as specified and set forth in the Licensed Documentation. Any changes to the features, functionality, operation and "look" of the Licensed Software that CUSTOMER desires shall be addressed in future enhancements, or contracted as additional custom programming work after the deliverables (to be agreed and specified with the CUSTOMER) are accepted and SUPPLIER is paid in full for charges detailed in the project specific Addendums.

d. **Failure of Acceptance Testing and Remedy:** Upon review of the agreed Deliverables, if any of the Deliverables are not operating as set forth in the Licensed Documentation, then CUSTOMER shall supply SUPPLIER written description of the specific claimed defects in the Product(s). Upon receipt of such written description SUPPLIER shall have thirty (30) days to remedy the situation. If at the end of the thirty (30) days SUPPLIER has not provided remedy then CUSTOMER shall have right to continue working with SUPPLIER toward remedy or receive a full refund of money paid for the Licensed Software (Software Licensing Fees) and at that time must return all Licensed Software and Documentation to SUPPLIER at SUPPLIER's cost of shipping and handling. Any and all money paid SUPPLIER by CUSTOMER for Installation, Training, Consulting, Custom Programming, and Expense Reimbursement is non-refundable.

5. SUPPLIER Professional Services Fees and Expense Reimbursement

a. SUPPLIER Professional Service Fees include services such as: consulting based on SUPPLIER software application and use, SUPPLIER software installation, training based on SUPPLIER software, custom programming of SUPPLIER software, interfacing/integrating SUPPLIER software with third party or CUSTOMER-owned software applications.

6. SUPPLIER Software Maintenance and Support Services

a. Annual software support for the first year is included following an agreed period after Go-Live. Ongoing software support is optional, but it is recommended. The cost for annual software support for the second year and for subsequent years shall be calculated according to the following Maintenance and Support Fee Escalation and Calculation explanation. Technical Support is available Monday through Friday (excluding holidays) between 8:30AM through 5.30PM, GMT. Emergency support is available at all other times for critical problems that, in CUSTOMER's reasonable opinion, must be addressed prior to the next scheduled commencement of regular Technical Support hours. All support communication channels are monitored around the clock. From 8.30AM to 5.30PM, GMT, SUPPLIER staff is on duty.

b. In consideration of the Annual Software Support Fee, SUPPLIER offers CUSTOMER the following maintenance and ongoing services:

SUPPLIER's Technical Support Programs, and Software Maintenance Programs are applicable for Product(s). SUPPLIER shall support and maintain the Product(s). SUPPLIER, though it is willing to help a client/licensee with hardware, network, infrastructure issues, matters or problems, assumes no responsibility for support or maintenance of the other aspects of a client/licensees hardware, network, and infrastructure.

In exchange for Annual Software Support and Maintenance fees SUPPLIER shall provide the following services: (1) technical Web submission/e-mail/phone support; (2) free upgrades to new releases and versions of the Licensed Software Products; (3) access to the SUPPLIER FTP Site; (4) program fix service; (5) quick-and-easy custom tweaks/enhancements; (6) SUPPLIER's beta user/tester program, (7) SUPPLIER's users' Group which meets once a year. Annual SUPPLIER Software Support and Maintenance programs do not cover SUPPLIER Professional Services on-site at CUSTOMER's facilities.

c. Annual Software Support and Maintenance is optional. CUSTOMER may, at its option, retain SUPPLIER for any needed support and maintenance services and/or programs on an as-needed basis. Declining or discontinuing SUPPLIER's Annual Software Support and Maintenance programs do not terminate the License.

7. Maintenance and Software Support Fee Escalation and Calculation

The fee for annual maintenance and software support for the first year after Product installation (Go-Live) shall be an amount equal to twenty percent (22%) of the current value of all SUPPLIER software purchased as listed on the then current Retail Price List. Subsequent Annual Maintenance and Software Support Fees, beginning with the second year, shall be a minimum of the amount paid in the first year but shall never escalate, one year to the next, by an amount equal to (1) the rise in the Consumer Price Index as published by the appropriate Government Agency, or (2) an amount equal to 110% of the previous year's Annual Maintenance fees.

8. Annual Maintenance and Software Support Programs

Technical Web Submission/E-mail/Phone Support: This program offers help-desk-type software support services for commonly asked questions and troubleshooting. The technical -web -submission process is the primary tool used for first time reporting of issues and problems and inquiries. When received these submissions are indexed immediately to the SUPPLIER support database and tracking system.

Upgrades To New Releases, and Versions, Of The Licensed Software Versions: This program entitles CUSTOMER to enhanced releases and versions of the Product(s). CUSTOMER shall receive new releases or versions and corresponding documentation made available to any other similar Licensee of the Product(s). This includes any version, release, revision, modification, refinement, fix, work around, or improvement that is incorporated into the Licensed Software and that generally adds or changes functionality or improves performance.

SUPPLIER represents and warrants that all new releases and new versions delivered to CUSTOMER pursuant to the Maintenance Agreement shall perform at least according to the same quality standards that are contained in the Licensed Software at the time initially licensed by CUSTOMER and that such new releases and new versions shall not decrease or change functionality or adversely affect performance of the Licensed Software.

Access To The SUPPLIER FTP Site: This program includes the means for transferring files back and forth for testing, trouble shooting and for distribution of enhanced interim releases.

Program Fix Service: If a Licensed Program, as furnished and without CUSTOMER modification, fails to function in accordance with the published specifications set forth in the Licensed Documentation due to an error in the Licensed Programs, and it has been reasonably determined that the failure is not due to incorrect or defective data entry or operator performance, SUPPLIER will make a prompt and reasonable attempt to provide a program patch to correct such error or malfunction. The terms “prompt and reasonable” shall apply to SUPPLIER's initial response to a reported problem or issue, or request for

support. SUPPLIER shall initially respond, to CUSTOMER's initial report or request for support, within four hours of report or request when initially received between the hours of 8.30AM and 6PM GMT. Four hours shall be the maximum time interval between initial report/request and initial response/message back from SUPPLIER. SUPPLIER shall have the right to verify the existence of any error reported, and SUPPLIER shall have no obligation to correct any error or defect unless the error or defect can be recreated with the latest unaltered version of the Licensed Program. Error verification shall be conducted through SUPPLIER's Technical Support Offices.

Quick And Easy Custom Tweaks/Enhancements: SUPPLIER will optimize a Product for a specific CUSTOMER use. Upon review and establishing the programming time and effort required to effect such enhancement, SUPPLIER will advise CUSTOMER accordingly. SUPPLIER reserves all rights regarding determination of performing custom programming to effect a requested enhancement at no additional charge outside of the Annual Software Support and Maintenance Fees, or if custom programming charges will be required.

BETA User/Test Program: This program provides software products as they become available for testing. This program includes certain limitations and restrictions on ancillary services such as support.

9. Warranties

a. SUPPLIER makes no Warranties except as expressly provided herein.

b. SUPPLIER warrants that the media on which a Product is furnished to be free from defects in materials and workmanship for a period of 90 days from the date of delivery to CUSTOMER. SUPPLIER does not warrant that the programs provided will be error free and that the software will operate uninterrupted. SUPPLIER warrants that the Licensed Software, as delivered by SUPPLIER, is an accurate version and will reasonably conform to the material specifications as described in the provided Licensed Documentation. SUPPLIER, however, makes no warranties, either express or implied, regarding its merchantability, or fitness for any particular purpose. SUPPLIER does warrant to CUSTOMER per the terms and conditions detailed in the License Agreement under Article 7, SUPPLIER Software Maintenance and Support Services, and Article 9, Annual Maintenance and Software Support Programs, that SUPPLIER will provide expedient and professional service and support when problems and errors with the software occur. CUSTOMER acknowledges that SUPPLIER's performance with regard to software maintenance and support is governed by the terms and conditions set forth and referenced in the License Agreement under Article 7, SUPPLIER Software Maintenance and Support Services, and Article 9, Annual Maintenance and Software Support Programs.

Regarding defective media, SUPPLIER's entire liability and CUSTOMER's exclusive remedy shall be the replacement of any media that is defective in materials or workmanship. Such defective media must be returned to SUPPLIER within the 90-day warranty period along with a copy of CUSTOMER's receipt or other proof of payment.

c. SUPPLIER warrants that the source code of the Products contain no specific code, mechanisms, or features intended to shut down or terminate, either automatically or remotely, the Products. Though software error, user error, or hardware/network problems could cause the Products to not function or to shut down, there is no programmed “time bomb” feature within the source code of the Products.

10. Proprietary Rights; Indemnity

a. Each party shall indemnify, defend and hold harmless the other party, its affiliates, subsidiaries, successors and assignees, and their respective directors, officers, employees and agents, from all liabilities and damages, suits, proceedings, recoveries, judgments or executions (including expenses and reasonable attorney's fees) which may be made, had, bought or recovered by any third party by reasons of or on account of the indemnifying party's breach of performance of any of its obligations under this Agreement. SUPPLIER shall indemnify, defend and hold harmless CUSTOMER, its affiliates, subsidiaries, successors and assignees, and their respective directors, officers, employees, and agents from all liabilities and damages and claims for damages, suits, proceedings recoveries, judgments or executions (including expenses and reasonable attorney's fees) arising out of or in connection with any claim that the use of the Product by CUSTOMER infringes any third party patent, copyright, trademark or other property right related to the claim or act or event which gave rise to the indemnification.

b. In the event that the Product licensed hereunder, or any portion thereof, is held to constitute an infringement and its use is enjoined, SUPPLIER shall have the obligation to, at its expense, (1) modify the infringing Product without impairing in any material respect the functionality of performance, so that it is non-infringing, (2) procure for CUSTOMER the right to continue to use the infringing Product, or (3) replace the Product with equally suitable, non-infringing Product. If none of the foregoing alternatives are available to SUPPLIER, CUSTOMER shall receive repayment of monies paid for the infringing Product's software licensing fees and for professional services fees associated with the installation, training, and custom programming of the infringing Product.

This provision shall not be applicable in the event of gross negligence or willful misconduct by the indemnified party.

11. Limitation of Liability

Except as otherwise provided herein, neither party shall be liable to the other for indirect, incidental or consequential damages, loss of profits, loss of use of data or interruption of business, whether such alleged damages are labeled in tort, contract, or indemnity, even if the appropriate party has been advised of the possibility of such damages. SUPPLIER strongly recommends backing up all database files, application files and records. SUPPLIER will in no way be responsible for any loss of data for any reason.

12. Confidential Information

Customer and SUPPLIER agree to hold in the strictest confidence and not use or disclose to any person, firm or corporation, without the written authorization of the other party, except as required by law, any "Confidential Information" (as defined below). Each party and their respective employees, officers, directors, shareholders and agents agree not to use any of the Confidential Information for the purpose of competing with the other party either directly or indirectly or to assist third persons or entities to compete with the other party. For purposes of this agreement, "Confidential Information" means all information, documents and materials provided by one party to the other party before or during the term of this Agreement relating to or in connection with the Project, including, without limitation, technical data, specifications, communication protocols, trade information, customer or client lists and records, business and marketing plans, schematics, reports and technical and marketing data; provided, however, that neither party shall be under any obligation to maintain in confidence any portion of the information it has received which (a) is now, or which becomes hereafter, through no act or failure to act on the part of the recipient party, generally known or available to the public, (b) is known by the recipient party at the time of the disclosure of such information, provided that the source of such information was not known by the receiving party to be prohibited from disclosing such information by a contractual, legal or fiduciary obligation or (c) is hereafter furnished to the recipient party by a source other than the other party, provided that such source is not known by the receiving party to be prohibited from disclosing such information by a contractual, legal or fiduciary obligation. Neither party shall disclose the Confidential Information of the other party to its employees except on a need-to-know basis, and the recipient party shall be responsible for the unauthorized disclosures of Confidential Information by its employees.

No express or implied rights or license is granted by any disclosure of Confidential Information to the recipient party in connection with this Agreement.

13. Effective Date

a. This Agreement and the license granted hereunder take effect upon the date when the last party executes this Agreement.

b. Termination. Each party shall have the right to terminate this Agreement and the license granted herein upon the occurrence of one of the following events ("Event of Default"):

i) In the event the other party violates any provision of this Agreement:

ii) In the event the other party:

(1) terminates or suspends its business;

(2) becomes subject to any bankruptcy or insolvency proceeding under Federal or State statute;

(3) becomes insolvent or subject to direct control by a trustee, receiver or similar authority; or

(4) has wound up or liquidated, voluntarily or otherwise.

c. **Notice and Opportunity to Cure** Upon the occurrence of an Event of Default, a party shall deliver to the defaulting party a Notice of Intent to Terminate that identifies in detail the Event of Default. If the Event of Default remains uncured for 30 days, the party may terminate this Agreement and the license granted herein by delivering to the defaulting party a Notice of Termination that identifies the effective date of the termination, which date shall not be less than 30 days after the date of delivery of the Notice of Intent to Terminate.

d. **Procedure:** Within 10 days after termination of the license, CUSTOMER shall return to SUPPLIER, at CUSTOMER's expense, the Product and all copies thereof, delete or destroy all copies of the Product, and certify, in writing, by an officer of the CUSTOMER that the Product has been returned, all copies deleted or destroyed, and its use discontinued.

14. Proprietary Rights of SUPPLIER

a. SUPPLIER represents and warrants that it is the owner of the software licensed hereunder and that, at the time of signature of this Agreement, there is no challenge to the ownership rights of SUPPLIER in the software licensed hereunder.

b. CUSTOMER agrees that the Product contains proprietary information, including trade secrets, know-how, and confidential information that is the exclusive property of SUPPLIER. During the period while this Agreement is in effect and up to and through 3 years after its termination, CUSTOMER and its employees and agents shall maintain the confidentiality of this information and not sell, license, publish, display, distribute disclose or otherwise make available this information to any third party nor use such information except as authorized by this Agreement. CUSTOMER shall not disclose any such proprietary information concerning the Product, including any flow charts, logic diagrams, user manuals, and screens to persons not an employee of CUSTOMER without the prior written consent of SUPPLIER, which may require such third party to execute a non-disclosure agreement.

15. Transfer of Rights

a. **Title:** CUSTOMER and SUPPLIER agree that SUPPLIER owns all proprietary rights, including patent, copyright, trade secret, trademark and other proprietary rights in and to the Product and any corrections, bug fixes, enhancements, updates or other modifications, including CUSTOMER modifications, to the Product, whether made by licensor or any third party.

b. **Transfers:** Under no circumstances shall CUSTOMER sell, license, publish, display, distribute or otherwise transfer to a third party the Product or any copy thereof, in whole or in part, without SUPPLIER's prior-written consent.

c. **Assignment:** Neither party shall assign this Agreement without first obtaining the written consent of the other, which consent may not be unreasonably withheld

except that either party may assign all or any part of its rights and interest under this Agreement to its parent, subsidiaries or affiliates, without prior written consent from the other party. Nothing herein shall limit the right of either party to have any of its obligations performed by its subsidiaries, affiliated companies or parent companies, provided that in all such cases the party to this Agreement shall remain directly responsible for any such obligation. Reorganization, merger, or consolidation is not deemed to be an assignment. There shall be no charge to Licensee or the assignee for any assignment hereunder.

d. **Successor:** This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and permitted assigns.

16. Governing Law

The validity, performance and construction of this Agreement are governed by the UK laws.

17. Notices

The notices between the parties shall be deemed given when mailed by first class, certified mail with return receipt required addressed to the address below or to any other address as the party may designate.

If to SUPPLIER: Pauline Green, Company Secretary

CCube Solutions
13 Diamond Court
Opal Drive
Milton Keynes
MK15 0DU

If to CUSTOMER

Facsimile Number: _____

With A Copy to:

Facsimile Number: _____

18. Force Majeure

Neither party shall be liable by reason of any failure or delay in the obligations hereunder on account of strikes, riots, fires, explosions, acts of God, war, governmental action or any other cause which is beyond the control of such party.

19. Waiver

No delay, omission or failure to exercise any right or remedy provided for in this Agreement shall be deemed to be a waiver of that right or remedy. Every such right or remedy may be exercised, from time to time, as may be deemed expedient by the party exercising such right or remedy.

20. Severability

In the event that any provision of this Agreement shall be unenforceable or invalid under any applicable laws or be so held by applicable court decision, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole, and, in such event, such provision shall be changed and interpreted so as best to accomplish the objectives of such unenforceable or invalid provision within the limits of the applicable law or applicable court decision.

21. SUPPLIER Marketing Rights

SUPPLIER reserves the right to announce this Agreement by issuing a Press Release to the general press, industry press, and vertical press upon signing by the parties. CUSTOMER will receive a copy of this initial announcement. The initial announcement will state CUSTOMER'S company name, address, assets if a publicly held organization, and licensed software. No proprietary or confidential information will be in the statement. A sample "License Agreement Announcement" press release is available upon request.

22. Entire Agreement

This Agreement together with those documents incorporated by reference constitutes the entire agreement between the parties and supersedes any prior Agreements. This Agreement may only be changed by mutual agreement, in writing.